

**RESIDENTIAL CONSTRUCTION AGREEMENT**

This RESIDENTIAL CONSTRUCTION AGREEMENT (this "**Agreement**") is entered into, for good and valuable consideration, by and between:

**CONSTRUCTION COMPANY**, a Utah limited liability company ("**Contractor**"), of 123 Construction Street, Provo, Utah 84604;

*and,*

**DANIEL HOMEOWNER** ("**Owner**"), of 1234 New Residence Lane, Salt Lake City, UT 84105.

Contractor and Owner are sometimes collectively referred to herein as the "Parties" and may be individually referred to as a "Party." This Agreement is effective as of the date of last signature below (the "**Effective Date**"). The Parties jointly agree to be bound by the Standard Terms and Conditions contained in this Agreement, as well as in all areas pertaining to the goods and services outlined in this Agreement (hereinafter collectively referred to as the "**Goods and Services**" and individually referred to as the "**Good(s)**" and/or the "**Service(s)**").

This Agreement consists of: (i) this signature page; (ii) the attached Standard Terms and Conditions; (iii) all written statements of work for Contractor's Goods and Services ("**SOWs**"), together with any related exhibits or purchase orders thereto, executed by the Parties under this Agreement, all of which are incorporated herein by this reference; and (iv) any addendum that may be executed by the Parties from time to time setting forth additional terms related to specific Goods and/or Services (each, an "**Addendum**").

This Agreement is the complete agreement between the Parties and replaces any prior or contemporaneous oral or written communications between the Parties concerning the subject matter of the relevant SOW(s). There are no conditions, understandings, agreements, representations or warranties, express or implied, which are not specified herein. This Agreement may only be modified by a written document expressly stated for such purpose and executed by the Parties.

IN WITNESS WHEREOF, each Party understands that their respective dated signatures below will duly authorize the full execution of this Agreement in its entirety, and each Party warrants and represents that its respective signatories whose signatures appear below have been and are, on the date of signature, duly authorized to execute this Agreement. The Parties have caused this Agreement to be duly executed, and covenant to uphold and be bound by every provision, promise, SOW, and any other item described in the entirety of this Agreement.

("Owner")

("Contractor")

\_\_\_\_\_  
*Full Legal Name*

\_\_\_\_\_  
*Representative of Construction Company*

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*

## **STANDARD TERMS AND CONDITIONS**

**§ 1 – AGREEMENT STRUCTURE.** Each SOW executed by the Parties under this Agreement shall be subject to these Standard Terms and Conditions and the additional terms and conditions set forth in the Addendum hereunder applicable to such SOW, if any. Each SOW shall specifically reference this Agreement, the Addendum to which such SOW is subject, if any, and set forth the specific Goods and Services (as defined in each SOW), fees, Permitted Applications (as defined in a SOW), if any, and any other terms applicable to the Goods and Services provided under such SOW. When fully executed, each SOW shall be incorporated into, and shall form a part of, this Agreement. The provisions of the various Agreement documents shall, to the extent possible, be interpreted so as to supplement each other and avoid any conflict between them. In the event of a conflict between the terms and conditions of these Standard Terms and Conditions and/or the Addendum applicable to a SOW, if any, on the one hand and the terms and conditions of a SOW on the other hand, the terms and conditions of these Standard Terms and Conditions and the Addendum applicable to such SOW, if any, shall control, unless explicitly stated otherwise in the SOW, and in that case the conflicting terms and conditions in such SOW shall apply only to that SOW.

