

CONSTRUCTION AGREEMENT

This Agreement is made on the date, by and between, the Owner and Contractor:


DATE: JULY 15, 2007

OWNER: ARIZONA FIRST PARTNERS 1 LLC
5041 E Pershing Ave
Scottsdale, AZ 85254-3621
David Haney, Manager/Member

CONTRACTOR: THE SAHUARO GROUP LLC
19 S 10th Ave
Phoenix, AZ 85007-3697
Terry Haver, Manager/Member

ARCHITECT: GROUP RENAISSANCE ARCHITECT
2018 W Cambridge Ave
Phoenix, AZ 85009-1950
Jerry Vest, Owner

PROJECT: LAS SENDAS OFFICE BUILDING




In consideration for the mutual covenants and obligations contained herein, Owner and Contractor, agree as follows:

1. WORK

- 1.1 **Construction Phase of Work.** Contractor shall perform all construction services and provide all material, equipment, tools, and labor necessary to satisfactorily complete all Work designed and reasonably inferable from the Contract Documents.
- 1.2 **Warranty Phase of Work.** Contractor warrants all construction items, labor and materials, referenced in Paragraph 1.1 hereof, for a period of one year from the date of completion, and shall provide Owner will all product data and warranty information, including extended warranties, from all subcontractors upon completion of work.

2. CONTRACT DOCUMENTS

- 2.1 **Contract Documents.** The Contract Documents are comprised of all of the following documents and are incorporated herein by reference:
- (a) This Construction Agreement and its Exhibits A thru D attached hereto;
 - (b) The detailed Construction Documents/Drawings, Project Manual, and its respective Amendments as listed in Exhibit A hereto, and any and all other submission documents from the Architect after their approval by Owner; and
 - (c) Any Change Orders, and/or other written modifications executed by Owner and Contractor.
- 2.2 **Precedence In Order.** The Contract Documents are complementary to each other and must be interpreted in harmony so as to avoid conflict. In the event of any inconsistency,
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conflict, or ambiguity, the Contract Documents shall take precedence in the order in which they are listed in Paragraph 2.1.

- 2.3 **Definition.** Terms, words and phrases used in the Contract Documents shall have the meanings as defined in the Contract Documents or if not specifically defined, their ordinary and common meaning, with undefined words, phrase and abbreviations interpreted consistent with construction and design industry standards and technical and trade meanings.
- 2.4 **Entire Agreement.** The Contract Documents form the entire agreement between Owner and Contractor and by incorporation herein are as fully binding on the parties as if repeated herein. The Contract Documents supercede all prior discussions and negotiations. The Contract Documents may be amended or modified only in writing executed by Owner and Contractor.

3. OWNERSHIP OF DOCUMENTS

- 3.1 **Drawings.** The Owner, through separate agreement with the Architect, shall own all drawings, specifications, and other documents and data furnished by the Architect. Contractor shall have no right or interest in such documents, except for the right to use in rendering services during the pre-construction phase and the construction phase.
- 3.2 **Estimates.** The Owner shall also own any and all estimates of Construction Costs and other estimates and all schedules, value engineering submissions, or other work product furnished by Contractor or Architect to Owner.

4. CONTRACT TIME

- 4.1 **Contract Time.** Owner and Contractor mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents. Contractor agrees that it will complete the Work within the applicable Contract Time (defined herein), as adjusted in accordance with the Contract Documents.
- 4.2 **Commencement Date.** Construction shall commence within five (5) days of Contractor's receipt of Owner's notice to proceed with construction work ("Commencement Date").
- 4.3 **Completion Date.** The completion of the entire construction work shall be achieved no later than one-hundred-fifty (150) days from the Commencement Date, subject to any adjustments in accordance with the Contract Documents ("Completion Date").
- 4.4 **Penalty.** Contractor understands if completion of the entire Work is not attained by the Completion Date set forth in Paragraph 4.3, Owner will suffer damages, which are difficult to specify accurately. Contractor agrees if completion of the entire work is not attained by the Completion Date, Contractor shall pay Owner as liquidated damage the total of two-hundred dollars (\$200) per day beyond the Completion Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, any delay in achieving completion of the entire work on or after the Completion Date.

5. COMPENSATION

- 5.1 **Management Fee.** Owner shall pay Contractor a management fee for construction phase services in accordance with the Contract Documents. The fee for construction phase services will be five (5%) of the cost of the work.

