

(Name of Project)

EXTERIOR AND INTERIOR IMPROVEMENTS
FIXED PRICE CONTRACT

THIS AGREEMENT is dated the ____ day of _____ 200__ by and between _____ (“Owner”) and _____ (“Contractor”).

WHEREAS, Contractor is (or will become prior to the commencement of the Work) licensed and certified by the State of Ohio and the City of _____ to conduct general contracting work and projects (License No. ____). All persons working as sub-contractors on Contractor's behalf are also licensed and certified by the State of Ohio and City of _____.

WHEREAS, Contractor proposes, and Owner hereby accepts Contractor's proposal to perform the following work for the price, and on the terms specified below:

1. **PROJECTED DATE(S)**: Commencing on or about _____ 200__ (or as soon as practical before or thereafter depending on weather) and completion to occur as prescribed below.
2. **PROJECTED LOCATION**: The Project is located at: (describe project and address, or attached addresses), described in Exhibit A attached hereto and made a part hereof (the “Premises.”)
3. **SCOPE OF WORK**. Repair, replacement, renovation, and installation of exterior and interior improvements at the Premises as described and specified in Exhibit B attached hereto and made a part hereof (the “Owner’s/Architect’s Specifications”).

The type, quality, quantity and color the foregoing materials shall be as set forth in the Owner’s/Architect’s Specifications. Notwithstanding anything to the contrary in Exhibit B, the Scope of the Work, and the Owner’s/Architect’s Specifications shall, and does hereby include all abatement of any needed asbestos, lead or other environmental hazards. The Contractor shall fully execute and complete the Scope of the Work. The Contractor accepts the relationship of trust and confidence established by this contract and covenants with Owner to cooperate and coordinate with the Owner or its Architect and exercise the Contractor’s skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and daily, ongoing supervision of the work; to furnish at all times an adequate supply of workers and materials; and to perform the Scope of Work in an expeditious and economical manner consistent with the Owner’s/Architect’s Specifications.

4. **COST.** The Cost shall be a fixed price of _____ Dollars (\$ _____) (the "Fixed Price"). The Contractor acknowledges this is a strict fixed price contract. Contractor therefore warrants that it has conducted sufficient independent due diligence, inspections, testing and consulting with the Owner/Architect and the City of _____ building departments and other authorities having jurisdiction over the work to assure itself of the nature and scope of the Premises, the Designated Use and the Scope of Work. The Fixed Price, includes all soft costs, Contractor and subcontractor overhead, all architectural fees of the Architect, and expenses, all out-of-pocket costs and fees for permits, insurance, and due diligence costs and inspections, all Contractor general conditions, project insurance, abatement of asbestos or lead, and the cost of any required satisfactory completion and performance bonds for the project. Any such bonds shall be identified in Exhibit C, attached hereto and made a part hereof.

5. **WARRANTY.** Contractor agrees to supply all labor, supplies, expertise, supervision, work scheduling, financial reporting (at least monthly if the project exceeds one month in duration) to Owner (or Owner's Lender) for this project. All labor, workmanship and material is warranted and guaranteed for a period of two (2) years. Any other product, material or system warranties in excess of two years shall be passed and apply to the Owner, and Contractor shall so certify by reasonable documentation that such products, materials and systems pass to Owner. Contractor shall repair or replace any defective or unworkmanlike labor with materials or labor with the same quality, type and quantity as required hereunder for two (2) years.

6. **PAYMENT TERMS.**

Accounting Records: The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner and Owner's lender(s). The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, payroll and labor reports/records, 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. All these rights and reservations shall also inure to the benefit of Owner's Lender(s).

Payments – Progress Payments. Based upon Application for Payments submitted to the Owner or Architect by the Contractor and Certificates for Payment approved in advance by Owner, the Owner shall make progress payments to the Contractor as provided below.

The period covered by each Application for Payment shall be no more frequent than one calendar month at a time commencing on the 1st day of each month unless Owner chooses a more frequent schedule.

Provided that an Application for Payment is received by the Owner not later than the 25th day of a month and otherwise approved by the Owner, the Owner shall make payment to the Contractor not later than the 25th day of the following month. If an Application for Payment is received by the Owner/Architect after the application date fixed above, any approved payment shall be made by the Owner not later than Thirty (30) days after the Owner/Architect receives the Application for Payment.

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 herein by the Owner, Owner's Lender or Architect to demonstrate that all work has been paid for, waiver of liens (conditional or final) have been issued and that all wages, supplies and payments have been properly applied by the Contractor.

Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with this Contract and the Owner's/Architect's Specifications and good faith schedule of costs attached hereto as Exhibit C (the "Good Faith Cost Schedule"). The schedule of values shall allocate the entire Fixed Price among the various portions/categories of charges of the Good Faith Cost Schedule. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner/Architect may require. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Fixed Price shall nevertheless control the cost of the Scope of Work.

Applications for Payment shall show the percentage of completion of each portion of the work as of the end of the period covered by the Application for Payment.

Except with the Owner's prior written approval, payments to Subcontractors shall be subject to retainage of not less than Ten (10%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

Final payment, constituting the entire unpaid balance of the Fixed Price, shall be made by the Owner to the Contractor when:

- a. the Contractor has fully performed the Scope of Work except for the Contractor's responsibility to correct work and to satisfy other requirements or warranties which extend beyond final payment, and
- b. a final Certificate for Payment has been issued and approved by the Architect and Owner.

Provided all work has been performed and completed as provided herein, the Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

7. **QUALIFICATIONS.** Contractor represents and warrants that all agents, subcontractors and employees are fully licensed, certified or otherwise authorized to perform the work. Contractor also warrants and represents he has Workers Compensation benefits available for any employees of Contractor and will require any of his subcontractors to also have Workers Compensation in full force and effect.

