



Contract Number: \_\_\_\_\_

*Office Use Only*

2233 Citygate Drive □ Columbus, Ohio 43219 □ 614.418.7725 tel □ 614.418.7720 fax □ [www.creativehousing.org](http://www.creativehousing.org)

## CONSTRUCTION AGREEMENT/CONTRACT

Between:

**Creative Housing, Inc.**  
2233 Citygate Dr.  
Columbus, OH 43219  
614.418.7725

For the Project:

**[Insert Project Name]**  
[Insert Address]  
[Insert City, State, Zip Code]

And the Contractor:

**[Insert Name of Contractor]**  
[Insert Address 1]  
[Insert Address 2]  
[Insert City, State, Zip Code]  
[Insert Phone Number]  
[Insert Tax ID] Federal Tax I.D. #

On:

**01/01/2008**

### ARTICLE 1. CONTRACT DOCUMENTS

**1.1** The Contract Documents consist of this agreement, construction documents & specifications, Creative Housing prototypical specifications, and all change orders or modifications issued and agreed to by both parties. These contract documents represent the entire agreement of both parties and supersede any prior oral or written agreement.

**1.2** The intent of the Contract Documents is to include all items, labor, materials, and equipment necessary for the proper execution and completion of the Work. Performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonable inferable from them as being necessary to produce the intended results.

**1.3** Execution of the Agreement by the Contractor is a representation that the Contractor reviewed the Contract Documents and has visited the site and become familiar with the physical and other conditions under which the Work is to be performed, including the local markets, labor pool, site conditions, restrictions affecting the Work, and other matters potentially affecting the Contractor's performance.

### ARTICLE 2. SCOPE OF WORK

**2.1** The Contractor shall provide all labor, materials, equipment, pay all fees due to the governing local jurisdiction(s) and perform all the Work according to the construction documents & specifications, and all change orders and modifications set forth. All of which are incorporated by reference.

### ARTICLE 3. SCHEDULES

**3.1** Time limits stated in the Contract Documents are of essence of this Agreement. The Work to be performed under this Agreement shall commence approximately on the 1<sup>st</sup> of January, 2007, and subject to authorized modifications and/or unusual weather, Substantial Completion shall be achieved on or before 120 days from date of Commencement or 01/01/2008, whichever date is earlier.

**3.2** Substantial Completion shall be that point in time when the Work has been completed with the exception of minor punch list items, the Work has been accepted by Creative Housing, Inc. in writing, the Contractor has obtained all necessary permits and inspections, and the Work is legally available for Creative Housing, Inc. to occupy or utilize the Work or designated portion thereof for the use for which it is intended, as expressed in the contract documents.

**CREATIVE HOUSING, INC.**  
**CONSTRUCTION AGREEMENT/CONTRACT (Continued)**

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**3.3** Contractor shall complete all punch list items on or before 120 days from date of Substantial Completion or 01/01/2008, whichever date is earlier.

**3.4** If the Contractor is delayed in the progress of the Project by acts or neglect by the Contractor, Contractor's employees, fire, unusual and adverse weather conditions, unavoidable casualties, or by code or building/zoning/occupancy permit-related delays beyond the Contractor's reasonable control, then the Substantial Completion Date may be equitably extended by Change Order.

**3.5** If Contractor fails to complete work within the period of time mentioned above, the Contractor will pay to Creative Housing, Inc. One Hundred (\$100.00) in liquidated damages for each and every day thereafter that the said work remains in an unfinished condition.

**ARTICLE 4. THE CONTRACT SUM**

**4.1** The purchase price of the project shall be set at the sum of One Thousand Dollars and Zero cents, (\$ 1,000.00), subject to additions and deductions pursuant to authorized change orders and allowances.

**ARTICLE 5. PAYMENTS**

**5.1** Progress Payments shall not constitute final acceptance of the Work.

**5.2** Final Payment, constituting the entire unpaid balance of the Contract Sum, including retainage amounts, shall be made by Creative Housing, Inc. to the Contractor when the Work has been completed to the satisfaction of Creative Housing, Inc., and Agreement fully performed.

**5.3** Payments may be withheld on account of (1) defective Work not remedied, (2) claims filed by third parties, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment or to material suppliers or other vendors, (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, (5) damage to Creative Housing, Inc. or another subcontractor of Contractor, (6) reasonable evidence that the Work will not be completed within the Contract Time, or (7) failure to carry out the Work in accordance with the Agreement or the Contract Documents.

**5.4** Payments due and unpaid under this Agreement by Creative Housing, Inc. shall bear no interest.

**ARTICLE 6. DUTIES OF THE CONTRACTOR**

**6.1** The Contractor shall supervise and direct the Work, using the Contractor's best skills and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the contract.

**6.2** Unless Contract Documents give other specific instructions concerning these matters, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Contractor shall receive, inspect and provide any necessary storage for Creative Housing, Inc. provided materials and equipment.

