

3S REAL ESTATE INVESTMENTS LLC
SERIES 7

April 24, 2017

Mr. Stephen T. Gray
McDermott Gray Construction, LLC
5803 Larkin Street
Houston, Texas 77007

Sent via Certified Mail
RRR #7017 0660 0000 7671 9269
and USPS First Class Mail

**Re: Notice of Termination of Cost-Plus Construction Agreement dated August 28, 2015
(the "Cost-Plus Agreement")**

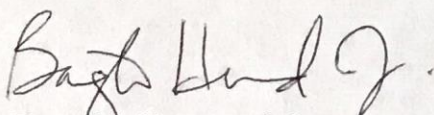
Dear Mr. Gray:

Please accept this letter as notice that the Cost-Plus Agreement¹ is hereby terminated in accordance with Article 9.1 of that Agreement as of the fifth day following the postmark date of this letter; the intended termination date is intended to be April 29, 2017.

Review of the project as of the date of this letter sheetrock has not yet been installed and you have been paid \$15,000 as required by the Cost-Plus Agreement. In accordance with the Cost-Plus Agreement, no other payments will be remitted to you.

Please comply with all requirements outlined in Article 9.2 of the Cost-Plus Agreement, and all other requirements up to and relating to termination, including but not limited to providing all outstanding invoices for payment of subcontractors and evidence of insurance.

Cordially,



Barry M. Hammond, Jr.
General Counsel
3S Real Estate Investments, LLC

¹ Enclosed as Exhibit A

COST-PLUS CONSTRUCTION AGREEMENT

THIS AGREEMENT is made effective as of August 28 2015 (the "Effective Date") by and between **3S REAL ESTATE INVESTMENTS, LLC – SERIES 7**, a distinct series of a Texas limited liability company (the "Owner") and **MCDERMOTT GRAY CONSTRUCTION, LLC**, a Texas corporation, of 5803 Larkin Street, Houston, Texas 77007 (the "Contractor").

ARTICLE I – GENERAL:

- 1.1 The "Architect" on this Project is To Be Determined
- 1.2 The "Construction Schedule" for the Work shall be prepared by Contractor and approved by Owner and Architect prior to the commencement of the Work, and shall detail all dates for completion and payment.
- 1.3 The "Contract Documents" consist of (i) this Agreement, (ii) all Modifications issued after execution of this Agreement, and (iii) the following documents, plans, specifications, drawings, and agreements, if any:

Plans and Specifications dated _____
 Site plan and survey for 914 Woodard Street, Houston, Texas 77007 dated _____
 Owner's finish selection sheet dated _____
 Budget and timeline of Work dated _____

The Contract Documents are all incorporated herein, and are a material part of this Agreement. If anything in the Contract Documents is inconsistent with this Agreement, this Agreement shall govern. All plans, drawings, and copies thereof are and shall remain the property of the Owner.

ARTICLE 2 – THE WORK (THE PROJECT):

- 2.1 The "Project" is the construction of a new single-family residence, to be constructed as part of the Work (defined below) and located at 914 Woodard Street, Houston, Texas 77007.
- 2.2 The Contractor shall perform all the work required by, or reasonably inferable from, the Contract Documents in accordance with all applicable federal, state, and local laws, codes, ordinances, rules, regulations and orders for the Project (collectively, the "Work").
- 2.3 The Architect has been engaged by the Owner for the purpose of creating the plans and specifications for the Project, which are incorporated into the Contract Documents. Contractor acknowledges that Contractor shall have no ownership rights such plans and specifications, and that Owner shall be entitled to injunctive relief to prevent the reuse or resale of the plans and specifications and for liquidated damages in the amount of \$20,000.00.
- 2.4 It is specifically understood and agreed that Contractor shall not be liable for any damages, regardless of their nature or cause, which are due in whole or in part to deficiencies or defect in the design of the Project.

ARTICLE 3 – THE CONTRACTOR'S DUTIES:

- 3.1 Contractor shall use its best skill and judgment, and cooperate with the Architect, to timely complete the Work, it being understood that time is of the essence. Contractor shall supervise the Project and the Work, and shall furnish at all times an adequate supply of workmen and materials, and to perform the Work in the most expeditious and economical manner, consistent with the interest of the Owner.
- 3.2 Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the

Work. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Owner shall not interfere with, restrict or harass Contractor's working forces or subcontractors.