**§ 1.1 – Titles, Headings, and Subheadings.** Each segment of this Agreement is titled with its respective purpose; i.e., by a Title whereby all the individual Titles (namely, “MASTER GOODS AND SERVICES AGREEMENT”; “STANDARD TERMS AND CONDITIONS”; and “STATEMENT OF WORK FOR GENERAL CONTRACTOR SERVICES”) found herein comprise the substance and entirety of this Agreement. The Headings and Subheadings of the clauses contained under each Title of each segment of this Agreement are differentiated by their respective “Section” symbol (§) and number. Each individual Heading is represented by a *whole* number (e.g., “1, 2, 3 . . .”), and each individual Subheading under its pertinent Heading is represented by the number of its respective Heading, followed by a decimal point (e.g., “1.1, 1.2, 1.3 . . .; 2.1, 2.2, 2.3 . . .”) to differentiate each individual Subheading. In addition to having decimal points, each Subheading can be distinguished as such by its indentation and location, i.e., 0.25 inches to the right and directly underneath its respective Heading. The use of Titles, Headings, and Subheadings are for convenience and ease of reference and do not limit the scope or intent of any clause(s) contained in this Agreement.

**§ 2 – TERM.** This Agreement shall commence on the Effective Date and remain in effect until the conclusion of the construction project (hereinafter referred to as the “**Project**”). This Agreement shall remain in effect and govern any future Project(s) that Owner may request from Contractor, unless otherwise modified by an Addendum duly executed by the Parties.

### **§ 3 – FEES; PRICE AGREEMENT; TAXES.**

**§ 3.1 – Fees.** Owner shall pay Contractor the fees for the Goods and Services (“**Fees**”) set forth in each SOW. Owner agrees that any Fees due under this Agreement (1) may be charged to Owner’s credit card on file with Contractor, if applicable; and/or (2) may be charged to Owner’s bank account on file with Contractor, if applicable; and/or (3) may be paid in full via bank cheque, cashier’s cheque, cash, money order, etc.; and/or (4) may be paid in full via any other efficacious method that the Parties may agree to at any given time. Owner agrees that all Fees paid hereunder shall be nonrefundable. If full payment is not made in compliance with this § 3.1 and/or the applicable SOW, Owner may be assessed a late charge equal to 1.5% of the unpaid amount per month, or the maximum limit permitted by law, whichever is less. If Owner becomes fourteen (14) or more days past due and fails to pay all past due fees within fourteen (14) days of Contractor’s written notice of such delinquency, Contractor may suspend access or delivery of any Goods and/or Services provided under this Agreement until all

past due charges and any related interest are paid, or terminate the Agreement, including any SOW. Owner shall pay Contractor all costs of collection of past due amounts owed to Contractor hereunder, including without limitation, attorney fees, collection agency fees, and court costs.

**§ 3.2 – Price Agreement.** Each Party agrees to adhere to the price of the Goods and Services set by Contractor in this Agreement as final. Contractor represents to the best of its knowledge that the cost for its Goods and Services represents the fair market value within the applicable industry in Utah.

**§ 3.3 – Taxes.** Fees are exclusive of sales, use, excise, ad valorem, personal property, and other taxes. When Contractor has the legal obligation to collect such taxes, the appropriate amount shall be paid by Owner, unless Owner provides Contractor with a valid tax exemption certificate prior to issuance of the invoice. Such certificate must be in a form authorized by the appropriate taxing authority.

#### **§ 4 – CONFIDENTIALITY.**

**§ 4.1 – Confidential Information.** In the course of this Agreement, each Party may obtain information from the other Party that is confidential and proprietary in nature, which includes, but is not limited to the terms of this Agreement; nonpublic personal information; any information regarding a Party's current, future, and proposed plans, regardless of the nature or scope of said plans; data; and any other information the receiving Party knows or reasonably ought to know is confidential, proprietary, or secret information (collectively, "**Confidential Information**").

**§ 4.2 – Obligations.** The Parties agree that at all times, and notwithstanding the termination or expiration of this Agreement, they shall hold all Confidential Information of the other Party and/or third party in strict confidence and trust, and shall not use, reproduce, or disclose the Confidential Information of the other Party and/or third party to any person or entity, except as specifically and explicitly permitted by the Party and/or third party to whom the Confidential Information belongs and/or pertains.

**§ 4.3 – Exclusions to Confidentiality.** The restrictions on use and disclosure of Confidential Information set forth in § 4.2 shall not apply to the extent the Confidential Information: (i) is or becomes generally available to the public through no fault of the receiving Party (or anyone acting on its behalf); (ii) is subsequently disclosed to the receiving Party by a third party who may rightfully transfer and disclose the information without restriction and free of any obligation to keep it confidential; or (iii) is independently developed by the receiving Party or a third-party without reference or access to the disclosing Party's Confidential Information.

