

UNOFFICIAL COPYExhibit A**CONTRACT AGREEMENT
FOR THE CONSTRUCTION OF A JOS. A. BANK CLOTHIERS**

SITE: 1070 Gage Street
Street and Number

Winnetka, IL
City, County, State

THIS AGREEMENT, made the 29th day of May, 2014, by Brackenridge Construction Company Inc., whose address is: 300 Cherry Street, city of Brackenridge, state of Pennsylvania, telephone (724)224-3404; incorporated in the State of _____; License number _____, authorized by Federal, state and municipal laws, ordinances, rules and regulations to perform as herein required; (herein referred to as "CONTRACTOR"), and Jos. A. Bank Clothiers, a Delaware corporation, with its principal place of business at 500 Hanover Pike, Hampstead, Maryland, 21074 (herein referred to as "OWNER").

WITNESSETH, CONTRACTOR AND OWNER, in consideration of the mutual promises herein contained, and other good and valuable considerations and intending to be legally bound hereby agree as follows:

ARTICLE I. CONTRACTOR shall provide all materials and labor and perform in a thoroughly workmanlike manner all work for the construction of a Jos. A. Bank Clothiers, at the site specified above (hereinafter referred to as the "work") complete in every detail and all in accordance with this Agreement and the Contract Documents. Said Contract Documents include the Instructions to Contractor (attached hereto and made a part hereof as Exhibit A), Project Bid Form (attached hereto and made a part hereof as Exhibit B), Technical Specifications, Addenda, a list of drawing numbers, dates, and revision dates (attached hereto and made a part hereof as Exhibit C), Final Waiver of Lien - Subcontractor (attached hereto and made a part hereof as Exhibit D), Mandatory Payment Draw Schedule (attached hereto and made a part hereof as Exhibit E), Warranty/Guarantee (attached hereto and made a part hereof as Exhibit F), Partial Waiver of Lien - Subcontractor (attached hereto and made a part hereof as Exhibit G) Partial Waiver of Lien - General Contractor (attached hereto and made a part hereof as Exhibit H), Final Waiver of Lien - General Contractor (attached hereto and made a part hereof as Exhibit I), and General Contractor Affidavit to Owner (attached hereto and made a part hereof as Exhibit J) are hereby incorporated by reference and made part hereof and hereafter referred to as the Contract Documents.

ARTICLE II. It is agreed by and between the parties:

a) The work to be performed under this Contract is to be done under the direction of the OWNER's ARCHITECT and/or OWNER's designated DIRECTOR OF STORE DEVELOPMENT (herein referred to as "ARCHITECT") and that his decision as to the true meaning of the Contract shall be final; the services of said ARCHITECT shall be paid for by OWNER; and

b) If further drawings and specifications, other than shop drawings, are necessary to detail and illustrate the work to be done, they are to be furnished by the ARCHITECT, and CONTRACTOR will conform to and abide by the same insofar as they are consistent with the general purpose and intent of the original Contract Documents referred to in Article I; and

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c) Any and all Contract Documents prepared for the purpose of this Contract are to remain the property of OWNER.

ARTICLE III. OWNER shall, in accordance with the terms and conditions contained in the Contract Documents pay to the CONTRACTOR the sum of [REDACTED] dollars ([REDACTED]) for work set forth in Article I in accordance with OWNER'S project bid form as submitted by CONTRACTOR attached hereto and incorporated herein as Exhibit B.

ARTICLE IV. CONTRACTOR shall forward applications for payment to the STORE DEVELOPMENT COORDINATOR. The CONTRACTOR is required to submit three (3) draws. First draw 30% of contract value to be billed at end of week two (2) of construction. Second draw 30% of contract value to be billed at completion of construction. Third draw 40% of contract value to be billed at completion of punch list. Each draw submitted must follow the Mandatory Payment Draw Schedule in Exhibit E.

With regards to the second draw, CONTRACTOR shall have paid subcontractors and submit to OWNER properly completed and executed subcontractor lien waivers evidencing such payment.