ARTICLE 4 – COMPLETION:

- 4.1 The Work, or a portion thereof, shall be "*Substantially Complete*" when the Work or such portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or use the Work or such portion for its intended use.
- 4.2 The Work shall be "*Finally Complete*" not later than 30 days after all portions of the Work are Substantially Complete. The Work shall be Finally Complete when (i) all punch list items have been completed, (ii) Contractor has delivered to Owner all final lien waivers from Contractor, all subcontractors, and all suppliers of materials, and (iii) Contractor has delivered to Owner an Affidavit of Completion.
- 4.3 Contractor acknowledges that time is of the essence, and Contractor acknowledges that the dates set forth in the Construction Schedule for the Work to be Substantially Complete and Finally Complete have been determined so as to provide sufficient time for Contractor to Substantially Complete and then Finally Complete the Work within such time periods.
- 4.4 In the event that the Contractor does not Substantially Complete or Finally Complete the Work or any portion thereof, or obtain the required certificate(s) of occupancy (the "*Untimely Work*"), on or before the date(s) set out in the Construction Schedule (taking into account any delays due to force majeure), the Owner may give the Contractor written notice of failure to meet the Construction Schedule. If the Contractor does not Substantially Complete or Finally Complete the Untimely Work (as applicable) within 14 days after the date of Owner's notice, then Owner may contract with a third party to Substantially Complete or Finally Complete the Untimely Work, and may deduct the cost of such third party work from the Contractor's Fee and/or charge Contractor for the cost of such third party work, even if the cost of such third party work exceeds the amounts payable Contractor under the Contract Documents.

ARTICLE 5 – CHANGES IN THE WORK:

- 5.1 The Owner may make additions to or deletions from the Work (each, a "*Change*"), upon reasonable prior notice to Contractor.
- 5.2 The cost or credit to the Owner from a Change shall be determined by mutual agreement of the parties, with the understanding that the cost of or credit for a Change shall be based on the Contractor's cost of labor, material, and equipment, and Changes shall not affect the Contractor's Fee.
- 5.3 If Contractor reasonably determines that a Change will require a delay in completion of any aspect of the Work, Contractor will notify Owner, and the parties will amend the Construction Schedule by mutual agreement.
- 5.4 If concealed or unknown physical conditions are encountered at the site of the Project that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Cost of the Work and the Construction Schedule shall be equitably adjusted.

ARTICLE 6 – PAYMENTS TO THE CONTRACTOR:

- 6.1 The Owner shall pay the Contractor the Contractor's Fee in current funds for the Contractor's performance of the Work. The "*Contractor's Fee*" shall be equal to \$25,000.00 and shall be paid as set forth below.
- 6.2 The Owner shall pay the Contractor's Fee and the Cost of the Work in progress payments, as follows:
 - a. Owner shall pay a \$15,000.00 installment of the Contractor's Fee to Contractor no later than 2nd business days after the Effective Date of this Contract; a second installment of \$5,000.00 upon 8/5/18.

completion of the installation of sheetrock in the Project, and \$5,000.00 ^{10/20/11} ~~thirty-one~~ days after Final Completion of the Work.

- b. Contractor will invoice Owner every week. Each invoice shall be based on the percentage of the Work then-completed, showing the Cost of the Work incurred to date, minus 10% statutory retainage, and may include part of the Contractor's Fee due in accordance with this Agreement. The undisputed portion of all invoices will be due 5 business days after Owner's receipt. In the event Owner disapproves of a portion of the Work for which an invoice is submitted, Owner may withhold payment for such disapproved Work, but the Owner shall not withhold payment for other Work not in dispute.
- c. Together with each invoice, Contractor shall provide Owner with an executed Partial Release of Lien for Contractor and an Affidavit of Payment of all subcontractors.
- d. The entire unpaid balance of the Contractor's Fee (less retainage) shall be due upon Final Completion of the Work, and shall be paid by Owner no later than 10 days after issuance of the required certificate(s) of occupancy, or Owner's occupancy of the property, whichever comes first.
- e. Final payment of the 10% statutory retainage (less any amounts claimed by any subcontractors or suppliers) shall be paid by Owner 31 days after Final Completion of the Work.
- e. Unless otherwise directed by Owner in writing, all invoices shall be submitted to both Owner and Owner's lender, and shall be subject to both Owner's and Owner's lender's reasonable review. Contractor shall provide all necessary documentation requested by Owner or Owner's lender prior to being entitled to payment on any invoices. Owner shall not be responsible for delays in payment caused by Owner's lender, unless such delays are caused by Owner.

