

**EXHIBIT A:**

**Agreement Between Developer and Contractor**

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# AGREEMENT BETWEEN DEVELOPER AND CONTRACTOR

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## CONSTRUCTION AGREEMENT

**THIS AGREEMENT**, made as of the \_\_\_ day of \_\_\_\_\_ in the year of Two Thousand and One.

**BY AND BETWEEN**

The **DEVELOPER**:

and the **CONTRACTOR**:

For the following **PROJECT**: The Project is the design and development of an office building consisting of \_\_\_\_\_ square feet, together with all necessary furnishings, parking improvements and other appurtenances to complete a fully developed and integrated facility.

The Owner of the Project is \_\_\_\_\_ .

The architectural services for the Project will be provided by \_\_\_\_\_, a firm that is lawfully licensed to provide architectural services in the State where the Project is located (and is defined as the "**Architect**" for the purposes hereof).

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**TERMS AND CONDITIONS  
OF  
CONSTRUCTION AGREEMENT**

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**WHEREAS**, the Owner is a real estate company with headquarters in \_\_\_\_\_.

**WHEREAS**, the Developer is a Michigan corporation which serves as a resource to provide real estate development and related services to real estate owners; and

**WHEREAS**, Owner desires to have Developer develop certain real estate owned by it and located near \_\_\_\_\_ (hereafter the "**Property**"); and

**WHEREAS**, Owner and Developer have entered into that certain Development Agreement dated September \_\_, 2001 (the "**Development Agreement**"); and

**WHEREAS**, the Developer has retained the Architect to provide all design services necessary for the Project pursuant to a Design Services Agreement (hereafter the "**Design Services Agreement**"); and

**WHEREAS**, the Developer desires to retain the Contractor to provide all construction services necessary to complete the Contractor's Work in accordance with the Contract Documents; and

**WHEREAS**, the Contractor recognizes that the Developer has contracted with and is an independent contractor of the Owner in order to develop the Property on the Owner's behalf; and

**WHEREAS**, the parties hereto desire to set forth the terms of their agreement in writing to be effective as of the date set forth above.

**NOW, THEREFORE**, for a valuable consideration, the Contractor and the Developer hereby agree as follows:

## ARTICLE 1

### GENERAL PROVISIONS

#### 1.1 Basic Definitions

- 1.1.1 The "**Contract Documents**" consist of this Agreement (hereafter the "**Construction Agreement**"), Modifications (as defined in the General Conditions) issued after the execution of this Construction Agreement and the General Conditions of the Contracts for Design and Construction (hereafter the "**General Conditions**") and all other documents referred to in the General Conditions. These form the Contract Documents, and are as fully a part of the Contract Documents as if attached to this Construction Agreement or as if repeated herein.
- 1.1.2 The "**Construction Services**" are all those services to be provided by the Contractor to complete the Contractor's Work.
- 1.1.3 The "**Contractor's Work**" comprises the construction of the Project pursuant to the Contract Documents, including, but not limited to, all services and all labor, materials and equipment used or incorporated therein.

#### 1.2 Execution, Correlation and Intent

- 1.2.1 This Construction Agreement shall be signed in not less than duplicate by the Contractor and the Developer.
- 1.2.2 It is the intent of the Contractor and the Developer that the Contract Documents include all items necessary for proper execution and completion of the Contractor's Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents, but reasonably inferable from the Contract Documents, will be included as part of the Contractor's Work. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings or in accordance with the meanings as defined in the AIA Glossary of Construction Industry Terms, 1991 edition, published by the American Institute of Architects.
- 1.2.3 Notwithstanding anything contained in the Contract Documents to the contrary, in the event of a conflict between the Construction

GMP and any of the Contract Documents the Construction GMP shall govern.

**1.3 Ownership and Use of Documents**

**1.3.1** The drawings, specifications and other documents furnished by the Architect or the Developer, as the case may be, are instruments of service, the ownership of which shall be governed by the terms and conditions contained in Article 1 of the General Conditions.

**ARTICLE 2**

**CONTRACTOR'S RESPONSIBILITIES**

**2.1 Basic Services and Responsibilities**

**2.1.1** The Contractor shall provide as basic services all Construction Services necessary to complete the Contractor's Work as set forth herein and in the Contract Documents.

