

State of Louisiana

**CONSTRUCTION CONTRACT**

This Construction Contract (the "Contract") is made as of September 12<sup>th</sup>, 2022 (the "Effective Date") by and between Popinjay Investments, INC /Guardian Securities, of P.O. Box 233 Jasper, Texas 75951, and DELTATECH CONSTRUCTION LLC of 1048 Lakeshore Blvd, Slidell, Louisiana 70461.

DELTATECH CONSTRUCTION LLC desires to provide Construction services to Popinjay Investments, INC /Guardian Securities and Popinjay Investments, INC /Guardian Securities desires to obtain such services from DELTATECH CONSTRUCTION LLC.

THEREFORE, in consideration of the mutual promises set forth below, the parties agree as follows:

**1. DESCRIPTION OF SERVICES.**

Beginning on June 12th, 2022, DELTATECH CONSTRUCTION LLC will provide to Popinjay Investments, INC /Guardian Securities the following services (collectively, the "Services"):

DELTATECH CONSTRUCTION LLC will effect repairs according to the attached estimate (Annex A) at property located at 1113-1115 Dauphine St, New Orleans, LA. DELTA TECH CONSTRUCTION LLC will be responsible for managing all portions of the project.

**2. SCOPE OF WORK.**

DELTATECH CONSTRUCTION LLC will provide all services, materials and labor for the work described above at the property of Popinjay Investments, INC /Guardian Securities located at: 1113-1115 Dauphine St, New Orleans, LA hereinafter referred to as ("Worksite").

This includes building and construction materials, necessary labor and site security, and all required tools and machinery needed for completion of construction.

DELTATECH CONSTRUCTION LLC is only responsible for furnishing any building improvements related to construction of the structure, but not related to landscaping, sewer or water systems, etc., unless they are specifically agreed to in writing.

**3. COMPLIANCE WITH LAWS.**

DELTATECH CONSTRUCTION LLC shall provide the Services in a workmanlike manner, and in compliance with all applicable federal, state and local laws and regulations, including, but not limited to all provisions of the Fair Labor Standards Act, the Americans with Disabilities Act, and the Federal Family and Medical Leave Act.

**4. WORK SITE.**

Popinjay Investments, INC /Guardian Securities warrants that Popinjay Investments, INC /Guardian Securities owns the property herein described and is authorized to enter into this contract. Prior to the start of construction, Popinjay Investments, INC /Guardian Securities shall provide an easily accessible building site, which meets all zoning requirements for the structure.

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**5. MATERIALS AND/OR LABOR PROVIDED:**

DELTATECH CONSTRUCTION LLC may substitute materials only with the expressed written approval of Popinjay Investments, INC /Guardian Securities, provided that the substituted materials are no lesser quality than those previously agreed upon by Popinjay Investments, INC / Guardian Securities and DELTATECH CONSTRUCTION LLC.

**6. CONTRACT SUM.**

The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The contract Sum shall be \$ 45,808.75 subject to additions and deductions as provided in the Contract Documents and as per Cost Estimate in Annex A.

**7. PAYMENT.**

Payment shall be made to DELTATECH CONSTRUCTION LLC, Slidell, Louisiana 70461 according to the following draw schedule here below:

Draw 1: Contract Signed, Permit Obtained, Start of Work : 15%

Draw 2: Substantial Completion : 70%

Draw 3: Certificate of Occupancy, inspections passed : 15%

If any invoice is not paid when due, interest will be added to and payable on all overdue amounts at 18 percent per year, or the maximum percentage allowed under applicable laws, whichever is less. Popinjay Investments, INC /Guardian Securities shall pay all costs of collection, including without limitation, reasonable attorney fees.

In addition to any other right or remedy provided by law, if Popinjay Investments, INC / Guardian Securities fails to pay for the Services when due, DELTATECH CONSTRUCTION LLC has the option to treat such failure to pay as a material breach of this Contract, and may cancel this Contract and/or seek legal remedies.

**8. TERM.**

DELTATECH CONSTRUCTION LLC shall commence the work to be performed upon approval of Building Permit and shall complete the work within 60 business working days of commencement of work, time being of the essence of this contract.

**9. CHANGE ORDER.**

Popinjay Investments, INC /Guardian Securities, or any allowed person, e.g. lender, public body, or inspector, may make changes to the scope of the work from time to time during the term of this Contract. However, any such change or modification shall only be made in a written "Change Order" which is signed and dated by both parties. Such Change Orders shall become part of this Contract. Popinjay Investments, INC /Guardian Securities agrees to pay any increase in the cost of the Construction work as a result of any written, dated and signed Change Order. In the event the cost of a Change Order is not known at the time a Change Order is executed, DELTATECH CONSTRUCTION LLC shall estimate the cost thereof and Popinjay Investments, INC /Guardian Securities shall pay the actual cost whether or not this cost is in excess of the estimated cost.

**10. PERMITS.**

DELTATECH CONSTRUCTION shall obtain all necessary building permits. DELTATECH CONSTRUCTION LLC shall apply for and obtain any other necessary permits and licenses



required by the local municipal/county government to do the work, the cost thereof shall be paid by Popinjay Investments, INC /Guardian Securities under this Contract.