- 5.2 **General Conditions (Overhead) Costs.** Contractor guarantees its General Conditions Costs (Overhead) shall not exceed the amount set forth in Exhibit C hereto, and to the extent Contractor can reduce any item in and of such costs, any savings shall inure to the benefit of Owner.
- 5.3 **Guaranteed Maximum Price.** Contractor guarantees the total construction work under this Agreement shall not exceed the Guaranteed Maximum Price ("GMP") amount set forth in Exhibit B hereto, and to the extent Contractor can reduce any item in and of such costs, any savings shall inure to the benefit of Owner. The GMP includes all sales, use, consumer and other taxes mandated by applicable Legal Requirements and all general conditions, and insurance. The GMP may only adjust upon a signed Change Order by Owner.
- 5.4 **Construction Delays Or Suspension Of Work.** For agreed-to Owner-caused construction delays Contractor will provide all the necessary extended general conditions for the daily amount agreed in the GMP. Owner-caused construction delays do not include delays resulting from suspension of the Work by Owner. Contractor will be solely responsible and Owner will have no responsibility for claims by subcontractors for extended general conditions relating to Owner-caused delays. In setting the amount to be paid by Owner to Contractor for Owner-caused construction delays, Contractor will take into account any amount Contractor anticipates that it might need to deal with possible subcontractor claims for extended general conditions relating to Owner-caused delays.

6. PROCEDURE FOR PAYMENT

- 6.1 **Progress Payments.** Contractor shall submit payment application for completed work to Owner no later than the 25th of the month. Owner shall process payment application with the Bank within 5 business days of receipt of the payment application, and shall cause Bank to make funds available to Owner and/or Contractor within 15 business days from receipt of payment application from Contractor.
- 6.2 **Withholding.** The parties acknowledge 10% of the total amount of all payment applications referred to in Paragraph 6.1 hereof, shall be withheld until satisfactory completion of all entire Work. Owner shall cause such withheld funds to be released and paid to Contractor within 10 business days of satisfactory completion of all entire Work.
- 6.3 **Interest.** Payments due and unpaid by Owner to Contractor, whether progress payments or final payment, shall bear interest as provided by law.
- 6.4 **Record Keeping and Financial Controls.** With respect to all Work performed by Contractor under this Agreement, Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using approved accounting and control systems. During performance of the Work and for two (2) years after final payment for the entire construction Work, the Contractor shall retain for review and/or audit by the Owner all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matter related to the Work. Upon request by the Owner, a legible copy or the original of any or all such records shall be produced by the Contractor at any time during or after the Work as the Owner may request. The Contractor shall submit to the Owner upon request all reports, estimates, records and any other data concerning Work performed or to be performed and concerning materials supplied or to be supplied, as well as subcontractor or any consultant payment applications or invoices and such subcontractor's or any consultant's progress payment checks. The requirements of this Paragraph shall be included in all

contracts between Contractor and its subcontractors and any consultants employed by the Contractor.

7. MISCELLANEOUS

- 7.1 **Termination.** The Owner and the Contractor may terminate this Agreement for just cause. Among other rights, the Owner has the right to terminate this Agreement for convenience.
- 7.2 **Insurance.** Contractor shall procure the insurance coverages as required. Insurance certificates shall be submitted to Owner at the time of commencement of work.
- 7.3 **Owner's Representative.** Owner designates David Haney as its Senior Representative, which individual has the authority and responsibility for avoiding and resolving disputes.
- 7.4 **Contractor's Representatives.** Contractor designates Terry Haver as its Senior Representative, which individual has the authority and responsibility for avoiding and resolving disputes. Contractor's representatives and Construction Superintendent shall not be replaced without the Owner's prior written approval.
- 7.5 **Change of Consultants and Subcontractors.** Any consultants and subcontractors submitted and approved as pre-qualified by the Owner shall not be replaced without the Owner's prior written approval. Any additional costs due to an approved change of subcontractor or consultant without a change in the scope of Work shall not be the Owner's responsibility and will not increase the Guaranteed Maximum Price.
- 7.6 **Contractor Representation.** Contractor represents that it is a licensed general Contractor in the state of Arizona, and that it has the necessary financial resources to fulfill its obligations under the Contract Documents and has the necessary corporate approvals to execute this Agreement and perform the Work described herein.
- 7.7 **Value Engineering, Cost Avoidance, Cost Savings to Inure to Owner.** Contractor and Owner recognize the scope of work as reasonably inferred from the plans will be modified through a value engineering process. Any modifications shall be approved by the Architect, Contractor, and Owner. Throughout the course of construction, Contractor shall submit cost avoidance items for review and approval by the Owner and Architect. In the event of any costs savings, such benefit shall inure to Owner.

This Agreement is entered into as of the date first above written.