**2.1.2** The Developer acknowledges that the Contractor is neither an architect, engineer, nor designer and agrees that no provision of this Construction Agreement or any of the Contract Documents shall be construed to create any responsibility of or liability upon the Contractor for the accuracy, adequacy, sufficiency, or safety of any element or component of the design of the Project, but nothing herein shall be construed to relieve the Contractor of the obligations under Article 4 of the General Conditions.

**2.2 Additional Services**

**2.2.1** Other than the Construction Services, or such services as are reasonably inferable therefrom; the Contractor shall not be required to provide any additional services, except when agreed to by the Developer and Contractor in writing.

**2.3 Equal Employment Opportunity and Affirmative Action**

**2.3.1** The Contractor shall comply with all applicable laws, regulations and special requirements of the Contract Documents, if any, regarding equal employment opportunity and affirmative action programs.

### **ARTICLE 3**

#### **DEVELOPER RESPONSIBILITIES**

- 3.1** The Developer shall have the obligations and responsibilities set forth herein and in the General Conditions. Whenever the Contract Documents require action by the Architect, the Developer shall cause the Architect to take appropriate action. Whenever the Contract Documents require action by the Owner, the Developer shall use all reasonable efforts to require the Owner to take appropriate action. Developer agrees to use all practical efforts to enable Contractor to perform the Services in an expeditious manner by furnishing and approving in a timely way information required by the Contractor and making payments to the Contractor in accordance with the requirements of the Contract Documents.
- 3.2** Contractor hereby recognizes and agrees that the Developer has contracted with and is an independent contractor of the Owner for all of the purposes of the Project, the Work, this Design Services Agreement and the Contract Documents.

### **ARTICLE 4**

#### **TIME**

- 4.1** The Contractor agrees to perform the Construction Services and Additional Services as expeditiously as is consistent with the highest professional skill and care. The Pre-Construction Services began in \_\_\_\_\_. The Construction Services will commence in \_\_\_\_\_. Subject to authorized adjustments and to delays as provided in Article 10 of the General Conditions, Substantial Completion shall be achieved on or before \_\_\_\_\_. Final Completion shall be achieved on the later of ninety (90) days after Substantial Completion or ninety (90) days after delivery to Contractor of a punch list prepared by the Architect and approved by the Owner and the Developer.
- 4.2** Except as otherwise provided in the Contract Documents, if the Project is delayed by the neglect of the Contractor or the Contractor's employees, the Contractor shall be liable to the Developer for any and all damages, expenses (including attorney's fees), costs, actions or liability arising therefrom, including, but not limited to, consequential damages.

## ARTICLE 5

### CONSTRUCTION GMP; COST OF THE CONSTRUCTION SERVICES

#### 5.1 Construction GMP

**5.1.1** The total Cost of the Construction Services and the Contractor's Fee is guaranteed by the Contractor not to exceed the amount of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_) (the "**Construction GMP**") as set forth on Exhibit 2 attached hereto and made a part hereof. In the event, upon final completion of the Construction Services, the Cost of the Construction Services (as determined in Paragraph 5.1.2 below) plus the Contractor's Fee is less than the Construction GMP, the Contractor shall not be entitled to share in any savings.

**.1** The Construction GMP includes the Contractor's contingency (the "**Contractor's Contingency Fund**") to protect the Contractor against the risks assumed in providing a Construction GMP based on incomplete design documents. The Developer acknowledges that the cost estimating process is not exact, and therefore, the Contractor's Contingency Fund is included to adjust the estimate for quantity and price estimating accuracies, and other eventualities which have not been taken into precise account in the establishment of the Construction GMP, including, but not limited to (a) unfavorable bidding from trade contractors, due to market conditions, price increases, lack of competition, and other variables; (b) contract default in payment or performance by a Subcontractor or supplier; (c) costs of corrective work not provided for elsewhere; and (d) other conditions which result in an increase of the Cost of Construction Services, without increasing the Construction GMP. The contingency shall not be used for changes in the Contractor's Work or unforeseen conditions, including the effects of soil conditions.

**.2** The Contractor shall be bound only by the Construction GMP, in total, and not by cost estimates for the various categories or line items of work comprising the Construction GMP.

