

**CONSTRUCTION AGREEMENT**

THIS AGREEMENT, made effective this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between \_\_\_\_\_ (hereinafter "Baptist") and \_\_\_\_\_, (hereinafter "Contractor");

IN CONSIDERATION of their mutual promises and undertakings as set out herein, the parties agree as follows:

1. **GENERAL PURPOSE.** The parties acknowledge that BAPTIST is leasing certain space, as more particularly described below (the "Premises"), and desires to construct / build-out / renovate the Premises according specific architectural plans, to be provided to Contractor by BAPTIST or architect, the terms and specifications of which are incorporated into this Agreement (the "Work"). Contractor shall fully execute the required improvements according to the accepted architectural plans and all subsequent change orders.
  
2. **COMMENCEMENT DATE.** The Work shall begin on the effective date of this Agreement.
  
3. **SUBSTANTIAL COMPLETION.** Subject to agreed modifications, the Work shall be substantially completed no later than one hundred twenty (120) calendar days from the date of commencement.
  
4. **CONTRACT PRICE.** BAPTIST shall pay to Contractor the Contract Price of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_) for this Agreement, subject to modification to the Work as agreed by the parties.
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  - d. \_\_\_\_\_
  
5. **PAYMENTS.** Contractor shall submit all requests for payment to Architect for review and certification not later than the 30<sup>th</sup> day of each month. 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. Architect shall certify that the Work has progressed to the point indicated, that the Work quality conforms to the plans and specifications of the architect, and that Contractor is entitled to payment in the amount certified. BAPTIST shall pay the amount certified to Contractor not later than the thirtieth (30<sup>th</sup>) day of the following month.
  - a. For each progress payment made prior to Substantial Completion of the Work, BAPTIST shall retain five percent (5%) of the payment requested as surety for final completion of the Work.
  
  - b. Final payment, constituting the entire unpaid balance of the Contract Price, shall be made by BAPTIST to Contractor when

- i. Contractor has fully performed all corrections to the Work and has satisfied all other requirements, if any, and
- ii. A final Certificate of Payment has been issued by the architect. BAPTIST's final payment to Contractor shall be made no later than thirty (30) days after the issuance of the architect's final Certificate of Payment.
- iii. Additional items needed at completion of project include:
  - Temporary / Final Certificate of Occupancy.
  - Certificate of Substantial Completion\* (with approved punch-list attached).
  - Test and Balance Report\* (and Commissioning Report if available).
  - Contractor's Warranty Letter (one year minimum from GC).
  - As-Built Drawings\* (in PDF & CAD for permitted work).
  - Final Payment Application.
  - Final Lien Waiver and Affidavit of Payment of all Debts and Claims (GC signed).
  - Construction and Demolition Waste Management Report.
  - Operation and Maintenance Instructions\* (for all installed equipment).
  - Certifications\* (fire alarm, sprinklers, physicist, med-gas, HVAC, DOH etc.).

6. **BINDING DISPUTE RESOLUTION.** The parties will first attempt to resolve all disputes by good-faith discussions among the parties to reach a mutually acceptable resolution. In the event such discussions are unable to produce a resolution, then the parties shall proceed to mediation by a neutral third-party chosen by agreement of the parties. All disputes not resolved by mediation shall be submitted to binding arbitration by a neutral arbitrator(s) chosen by the parties. The decision of such arbitrator(s) shall be the final decision resolving the dispute.

7. This Agreement is supplemented by, and incorporates, the following documents:

- a. AIA Document A132™ - 2019, Exhibit A, Insurance and Bonds
- b. AIA Document A232™ - 2019, General Conditions of the Contract for Construction
- c. BAPTIST's Purchase Order of even date.

8. **NOTICES.** For all notices required in this Agreement, or for any other purposes contemplated herein, the parties designate the following representatives:

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Project Manager  
 Baptist Memorial Health Care  
 350 N. Humphreys Blvd  
 Memphis, TN 38120

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Managing Principal  
 Contractor

9. **MATERIALS AND WORKMANSHIP.** Contractor warrants that all materials and workmanship shall be the best of the respective kind and described in the architect's plans. If required by architect or BAPTIST, Contractor shall furnish satisfactory evidence as to the kind and quality

of materials and equipment. The architect shall have the power, with BAPTIST's approval, to order removal and substitution of any defective materials or performance of any remedial work to conform to required plans and specifications. Notwithstanding the foregoing, BAPTIST may allow such defective materials and/or work to remain and shall fix such lower rates or prices it deems fit in its sole discretion which shall be mutually agreed by Contractor, or if lower rates or prices are not agreed upon Contractor will replace such materials. This warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

10. **PERMITS AND APPROVALS.** BAPTIST, assisted by Architect, shall secure and pay for the building permit(s). Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received and accepted.
11. **INSURANCE AND BONDS.** BAPTIST and Contractor shall purchase and maintain insurance policies of a kind and in adequate amounts to provide for each party's indemnity and performance obligations.
12. **INDEMNIFICATION.** Each party agrees to indemnify and hold harmless the other party for any claims against any person or entity by any employee, agent, officer, of either party, and any third-party arising from the negligent act, omission, or conduct of the offending party, including, without limitation, damages for injury and/or property loss, attorney's fees, and any other damages which may be awarded by settlement, third-party arbitration award, or a court of competent jurisdiction.
13. **TERMINATION.** The parties adopt and incorporate the provisions of Article 14 of AIA Document 232™ - 2019 regarding the rights of either party to terminate this agreement with or without cause and the remedies available to the non-terminating party.
14. **SUPPLEMENTAL PROVISIONS.** The All terms and conditions not referenced or amended herein shall refer to AIA Document 232™- 2019 and the same is incorporated herein.

BAPTIST MEMORIAL HEALTH CARE CORP, INC.

CONTRACTOR,

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_