ARTICLE 7 – COST OF THE WORK:

- 7.1 The "Cost of the Work" includes all costs actually incurred by Contractor in the course of performing the Work, less any discounts, including but not limited to the following: (i) cost of all materials, supplies, and equipment used or incorporated in the Work, including the costs of transportation or delivery; (ii) payments made by the Contractor to any subcontractor(s) or supplier(s) for Work performed pursuant to subcontracting any portion of the Work or this Agreement; (iii) rental charges for all necessary machinery and equipment, excluding hand tools used at the site of the Project, whether rented from the Contractor or others, including installation, minor repairs and replacement, dismantling, removal, transportation, and delivery costs, all at rental rates consistent with prevailing rates in the area; (iv) sales, use, gross receipts, or similar taxes related to the Work and for which Contractor is liable; (v) permit fees, license fees, and the costs of inspections and tests; (vi) cost of premiums for builder's risk insurance, as set forth in Section 8.1; and (vii) all other costs incurred in the performance of the Work if approved by Owner. Contractor shall obtain Owner's approval for all amounts included in the Cost of the Work which exceed \$5,000.00.
- 7.2 The Cost of the Work shall specifically exclude any of the following: (i) wages, salaries, and other compensation of the Contractor's personnel, in whatever capacity, together with all federal, state, and local taxes applicable to such wages, if any, together with all applicable taxes and benefits; (ii) expenses incurred at the Contractor's principal and branch offices; (iii) overhead and other expenses of any kind relating to the performance of Contractor's supervisory, project management, and/or oversight responsibilities under this Agreement, except as specifically included in Section 7.1; (iv) costs or expenses caused by the Contractor, any subcontractor, or anyone directly or indirectly employed by Contractor or any subcontractor, including but not limited to costs for correction of damaged, defective, or non-conforming Work, disposal and replacement of incorrectly ordered materials and equipment, and correcting damage to property not forming part of the Work; (v) any of Contractor's federal, state, or local income taxes, franchise taxes, or personal or real property taxes, and the cost for any licenses obtained for the general conduct of Contractor's business; (vi) rental costs for items not customarily rented for projects similar to the Project, unless authorized by Owner; (vii) cost of premiums for all bonds and insurance

which Contractor elects to purchase and maintain, and the cost of all bonds for subcontractors, suppliers, and vendors (except builder's risk insurance), it being agreed that the cost of such premiums is included in the Contractor's Fee; (viii) payments made by the Contractor to any subcontractor(s) for Work performed pursuant to subcontracting any of Contractor's supervisory, project management, and/or oversight responsibilities under this Agreement; and (ix) any other costs not specifically described in Section 7.1 or approved by Owner in writing.

- 7.3 Contractor will invoice Owner for the Cost of the Work, as costs are incurred by Contractor, and Owner shall reimburse Contractor for the Cost of the Work (plus the Contractor's Fee, as set forth above), upon receipt of such invoices, as set forth in Section 6.2.
- 7.4 All cash discounts shall accrue to the Contractor, unless the Owner advances funds with which to make payments, in which case cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment shall accrue to the Owner, and the Contractor shall notify Owner of all potential discounts within a reasonable time so that the Owner can determine whether or not to take advantage of such discounts.
- 7.5 Contractor shall keep full and detailed accounts of the Work and the Cost of the Work, as may be necessary for adequate financial management of the work. Contractor shall preserve all books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement for a period of at least one year after the Work is Finally Complete. Owner shall be permitted to audit and copy the contractor's books, records, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Agreement.

