



**Article IV. Change Orders**

Any increase or decrease in either the Scope of Work or the Contract Price must be requested in a written "Change Order" that is signed by both the Homeowner and the Contractor and submitted to the Lender. Not all Change Order requests may be accepted or approved by the Lender. Therefore, the Homeowner and Contractor proceed at their own risk if the work has started and/or completed without an accepted and approved Change Order signed by the Lender

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Borrower - Initial

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**Article V. Payment Procedures**

- A. All disbursements prior to the final payment as outlined in the signed "Draw Disbursement Summary."
- B. **Final Payment.** Final payment of the balance of the Contract Price-including the Holdback shall be made in accordance with the following procedures
  - a. When the Contractor considers the Work complete, the Contractor shall notify the Homeowner in writing. Within a reasonable time thereafter, the Homeowner and Contractor shall inspect the Work. Promptly after such inspection, the Homeowner shall deliver to the Contractor a written punch list of the items that must be completed in order for the Work to reach final completion ("Final Completion"). Alternatively, the Homeowner shall deliver to the Contractor a written statement that the Final Completion has been reached because no punch list items remain to be completed.
  - b. If the Homeowner delivers a written punch list to the Contractor, then the Contractor shall deliver to the Homeowner a written notice that the Work is finally complete when the Contractor believes that the punch list items have been completed. Then the Homeowner and Contractor shall promptly inspect the punch list items. Shortly after such inspection, the Homeowner shall deliver to the Contractor either (i) a written statement that the Final Completion has been reached or (ii) another written punch list of the items that still must be completed in order for the Work to reach Final Completion in which event the punch list procedure described above shall be repeated until all punch list items have been completed.
  - c. When Final Completion has been reached and after the Contractor has delivered to the Homeowner all maintenance and operating instructions, schedules, guarantees, certificates of inspections, marked-up record documents and other documents, then the Contractor may apply for final payment following the procedure for progress payments. The Final Request for Advance shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to the Homeowner and Lender) of all potential liens arising out of or filed in connection with the Work.
  - d. The Homeowner and Contractor acknowledge that on a FHA 203K Limited or a FNMA Homestyle that the Lender is required to secure a fully complete final inspection from the appraiser prior to the release of the final disbursement of funds. This inspection will require that all work to the property be completed for the final close out of the agreement to pass inspection. All work includes work being done by the Homeowner which is outside of the scope of this agreement.
  - e. The Homeowner acknowledges that by signing any Draw Request, the Homeowner is representing that the work identified in the Draw Request is complete and acceptable to the Homeowner and therefore authorizes the Lender to release the requested payment. Payments are typically disbursed in the form of a two-party check made payable to both the Homeowner and the Contractor. The Homeowner agrees to endorse over the two-party check and deliver it to the Contractor within 5 business days of receipt of this/these checks. If the Homeowner fails to deliver this/these checks within the 5-business day period, this could be considered by the Contractor as a breach by the Homeowner of this Contract. Please refer to Article 10, Termination.

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Contractor- Initial

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Borrower - Initial

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**Article VI. Contractor’s Representation**

In order to induce the Homeowner to enter into this Contract, Contractor makes the following representation:

The Contractor has familiarized themselves with the nature and extent of the Contract Documents, Work Site, Locality, and all local conditions, laws, and regulations that in any manner may affect cost, progress, performance or furnishing of the Work. The Contractor is duly licensed and bonded to perform the work as required by all local laws and regulations where the property is located. The Contractor agrees to provide the Homeowner with copies of any and all required licenses and insurance certificates required by these local laws and regulations and also agrees to keep all required licenses and insurance up to date and valid throughout the duration of this Contract.

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Contractor- Initial

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Borrower - Initial

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**Article VII. Contract Documents**

The Contract Documents which comprise of the entire Contract between the Homeowner and the Contractor concerning the Work consisting of this Contract, the Scope of Work, any and all Plans and Drawings, any and all Change Orders, and all required third party documentation.