**5.1.2** The Developer shall pay the Contractor as provided in Article 11 of the General Conditions in current funds for the Contractor's performance of the Contractor's Work, the Cost of Construction

Services, as defined on Exhibit 1 attached hereto, and a total Contractor's Fee equal to:

- .1 (i) A fee equal to six (6%) percent of the cost of Construction Services which shall include the Site Cost and Building Cost specified in the revised budget data dated May 29, 2001  
\$ .00

and

- (ii) A fee for General Conditions equal to:  
\$ .00

Total Contractor's Fee:  
\$ .00

The Total Contractor Fee shall be paid as a percentage of construction completed as of the date of the payment request. The portion of the Contractor's Fee on the Contractor's Contingency Fund portion of the Contractor's Fee shall be payable as part of any payment request which includes an expenditure of the Contractor's Contingency Fund made pursuant to the requirements of Exhibit 1 attached hereto.

- .2 For authorized changes in the Construction Work, the Contractor's Fee shall be increased at the rate of six percent (6%) of the cost of additive Change Orders. In addition, if the Change Order Extends the schedule for completion of the Project, then the fee for General conditions shall be increased by \$4,000.00 for each week that the schedule for completion of the Project is extended.

- .3 The Contractor's Fee shall not be decreased by reason of Change Orders that reduce the Construction GMP.

**5.1.3** Contractor agrees that, at such time as the Construction Documents are complete and all of the Construction Services are completely bid or otherwise accurately priced to the satisfaction of the Contractor, and only in the event the sum of all such Construction Services are less than the Construction GMP (herein referred to as the "**Projected Savings**"), Contractor shall issue a deductive Change Order reducing the Construction GMP in an amount equal to seventy-five percent (75%) of the Projected Savings. Project Savings shall not include the Contractor's Contingency Fund;

budgets for minor unawarded Work; or funds reasonably necessary to account for overtime, expedited deliveries or miscellaneous coordination costs.

- 5.1.4** Contractor agrees that, in the event the Construction GMP is in excess of the Cost of Construction Services and the Contractor's fee after the time of final payment (and except as provided in Paragraph 8.3.5), the Contractor shall issue an additive change order to the Construction GMP increasing the Construction GMP to the sum of the actual Cost of Construction Services plus the Contractor's Fee. Likewise, the Contractor agrees that, in the event the Construction GMP is less than the Cost of Construction Services plus the Contractor's Fee, the Contractor shall not be entitled to any additional payment above the amount of the Construction GMP from Developer, and the Contractor shall be responsible for all Costs of Construction Services in excess of the Construction GMP.
- 5.1.5** Any changes to the scope of the Contractor's Work (as set forth in the Construction GMP attached hereto as Exhibit 2) or the Contractor's Services shall be made pursuant to Article 9 of the General Conditions.

## **ARTICLE 6**

### **DISCOUNTS, REBATES, AND REFUNDS**

- 6.1** Cash discounts obtained on payments made by the Contractor shall accrue to the Developer if (1) before making the payment, Contractor included them in an Application for Payment and received payment therefore from the Developer, or (2) the Developer has deposited funds with the Contractor with which to make payments; otherwise cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus material and equipment shall accrue to the Developer, and the Contractor shall make provisions so that they can be secured.
- 6.2** Amounts which accrue to the Developer in accordance with the provisions of Paragraph 6.1 shall be credited to the Developer as a deduction from the Cost of Construction Services.

## ARTICLE 7

### **ACCOUNTING RECORDS; RIGHT TO AUDIT**

- 7.1** The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Construction Agreement, and the accounting and control systems shall be reasonably satisfactory to the Developer. The Developer and the Developer's representatives shall be afforded reasonable access to the necessary and relevant Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Contract and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. The Contractor shall check all materials, equipment and labor entering into the Construction Services and shall keep such full and detailed accounts as may be necessary for proper financial management under this Construction Agreement, and the system shall be satisfactory to the Developer.
- 7.2** In addition to all other rights under the Contract Documents, the Developer shall have the right to audit the Contractor with respect to its Construction Services, the Cost of Construction Services, the Construction GMP and the Project during the term of the Construction Services and for three (3) years after Final Payment. In addition to the records referred to in Paragraph 7.1 above, the Developer shall be afforded reasonable access to copies of all documents reasonably necessary to perform a full, complete and accurate audit consistent with the terms of the Contract Documents.
- 7.3** Regardless of the time when the audit is conducted during the term of this Construction Agreement or within three (3) years after final payment, if the audit determines overcharges by the Contractor, the Contractor shall repay the Developer the amount of said overcharges if the Contractor agrees with such audit. However, if the Contractor does not agree with such audit, the Developer's claim for such overcharges shall be submitted as a Claim under Article 6 of the General Conditions.