ARTICLE 8 – INSURANCE AND INDEMNIFICATION:

- 8.1 Contractor shall obtain and purchase "All Risk" Builders Risk Insurance at Owner's expense, including perils such as earthquake, fire, and flood, in an amount equal to 100% of the replacement cost of the Project. Such insurance shall be procured in the name of the Owner, Contractor, and/or any subcontractors or materialmen as their interests may appear. Any deductibles contained in such All Risk insurance or any uninsured losses shall be paid for by Owner. Contractor shall be responsible for any loss due to fire, vandalism, weather or theft of any materials delivered to the job site.
- 8.2 Contractor shall maintain and keep in force a policy of commercial general liability in the amount of at least \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, and shall maintain and keep in force all other policies of insurance (including automobile and workers compensation), in such amounts, as Contractor deems reasonably prudent or are required by Owner's lender. All policies of insurance shall name Owner as an additional insured, and shall provide that they may only be cancelled or modified upon 30 days prior written notice to Owner. Contractor shall provide Owner with a certificate of insurance or duplicate policy prior to commencement of any work. Contractor shall maintain such insurance in full force and effect during the progress of the construction and until delivery of possession of the Project to Owner. Contractor shall also maintain Workers Compensation with statutory limits and Employers Liability insurance of at least \$1,000,000 with respect to such work, which insurance shall include a waiver of subrogation clause and shall name Owner as an alternate employer.
- 8.3 If the Project is wholly or partially damaged or destroyed by any accident, disaster, calamity or other casualty before the final completion of the Work, the Contractor, upon written instructions from the Owner, shall proceed to replace or repair the Work so as to complete it in accordance with the Contract Documents. In this event, the provisions of this Agreement shall remain in full force and effect, and the Construction Schedule shall be automatically extended by a period of time equal to the actual delay in construction caused by the damage or destruction and subsequent restoration work. Alternatively, Owner may elect to terminate this Agreement pursuant to Section 9.1.
- 8.4 Contractor waives any rights or claims Contractor may have against Owner for any personal injuries and/or property damages incurred by anyone on the property during the period of construction, and shall indemnify, defend and hold Owner harmless from any claims, damages, liabilities, suits or awards asserted

for such alleged injuries and/or damages, including but not limited to any attorney's fees and costs incurred.

- 8.5 Owner and Contractor hereby waive all rights of subrogation against each other, and their respective agents, officers, directors, and employees, for loss of or damage to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damage.
- 8.6 To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless Owner and their successors and assigns (collectively, the "*Owner Indemnitees*") from and against any and all claims, settlements, demands, suits, liens, causes of action, penalties, fines, liabilities, judgments, costs, damages, attorneys' fees, losses and expenses of any nature or kind (hereafter, the "*Indemnified Claim*") arising out of or resulting from (a) Contractor's performance of, or failure to perform, the Work or Contractor's obligations under this Agreement or (b) any act, omission or default of Contractor or any of its subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees.

To the extent that a court of competent jurisdiction issues a final, non-appealable judgment finding that an Indemnified Claim resulted from a claim of, or damages resulting solely from the gross negligence, or willful, wanton or intentional misconduct of the Owner Indemnitees, or for statutory violation or punitive damages (except and to the extent that the statutory violations or punitive damages are caused by or result from the acts or omissions of the Contractor or any of its subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees), Contractor's obligation to indemnify an Owner Indemnitee shall not apply to the extent of such finding.

Without in any way impairing, controlling or restricting Contractor's duties and obligations set forth above, Contractor shall defend, indemnify and hold harmless the Owner Indemnitees from any claim, loss, settlement, liability or damage of any nature, including reasonable attorneys' fees, incurred by the Owner Indemnitees arising as a result of any construction lien, equitable lien or other lien or claim against the Project improved as part of the Contractor's work under this Agreement, whether filed or maintained by any subcontractor, sub-subcontractor, materialman or agent of any tier or their respective employees, or any party providing labor, materials, services or equipment by or through Contractor, other than Contractor.

