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DESIGN/BUILD COST PLUS CONTRACT - PERCENTAGE

THIS AGREEMENT, Made as of (Current Date), In the Year of (Current Year)

Between the Owner:

Contact Primary Full Address
Contact Telephone

And the Contractor:

Company Full Address
License Number
Telephone

For the Project:

Project Address

Construction Lender:

Lender Address

ARTICLE 1. CONTRACT DOCUMENTS

- 1.1. The contract documents consist of this agreement, general conditions, specifications, allowances, finish schedules, construction information disclosure statement, all addenda issued prior to execution and all change orders or modifications issued and agreed to by both parties. The contract documents represent the entire agreement of both parties and no prior oral or written agreement.

ARTICLE 2. SCOPE OF WORK

- 2.1. The Owner agrees to purchase and the Contractor agrees to prepare construction documents and construct the above mentioned structure and fixtures located in **(the city, county and state of project)** according to the construction documents, specifications, allowances, finish schedules, all addenda, change orders, modifications and specifications set forth in the specification booklet.

ARTICLE 3. DESIGN DEVELOPMENT

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- 3.1. Based upon the mutually agreed upon program and layout established at the Initial Meeting, the contractor/designer/architect, shall prepare a set of construction documents for review by the owner. These documents shall include site plans, elevations, and a front elevation, as well as any specific information requested by the owner. The contractor/designer/architect shall be responsible for providing drawings to show room sizes and adjacencies.
- 3.2. The owner and contractor/designer/architect will review the drawings and make any changes, options, questions or general concerns they may have. The contractor/designer/architect will then prepare a set of **CAD** construction documents showing the modified floor plans, elevations and electrical layouts.
- 3.3. Upon final approval of the design, the production of the plans shall be completed within **(number of days)** business days to complete.
- 3.4. The final meeting shall consist of the owner receiving the completed construction documents shall consist of **5 (five)** complete sets of construction documents; floor plans, all elevations, typical details and sections, electrical layouts, framing plans, and roof plans.
- 3.5. The cost of the plans will be calculated at **\$0.00** per square foot of construction.
- 3.6. At the receipt of the design development documents, a payment of design fees will be due.
- 3.7. At the receipt of final plans the owner shall pay contractor/designer/architect the amount due plus any additional services and/or reimbursable expenses. Complete payment is due upon receipt of the design documents.

ARTICLE 4. THE CONTRACT PRICE

- 4.1. The construction contract shall be calculated on a cost plus coordination services, materials, permits and insurance figured as costs.

Select one of the following calculation methods:

Construction coordination services shall be charged at **(percent)%** of construction costs.
 Construction coordination services shall be charged at costs plus **(percent)%** (obtained by dividing the costs by (1 minus the percentage)).

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- 4.2. Pre-construction estimates for construction costs and coordination **(written) Dollars, (\$000,000.00)**, Closing costs shall be paid by t
- 4.3. The Owner and the Contractor acknowledge that the Owner will p **Dollars, (\$000,000.00)**, upon signing of this contract and before c a deposit and part of the purchase price of the project.

ARTICLE 5. PROGRESS PAYMENTS

- 5.1. The Owner will make payments to the contractor every two weeks labor and materials submitted. Construction coordination fees sh those draws. Owner shall make payments to contractor within **(da** contractor. Should the owner fail to make payment, contractor m **(percent)** annually upon the unpaid amount until paid.
- 5.2. If payment is not received by the Contractor within **(number of da** of payment demand for work satisfactorily completed, contractor s stop work or terminate the contract at his option. Termination by provisions of this paragraph shall not relieve the Owner of the obl Contractor for that part of the work performed prior to such termin Owner under the provisions of this paragraph shall not relieve the obligations of payments to Contractor for that part of the work per termination.

ARTICLE 6. DUTIES OF THE CONTRACTOR

- 6.1. All work shall be in accordance to the provisions of the plans and systems shall be in good working order.
- 6.2. All work shall be completed in a workman like manner, and shall o applicable national, state and local building codes and laws.
- 6.3. All work shall be performed by licensed individuals to perform the by law.
- 6.4. Contractor shall obtain all permits necessary for the work to be co

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- 6.5.** Contractor shall remove all construction debris and leave the project in good condition.
- 6.6.** Upon satisfactory payment being made for any portion of the work, the Contractor shall furnish a full and unconditional release from any claim or measure of damages for any portion of the work for which payment has been made.

ARTICLE 7. OWNER

- 7.1.** The Owner shall communicate with subcontractors only through the Contractor.
- 7.2.** The Owner will not assume any liability or responsibility, nor have any control over the means, methods, techniques, sequences, procedures, safety precautions and programs in connection with the project, since the Contractor shall be responsible for the Contractor's responsibility.