## ARTICLE 8

### **PAYMENTS**

#### **8.1 Payments**

- 8.1.1** Payments to the Contractor shall be made according to Article 11 of the General Conditions. To the extent the Payment procedures contained in Article 11 of the General Conditions differ with or

conflict with the Payment procedures provided in this Article 8, this Article 8 shall control with respect to payments to and payment procedures with the Contractor. It is the understanding and intent of the Contractor and the Developer that the payments under the Contract Documents shall be in accordance with the Development Agreement and the procedures set forth therein, and in the event the provisions of this Article 8 or Article 11 of the General Conditions conflict with the Development Agreement, the terms of the Development Agreement with respect to payment shall control. The terms of the Development Agreement with respect to payment shall not be modified without the written consent of the Contractor.

**8.1.2** Contractor acknowledges that all payments made to the Contractor by the Developer for payment to the Subcontractors or material suppliers shall be for the benefit of said Subcontractors and material suppliers for labor and materials used for the Project or the Contractor's Work, and, provided such payments are properly earned by the Subcontractors and material suppliers, Contractor agrees promptly to make all such payments to the Subcontractors and material suppliers.

## **8.2 Applications for Payment**

**8.2.1** The Contractor shall submit an Application for Payment each month as provided in Article 11 of the General Conditions.

**8.2.2** With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Developer or the Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Construction Services equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

**8.2.3** Each Application for Payment shall be based upon the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Construction GMP among the various portions of the Contractor's Work, except that the Contractor's Fee shall be shown as a single separate item (showing both the percentage of the fee being paid for Construction Services and the percentage of the fee being paid for General Conditions). The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or the Contract Documents may require.

This schedule, unless objected to by the Architect or the Developer, shall be used as a basis for reviewing the Contractor's Applications for Payment.

- 8.2.4** Applications for Payment shall show the percentage completion of each portion of the Contractor's Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Contractor's Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Contractor on account of that portion of the Contractor's Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Construction GMP allocated to that portion of the Contractor's Work in the schedule of values.
- 8.2.5** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
- .1** Take that portion of the Construction GMP properly allocable to completed Contractor's Work as determined by multiplying the percentage completion of each portion of the Contractor's Work by the share of the Construction GMP allocated to that portion of the Work in the schedule of values. Pending final determination of cost of changes in the Contractor's Work, amounts not in dispute may be included as provided in Subparagraph 9.3.6 of the General Conditions, even though the Construction GMP has not yet been adjusted by Change Order.
  - .2** Add that portion of the Construction GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Contractor's Work, or, if approved in advance by the Developer, suitably stored off the site at a location agreed upon in writing.
  - .3** Add the Contractor's Fee.
  - .4** Subtract the aggregate of previous payments made by the Developer.
  - .5** Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Subparagraph 8.2.2 to substantiate prior Applications for Payment, or resulting

from errors subsequently discovered by the Developer's representatives in such documentation.

- .6** Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 11.5 of the General Conditions.
- .7** Subtract retainage in the amount of Ten Percent (10%) of amounts otherwise due on account of Work performed by subcontractors or materials supplied suppliers, except as otherwise set forth below:
  - .1** Five percent (5%) on the Contractor's Fee; and
  - .2** Zero percent (0%) on materials only subcontracts.

**8.2.6** Contractor shall furnish, with each Application for Payment:

- .1** a partial waiver of lien for itself and a waiver for each of its subcontractors for the prior application.
- .2** a sworn statement listing (i) the names of all parties furnishing materials, labor or services in connection with the Contractor's Work in excess of \$10,000, (ii) the materials, labor or services to be furnished by each such party, (iii) the full contract prices (adjusted for extras or credits) for all such materials, labor or services, (iv) the amounts actually paid to each party furnishing materials, labor or services, (v) the amounts due or to become due to each such party, (vi) good faith estimates of the prices of all materials, labor and services not yet subcontracted for or not yet provided by Contractor, (vii) a statement that said sworn statement is made in order to induce the Developer to make the payment requested; and
- .3** any other such forms as required by the Developer or the title insurer in order to insure an effective waiver of mechanic and materialmen liens in compliance with Michigan law, and as may reasonably be required in connection with any financing which Owner may enter into with respect to the Contractor's Work or the Project.
- .4** The schedule of values by line item will be updated each month (with submittal of pay request) to show all committed contracts and expenses to date.