#### **11. INSURANCE.**

Before work begins under this Contract, DELTATECH CONSTRUCTION LLC shall furnish certificates of insurance to Popinjay Investments, INC /Guardian Securities substantiating that DELTATECH CONSTRUCTION LLC has placed in force valid insurance covering its full liability under the Workers' Compensation laws of the State of Louisiana and shall furnish and maintain general liability insurance.

- a) Limits for General Liability Insurance shall be a minimum of \$ 1,000,000 with a waiver of subrogation, primary and noncontributory, and additional insured in favor of Popinjay Investments, INC /Guardian Securities.
- b) Worker's Compensation & employers liability with a waiver of subrogation in favor of Popinjay Investments, INC /Guardian Securities.

#### **12. CONFIDENTIALITY.**

DELTATECH CONSTRUCTION LLC, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of DELTATECH CONSTRUCTION LLC, or divulge, disclose, or communicate in any manner, any information that is proprietary to Popinjay Investments, INC /Guardian Securities. DELTATECH CONSTRUCTION LLC and its employees, agents, and representatives will protect such information and treat it as strictly confidential. This provision will continue to be effective after the termination of this Contract.

#### **13. INDEMNIFICATION.**

With the exception that this Section shall not to be construed to require indemnification by DELTATECH CONSTRUCTION LLC to a greater extent than permitted under the public policy of the State of Louisiana, DELTATECH CONSTRUCTION LLC shall indemnify Popinjay Investments, INC /Guardian Securities against, hold it harmless from and defend Popinjay Investments, INC /Guardian Securities from all claims, loss, liability, and expense, including actual attorneys' fees, arising out of or in connection with DELTATECH CONSTRUCTION LLC's Services performed under this Contract. This indemnity shall be provided even if Popinjay Investments, INC /Guardian Securities is partly responsible for the claim, damage, injury or loss, but DELTATECH CONSTRUCTION LLC shall not provide indemnity against claims or losses deemed to be caused by the sole negligence or willful misconduct of Popinjay Investments, INC /Guardian Securities or Popinjay Investments, INC /Guardian Securities's agents or employees.

#### **14. WARRANTY.**

DELTATECH CONSTRUCTION LLC shall provide its services and meet its obligations under this Contract in a timely and workmanlike manner, using knowledge and recommendations for performing the services which meet generally acceptable standards in DELTATECH CONSTRUCTION LLC's community and region, and will provide a standard of care equal to, or superior to, care used by service providers similar to DELTATECH CONSTRUCTION LLC on similar projects. DELTATECH CONSTRUCTION LLC shall construct the structure in conformance with the plans, specifications, and any breakdown and binder receipt signed by DELTATECH CONSTRUCTION LLC and Popinjay Investments, INC /Guardian Securities.

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#### **15. FREE ACCESS TO WORKSITE.**

Popinjay Investments, INC /Guardian Securities will allow free access to work areas for workers and vehicles and will allow areas for the storage of materials and debris. Driveways will be kept clear for the movement of vehicles during work hours. DELTATECH CONSTRUCTION LLC will make reasonable efforts to protect driveways, lawns, shrubs, and other vegetation. DELTATECH CONSTRUCTION LLC also agrees to keep the Worksite clean and orderly and to remove all debris as needed during the hours of work in order to maintain work conditions which do not cause health or safety hazards.

#### **16. UTILITIES.**

Popinjay Investments, INC /Guardian Securities shall provide and maintain water and electrical service, connect permanent electrical service, gas service or oil service, whichever is applicable, and tanks and lines to the building constructed under this Contract after an acceptable cover inspection has been completed, and prior to the installation of any inside wall cover. Popinjay Investments, INC /Guardian Securities shall, at Popinjay Investments, INC /Guardian Securities's expense, connect sewage disposal and water lines to said building prior to the start of construction, and at all times maintain sewage disposal and water lines during construction as applicable. Popinjay Investments, INC /Guardian Securities shall permit DELTATECH CONSTRUCTION LLC to use, at no cost, any electrical power and water use necessary to carry out and complete the work.

#### **17. INSPECTION.**

Popinjay Investments, INC /Guardian Securities shall have the right to inspect all work performed under this Contract. All defects and uncompleted items shall be reported immediately. All work that needs to be inspected or tested and certified by an engineer as a condition of any government departments or other state agency, or inspected and certified by the local health officer, shall be done at each necessary stage of construction and before further construction can continue. All inspection and certification will be done at Popinjay Investments, INC /Guardian Securities's expense.

#### **18. DEFAULT.**

The occurrence of any of the following shall constitute a material default under this Contract:

- a. The failure of Popinjay Investments, INC /Guardian Securities to make a required payment when due.
- b. The insolvency of either party or if either party shall, either voluntarily or involuntarily, become a debtor of or seek protection under Title 11 of the United States Bankruptcy Code.
- c. A lawsuit is brought on any claim, seizure, lien or levy for labor performed or materials used on or furnished to the project by either party, or there is a general assignment for the benefit of creditors, application or sale for or by any creditor or government agency brought against either party.
- d. The failure of Popinjay Investments, INC /Guardian Securities to make the building site available or the failure of DELTATECH CONSTRUCTION LLC to deliver the Services in the time and manner provided for in this Contract.