**6.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall require its employees and subcontractors at the Project to wear and use safety and health equipment and to comply with the rules and regulations imposed by law covering working conditions. The Contractor shall indemnify Creative Housing, Inc. for fines, penalties and corrective measures, and damages, and shall reimburse Creative Housing, Inc. for costs and expenses, including attorney fees, that result from acts or omissions by the Contractor or its subcontractors or vendors or their assigns or their respective employees and agents in failing to comply with such safety rules and regulations. Creative Housing, Inc. mandates a drug-free and alcohol-free Project, and Contractor shall comply with these requirements and take appropriate precautions and implement reasonable measures to ensure compliance.

**CREATIVE HOUSING, INC.**  
**CONSTRUCTION AGREEMENT/CONTRACT (Continued)**

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**6.4** The Contractor warrants to Creative Housing, Inc. that materials and equipment furnished under this Contractor will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted and that the Work will conform with the requirements of the Contract Documents.

**6.5** The Contractor shall defend, indemnify, and hold harmless Creative Housing, Inc., its agents, servants, employees, successors and assigns, from any and all actions, rights of action, causes suits, costs, claims, liens, damages, losses and expenses (including but not limited to attorneys' fees and expert and consulting costs), penalties, fines, assessments, arising out of or resulting from performance of the Work, including, without limitation, damage, loss or expense attributable to defective workmanship, non-conforming Work, OSHA fines and assessments, bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including loss of use resulting therefrom. The Contractor shall further indemnify and hold harmless Creative Housing, Inc. from and against any and all costs, loss and expense, liability, damages, settlements, or claims for damages (including attorneys' fees and costs for defending any action) suffered, incurred or arising from mechanics' liens by Subcontractors, or liens or other payment claims by Subcontractor's laborers, unions or lower-tier suppliers or subcontractors. In the event that a lower-tier subcontractor or material supplier files a mechanics' lien against the Project, the Contractor shall, immediately upon demand of Creative Housing, Inc., promptly cause such lien to be formally released, or bonded off in accordance with applicable statutes, or otherwise satisfied.

**6.6** The Contractor shall be required to carry Builder's Risk Insurance for the Project. The Contractor shall be required to maintain a Performance-Payment Bond for the Project.

**6.7** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and Governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

**6.8** The Contractor shall comply with and give notices required by laws, ordinances, rules and regulations, and lawful orders of public authorities bearing on performance of the Work. The Contractor shall promptly notify Creative Housing, Inc. if the drawings and specification are observed by the Contractor to be at a variance therewith.

**6.9** The Contractor shall be responsible to Creative Housing, Inc. for the acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

**6.10** All work shall be in accordance to the provisions of the plans and specifications. All systems shall be in good working order.

**6.11** All work shall be completed in a workman like manner, and shall comply with all applicable national, state and local building codes and laws.

**6.12** All work shall be performed by licensed individuals to perform their said work, as outlined by law.

**6.13** Contractor shall secure and pay for all permits and inspections necessary to complete the Work.

**6.14** During the progress of the Work, the Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations of this Agreement. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, tools and construction equipment, machinery plus surplus materials, and leave the Project in a finished clean condition.

**CREATIVE HOUSING, INC.**  
**CONSTRUCTION AGREEMENT/CONTRACT (Continued)**

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**6.15** The Contractor shall keep Creative Housing, Inc. informed of the progress and quality of the Work. Contractor shall, at all times, provide Creative Housing, Inc. access to the Work.

**6.16** Upon satisfactory payment being made for any portion of the Work performed, Contractor shall furnish a full and unconditional release from any claim or mechanics' lien for that portion of the Work for which payment has been made.

**ARTICLE 7. CREATIVE HOUSING, INC. AND CREATIVE HOUSING, INC.'S AGENT**

**7.1** If Creative Housing, Inc. observes or otherwise becomes aware of a fault or defect in the Work or any nonconformity with the design or Construction Documents, Creative Housing, Inc. shall notify the Contractor.

**7.2** Creative Housing, Inc. shall furnish required information and services and shall promptly render decisions pertaining there to avoid delay in the orderly progress of the design and construction.

**7.3** Creative Housing, Inc. shall communicate with subcontractors only through the Contractor.

**7.4** Creative Housing, Inc. shall not assume any liability or responsibility, nor have control over or charge of construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the project, since these are solely the Contractor's responsibility.

**7.5** Creative Housing, Inc. shall have authority to reject Work which does not conform with the Contract Documents.

**7.6** Creative Housing, Inc. shall have the right to extract work from the Scope of Work and receive a Credit in an amount agreed upon by Creative Housing, Inc. and Contractor.

**ARTICLE 8. CHANGES IN THE WORK**

**8.1** A Change Order is a written order signed by Creative Housing, Inc. and the Contractor, and issued after execution of the contract, authorizing a change in the Work and/or Time or adjustment in the contract sum or contract time. The contract sum and time can only be modified by a change order.