#### **§ 5 – INDEMNIFICATION.**

**§ 5.1 – Indemnification by Contractor.** Contractor agrees to protect, defend, indemnify and hold Owner harmless from and against all claims of third parties arising out of or related to Contractor's use of information obtained as a result of the Goods and/or Services, or attributable to Contractor's breach of this Agreement; provided that Owner gives Contractor prompt written notice of any such claim. Owner shall control the defense and any settlement of such claim, and Contractor shall cooperate with Owner in defending against such claim. Furthermore, Contractor agrees to protect, defend, indemnify and hold Owner harmless from and against all claims of third parties arising out of or related to Contractor's (i) violation of any third party's rights of publicity or privacy; (ii) violation of any law, statute, ordinance or regulation (including without limitation the laws and regulations governing unfair competition, antidiscrimination, false advertising, email spam or any "do-not-call" registry); or (iii) acts that are defamatory, trade libelous, unlawfully threatening, or unlawfully harassing.

**§ 5.2 – Indemnification by Owner.** Owner agrees to protect, defend, indemnify and hold Contractor harmless from and against all claims of third parties arising out of or related to Owner’s use of information obtained as a result of the Goods and/or Services, or attributable to Owner’s breach of this Agreement; provided that Contractor gives Owner prompt written notice of any such claim. Contractor shall control the defense and any settlement of such claim, and Owner shall cooperate with Contractor in defending against such claim. Furthermore, Owner agrees to protect, defend, indemnify and hold Contractor harmless from and against all claims of third parties arising out of or related to (i) violation of any third party’s rights of publicity or privacy; (ii) violation of any law, statute, ordinance or regulation (including without limitation the laws and regulations governing unfair competition, antidiscrimination, false advertising, email spam or any “do-not-call” registry); or (iii) acts that are defamatory, trade libelous, unlawfully threatening or unlawfully harassing.

**§ 6 – TERMINATION.**

**§ 6.1 – Termination for Cause.** If either Party breaches any provision of this Agreement, including the provisions of any SOW, the non-breaching Party may, upon providing written notice of such breach, terminate this Agreement in its entirety or the specific SOW that was breached, if the breach is not remedied within 10 days following such notice, unless a shorter cure period is otherwise set forth in the applicable SOW

**§ 6.2 – Termination for Insolvency.** Either Party may immediately terminate this Agreement upon written notice to the other Party in the event the other Party: (i) becomes insolvent; (ii) files, submits, initiates, agrees to or is subject to any bankruptcy petition, conservatorship, request or petition for appointment of a receiver, or demand or application for voluntary or involuntary dissolution; or (iii) makes a general assignment for the benefit of its creditors.

**§ 6.3 – Effective of Termination.** Termination of this Agreement shall not relieve the Parties of any obligation(s) accruing prior to such termination.

**§ 7 – REPRESENTATIONS OF THE PARTIES.** The Parties hereby represent and warrant as follows:

**§ 7.1 – Licensure.** Contractor is, and at all times will be, properly and fully licensed, bonded and insured (at levels in accordance with applicable industry standards) under all applicable laws and trade regulations (and upon request will produce documentation to verify this to Owner), and further, that Contractor has not been turned down for insurance coverage related to its provision of services. Contractor agrees to notify Owner promptly of any such changes to its licensing, bonding, or insured status.

**§ 7.2 – Business History.** Contractor has not been sanctioned or penalized by any governmental authorities in connection with its provision of services to any of its Owners, and that it has not been denied membership to (or had its membership revoked from) any professional industry associations. Contractor authorizes Owner to verify that all of the above representations are truthful and accurate at any time while this Agreement remains in effect.