ARTICLE 9 – TERMINATION OF CONTRACT:

- 9.1 The Owner may terminate this Agreement on 5 days prior notice. If the Owner terminates this Agreement, Owner shall reimburse the Contractor for any unpaid Cost of the Work, including a proportional part of the Contractor's Fee based on the actual amount of the Work completed.
- 9.2 In the event that Owner terminates this Agreement, Contractor shall assign to Owner, and Owner shall assume and become liable for, all obligations, commitments, and unsettled claims that the Contractor has previously undertaken or incurred in good faith in connection with the Work (other than subcontractor payments included in the Cost of the Work paid to Contractor). The Contractor shall execute and deliver all such papers and take all such steps as the Owner may require for the purpose of fully vesting in itself the rights and benefits of the Contractor under such obligations or commitments.

ARTICLE 10 – WARRANTIES:

- 10.1 Contractor represents and warrants to Owner that: (a) it is duly licensed in the State of Texas to observe and perform the terms and conditions of this Agreement; (b) it is experienced and skilled in the construction and work of the type contemplated by this Agreement and the Contract Documents; (c) it has by careful examination satisfied itself as to the (i) nature, location and character of the job site, including without limitation the conditions of the property in which the Project is located, all structures and obstructions, all utilities, and the surface water conditions; (ii) the nature, location and character of the general area in which the Project is located, including without limitation the availability and cost of labor and materials; (iii) the quality and quantity of all materials, supplies, tools, equipment and labor necessary to complete the Work; (iv) the customary practices and procedures of any governmental agency having jurisdiction over the Work;

and (v) all other matters or things which could in any manner affect the performance of the Work; and (d) it will comply with all applicable federal, state and local statutes, safety regulations, codes, ordinances and orders with respect to the Work; (e) it is a duly organized business entity, validly existing and in good standing under the Laws of the State of Texas and has full power and authority to conduct business in the State of Texas; and (e) the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective.

- 10.2 Work not conforming to the Contract Documents may be considered "*Defective Work*." This warranty excludes any Defective Work caused by normal wear and tear, use for a purpose for which the Work was not intended, improper or insufficient maintenance, modifications of the Work performed by Owner or others, or abuse. Upon notification of any Defective Work, Contractor shall promptly repair or replace all Defective Work such that the Work substantially conforms to the Contract Documents.
10. Upon Final Completion, Contractor shall assign all manufacturer and third party warranties to the Owner. Owner agrees to be bound by the terms, conditions, and limitations of such warranties.

ARTICLE 11 – ASSIGNMENT:

- 11.1 Neither party shall assign this Agreement or any portion without the written consent of the other party. Notwithstanding the foregoing, Contractor shall be entitled to subcontract any of its obligations under this Agreement to individuals or entities it reasonably selects.

ARTICLE 12 – MISCELLANEOUS PROVISIONS:

- 12.1 Terms used in this Agreement but not defined herein shall have the meanings assigned to such terms in the Contract Documents.
- 12.2 This Agreement, together with the Contract Documents, represents the full, entire, and complete understanding of the parties with respect to the subject matter hereof, and supercedes all prior arrangements, representations, promises, agreements, or understandings (whether written or oral).
- 12.3 This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Texas (excluding any conflicts of laws provisions). For purposes of this Agreement, the parties agree that the duties and obligations of Contractor are performable, in whole or in part, in the State of Texas. The exclusive venue for any action to enforce or interpret this Contract shall be in a court of competent jurisdiction located in Harris County, Texas, and the parties waive their rights to sue or be sued elsewhere.
- 12.4 The Owner represents and warrants that it is the owner of the property on which the Project is to be constructed, and that Owner has full authority to authorize the Work.

This Agreement is entered into as of the day and year first written above.

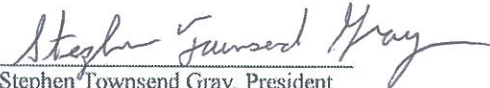
OWNER:

3S REAL ESTATE INVESTMENTS, LLC –
SERIES 7

By: _____
Adam Sinn, Manager

CONTRACTOR

MCDERMOTT GRAY CONSTRUCTION, LLC

By: 
Stephen Townsend Gray, President