8. **TIME FOR COMPLETION.** It is understood by Contractor that the work is for the purpose of preparing the Premises for Owner's tenants/or purchasers. Contractor acknowledges that it is key to the marketing of the Premises that the same be available to such tenants or purchasers on a timely basis. For this reason, time schedules for completion must strictly be adhered to and time is of the essence. In the event that Contractor is not able to complete the work in accordance with this Agreement, as required thereunder, Contractor shall be required to pay the sum of \$200 per day as and for liquidated damages, which damages, though incapable of precise determination shall be imposed to account for said delay and further to account for costs, fees and interest of Owner associated with Owner's financing of the project and delays in receiving rent attributable to the completed project, or liability for not being able timely to deliver space (or any portion thereof) in the Premises as committed to any third parties. Time for completion shall be as follows: Substantial completion (95% of Owner's Architect's Specifications) to occur on or before _____, 200__; and final completion (100% of Owner's/Architect's Specifications) completed on or before _____. Final completion shall be further defined as the work being totally completed sufficient for the Owner or its tenants to receive an unconditional, unqualified Certificate of Occupancy and final waiver of liens for all subcontractors, materialmen and suppliers.

9. **FIXED PRICE; EXTRAS.** The price herein shall remain fixed according to the Fixed Price set forth in Paragraph 4. No other charges, extras or additions shall be made to this Agreement unless first agreed to in writing by Owner. Any work performed or extras outside the scope or price of the work or this Agreement herein without Owner's prior written approval shall be at Contractor's sole cost and expense. A verbal authorization shall be insufficient as a basis for authorizing any extra costs to the fixed price. Such authorization may come only from _____ or his/her designee both in writing.

10. **DISPUTES.** Should any dispute or change in the scope of work emerge or become necessary during the work, the inability to resolve such dispute shall not be a basis for stopping the work. Contractor shall continue to perform all work hereunder within the time prescribed herein in order to make the Premises suitable for the intended use as prescribed by this Agreement. The parties shall employ good faith efforts to resolve such disputes, and failing thereof, shall pursue arbitration before the local AIA arbitration board, each party to bear its own costs. Such arbitration or dispute shall not authorize Contractor to stop work.

11. **WORK.** In the event any governmental authority, or Owner identifies unsatisfactory, defective, incomplete, or unworkmanlike work in the Contractor's services or materials (or the quality of either) herein while the work is in progress, Contractor will,

upon notice from Owner, Architect or such governmental unit immediately correct any such problem at Contractor's expense and shall do so within the required time of completions.

12. **PERFORMANCE.** Contractor represents and warrants that it possesses the skill, knowledge and necessary training to perform its work timely and in a workmanlike manner as prescribed herein.

13. **INSPECTION.** Contractor represents and warrants that it has fully inspected the Premises and that the scope of the work prescribed herein is based upon said actual on-site inspection by the Contractor and that said on-site inspection and Scope of Work are consistent with the Owner's/Architect's Specifications accurately describes .

14. **CONFORMITY WITH LAWS; PERMITS.** Contractor agrees that all work will be done in conformity with all applicable laws of the City of _____, State of Ohio, and United States of America, and that all required authorization, permits and approvals will be procured by the Contractor (and its subcontractors) at Contractor's expense.

15. **INDEMNIFICATION; PERFORMANCE, COMPLETION BOND.** Contractor will indemnify, hold harmless and defend Owner from any injuries, claims, liabilities, obligations or damages asserted or awarded against Owner on account of any unworkmanlike or defective materials, or for injury to any workers, employees, subcontractors, guests or invitees of Contractor; Owner shall also indemnify, hold harmless and defend Contractor from any injuries, claims, liabilities, or obligations or damages asserted or awarded against Contractor on account of any primary and proximate negligence of Owner's employees. Prior to commencing work, Contractor shall deposit with Owner the Contractor's in-force Workers Compensation Certificate, liability insurance certificate with limits of no less than \$_____ for injury to person or property per person per occurrence; and ___ shall/___shall not provide a broad-form performance and completion bond in form satisfactory to Owner. Such performance and completion bond shall be in such form and such amounts as will complete all of the Work required herein.

16. **LAW.** This Agreement shall be governed by Ohio law. Any dispute hereunder, related to or arising under this contract shall be prosecuted in all cases in the courts of the State of Ohio, and in particular the state courts of Cuyahoga County Ohio only; Contractor waives any right to have the case brought in any federal court, or removed to any federal court pursuant to any federal diversity statutes or *forum non conveniens* statutes.

17. **ENTIRE AGREEMENT.** This Agreement contains the full understanding of the parties and may not be modified without the express written consent of both parties.

18. **NO LIENS.** It shall be a default of this Agreement authorizing Owner to immediately terminate this Agreement if any mechanics liens be filed against the Premises or the work, which liens are not removed within ten (10) days of filing thereof. Owner may withhold progress payments (regardless of any dispute thereon) from Contractor on account of any such liens. Owner may, but is not obligated to pay off any such liens in order

to remove any clouds on title whereupon Contractor shall repay Owner for such amounts on demand. Failure of Contractor to repay any amounts owed to Owner on account of paying off mechanics lien holders or other out-of-pocket expenses of Owner arising from any default of Contractor shall accrue interest at the rate of sixteen percent (16%) per annum.

19. **ASSIGNMENT.** This contract may not be assigned by Contractor under any circumstances. Owner may assign this contract to any of its affiliated entities or any assignees transferees or buyers of the Premises.

WHEREOF, the parties signed this agreement this ___ day of _____, 200__.

Date

Contractor
by: _____
Title: _____

Date

_____ County Land Reutilization Corp.
by: _____
Title: _____