**§ 7.3 – Advertising Material.** Owner agrees that any written comments or testimonials it provides about Contractor’s Goods and/or Service or activities shall be the sole property of Contractor, that Contractor shall own any and all intellectual property rights in such comments or testimonials, and that Contractor may post and publish Owner’s comments or portions thereof at Contractor’s sole discretion on its Website or in marketing materials including Owner’s name and company or agency (if any), and that Owner shall not be entitled to any payments associated with Contractor’s use of the foregoing.

**§ 7.4 – Business Practices.** The Parties shall not engage in any illegal acts or acts of wrongdoing, dishonesty, or unethical business practices with one another, or any owner or other third party, including, but not limited to, disclosing any user personal information to any third party. The Parties shall, at all times, be in full compliance with all applicable Federal, State, local, and other laws and regulations that apply to each Parties’ activities.

**§ 8 – LIMITATION OF LIABILITY.** UNLESS OTHERWISE SET FORTH IN AN ADDENDUM OR SOW, CONTRACTOR’S TOTAL LIABILITY AND OWNER’S EXCLUSIVE REMEDY UNDER OR RELATED TO ANY SOW UNDER THIS AGREEMENT IS LIMITED TO DIRECT MONEY DAMAGES NOT EXCEEDING THE AMOUNT PAID BY OWNER TO CONTRACTOR UNDER SUCH SOW DURING THE 6 MONTHS PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH CLAIM. THIS LIMIT IS CUMULATIVE AND ALL PAYMENTS UNDER THIS AGREEMENT ARE AGGREGATED TO CALCULATE SATISFACTION OF THE LIMIT. THE EXISTENCE OF MULTIPLE CLAIMS DOES NOT ENLARGE THE LIMIT. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CONTRACTOR, OR ANY PROVIDER OF INFORMATION USED BY CONTRACTOR IN PREPARING OR PROVIDING THE GOODS AND/OR SERVICES, BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES; LOST GOODS, VALUABLES, NECESSARIES, OR ANY FORM OF ASSETS; LOST PROFITS OR REVENUE, OR LOST OR DAMAGED DATA OR INFORMATION; OR ANY OTHER LIABILITY FOR ANY EVENT, CAUSE, OR CIRCUMSTANCE, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF CONTRACTOR IS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

**§ 9 – LIMITED WARRANTY AGREEMENT.** THE GOODS AND SERVICES AND ANY OTHER PERTINENT ITEM OR PROCEDURE, WHETHER TANGIBLE OR INTANGIBLE, ARE SUBJECT TO THE FOLLOWING PROVISIONS OF THIS LIMITED WARRANTY AGREEMENT.

**§ 9.1 – Coverage.** Contractor warrants that the Project constructed is reasonably free of defects and within the customary tolerances of the construction industry in Utah. Contractor further warrants and guarantees that the Project reasonably conforms to the requirements of the contract documents, drawings, plans, and specifications. If any defects are found, contractor shall repair or replace any of the alleged defective work at its cost. The work to be corrected is limited to the particular part or area that is defective.

**§ 9.2 – Items Not Covered Under Warranty.** This limited warranty *does not* cover the following items:

- i. Damage or defects caused by failure to maintain any item or keep it in good working order.
- ii. Damage resulting from fire, freezing, storms, electrical malfunction or surge, lightning, earthquake, pest damage, acts of God, or other unforeseen causes or accidents.
- iii. Damage from alterations, misuse, or abuse by any person; ordinary wear and tear; or problems caused by lack of maintenance.
- iv. Damage resulting from Owner’s failure to observe any operation instructions furnished at the time of installation.

- v. Any item furnished, installed, modified, altered, or repaired by Owner or any other person other than Contractor.
- vi. Problems that arise as a result of attempting to match existing materials. There are limitations inherent in the matching of existing materials such as stucco, drywall, paint, wood, tile, flooring, concrete, and the like. Exact duplication in matching, texture, and color cannot be guaranteed. Variations within industry tolerances will be considered acceptable.

**§ 9.3 – Term of Warranty.** This warranty, as well as the statute of limitations for any claim of damages for defective work or materials, is limited to one year from the date of *Substantial Completion* of the Project, as the term is defined in § 6 of the Statement of Work for General Contractor Services contained hereinbelow.