### **8.3 Final Payment**

**8.3.1** Final payment shall be made by the Developer to the Contractor when (1) the Contractor's Work has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming, defective or faulty Contractor's Work, as provided in Subparagraph 14.2.2 of the General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Construction Services have been submitted by the Contractor and reviewed by the Developer's representatives; and (3) a final Certificate for Payment has then been issued by the Architect. Such final payment shall be made by the Owner not more than 30 days after the submission of said documents.

**8.3.2** The amount of the final payment shall be calculated as follows:

- .1** Take the sum of the Cost of the Construction Services substantiated by the Contractor's final accounting plus the Contractor's Fee, but not more than the Construction GMP.
- .2** Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Subparagraph 11.5.1 of the General Conditions or other provisions of the Contract Documents.
- .3** Subtract the aggregate of previous payments made by the Developer (or the Owner through the Developer or the Escrow Agent) to the Contractor.

If the aggregate of previous payments made to the Contractor exceeds the amount due the Contractor, the Contractor shall promptly reimburse the difference to the Developer.

**8.3.3** The Developer's representatives will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Construction Services, and provided that the Developer's representatives report have substantiated the Contractor's final accounting, and further provided the other conditions of Subparagraph 8.3.1 have been met, the Architect will, within seven (7) days after receipt of the written report of the Developer's representatives, either issue to the Developer a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and the Developer in writing of the Architect's reasons

for withholding a certificate as provided in Subparagraph 11.5.1 of the General Conditions.

**8.3.4** If the Developer's representatives report the Cost of the Construction Services as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to proceed in accordance with Article 6 of the General Conditions without a further decision of the Architect. Unless agreed to otherwise, a claim shall be filed for the disputed amount within 60 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Developer's representatives becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Developer shall pay the Contractor the undisputed amount certified in the Architect's final Certificate for Payment.

**8.3.5** If, subsequent to final payment and at the Developer's request, the Contractor incurs costs described in Paragraph 1.1 or Paragraph 1.2 on Exhibit 1 attached hereto and not excluded by Paragraph 1.3 on Exhibit 1 attached hereto (1) to correct nonconforming Work, or (2) arising from the resolution of disputes, the Developer shall pay the Contractor such costs and the Contractor's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Construction GMP.

## ARTICLE 9

### MISCELLANEOUS PROVISIONS

**9.1 Entire Agreement.** The Contract Documents represent the entire agreement between the Contractor and the Developer and supersedes any prior negotiations, representations or agreements. The Contract Documents, unless otherwise provided in the General Conditions, may be amended only by written instrument signed by both the Contractor and the Developer.

**9.2. Arbitration; Dispute Resolution.** Claims, disputes and other matters in question between the parties to the Contract Documents or related to the Project and arising out of or relating to the Contract Documents or the Project shall be submitted and resolved as provided in Article 6 of the General Conditions. This Article 9 shall survive completion or termination of this Construction Agreement.

**9.3 Insurance.** The Contractor shall be responsible to purchase and maintain the insurance and provide the bonds required in Article 13 of the General Conditions.

**9.4 Conditional Assignment of Construction Agreement.**

**9.4.1** Contractor acknowledges that Developer shall be entitled to collaterally assign all of Developer's right, title and interest in this Construction Agreement and any subcontracts entered into by the Contractor to the Owner, without any fee, charge or expense, to secure Developer's obligations to the Owner under the Development Agreement.

**9.4.2** Contractor acknowledges that Developer shall be entitled to collaterally assign all of Developer's right, title and interest in this Construction Agreement and any subcontracts entered into by the Contractor hereunder to the Owner, without fee, charge or expense, upon final completion of the Project.

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**EXHIBIT 1**

**COST OF CONSTRUCTION SERVICES**

**COSTS OF CONSTRUCTION SERVICES TO BE PAID**

1.1           The term "**Cost of the Construction Services**" shall mean costs necessarily incurred by the Contractor in the proper performance of the Construction Services. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Developer. The Cost of the Construction Services shall include only the items set forth in this Exhibit 1.

1.1.1           **LABOR COSTS**

1.1.1.1           Wages paid for labor in the direct employ of the Contractor in the performance of the Construction Services under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Developer and Contractor, and including such welfare or other benefits, if any, as may be payable with respect thereto.