#### **19. REMEDIES.**

In addition to any and all other rights a party may have available according to law of the State of Louisiana, if a party defaults by failing to substantially perform any provision, term or condition of this Contract (including without limitation the failure to make a monetary payment when due),

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the other party may terminate the Contract by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving said notice shall have 30 days from the effective date of said notice to cure the default(s) or begin substantial completion if completion cannot be made in 30 days. Unless waived by a party providing notice, the failure to cure or begin curing, the default(s) within such time period shall result in the automatic termination of this Contract.

## **20. FORCE MAJEURE.**

If performance of this Contract or any obligation under this Contract is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, but not be limited to, acts of God, fire, explosion, vandalism, storm, casualty, illness, injury, general unavailability of materials or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages, or other labor disputes, or supplier failures. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

## **21. DISPUTE RESOLUTION.**

The parties will attempt to resolve any dispute arising out of or relating to this Contract through friendly negotiations amongst the parties. If the matter is not resolved by negotiation, the parties will resolve the dispute using the below Alternative Dispute Resolution (ADR) procedure.

Any controversies or disputes arising out of or relating to this Contract will be submitted to mediation in accordance with any statutory rules of mediation. If mediation does not successfully resolve the dispute or is unavailable, then the parties may proceed to seek an alternative form of resolution in accordance with any other rights and remedies afforded to them by law, including filing suit.

## **22. ENTIRE CONTRACT.**

This Contract contains the entire Contract of the parties, and there are no other promises or conditions in any other contract whether oral or written concerning the subject matter of this Contract. Any amendments must be in writing and signed by each party. This Contract supersedes any prior written or oral agreements between the parties.

## **23. SEVERABILITY.**

If any provision of this Contract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

## **24. AMENDMENT.**

This Contract may be modified or amended in writing, if the writing is signed by each party.

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**25. GOVERNING LAW.**

This Contract shall be construed in accordance with, and governed by the laws of the State of Louisiana, without regard to any choice of law provisions of Louisiana or any other jurisdiction.

**26. NOTICE.**

Any notice or communication required or permitted under this Contract shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

**27. WAIVER OF CONTRACTUAL RIGHT.**

The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.

**28. ASSIGNMENT.**

Neither party may assign or transfer this Contract without the prior written consent of the non-assigning party, which approval shall not be unreasonably withheld.

**29. SIGNATORIES.**

This Contract shall be signed on behalf of Popinjay Investments, INC /Guardian Securities by Laura Golden + Caroline Hart and on behalf of DELTATECH CONSTRUCTION LLC by Sandra Tomasetti, Member (Contractor's License: 84-377 & 36-660) and shall be effective as of the date first written above.

Owner:

By: [Signature]  
..... on behalf of Popinjay Investments, INC /Guardian Securities  
[Signature]

Contractor:  
DELTATECH CONSTRUCTION LLC

Contractor's License: 84-377 (Residential) & 36-660 (Commercial)

By: [Signature]  
Sandra Tomasetti  
Member

Handwritten initials and marks in the bottom right corner, including "SI" and a circled "CW".



**DELTATECH CONSTRUCTION LLC**

**ANNEX A**

**ESTIMATE**

**DATE :** June 12th, 2022  
**ESTIMATE # :** 2022/0657

**BILL TO :**  
 Popinjay Investments, INC

**JOB LOCATION :**  
 1113-1115 Dauphine St  
 New Orleans, LA

PO NO :	TERMS	PROJECT	JOB INFORMATION
	Due on Receipt		See Agreement
DESCRIPTION	Qty	AMOUNT	Total Amount
Following an inspection of the premises, hereafter is an estimate for the following scope of work :			
<b>1. Tuck point bricks</b>			
We will tuck point all bricks on the facade adjacent to 1107 Dauphine.			
		Budget Cost	\$ 10,987.00
<b>2. Stucco damage</b>			
Damaged stucco will be repaired on the front of the property.			
		Budget Cost	\$ 4,260.00
<b>3. Awnings</b>			
The awning on the front facade will be repaired and repainted.			
		Budget Cost	\$ 5,800.00
<b>4. Painting</b>			
The entire front facade will be repainted.			
		Budget Cost	\$ 15,600.00
<i>Inclusive of all insurances (LWCC &amp; GL)</i>			
		<b>SUB TOTAL</b>	<b>\$ 36,647.00</b>
		<b>Overhead (5%)</b>	<b>\$ 1,832.35</b>
		<b>Supervision (10%)</b>	<b>\$ 3,664.70</b>
		<b>Profit (10%)</b>	<b>\$ 3,664.70</b>
		<b>GRAND TOTAL</b>	<b>\$ 45,808.75</b>

**Please make payments to : DeltaTech Construction LLC - Tax ID : 72-1450755**

*[Handwritten initials/signature]*