



CONSTRUCTION CONTRACT RIDER

In connection with the work at _____, Massachusetts (the “Development”) to be performed by _____ (the “Contractor”) pursuant to the Construction Contract dated _____, 20__ between the Contractor and _____ (the “Owner”) to which this Rider is attached (as the same may be amended, the “Agreement”), the Contractor and the Owner accept and agree to the following conditions required by the Massachusetts Housing Finance Agency (“MassHousing”):

1. Loan Agreement. If any provision of the Agreement is inconsistent with this Rider, the terms of this Rider shall govern. If any provision of the Agreement is inconsistent with the [*Construction Loan Agreement*]/[*Repairs Loan Agreement*] between the Owner and MassHousing (the “Loan Agreement”), the terms of the Loan Agreement shall govern. The Contractor agrees to assist the Owner to fulfill all of the Owner’s obligations under the Loan Agreement including, without limitation, compliance with cost certification requirements of MassHousing, which shall be required for payment to the Contractor; provided, however, that nothing herein contained shall require the Contractor to perform any construction work or furnish any materials or equipment other than as required in the Plans and Specifications (as defined in the Loan Agreement), nor to perform its work in connection therewith (the “Work”) in a time other than as set forth in this Agreement.

2. Compliance with Plans and Specifications. The Contractor agrees that the materials, fixtures or articles used in the Work shall comply with the quality called for in the Plans and Specifications, and any changes thereto approved by MassHousing and the Owner.

3. Schedule of Work. The Contractor shall, on or before the commencement of the Work hereunder, provide the Owner with detailed progress schedule for the progress of the Work, which schedule shall be satisfactory to MassHousing, and shall further notify the Architect and the Owner of any substantial deviations from the said progress schedule when said deviations are discovered and, if the deviation involved the extension of time required to accomplish any item of the Work, provide the Architect and the Owner with a statement by the Contractor giving the reasons for such deviation and the steps being taken by the Contractor to remedy such deviation.

4. Extension of Time. No extension of time shall be granted by reason of delays experienced in obtaining materials, supplies, equipment, or the like unless the Contractor shall, at the time such extension is requested, provide evidence satisfactory to the Architect that the materials, supplies, equipment or the like were ordered, purchased or otherwise contracted for in a timely fashion and that the failure of the person claiming delivery of the same on or before the time required for the expeditious performance of the work hereunder results from causes beyond the Contractor’s reasonable control.

5. Bonds. The Contractor shall, on or before the commencement of the Work hereunder, provide the Owner with (a) a construction performance and payment bond with a surety company satisfactory to MassHousing, which shall comply with (but not be limited to compliance with) the provisions of Massachusetts General Laws, Chapter 149, Section 29, as required by Section 5 of Chapter 708 of the Acts of 1966; and (b) a lien bond pursuant to Section 12 of Chapter 254 of the Massachusetts General Laws (such conforming bond, a “Lien Bond”).

6. Entry; Document Review. The Contractor shall permit MassHousing to enter upon said premises and to have access to the Development and the Work with respect thereto and all materials, fixtures and articles used or to be used in the construction and to examine all detailed plans, shop drawings and specifications which are or may be kept at the Development site and shall furnish to MassHousing, when

requested, copies of such plans, drawings and specifications.

7. Approval of Changes. No changes in the Plans and Specifications or any terms of the Contract Documents with respect hereto or orders for extra work or changes by altering, adding to or deleting from the work, which result in any net construction cost increase, cost decrease, or will change the design concept, can be effected, except with the prior written approval of MassHousing and under such conditions as the MassHousing may establish.

8. Change Orders. Copies of all proposed change orders, together with relevant detailed cost breakdowns, working sketches, drawings or shop drawing must be submitted to MassHousing through the Architect and the Owner for review, evaluation and acceptance prior to a commencement of work, on AIA Document No. G701.

9. Inspections by Owner and MassHousing. The Contractor shall provide the Owner and MassHousing at least three (3) working days' prior written notice of the time when each of the following events are to occur with respect to the Work, to permit a representative of the Owner and MassHousing to make an inspection:

- (a) commencement, if any, of covering of the framing, plumbing, and electrical work;
- (b) preparation of the final Approved Punch List, with representatives in attendance of MassHousing, the Architect and the Owner (and any other governmental representatives, if required by law or regulation); and
- (c) final inspection with the designated supervisor of the Work.