1.1.1.2           Salaries and other compensation of Contractor's personnel when providing Construction Services or stationed at the field office, in whatever capacity employed, at the rates contained in the Personnel Billing Rate Schedule attached hereto as Schedule "A." Personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment, shall be considered as stationed at the field office and their compensation paid for that portion of their time spent on this Work. Other personnel shall be reimbursable for time spent performing Construction Services in connection with the Project at the rates set forth in Schedule "A." Billing rates shall be subject to reasonable adjustment on the first day of each calendar year if required by Contractor.

1.1.1.3           Cost of contributions, assessments or taxes incurred during the performance of the Construction Services for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the Contractor and included in the Cost of the Construction Services under Subparagraphs 1.1.1.1 and 1.1.1.2.

1.1.1.4           Workers' Compensation insurance and all required Federal and State payroll-related taxes and insurance and all other costs described in this paragraph 1.1.1.4 shall be billed at FIFTY (50%) PERCENT of the applicable tax labor rate, but subject to adjustment on the first day of the calendar year, if required by the

Contractor, in the event of any change in the legal or publicly filed insurance or tax rates.

#### 1.1.2 SUBCONTRACT COSTS

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

#### 1.1.3 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

1.1.3.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

1.1.3.2 Costs of materials described in the preceding Clause 1.1.3.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be itemized and stored by the Contractor until the Developer determines from the Owner what materials the Owner desires to retain; those items not retained by the Owner shall be sold by the Developer, and the proceeds therefrom shall be turned over to the Owner.

#### 1.1.4 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

1.1.4.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site and fully consumed in the performance of the Construction Services; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

1.1.4.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are necessary and reasonably and prudently provided by the Contractor for the Contractor's Work at the site for the most economical rate and the shortest term appropriate, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rental charges for Contractor-owned equipment shall be eighty-five percent (85%) of those listed in the most current edition of the Rental Blue Book for Construction Equipment published by the Equipment Guidebook Company.

1.1.4.3 Costs of removal of debris from the site.

1.1.4.4           Reproduction costs, costs of telegrams, facsimile transmissions, long-distance telephone calls, postage and parcel delivery charges, messenger services, express delivery charges, telephone service, office supplies, parking, and reasonable petty cash expenses.

1.1.4.5           That portion of the reasonable travel, relocation, temporary living allowances, and subsistence expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Construction Services, or stationed at the field office.

#### 1.1.5           MISCELLANEOUS COSTS

1.1.5.1           Costs of premiums for bonds and insurance which the Contractor is required by the Contract Documents to purchase and maintain, or which Contractor deems necessary for the prosecution of the Construction Services, and cost of Subcontractors' payment and performance bonds, required under the Subcontracts. Primary comprehensive general and automobile liability insurance and umbrella/excess liability insurance shall be reimbursed at a commercially reasonable rate each monthly project billing. Rates shall be subject to adjustment on the first day of each calendar year if required by Contractor.

1.1.5.2           Sales, use or similar taxes imposed by a governmental authority which are related to the Services and for which the Contractor is liable.

1.1.5.3           Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is liable.

1.1.5.4           Fees of testing laboratories for tests required by the Contract Documents.

1.1.5.5           License fees, royalties, damages for infringement of patents and costs of defending suits therefore, and deposits lost for causes other than the Contractor's negligence.

1.1.5.6           Data processing costs related to the Construction Services.

1.1.5.7           Legal, mediation and arbitration costs reasonably incurred by the Contractor for the prosecution of the Contractor's Work and incurred with the Developer's permission, which permission shall not be unreasonably withheld. Such legal, mediation and arbitration costs shall in no event be permitted to be included as a Cost of Construction Services if such costs are related to a Claim between the Contractor and the Developer, the Contractor and the Owner or a Claim including the Contractor, the Owner and the Developer.

1.1.5.8 Expenses incurred in accordance with the Contractor's personnel policy for relocation and temporary living allowances of personnel performing Construction Services, where it is necessary to relocate such personnel from distant locations.

1.1.5.9 For Construction Services performed by Contractor's own forces, an overhead amount equal to \_\_\_Five (5%) percent of the cost of such Construction Services.

#### 1.1.6 OTHER COSTS

1.1.6.1 Other costs incurred in the performance of the Construction Services if and to the extent approved in advance in writing by the Developer.

1.1.6.2 The deductible portion, if any is paid by the Contractor, of any losses under policies of Builder's Risk Insurance.