OWNER:

ARIZONA FIRST PARTNERS 1 LLC



David Haney, Manager/Member

CONTRACTOR:

THE SAHUARO GROUP LLC



Terry Haver, Manager/Member

EXHIBIT A

LIST OF CONTRACT DOCUMENTS

THE FOLLOWING LIST OF CONTRACT DOCUMENTS INCLUDES THE DETAILED PLANS, SPECIFICATIONS SET FORTH IN THE PROJECT MANUAL, AND ADDENDUMS TO THE PROJECT MANUAL, AS PREPARED BY GROUP RENAISSANCE FOR THE CONTRACTOR AND FOR THE PROJECT FIRST SET FORTH IN THE CONSTRUCTION AGREEMENT

SHEET	DRAWING TITLE	DATE
A.00	Cover Sheet	
A.0.1	Project information	
A.0.2	Code Info & Egress Plans	
A.1.0	Architectural Site Plan	
A.1.1	Site Plan Details	
A.1.2	Site Plan Details	
A.1.3	Not Used	
A.2.1	Lower Level Plan	
A.2.2	Upper Level Plan	
A.4.1	Roof Plan	
A.5.1	Exterior Elevations	
A.5.2	Exterior Elevations	
A.7.1	Wall Sections	
A.7.2	Wall Sections	
A.7.3	Wall Sections	
A.7.4	Wall Sections	
A.7.5	Wall Sections	
C1	Civil Improvement Plans	
C2	Civil Grading and Drainage	
C3	Civil Grading and Drainage	
C4	Civil Grading and Drainage	
C5	Civil Utility Plan	
C6	Civil Utility Plan	
C7	Stormwater Pollution Prevention Plan	
C8	Stormwater Pollution Prevention Plan	
C9	Stormwater Pollution Prevention Plan	
L-1	Landscape Plan	
L-2	Landscape Plan	
L-3	Irrigation Plan	
L-4	Landscape Details	
L-5	Irrigation Details	
S1.0	General Structural Notes	
S1.1	General Structural Notes	
S2.0	Foundation Plan	
S3.0	Floor Framing Plan	
S4.0	Roof Framing Plan	
S5.0	Sections and Details	
S6.0	Sections and Details	
S7.0	Sections and Details	
S8.0	Sections and Details	
M1.0	HVAC Specifications	
M2.1	HVAC Plan-Lower Level	
M2.2	HVAC Plan-Upper Level	
M3.0	HVAC Schedules and Details	

P1.0	Plumbing Specifications
P2.1	Sanitary Waste and Vent Plan-Lower Level
P2.2	Sanitary Waste and Vent Plan-Upper Level
P2.3	Domestic Water Plan-Lower Level
P2.4	Domestic Water Plan-Upper Level
P3.0	Plumbing Schedules and Details
E0.1	Site Lighting and Utilities
E0.2	Site Lighting Photometrics
E1.1	Lower Level Floor Plans
E1.2	Upper Level Floor Plans
E1.3	Schedules and Notes
E2.1	One-Line Diagram & Schedules
E3.1	Legend and Specifications
FP1	Deferred Submittal
FP2	Deferred Submittal

PROJECT MANUAL

ADDENDUMS TO THE PROJECT MANUAL

ADDENDUM #1

April 6, 2007

ADDENDUM #2

April 6, 2007

ADDENDUM #3

April 10, 2007

ADDENDUM #4

April 18, 2007



EXHIBIT B

**CONTRACTOR'S GUARANTEED MAXIMUM PRICE,
WORK DESCRIPTIONS, SUBCONTRACTORS, AND COST BREAKDOWN**

Las Sendas Office Bldg	Building Square Footage:	10,406
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Description	Contractor	Amount
General Conditions	Sahuaro	\$69,733
Survey	Hughes	\$9,500
Earthwork	Aspire	\$90,000
Soil treatment	Termite One	\$375
SWPPP	Sahuaro	\$1,000
Asphalt Paving	Aspire	\$20,000
Rip Rap	Sahuaro	\$630
Brick Pavers	Sahuaro	\$7,600
Site Concrete	Premier	\$36,795
Bike Rack	Sahuaro	\$530
Site Utilities	Underground Utilities	\$18,240
Ornamental Fences/Gates	Sahuaro	\$1,200
Landscape and irrigation	Westar	\$55,000
Cast-in-place footings/slab	Premier	\$37,314
Cast-in-place walls	Premier	\$0
Cementious topping	Christys	\$7,050
Concrete masonry units	Avila	\$40,000
Concrete Masonry Site Walls	Avila	\$5,000
Stone Veneer	Avila	\$52,000
Structural Metal Framing	Sahuaro	\$9,365
Steel Stairs	Sahuaro	\$300
Handrails/Railings/bollards	Sahuaro	\$500
Rough carpentry	K-10	\$122,600
Building insulation	Arizona Thermal	\$8,067
Waterproofing	Cactus Rose	\$7,569
Concrete roofing tile	Anchor	\$21,000
Single-Ply Membrane Roofing	Anchor	\$4,595
Roof Accessories	Sahuaro	\$628
Joint Sealers	Sahuaro	\$1,041
HM doors/frames	Calply	\$1,040
Door install	Sahuaro	\$360
Glazing	Jonic Glass	\$43,877
Gypboard	Sahuaro	\$13,008
Stucco	Kinman	\$33,800
Painting	Sahuaro	\$2,602
Fire Extinguishers	Sahuaro	\$300
Car Shelters	Sun Ports	\$12,000
HVAC	Sun Devil	\$47,200
Plumbing	Az Tec	\$12,500
Fire sprinklers	Courtney	\$17,500
Electrical	Sentry	\$56,000
	Sub-total	\$867,819
Testing and Inspections		\$4,000
	Sub-total	\$871,819
Dust control Permit		\$500
	Sub-total	\$872,319
Allowance 1 for soils reviews		\$7,000
Allowance 2 for steel door hardware		\$850