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Contractor- Initial

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Borrower - Initial

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**Article VIII. Contractor’s Responsibilities**

- A. Performance. The Contractor shall perform the Work in accordance with the Contract Documents. The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of the Construction.
- B. Personnel. The Contractor shall provide competent, suitable personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The Contractor shall at all times maintain good discipline and order at the Property.
- C. Furnished Items. The Contractor shall furnish and be fully responsible for all materials, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.
- D. Materials. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier.
- E. Subcontractors. The Contractor shall be fully responsible to the Homeowner for all acts and omissions of its subcontractors, suppliers, and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the Contractor just as the Contractor is responsible for the Contractor’s own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between the Homeowner and any such subcontractor, supplier, or other person or organization except as may otherwise be required by laws and regulations.
- F. Permits; Inspections. The Contractor shall obtain and shall pay for all construction permits and licenses. The Homeowner may assist the Contractor, when necessary, in obtaining such permits and licenses. The Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work. The Contractor shall give all notices and comply with all laws and regulations applicable to the furnishing and performance of the Work.
- G. Taxes. The Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by the Contractor in accordance with the laws and regulations of the place of the Work which are applicable during the performance of the Work.
- H. Use of the Premises. The Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Property and shall not unreasonably encumber the Property

with materials or equipment. The Contractor shall be fully responsible for any damage to the Property or areas contiguous thereto resulting from the performance of the Work. During the progress of the Work, the Contractor shall keep the Property free from accumulations of waste materials, rubbish and other debris from and about the Property as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the Property clean and ready for occupancy by the Homeowner.

- I. Record Documents. The Contractor shall maintain in a safe place at the Property one record copy of all drawings, specifications, addenda, written amendments, Change Orders, and copies of all required permits and licenses.
- J. Safety. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The Contractor shall comply with all applicable laws and regulations relating to the safety of persons or property.
- K. Continuation of the Work. The Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the Homeowner.
- L. Damage to the Work. The Contractor shall repair or replace, at the Contractor's sole expense, every portion of the Work that is damaged or destroyed prior to the Final Completion and caused in whole or in part by the acts or omissions of the Contractor. Notwithstanding the foregoing, the Homeowner shall bear the cost of such repair or replacement is the sole cause of the damage or destruction of the Work was the result of the Homeowner's negligence.
- M. Warranty. The Contractor warrants and guarantees to the Homeowner that all Work will be in accordance with the Contract Documents and will not be defective. If within one year after the date of the Final Completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any specific provision or applicable special guarantee in the Contract Documents, any Work that is found to be defective, the Contractor shall promptly either correct such defective Work or if it has been rejected by the Homeowner, remove it from the Property and replace it with non-defective Work. If the Contractor does not promptly comply with the terms of such instruction, or in an emergency where delay would cause serious risk of loss or damage, the Homeowner may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect, and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys, and or other professionals) will be paid by the Contractor.
- N. Indemnity and Hold Harmless. The Contractor shall indemnify and hold harmless the Homeowner against all loss, liability, cost expense, damage, and economic detriment of any kind whatsoever that arises out of the results from performance of the Work but only to the extent caused in whole or in part by the acts or omissions of the Contractor.
- O. Work by the Homeowner or other Contractors. The Homeowner reserves the right to perform work on the property that is NOT part of this Contract/Scope of Work. The Homeowner and Contractor acknowledge that on an FHA 203K Limited and a FNMA Homestyle that the Lender is required to secure a fully complete final inspection from the appraiser prior to the release of the final disbursement of funds. This inspection will require that all work to the property be completed for the final close out of this Contract. All work including work being done by the Homeowner or other contractors outside of this Contracted Scope of Work must be completed prior to the final inspection.