With regards to the third draw, CONTRACTOR shall have paid in full all subcontractors and submit to OWNER properly completed and executed subcontractor lien waivers evidencing such payment; all work and materials must be in place; the final completed punch list signed to the satisfaction of a designated Jos. A. Bank representative, submit all final waivers of lien for all work and materials completed by the CONTRACTOR and each subcontractor and material-man utilized on this project, and all other required documentation listed for the third draw in Exhibit E. With regards to the execution of the Partial and Final Waivers of Lien, a general partner must sign if the general contractor or subcontractor is a partnership and an officer must sign if the general contractor or subcontractor is a corporation. Partial and Final Waivers of Lien must have original signatures, must be notarized, and completed in its entirety. Whiteout is prohibited on the Partial and Final Waivers of Lien.

ARTICLE V. CONTRACTOR shall forward all applications for payment in a secured package ensuring that all documents will not be separated. Once OWNER is in receipt of a fully complete and correct application for payment draw submittal, OWNER will expedite payment with a two-week turnaround time. Payment will not be made if items are incorrect or missing. If any items are incorrect and/or missing, the two-week expedited payment begins once OWNER receives the corrected documents. Facsimile copies are not acceptable.

ARTICLE VI. Change in the work shall not be proceeded with, nor will any claim for extra charge be valid, except as authorized in writing. All such changes shall be submitted on AIA Form G701. CONTRACTOR to submit in a timely fashion change orders to OWNER.

All charges for properly approved additional work which are not performed on a lump sum price basis shall be determined as follows:

Actual cost of materials and labor as validated by invoices for such changes.

10 % to CONTRACTOR for work done directly by CONTRACTOR.

10 % to Subcontractor for work done by Subcontractor.

10 % to CONTRACTOR for work done by Subcontractor.

If work is further sublet by a Subcontractor (regardless of how many additional degrees of subcontract are involved), the total mark-up to OWNER, including CONTRACTOR'S mark-up, shall not exceed 10%.

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ARTICLE VII. Construction shall commence upon notification to CONTRACTOR by OWNER, pursuant to Article XIV herein. Said notification date to be no later than the 25th day of July, 2014. If construction notification is not given by said date, this contract shall be null and void.

ARTICLE VIII. CONTRACTOR shall check all materials, equipment and labor entering into the work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Contract, and the system shall be satisfactory to the OWNER. OWNER shall be afforded access to all CONTRACTOR'S records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Contract, and CONTRACTOR shall preserve all such records for a period of three (3) years after the final payment.

ARTICLE IX. CONTRACTOR accepts the relationship of trust and confidence established between him and OWNER by this Contract. He covenants with OWNER to furnish his best skill and judgement and to cooperate with the ARCHITECT in furthering the interests of OWNER. CONTRACTOR agrees to furnish efficient business administration and superintendence and to furnish at all times an adequate supply of workmen and materials. CONTRACTOR also agrees to perform the work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of OWNER.

ARTICLE X. If CONTRACTOR is adjudged a bankrupt, or if he files a voluntary petition in bankruptcy, or is placed in involuntary bankruptcy by a petition of his creditors, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he refuses or fails, except in cases for which extension of time is provided, to supply enough properly-skilled workmen or proper materials, or if he fails to make prompt payment to subcontractors or for materials or labor, or if he disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if he otherwise is guilty of a substantial violation of a provision of the Contract Documents, then OWNER may, without prejudice to any right or remedy and after giving CONTRACTOR and his surety, if any, three (3) days written notice, terminate the employment of CONTRACTOR and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by CONTRACTOR and may finish the work by whatever method he may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract sum exceeds the cost of finishing the work, including compensation for the ARCHITECT'S additional services, such excess shall be paid to the CONTRACTOR. If such costs exceed the unpaid balance, CONTRACTOR shall pay the difference to OWNER.

OWNER retains any further rights to terminate as set forth in the Contract Documents.