10. Advances and Retainage.

(a) Advances shall be made by MassHousing as the Work is completed, upon written requests (on forms approved by MassHousing) for payment made by the Owner and certified as accurate by the Architect and the Contractor, fully describing the progress claimed to have been made and the amount claimed to be due. MassHousing may require evidence satisfactory to it of the application of all advances. MassHousing shall have ten (10) days after such a request for payment has been made to have its representative make an inspection and investigation to determine whether the amount claimed is payable, and to make payment in accordance with its determination as to the amount payable in view of progress made. Advances shall be computed substantially in accordance with values set forth on MassHousing's Form 2448 (the "Schedule of Values") completed by the Owner, the Contractor and the Architect and approved by MassHousing and subsequently updated as part of each requisition approved by MassHousing. No more than five percent (5%) of the amount for each item in the Schedule of Values will be advanced at any one time for material stored on the job; provided, however, that MassHousing, in its sole discretion, may permit amounts in excess of five percent (5%) to be advanced after the Owner has submitted evidence of its ownership of the material and of its security precautions for storage.

(b) MassHousing may withhold or refuse to fund any advance if: (i) a notice of contract (the "Notice of Contract") has been filed under Section 4 of Chapter 254 of the Massachusetts General Laws, as amended (the "Mechanic's Lien Law"), unless a Lien Bond shall have been filed covering such contract; (ii) a Notice of Contract has been filed by a contractor under Section 2 of the Mechanic's Lien Law, unless with respect to the subject requisition, an accurately completed and valid partial waiver and subordination of lien form, in the form set forth in clause (4) of Section 32 of said Chapter 254 (the "Lien Form"), has been provided to MassHousing with a Payment Period Date (as hereinafter defined) no more than twenty-five (25) days before the date of the funding of such advance; or (iii) any other statutory lien

has been filed or established relating to claims for labor, materials, or supplies, whether under the Mechanic's Lien Law or otherwise, except for a lien under Section 1 of the Mechanic's Lien Law. As used herein, the term "Payment Period Date" shall mean the date designated in the Lien Form through which the Contractor waives any and all lien rights for labor and materials, or rental equipment, appliances or tools, performed or furnished. If MassHousing has not funded any requisition within twenty-five (25) days after the applicable Payment Period Date as set forth in the Lien Form submitted with the subject requisition, MassHousing may, at its option, withhold or refuse to fund the requisition and require the Owner to resubmit an updated requisition in accordance with the terms and provisions set forth herein, with an updated Lien Form.

[Assuming Construction Contract has an original contract sum/price of \$3 million or greater]

(c) In accordance with and subject always to the applicable requirements of M.G.L. Chapter 149, Section 29F (as amended from time to time, "Retainage Law"), MassHousing shall withhold five percent (5%) from each approved payment on account of total construction costs (the "Retainage"). In no event, however, shall more than ninety-five percent (95%) of the contract sum (adjusted to reflect approved Changed Orders) be advanced until the Owner shall have submitted to MassHousing copies of (i) the Contractor's notice of substantial completion, in the form prescribed by the Retainage Law (the "Contractor's Completion Notice"), as accepted (or deemed accepted) by the Owner or determined by dispute resolution to be final and binding; and (ii) a final, monetized "punch list" agreed to by the Owner and the Contractor and accepted by MassHousing (the "Punch List"), as supported by (or in the form of) an application for payment of retainage (the "Application for Payment of Retainage") as prescribed by the Retainage Law. Such Application for Payment of Retainage shall be accompanied by a list of incomplete or defective work items and deliverables that the Contractor has completed, repaired or delivered, identified by the Architect, as approved by the Owner, upon substantial completion. Upon receipt of the Contractor's Completion Notice, Punch List and Application for Payment of Retainage, MassHousing shall release the Retainage to Contractor, less the following amounts: (i) for incomplete, incorrect or missing deliverables, either (A) the value of the deliverables as mutually agreed by the parties to the Agreement, or (B) if no value has been agreed upon in writing by the parties, the reasonable value of the deliverables, which may not exceed two and one-half percent (2.5%) of the total adjusted contract price, (ii) one hundred fifty percent (150%) of the reasonable cost to complete or correct the identified incomplete or defective work items and deliverables, and (iii) the reasonable value of claims and any costs, expenses and attorneys' fees, as determined by the Owner, incurred as a result of the claims if permitted under the Agreement.

11. Contractor Affidavit and Notice of Substantial Completion. Prior to any advance, the Contractor shall execute an affidavit that: (a) all monies previously advanced pursuant to requisitions hereunder have been paid to or are being held for the Contractor, subcontractors, or suppliers; (b) there are no further amounts owing to the knowledge of the Contractor other than as set forth in the current requisition; and (c) only materials, fixtures and equipment to which the Owner has absolute title have been used; and shall provide such stipulations, acknowledgments of payment, postponements, subordinations, releases, discharges, and waivers of notices, claims, liens, and rights of lien, and such other assurances from the Contractor, subcontractors, and suppliers as MassHousing may from time to time require.