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**Article IX. Insurance.**

- A. Contractor's Insurance. The Contractor will purchase and maintain all such insurance(s) that are required by both the state and local municipality where the property is located. This includes but is not limited to a General Liability Insurance Policy, Workmen's Compensation Policy, and any other insurance to protect the Homeowner's property resulting from the conduct of this Contract.

- B. Homeowner's Insurance. The Homeowner shall be responsible for purchasing and maintaining an active Homeowner's Insurance Policy that fully covers the Property throughout the duration of this Contract. The Homeowner is responsible for communicating any and all information that the Homeowner's Insurance Company may need to underwrite and issue a policy during the construction project. The Homeowner understands and agrees that it is their responsibility to secure any and all insurance to project their property.
  - a. Builder's Risk Policy. The Homeowner understands that if the home is unable to be lived in at any point of the construction phase that they are required to purchase and maintain a Builder's Risk Insurance Policy for the Property unless they are able to provide written proof from their Insurance agency that their Homeowner's Insurance Policy will supersede Builder's Risk and that they will continue insuring the Property during the uninhabitable phase of construction.

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**Article X. Termination.**

- A. Termination by the Homeowner. If the Contractor breaches any of their obligations under this Contract, then the Homeowner may give the Contractor written notification identifying such a breach. If the Contractor has not cured such breach within seven (7) calendar days from their receipt of the Homeowner's written notification or if such a breach cannot be cured within such seven (7) day period, then if the Contractor either does not begin to cure within such seven (7) day calendar period or fails to diligently prosecute cure to completion, the Homeowner may terminate this Contract and take possession of the Work. Alternatively, instead of terminating this Contract, the Homeowner may cure the breach and deduct the cost thereof from the amounts otherwise owed to the Contractor.
- B. Termination by the Contractor. If the Homeowner breaches any of their obligations under this Contract, then the Contractor may give the Homeowner written notification identifying such a breach. If the Homeowner has not cured such breach within seven (7) calendar days from their receipt of the Contractor's written notification, or if such a breach cannot be cured within such seven (7) day period, then if the Homeowner either does not begin to cure within such seven (7) day period or fails to diligently prosecute cure to completion, the Contractor may terminate this Contract.

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**Article XI. Miscellaneous.**

Assignment of any rights or interests under this Contract shall not be binding on any party to the Contract without written consent of such party. Payments due under this Contract may not be assigned. Notwithstanding the foregoing, the Homeowner hereby assigns all of its rights, title and interest in and to this Contractor to the Homeowner's Lender, Homebridge Financial Services, having an address at- 194 Wood Avenue South, 9<sup>th</sup> Floor, Iselin, NJ 08830- as additional security for the loan. The Contractor hereby consents to such assignment. Notwithstanding anything to the contrary in this Contract, upon a breach by the Homeowner of this contract, the Contractor shall give the Lender notice of such a breach, at the address set forth above, and provided that the Homeowner or the Lender cures such default within a reasonable period and continues to pay the Contractor all amounts due under this Contract, the Contractor shall continue to perform its services under this Contract.

The Homeowner and Contractor each bind themselves, its partners, successors, assigns and legal representatives, to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

This Contract and all issues, disputes, and matters arising out of it shall be governed by and construed in accordance with the law of the state in which the Property is located, exclusive of that body of law governing conflicts of laws.

Binding Arbitration. Claims or disputes relating to the Contract will be resolved by the Construction Industry Arbitration Rules of the American Arbitration Association (AAA) unless both parties mutually agree to another method. The notice of the demand for arbitration must be filed in writing with the other party to this Contract and with the AAA and must be done within 60 days of the claim and/or disputed event. The reward rendered by the arbitrator will be considered final and judgement may be entered upon it in accordance with the applicable law in any court having jurisdiction where the property is located.

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Borrower - Initial

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IN WITNESS WHEREOF, the Homeowner and Contractor have signed this Contract.

This Contract will be effective on SETTLEMENT of the Property.

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Borrower Signature

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Borrower Signature

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Contractor Signature