1.1.6.3 Compensation to any consultants employed by the Contractor in connection with the Project, subject to the prior written consent of the Developer, which shall not be unreasonably withheld.

#### 1.2 EMERGENCIES: REPAIRS TO DAMAGED, DEFECTIVE OR NONCONFORMING WORK

The Cost of the Construction Services shall also include costs described in Paragraph 1.1 which are incurred by the Contractor:

1.2.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 12.3 of the General Conditions.

1.2.2 The cost of punchlist and corrective Work, payable as a Cost of the Construction Services, but in no event to increase the Construction GMP, with respect to Work originally performed by the Contractor's own forces.

1.2.3 In repairing damaged Work, provided such damage did not result from the fault or negligence of the Contractor or the Contractor's personnel, and only to the extent that the cost of such repairs is not recoverable by the Contractor from others and the Contractor is not compensated therefore by insurance or otherwise. If any such loss requires reconstruction and the Contractor is placed in charge thereof, the Contractor shall be paid for its services a fee proportionate to that stated in Paragraph 5.2.3 of the Agreement.

1.2.4 In correcting defective or nonconforming Work performed or supplied by a Subcontractor or material supplier and not corrected by them,

provided such defective or nonconforming Work did not result from the fault or neglect of the Contractor or the Contractor's personnel adequately to supervise and direct the Work of the Subcontractor or material supplier, and only to the extent that the cost of correcting the defective or nonconforming Work is not recoverable by the Contractor from the Subcontractor or material supplier.

1.2.5 The costs described in Subparagraphs 1.1 and 1.2 above shall be reimbursable as a Cost of the Construction Services notwithstanding any provision of the General Conditions or other conditions of the Contract Documents which provide that the Contractor is to pay or bear such costs, excepting only where such costs are specifically excluded by the provisions of Paragraph 1.3 below.

### **COSTS OF CONSTRUCTION SERVICES NOT TO BE PAID**

1.3 The Cost of the Construction Services shall not include:

1.3.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Clauses 1.1.1.2 and 1.1.1.3.

1.3.2 Expenses of the Contractor's principal office and offices other than those directly related to the Project.

1.3.3 Overhead and general expenses, except as may be expressly included in Subparagraph 1.1 and 1.2.

1.3.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work, but excepting interest on late payments as set forth in the Contract Documents.

1.3.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraphs 1.1 and 1.2.

1.3.6 Except as provided in clause 1.2.1.7.1, any cost not specifically and expressly described in Subparagraphs 1.1 and 1.2.

1.3.7 Costs which would cause the Construction GMP, as adjusted pursuant to the Contract Documents, to be exceeded.

**EXHIBIT 2**

**CONSTRUCTION GMP**

[see attached]

**AGREEMENT BETWEEN DEVELOPER AND CONTRACTOR  
CONSTRUCTION AGREEMENT**

**EXHIBIT 2  
CONSTRUCTION GMP**

The attached documents, prepared by \_\_\_\_\_, is the Guaranteed Maximum Price for the construction of the project which includes the approximate \_\_\_\_\_ square foot professional office building (1 floor); and a parking lot located at \_\_\_\_\_, Michigan (“the Work”). The Guaranteed Maximum Price includes all Work to complete the construction of the Work in accordance with the documents referenced and the clarifications noted.

The Guaranteed Maximum Price document includes the following specific Exhibits:

• Attachment “A”	Cost Summary
• Attachment “B”	Estimate Breakdown
• Attachment “C”	Document Listing
• Attachment “D”	Clarifications
• Attachment “E”	Change Orders to Bid
Package	
• Attachment “F”	Schedule
• Attachment “G”	Staff and General
Conditions	Breakdown

**The Guaranteed Maximum Price includes the following costs which are itemized more specifically in the Budget data dated \_\_\_\_\_, 2001. The allowances shall be adjusted upon completion of each specific item of work and incorporated into a single Allowance Adjustment Change Order upon completion of all work associated therewith.**

• General Conditions	\$ .00
• Site Work	\$ .00
• Building	\$ .00

The Contractor's Fee is included in the Construction GMP. The Contractor's Fee is the fee for General Conditions specified above and six (6%) percent of the cost of the Site Work and Building.

The Contractor has included a Construction Contingency of five (5%) of construction cost. Developer shall be advised and approve of any adjustments to the Construction Contingency prior to said use of Contingency funds by the Contractor.