**§ 9.4 – Transferability.** This warranty applies to Owner only and may not be transferred to any subsequent owners or other third parties.

**§ 9.5 – Equipment, Materials, and Appliances.** Contractor has provided—or will provide throughout the course of construction of the Project—certain materials, equipment, appliances, and other goods (hereinafter collectively referred to as “Products”) that have been manufactured and/or furnished by third-party vendors and/or manufacturers. Contractor, therefore, only warrants its services and workmanship pertaining to the installation of these Products. Contractor shall not be liable for latent defects in any of the Products, nor shall Contractor be liable for dangerous Products, design defects in Products, or defective warnings. Owner’s sole remedy for defective Products is against the third-party vendors of said Products and their warranties, if any.

**§ 9.6 – Limitations to Remedies.** With respect to any warranty claim(s) asserted by Owner, the Parties understand, agree, warrant, and represent there is no right to recover or request compensation for incidental, indirect, special, consequential, secondary, or punitive damages; loss of use; diminution in value; rental costs; moving costs; delay in occupancy; construction, mortgage, loan or line of credit interest charges; mortgage interest rate increases; lost profits or income; medical costs; damages for mental distress, aggravation, personal injury; or pain and suffering.

## **§ 10 – GENERAL PROVISIONS.**

**§ 10.1 – Relationship of Parties.** The Parties acknowledge that this is a business relationship based on the express provisions of this Agreement and no partnership, joint venture, agency, fiduciary or employment relationship is intended or created by this Agreement. Parties agree to and accept their mutual implied duties of good faith and performance, and covenant under penalty of perjury to cooperate with one another and to execute and deliver, or cause to be executed and delivered, to the other such additional instruments of conveyance and transfer and evidences of assumption as such party may reasonably request or as may be otherwise necessary or desirable to carry out the purposes of this Agreement. Neither Party is the legal representative or agent of, nor has the power or right to obligate, direct or supervise the daily affairs of the other Party, and neither Party shall act, represent or hold itself out as such.

**§ 10.2 – Notices.** All notices required under this Agreement shall be sent to the addresses on the signature page of this Agreement, and, if the notice relates to a specific SOW, to any additional notice addresses listed in such SOW, to the attention of the signatories, with a copy to the Legal Department (if any) of the Party. Either Party may from time to time change its address for notification purposes by giving the other Party written notice of the new address and the date upon which it will become effective. Notwithstanding the foregoing, notices regarding changes in pricing, policies, or programs

may be communicated by e-mail or by any other medium that efficaciously keeps an unalterable written record of the entire communication.

**§ 10.3 – Assignment.** Owner shall not assign or transfer this Agreement or any rights or obligations under this Agreement without Contractor's prior written consent. A change in control constitutes an assignment under this Agreement. Any unauthorized assignment or transfer shall be void and constitutes ground for immediate termination of this Agreement by Contractor. This Agreement binds and inures to the benefit of the Parties and their respective permitted successors and permitted assigns.

**§ 10.4 – Severability.** If any provision, or part thereof, of this Agreement becomes or is declared invalid, illegal, or unenforceable in any respect under any law, such provision, or part thereof, shall be null and void, and deemed deleted from this Agreement. The validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.

**§ 10.5 – No Waiver.** Any waiver is only valid to the extent expressly set forth in writing. No waiver by either Party of any right under this Agreement shall constitute a subsequent or continuing waiver of such right or any other rights under this Agreement.

**§ 10.6 – Governing Law.** This Agreement is governed by and construed in accordance with the laws of the State of Utah, without giving effect to its principles of conflicts of law. Any litigation arising out of this Agreement shall be brought by either Party in a court of competent jurisdiction, and each Party hereby waives any defenses it may have before such courts based on a lack of personal jurisdiction or inconvenient forum. Each Party hereby expressly and irrevocably waives the right to a jury trial.