ARTICLE XI. Should CONTRACTOR be delayed in the prosecution or completion of the work, by the act, neglect or default of OWNER, or any other CONTRACTOR or Subcontractor not in the employ of CONTRACTOR, or by damage caused by fire or other casualties not due to CONTRACTOR'S neglect, or by combined action of the workmen not contributed to by default of CONTRACTOR, not caused by breach of or refusal to renew any existing labor contract, nor caused by an unreasonable refusal of CONTRACTOR to settle any labor disputes, or by substantial addition of other and extra work not included within this Contract, or by any cause beyond CONTRACTOR'S control, weather conditions excepted, then except as hereafter provided, the time fixed herein for the completion of the work shall be extended for a period determined and fixed by the ARCHITECT to be equivalent to the time lost by reason of any cause aforesaid, or for the time required to complete the additional work, but no extension of time shall be made unless a request therefor is presented in writing to the OWNER within seven

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(7) days of the occurrence of such a delay or of the issuing of any order by them for additional work. Provided, however, if any delay from any cause for which CONTRACTOR is not responsible has occurred or is threatened, which in the opinion of the OWNER makes it advisable or necessary to cease work under this contract, then this contract may be terminated by notice in writing from OWNER to CONTRACTOR, and such termination shall be deemed to be effective upon the expiration of seven (7) days after giving such notice. In the event of such termination by the terms of this Article, OWNER shall assume and become liable for all contractual obligations in connection with the work contemplated hereunder which may have been approved in advance by OWNER and which CONTRACTOR may therefore in good faith have undertaken or incurred; and CONTRACTOR shall, as a condition to receiving payment, execute and deliver all papers and take all steps which in the opinion of OWNER may be required for the purpose of fully vesting in OWNER the rights and benefits of CONTRACTOR under such obligations. As soon as CONTRACTOR submits receipts and waivers of liens or other satisfactory evidence that no attachments, liens, encumbrances, or claims exist upon the property of OWNER or the time wherein such attachments, liens, encumbrances or claims may be filed has expired, OWNER shall, upon receipt of a complete release from CONTRACTOR, pay to CONTRACTOR as final settlement any balance remaining for the work then completed in accordance with the Schedule of Values. Profit shall be included in these values established by the Schedule and no additional profit shall be allowed.

ARTICLE XII. CONTRACTOR agrees:

a) CONTRACTOR will not file or permit any mechanic's lien or liens to be filed against the site or any building or improvement thereon at any time for any work done for or materials furnished by or to CONTRACTOR, unless such lien or liens are being contested in good faith and a surety bond is written by sureties approved by OWNER and acceptable to the court in an amount sufficient to indemnify OWNER from any loss, expense or damages (including court costs and reasonable attorney's fees) which OWNER may sustain. In the event CONTRACTOR is unsuccessful in contesting such lien or liens, or such other security as may be satisfactory to OWNER, CONTRACTOR shall immediately pay any judgement or decree rendered against OWNER arising out of any such mechanic's lien, including all proper costs and charges, and shall cause any such lien to be released of record without cost to OWNER. Upon request, CONTRACTOR agrees to execute a Stipulation Against Lien or other appropriate documents with each and every application for payment, which stipulation or document may be filed of record. Notwithstanding the foregoing, the CONTRACTOR covenants and agrees to cause any such lien(s), which are filed of record to be removed from the record or bonded aforesaid within ten (10) days after receiving written notification thereof.

b) To complete the work free and clear of mechanic's liens and, when requested, deliver to OWNER an original, executed, notarized, appropriate Waiver of Lien and satisfactory proof that all outstanding bills incurred for material furnished or services performed have been paid, and to hold OWNER harmless against all claims, demands, costs, expenses, and damages in connection therewith.

c) That payments made under this Contract shall neither be considered evidence of the satisfactory performance of any work by CONTRACTOR or an acceptance of defective work or improper materials.

d) To accept full and exclusive liability for the payment of any and all premiums, contributions and taxes for Worker's Compensation Insurance, Unemployment Insurance, and for Temporary Disability Benefits, Old Age Pensions, Annuities and Retirement Benefits, Union Dues and other charges, now or hereafter imposed by or pursuant to federal, state and municipal laws, which are measured by the wages, salaries or otherwise, and agrees to indemnify and hold

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OWNER harmless against any liability for such taxes or contributions which may be assessed against OWNER. CONTRACTOR further agrees to enter into any agreement that has been made or may hereafter be prescribed by any federal or state governmental body or authority in order to effectuate the foregoing purposes.