The Contractor shall, promptly upon achievement of substantial completion, execute and deliver to the Owner a notice of substantial completion, in the form prescribed in Section 2A of the Mechanics Lien Law, for recording in the Registry of Deeds and/or Registry District of the Land Court where the project that is the subject of the Agreement is located.

12. Materials, Supplies Fixtures and Other Articles for the Development. The Contractor shall not execute any conditional bill of sale or chattel mortgage covering any materials, supplies, fixtures or articles used in the performance of the Work or appurtenances thereto, or articles of personal property

included in the Development. The Contractor shall produce for MassHousing upon demand the contracts, bills of sale, statements, receipted vouchers, agreements, or the like pursuant to which the Contractor claims title to any such materials, supplies, fixtures and articles. The Owner shall not be obligated to make any payment associated therewith to the Contractor if any such materials, supplies, fixtures or articles have not been purchased by the Contractor so that the ownership thereof will vest unconditionally in the Owner, free from encumbrance, upon delivery at the Development; or if there is, at the time such payment is requested, any lien or encumbrance on such materials, supplies, fixtures or articles, furnished by the Contractor (or any person claiming through or under the Contractor), which lien or encumbrances involve one or more claims against the Contractor (or the person claiming through or under the Contractor) and the cost or expense of which is to be included in such payment.

13. Subcontractors; Other Parties.

(a) If requested by MassHousing, the Contractor shall disclose to the Owner and MassHousing the names of all persons with whom the Contractor has contracted or intends to contract for the performance of the Work or for the furnishing of labor and materials therefor.

[If applicable]

(b) Pursuant to 24 CFR section 266.225 (a), all laborers and mechanics employed by the Contractor or any subcontractor with respect to the repairs shall be paid not less than the wages prevailing in the locality in which the Work will be performed for the corresponding classes of laborers and mechanics employed in construction of a similar character, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. In addition, pursuant to Section 5(a) of Chapter 708 of the Acts of 1966, as amended, the laborers, teamsters, chauffeurs and mechanics employed or to be employed with respect to the Work have been paid or are to be paid the prevailing wages in the locality where the Development is located as determined by the Commissioner of Labor and Industries under the authority of Sections 26, 27, 27B 27C and 27D of M.G.L. c. 149, to the extent such wages for a particular employee category are higher. The Contractor shall provide such certificates or other evidence as the Owner or MassHousing shall request, certifying that such wages have been paid, post the prevailing wages in a conspicuous place on the job, and provide to the Owner or MassHousing upon request a list of all such workers by name, job description, dates of employment, and wage rates paid. The Contractor shall also certify to MassHousing from time to time as MassHousing may require and upon Completion that the higher of such federal or state wages described in each trade have been paid.

14. Insurance. The Contractor will maintain, and shall require each subcontractor during the period of construction to maintain, such insurance as required by MassHousing in connection with its commitment to provide financing to the Owner, a copy of which insurance requirements have been provided to the Contractor or are attached hereto. Any materials stored off site pursuant to the prior written approval of MassHousing will be insured in a manner satisfactory to MassHousing.

15. Cost Certification. The Contractor shall cooperate with the Owner in satisfying MassHousing's cost certification procedures and requirements, including, but not limited to, the completion of forms and certificates, prior to and following any termination of this Agreement for such construction work performed by the Contractor, and otherwise cooperate with and assist the Owner in satisfying the provision of the Loan Agreement. The Contractor also agrees upon request by the Owner promptly to prepare and promptly furnish, or cause to be prepared and furnished, all requisitions, certifications and statements required for submission by MassHousing and, in addition, all other certificates and certifications, including, but not limited to, cost certification statements required by MassHousing to be prepared or furnished by the Contractor or any subcontractor for the completion of MassHousing cost certification requirements and procedures. All information and certifications for MassHousing cost certification shall be provided by the Contractor within thirty (30) days of Substantial Completion.

16. Certification by Third Parties. In the event there is an identity of interest between the Contractor and any such subcontractor, equipment lessor or supplier, the Contractor shall include in all such subcontracts, equipment leases and purchase orders a provision requiring the subcontractor, equipment lessor or supplier to certify its costs incurred in connection with the Work, as required by MassHousing in or within the time requirements by MassHousing.