**§ 10.7 – Consequences of Breach.** In the event that Owner breaches any SOW or any other provisions of this Agreement, Contractor retains the right and has full discretion to rescind this Agreement in part or in its entirety, and any consideration given by it to Owner will be returned. In the event that Owner's material breach of any part of this Agreement causes any loss, perjury, or any pertinent damages and/or injuries to Contractor, Contractor shall retain the right to initiate and pursue any appropriate and necessary legal action against Owner for the recovery of but not limited to: (i) special damages; (ii) general damages; (iii) attorney's fees and costs incurred during the course of litigation; (iv) and such other and further relief as the Court may deem necessary, just and proper under the circumstances.

**§ 10.8 – Force Majeure.** Neither party shall be held responsible if the fulfillment of any SOW and/or any provisions of this Agreement are delayed or prevented by revolutions or other disorders, wars, acts of enemies, fires, floods, acts of God, or without limiting the foregoing, by any other cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, the party is unable to prevent, whether of the class of causes hereinbefore enumerated or not.

**§ 10.9 – Attorneys' Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party shall be entitled to recover actual reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

**§ 10.10 – No Third-Party Beneficiaries.** Contractor and Owner agree that this Agreement, including each and every SOW, is for the benefit of the entities executing such document(s) and are not intended to confer any rights or benefits on any third party, including any employee or Owner of either entity executing such document(s), and that there are no third-party beneficiaries as to any part or specific provision of this Agreement.

§ 10.11 – **Survival.** The following sections shall survive the termination of this Agreement: § 3 (Fees; Price Agreement; Taxes); § 4 (Confidentiality); § 5 (Indemnification); § 8 (Limitation of Liability); § 9 (Warranties); and § 10 (General Provisions).

§ 10.12 – **Counterpart, Facsimile Execution.** This Agreement may be executed in any number of identical counterparts and signature pages may be detached from one counterpart and added to another counterpart. This Agreement may also be transmitted between the Parties by facsimile machine or scanned electronic transmission. The Parties intend that faxed or scanned electronic signatures shall constitute original signatures and that a faxed or scanned electronic copy of this Agreement containing the signatures (original, faxed, or scanned electronic) of both Parties, by counterpart or otherwise, is binding on both Parties.

### **STATEMENT OF WORK FOR GENERAL CONTRACTOR SERVICES**

This STATEMENT OF WORK FOR GENERAL CONTRACTOR SERVICES (“SOW”) is entered into by and between **CONSTRUCTION COMPANY**, a Utah limited liability company (“**Contractor**”), and **DANIEL HOMEOWNER** (“**Owner**”). Contractor and Owner are sometimes collectively referred to herein as the “Parties” and may be individually referred to as a “Party.” This SOW is subject to the Residential Construction Agreement herewith entered into by and between Owner and Contractor, along with all subsequent amendments, exhibits, or attachments (collectively, this “**Agreement**”), which are incorporated herein by this reference. This SOW is effective as of the date of the last signature below (“**SOW Effective Date**”). The Parties agree as follows:

§ 1 - **TERM.** The initial term of this SOW shall begin on the SOW Effective Date (as defined below) and shall continue indefinitely unless and until this Agreement is cancelled by either Party pursuant to the Agreement. Either Party may cancel this SOW by providing the other Party with written notice of such cancellation at least fourteen (14) calendar days in anticipation.

§ 2 – **SCOPE OF WORK.** Contractor shall furnish the material, labor, equipment, tools, and supervision necessary to construct or renovate the Project for Owner, on the property identified below, in compliance with the plans and specifications supplied by Owner (if any such plans and specifications exist). Contractor agrees to obtain all necessary permits for the construction, if any are required, the costs of which shall be Owner’s responsibility to bear.

§ 2.1 – **Detailed Scope of Work.** Specifically, Contractor shall perform the following work on the Project:

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§ 3 – **PROPERTY ADDRESS.** The address at which the Project will take place is: 1234 New Residence Lane, Salt Lake City, UT 84105.