ARTICLE 8. TIME OF COMPLETION

- 8.1.** The projected completion date shall be approximately (number of months) from the first day of construction, however any change orders and/or unforeseen delays or otherwise affect the completion date. Barring inclement weather and related delays, the Contractor shall pay liquidated damages of (date) per month if the project is not completed within (number of months) months from the execution date shall be (date).

ARTICLE 9. CHANGE ORDERS AND FINISH SCHEDULES

- 9.1.** A Change Order is any change to the original plans and/or specifications. Change orders need to be agreed upon in writing, including cost, additional materials, approximate dates when the work will begin and be completed, a location where the work will be done and signed by both parties. Payment for each change order will be paid prior to the change, with the final payment at the completion of the change order. A 12% fee shall be added to all change order overages in excess of initial allowances. Additional time needed for change orders shall be taken into consideration in the project completion schedule.

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9.2. Completed Finish Selection Schedules shall be submitted to the Owner

9.2.1. Schedule #1 within four weeks after site clearing begins.

9.2.2. Schedule #2 within eight weeks after site clearing begins.

9.3. Any delays or changes in finish selection schedules will delay the start date.

ARTICLE 10. INSURANCE

10.1. The Owner will keep in force a Builder's Risk Insurance Policy on the project to protect both owner's and contractor's interests until construction is complete.

10.2. The Owner will purchase and maintain property insurance to the full extent of the project, in case of a fire, vandalism, malicious mischief or other loss that may occur.

10.3. The Contractor shall purchase and maintain needed [Workman's Compensation and Liability](#) insurance coverage as required by law and deemed necessary for the protection of the Contractor.

ARTICLE 11. GENERAL PROVISIONS

11.1. If conditions are encountered at the construction site which are substantially different from those concealed physical conditions or unknown physical conditions of the site which differ naturally from those ordinarily found to exist and generally inherent in construction activities, the Owner will promptly investigate and, if they differ materially and cause an increase or decrease in the cost of, and/or time required for, performance of any part of the work, will provide the Contractor an equitable adjustment in the contract sum, contract time and contract price.

ARTICLE 12. HAZARDOUS MATERIALS, WASTE AND ASBESTOS



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- 12.1.** Both parties agree that dealing with hazardous materials, waste or specialized training, processes, precautions and licenses. Therefore, this agreement includes the specific handling, disturbance, removal of hazardous materials, waste or asbestos, upon discovery of such materials, the Contractor shall notify the Owner immediately and allow the Contractor to contract with a properly licensed and qualified hazardous material removal contractor. All work shall be treated as a Change Order resulting in additional cost considerations.

ARTICLE 13. ARBITRATION OF DISPUTES

- 13.1.** Any controversy or claim arising out of or relating to this contract, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment of the arbitrator(s) may be entered in any court having jurisdiction.

ARTICLE 14. WARRANTY

- 14.1.** At the completion of this project, Contractor shall execute an instrument warranting the project for **(number of years)** against defects in work materials utilized. The manufacturers warranty will prevail. No legal action relating to the project, project performance or this contract shall be brought by either party against the other party after **(number of years)** beyond the project or cessation of work.

ARTICLE 15. TERMINATION OF THE CONTRACT

- 15.1.** Should the Owner or Contractor fail to carry out this contract, with the following options and stipulations shall apply:

15.1.1. If the Owner or the Contractor shall default on the contract, either party may declare the contract is in default and proceed against the other party for the recovery of all damages incurred as a result of said breach of contract plus reasonable attorney's fee. In the case of a defaulting Owner, the same shall be applied to the legally ascertained damages.

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15.1.2. In the event of a default by the Owner or Contractor, the Contractor may state his intention to comply with the contract and proceed for

15.1.3. In the case of a defaulting Owner, the Contractor may accept the earnest money as shown herein as liquidated damages, should the Contractor incur the expenses to date, the Contractor may make claim to the Owner for the amount of the earnest money and for proven loss with respect to equipment, materials, tools, costs and machinery, including reasonable overhead, profit and damage to property less the earnest money.

ARTICLE 16. ATTORNEY FEES

16.1. In the event of any arbitration or litigation relating to the project, pursuant to this contract, the prevailing party shall be entitled to reasonable attorney's fees and expenses.

ARTICLE 17. ACCEPTANCE AND OCCUPANCY

17.1. Upon completion, the project shall be inspected by the Owner and the Contractor. Any repairs necessary to comply with the contract documents shall be made by the Contractor.

17.2. The Owner shall not occupy the property until final payment has been made to the Contractor and a Certificate of Occupancy has been obtained.

17.3. Occupancy of the project by the Owner in violation of Article 17.2 shall constitute unconditional acceptance of the project and a waiver of any defects in the work.

WITNESS our hand and seal on this _____ day of _____,

Signed in the presence of:

Witness

Witness

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Contractor Signature

Owner Signature



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