e) To carry Worker's Compensation Insurance and Employer's Liability Insurance, in accordance with the laws of the applicable state or states, in force at the time of the work performed. CONTRACTOR is to indemnify and save OWNER harmless from any and all loss of whatsoever nature arising by virtue of his failure to carry such insurance and/or because of an injury to himself or any of his agents, subcontractors and/or employees engaged in work being performed pursuant to the terms of this Contract.

f) To carry insurance with an A rated or better insurance company and provide required coverage and certificates prior to commencement of work. Limits of liability shall be as follows: General Liability \$1,000,000 per person and \$3,000,000 per accident or such higher limits as may be required by the Landlord of the site. OWNER shall be the Certificate Holder as well as being named additional insured with the exact work location being specified. The certificate shall also designate as additional insureds the Landlord of the site and such other entities as OWNER as the landlord may direct. OWNER must be given thirty (30) days written notice before the cancellation or expiration of insurance. CONTRACTOR shall also submit insurance certificates to the Landlord per the Landlord's requirements. CONTRACTOR hereby indemnifies and holds OWNER harmless from and against any and all loss, liability, damage, claim, suit, demand, levy, lien, attachments and expense, including but not limited to taxes, fines, penalties, court costs and reasonable attorneys fees, arising in connection with any work or services performed by this Agreement. Payment will not be made to CONTRACTOR prior to receiving these certificates.

g) To indemnify and hold harmless the ARCHITECT and OWNER, its subsidiaries and affiliates and the employees thereof, and their agents, from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and is caused in whole or in part by any negligent act or omission of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or any one for whose acts any of them may be liable, regardless of whether or not it is caused by a party indemnified hereunder.

ARTICLE XIII. Nothing herein contained shall be interpreted as giving CONTRACTOR exclusive occupancy of the premises, and OWNER or the ARCHITECT shall have the right to allow other contractors to occupy the premises and to use any means of access to the premises or the work that may be in existence at that time. No decision as to the method or time of conducting the work or the use of the premises or the use of means of access to the premises or the work shall be made the basis of any claim for delay or damage.

ARTICLE XIV. Notices, demands, requests and approvals that may or are to be given by either party hereto to the other shall be in writing and given as provided herein, with a copy thereof to be sent to Jos. A. Bank Clothiers, Attention: Store Development, 500 Hanover Pike, Hampstead, Maryland, 21074, in all cases.

ARTICLE XV. The waiver by OWNER or the ARCHITECT of any writing, notice or breach of Contract shall not constitute a waiver of any other similar or subsequent writing or notice that may be required, or subsequent or other breach of Contract. Any notice, certificate or

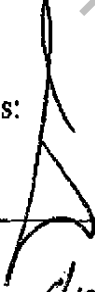
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writing required by the Contract Documents may not be waived by either the ARCHITECT or OWNER without written consent of the other party.

ARTICLE XVI. In the event of any conflict between this Agreement and the plans or specifications, this Agreement shall be controlling. The interpretation of the Contract Documents shall be governed by the laws of the State of Maryland.

ARTICLE XVII. This Contract contains the entire Agreement of the parties hereto and no representations, inducements, promises or agreements, oral or otherwise, not embodied herein or attached hereto unless in writing and of subsequent date, shall be of any force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed under seal, the day and year first above written.

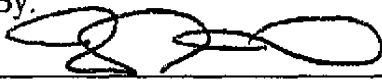
Witness: 

6/10/14

Date

CONTRACTOR's Signature

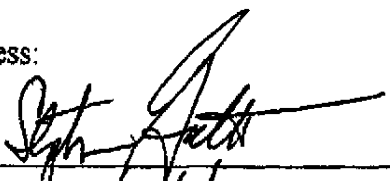
BRACKENRIDGE CONSTRUCTION

By: 

President

6/10/14

Date

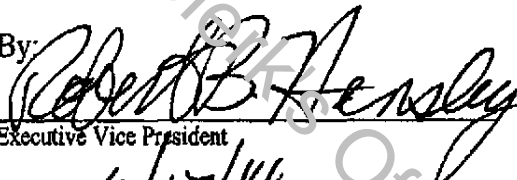
Witness: 

6/17/14

Date

OWNER's Signature

Jos. A. Bank Clothiers, Inc.

By: 

Executive Vice President

6/17/14

Date