§ 4 – **FEES.** Contractor will provide Owner the general contractor services described in the “Scope of

Work” hereinabove, at Owner’s request and as agreed to by the Parties. Owner shall pay to Contractor the Fees as set forth in the Draw Schedule attached to this Agreement. If any section below indicates that an exhibit is attached, the additional terms and conditions set forth in the exhibit shall apply to such section. Contractor reserves the right to refuse its goods and services for any reason, at any time, at its sole discretion.

**§ 4.1 – Per Stage Draw.** Contractor shall perform the work specified in each stage of the Draw Schedule, and Contractor shall issue an invoice to Owner before the commencement of every stage contained in the Draw Schedule. Owner shall, immediately at the beginning of each stage, pay Contractor the full amount specified in each respective stage (and said amount will be reflected in the invoice(s) issued by Contractor), and Contractor shall keep Owner informed as to the status of each stage during the construction of the Project. The cost of each subsequent stage shall be paid immediately prior to the commencement of work on the respective stage (and no work shall be performed unless the stage is paid for), upon Contractor issuing an invoice for said stage to Owner. Owner understands and agrees that no work will be performed on the Project unless the required payments per stage are timely made.

**§ 4.2 – Certification of Sufficiency of Funds.** Owner certifies, under penalty of perjury under the law of Utah, that he or she possesses sufficient funds to cover the full cost of the Project, whether these funds are personal or obtained through lender financing, and that Owner’s funds are equal to or greater than the Contract Price.

**§ 4.3 – Final Payment.** Owner shall pay Contractor for the final stage of the Project immediately prior to the commencement of said final stage, and this shall be the final payment made on the Project, unless any additional payments are reasonably required due to exigent circumstances or circumstances not contemplated by this Agreement, or as otherwise agreed to by the Parties.

**§ 4.4 – Payment Due Dates.** All payments required shall be timely made, and no payments to Contractor shall be withheld, delayed, reduced, or refunded if Contractor has fully performed his material obligations. If full payment is not made on or before the applicable due dates, a late charge may be assessed pursuant to § 3.1 of the Standard Terms and Conditions of this Agreement hereinabove.

**§ 4.5 – Failure of Payment.** Pursuant to § 3.1 of the Standard Terms and Conditions of this Agreement, contained hereinabove, if Owner fails to pay Contractor for amounts due, Contractor may suspend all work on the Project until the amounts due have been received by Contractor. Payments due and unpaid under this Agreement shall bear interest at a rate of 1.5% of the unpaid amount per month, or the maximum permitted by law, whichever is less. Owner shall pay Contractor all costs of collection of past due amounts owed to Contractor, including without limitation, attorney fees, collection agency fees, and court costs.

**§ 4.5 – Construction Lien.** In addition to the foregoing penalties for failure of payment, Contractor reserves the right to execute a lien against Owner’s property for the performance of work or the supply of materials used in conjunction with the Project (*i.e.*, for the amounts due).

**§ 5 – ADDITIONAL FEE INFORMATION.** Contractor reserves the right to increase the costs for its Goods and Services at any time upon providing Owner with thirty (30) days’ written notice of such increase (the “**Notice Period**”). In the event Contractor increases the costs for its Goods and Services, Owner may elect to cancel this SOW by providing Contractor with written notice of such election at least ten (10) days prior to the conclusion of the Notice Period.

**§ 6 – TIME OF PERFORMANCE.** Contractor shall commence work within seven (7) days after this Agreement has been signed, all required permits and approvals have been or will be issued, and Contractor has received or will receive the required payment(s). Contractor shall diligently pursue and substantially complete all work on the Project within a reasonable time. Contractor estimates substantially that the completion of the Project (“**Substantial Completion**”) will occur by approximately **18 weeks** after work commences. The Project will be considered substantially complete upon *any* of the following: (a) issuance of a government certificate of occupancy, final or temporary; (b) notice from Contractor that the work has been completed if a certificate of occupancy is not required; or (c) the Project is useable for the intended purpose. If the Project is delayed by the act, neglect, or default of Owner, Owner’s agent, Owner’s design professional, Owner’s lender, governmental action or inaction, any third-parties employed by Owner, any materials supplier acting for Owner, or any other reason or reasons beyond Contractor’s reasonable control, including without limitation damage caused by fire or other casualty, strikes, force majeure, shortage of materials or labor, transportation delays, weather conditions, or change orders, then the Substantial Completion date shall be extended for a period reasonably equivalent to the time lost by reason of such delay(s).