**8.2** Creative Housing, Inc. without invalidating the contract may order minor changes in the Work within the general scope of the original contract consisting of additions, deletions or other revisions and the contract sum and contract time shall not be adjusted.

**8.3** Creative Housing, Inc. without invalidating the contract may order changes in the Work within the general scope of the original contract consisting of additions, deletions or other revisions and the contract sum and contract time shall be adjusted accordingly. Such changes in the Work shall be authorized by a change order, and shall be performed under applicable conditions of the contract documents.

**ARTICLE 9. CORRECTION OF WORK**

**9.1** The Contractor shall promptly correct work failing to conform to the contract documents, whether observed before or after substantial completion and whether or not fabricated, installed or completed and shall correct work found not to be in accordance with the requirements of the contract documents within a period of one year from the date of substantial completion of the contract or by terms of an applicable special warranty required by the contract documents. The provisions of this article apply to work done by subcontractors as well as to work done by direct employees of the Contractor.

**9.2** The Contractor shall complete the construction of the project to the dimensions of the construction documents. Any variances in the field based on site conditions, materials used, or other encumbrances not known shall be approved in writing prior to performing the Work.

**CREATIVE HOUSING, INC.**  
**CONSTRUCTION AGREEMENT/CONTRACT (Continued)**

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**ARTICLE 10. INSURANCE**

**10.1** Prior to beginning the performance hereunder, Contractor agrees to furnish to Creative Housing, Inc. proof satisfactory of Contractor's Liability Insurance in the amount to \$2,000,000.00 and Property Damage Insurance in the amount of \$2,000,000.00 to protect Creative Housing, Inc. from all claims arising in connection with the Work.

**10.2** The Contractor shall provide proof of needed Workman's Compensation and Liability insurance coverage as required by law and deemed necessary for his own protection.

**ARTICLE 11. MISCELLANEOUS PROVISIONS**

**11.1** The Contract shall be governed by the laws of the State of Ohio.

**ARTICLE 12. HAZARDOUS MATERIALS, WASTE AND ASBESTOS**

**12.1** Both parties agree that dealing with hazardous materials, waste or asbestos requires specialized training, processes, precautions and licenses. Therefore, unless the scope of this agreement includes the specific handling, disturbance, removal or transportation of hazardous materials, waste or asbestos, upon discovery of such hazardous materials the Contractor shall notify Creative Housing, Inc. immediately and allow Creative Housing, Inc./Contractor to contract with a properly licensed and qualified hazardous material Contractor. Any such work shall be treated as a Change Order resulting in additional costs and time considerations.

**ARTICLE 13. WARRANTY**

**13.1** At the completion of this project, Contractor shall execute an instrument to Creative Housing, Inc. warranting the project for one (1) year against defects in workmanship or materials utilized. The manufacturers warranty will prevail. No legal action of any kind relating to the project, project performance or this contract shall be initiated by either party against the other party after three (3) years beyond the completion of the project or cessation of work.

**ARTICLE 14. TERMINATION OF THE CONTRACT**

**14.1** Should Creative Housing, Inc. or Contractor fail to carry out this contract, with all of its provisions, the following options and stipulations shall apply:

**14.1.1** If Creative Housing, Inc. or the Contractor shall default on the contract, the non-defaulting party may declare the contract is in default and proceed against the defaulting party for the recovery of all damages incurred as a result of said breach of contract, including a reasonable attorney's fee.

**14.1.2** In the event of a default by Creative Housing, Inc. or Contractor, the non-defaulting party may state his intention to comply with the contract and proceed for specific performance.

**14.1.3** In the case of a defaulting Creative Housing, Inc., the Contractor may make claim to Creative Housing, Inc. for all work executed and for proven loss with respect to equipment, materials, tools, construction equipment and machinery, including reasonable overhead, profit and damages applicable to the property. Cancellation costs are not permitted or compensable.

**ARTICLE 15. ATTORNEY FEES**

**15.1** In the event of any arbitration or litigation relating to the project, project performance or this contract, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses.

**ARTICLE 16. ACCEPTANCE AND OCCUPANCY**

**16.1** Upon completion, the project shall be inspected by Creative Housing, Inc. and the Contractor, and any repairs necessary to comply with the contract documents shall be made by the Contractor.

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**CONSTRUCTION AGREEMENT/CONTRACT (Continued)**

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**16.2** The property shall not be occupied until a Certificate of Occupancy, as required, has been obtained.

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**CONSTRUCTION AGREEMENT/CONTRACT (Continued)**

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By execution of this document, I agree to have read and fully understand all statements and implications of this document. I agree to explicitly abide by and follow the above conditions as listed in this agreement.

Contractor/Authorized:	_____	_____
Representative	Print Name	Signature & Date

Creative Housing, Inc:	<u>Timothy Oberschlake</u>	_____
Representative	Print Name	Signature & Date

Creative Housing, Inc:	<u>Patrick Rafter</u>	_____
CEO	Print Name	Signature & Date