CA

TH

Allowance 3 for deferred wood truss review		\$1,500
Allowance 4 for monument sign modifications		\$0
Allowance 5 for water feature		\$0
	Sub-total	\$881,669
Insurance		\$13,225
	Sub-total	\$894,894
Fee		\$44,745
	Sub-total	\$939,639
Sales tax	City @ 5.233%	\$49,171
	Sub total	\$988,810
Add allowance to revise structural plans		\$7,500
Add allowance for 4 restrooms finished		\$20,000
Add allowance for planters/water feature		\$20,000
Guaranteed Maximum Price (GMP)		\$1,036,310

EXHIBIT C

CONTRACTOR'S GUARANTEED MAXIMUM GENERAL CONDITIONS COSTS

PROJECT:	Las Sendas	MONTHS	5
LOCATION:	Mesa	WEEKS	22
		WORK DAYS	107
		CAL DAYS	150

PHASE	GENERAL CONDITIONS	QTY	UNIT	RATE	EXTENSION
1072	Layout	0.0	EA	\$250.00	\$0
1184	Temporary fire protection	0.0	EA	\$45.00	\$0
1502	Project sign	0.0	EA	\$450.00	\$0
1503	Drinking water	15.0	WK	\$15.00	\$225
1507	Communications-job site phone	5.0	MO	\$100.00	\$500
1509	Cellular Phone	5.0	MO	\$75.00	\$375
1511	Office supplies	0.0	WK	\$10.00	\$0
1512	Temporary toilets	21.5	MO	\$90.00	\$1,935
1513	Postage/express	0.0	JOB	\$50.00	\$0
1516	Temp. elect/generator	1.0	JOB	\$500.00	\$500
1518	Temp. Water/Sewer	1.0	JOB	\$250.00	\$250
1562	Dumpster	5.0	EA	\$500.00	\$2,500
1564	Dust control	0.0	JOB	\$500.00	\$0
1566	Weekly clean/labor	107.0	HR	\$15.00	\$1,605
1568	Safety & first aid	0.0	JOB	\$100.00	\$0
1570	Temp. fence	800.0	LF	\$2.35	\$1,880
1572	Security/barricades	0.0	JOB	\$400.00	\$0
1574	Final cleanup	0.0	JOB	\$500.00	\$0
1590	Job trailer	6.0	MO	\$340.00	\$2,040
1591	Mobilization/demobilze	0.0	JOB	\$250.00	\$0
1594	Truck (superintendent)	5.0	MO	\$400.00	\$2,000
1595	Project manager vehicle	0.0	MO	\$400.00	\$0
1596	Superintendent vehicle gas	21.5	WK	\$75.00	\$1,613
1597	Project Manager vehicle gas	0.0	WK	\$75.00	\$0
1598	Small tool rental	0.0	JOB	\$50.00	\$0
1600	Small tool purchase	0.0	JOB	\$50.00	\$0
1602	Per diem	0.0	JOB	\$0.00	\$0
1701	Miscellaneous materials	0.0	JOB	\$500.00	\$0
1893	Assistant Superintendent	21.5	WK	\$940.00	\$20,210
1893	Project Manager	4.0	WK	\$1,900.00	\$7,600
1894	Superintendent	12.5	WK	\$1,800.00	\$22,500
1895	Project Engineer	0.0	WK	\$1,000.00	\$0
1896	Project Coordinator	4.0	WK	\$1,000.00	\$4,000
1897	Goodwill	0.0	JOB	\$0.00	\$0
1933	Photos	0.0	JOB	\$0.00	\$0
1934	Reprographics	0.0	JOB	\$300.00	\$0
1936	Estimating	0.0	JOB	\$0.00	\$0
1000	Warranty	0.0	JOB	\$500.00	\$0
	MAXIMUM GENERAL CONDITIONS COST				\$69,733

Cost-Month:	\$13,947
Cost-Week:	\$3,243
Cost-Day:	\$465