**§ 7 – CHANGES TO THE PROJECT OR PRICE.** Owner may not make changes to the Project without Contractor’s agreement. The cost to complete the Project may increase or decrease due to: (a) changes to the Project agreed to by the Parties; (b) changes in codes after commencement; and (c) latent defects in the existing structure (such as structure settlement that may require extraordinary work) that could not reasonably have been observed by Contractor before the work. A change to the Project or Contract Price will be agreed to by the Parties and must be memorialized in a written Change Order.

**§ 8 – CONSTRUCTION STANDARDS.** Contractor will construct the Project in substantial compliance with the Plan and applicable building codes. If Owner has provided the Plans, Contractor is not responsible or liable for errors in them.

**§ 9 – INSURANCE.** Before commencing work on the Project, Contractor shall purchase and maintain insurance from an insurer admitted to do business in Utah that will protect it from bodily injury or property damage claims arising out of its operations under this Agreement, whether the operations are by Contractor, Contractor's consultants or subcontractors, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

**§ 10 – ASSUMPTION OF RISK.** In conjunction with § 8 of the Standard Terms and Conditions of this Agreement, contained hereinabove, Owner understands and acknowledges that during the course of construction, the Property may not be safe for non-construction personnel. Owner assumes all risks for Owner, his or her family members, invitees, agents, or guests, including without limitation, personal injury from, relating to, or associated with the Project and/or Contractor’s performance, except for gross negligence or willful injury. Owner agrees to absolve Contractor from any and all liability associated thereto.

**§ 11 – OWNER WARRANTIES AND RESPONSIBILITIES.** In addition to all other Owner duties, the following apply:

**§ 11.1 – Ownership.** Owner warrants that it has fee simple title to the Property.

**§ 11.2 – Access.** Owner must provide Contractor and all employees, subcontractors, and suppliers of contractor with adequate access to the Project as required by Contractor to perform the work on the Project, as laid out by this Agreement.

§ 11.3 – **Survey.** Owner is responsible for obtaining any reasonably necessary boundary surveys, site plans, foundation surveys, and final surveys.

§ 10 – **SUBCONTRACTORS, EMPLOYEES, AND SUPPLIERS.** Contractor is entitled to select the subcontractors, employees, and suppliers who will work on or provide materials for the Project. Contractor is solely responsible for hiring, firing, and supervising construction personnel. Owner will not give directions or orders to anyone other than Contractor or its designated Project supervisor. Owner will not interfere with construction personnel or negotiate with or retain any of Contractor’s employees or subcontractors without Contractor’s prior written consent. Owner will not have any work performed on the Project by other personnel until Contractor has completed the Project or this Agreement has been terminated.

§ 11 – **COUNTERPART, FACSIMILE EXECUTION.** This SOW may be executed in any number of identical counterparts and signature pages may be detached from one counterpart and added to another counterpart. This SOW may also be transmitted between the Parties by facsimile machine or scanned electronic transmission. The Parties intend that faxed or scanned electronic signatures shall constitute original signatures and that a faxed or scanned electronic copy of this Agreement containing the signatures (original, faxed, or scanned electronic) of all Parties, by counterpart or otherwise, is binding on all of the Parties.

IN WITNESS WHEREOF, the Parties have caused this SOW to be duly executed. Each Party warrants and represents that its respective signatories whose signatures appear below have been and are, on the date of signature, duly authorized to execute this SOW.

(“Owner”)

(“Contractor”)

\_\_\_\_\_

*Full Legal Name*

\_\_\_\_\_

*Representative of Construction Company*

\_\_\_\_\_

*Authorized Signature*

\_\_\_\_\_

*Authorized Signature*

\_\_\_\_\_

*Date*

\_\_\_\_\_

*Date*