

# Standard Contract Agreement

AGREEMENT made as of the    day of    in the year .

BETWEEN the Owner:

**Cinemark USA, Inc.**

**3900 Dallas Parkway, Suite 500**

**Plano, TX 75098**

Phone: **(972) 665-1071**

And the Contractor:

**CONTRACTOR**

Other Parties Related to the Project:

Architect:

Lender:

The Owner has made this contract for construction dated :

For the following Project:

**THEATER**

Which Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project.

The Owner and the Contractor agree as follows.

## **ARTICLE 1 THE CONTRACT DOCUMENTS**

**1.1** The Contract Documents consist of (1) this Agreement; (2) other documents listed in Article 15 of this Agreement; and (3) Modification to this Contract issued after execution of this Agreement.

These form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and superseded prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 15.

**1.2** The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect (if any) and the Contractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Owner and Contractor.

## **ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES**

**2.1** The Owner and Contractor shall be mutually bound by the terms of this Agreement. The Owner shall have the benefit of all rights, remedies and redress against the Contractor, and the Contractor shall have the benefit of all rights, remedies and redress against the Owner, insofar as applicable to this Contract. Where a provision of another document, as outlined in this Contract, is inconsistent with a provision of this Agreement, this Agreement shall govern.

**2.2** The Owner may require the Contractor to enter into agreements with Subcontractors performing portions of the Work of this Contract by which the Contractor and the Subcontractor are mutually bound, to the extent of the Work to be performed by the Subcontractor, assuming toward each other all obligations and responsibilities which the Owner and Contractor assume toward each other and having the benefit of all rights, remedies and redress each against the other which the Owner and Contractor have by virtue of the provisions of this Agreement.

## **ARTICLE 3 OWNER**

### **SERVICES PROVIDED BY THE OWNER**

**3.1** The Owner shall cooperate with the Contractor in the scheduling and performing the Owner's Work to avoid conflicts or interference in the Contractor's Work and shall expedite written responses to submittals made by the Contractor in accordance with Paragraph 4.1 and Article 5. As soon as practicable after execution of this Agreement, the Owner shall provide the Contractor copies of the Owner's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Contractor to plan and perform the Contractor's Work properly. The Contractor shall be notified promptly of subsequent changes in the construction and submittal schedules and additional scheduling details.

**3.2** The Owner shall provide suitable areas for storage of the Contractor's materials and equipment during the course of the Work at Contractor's own risk.

**3.3** The Owner's equipment will be available to the Contractor only at the Owner's discretion and on mutually satisfactory terms.

### **COMMUNICATIONS**

**3.4** The Owner shall promptly make available to the Contractor information which affects this Contract and which becomes available to the Owner subsequent to the execution of this Contract.

**3.5** The Owner shall not give instructions or orders directly to the Contractor's employees or to the Contractor's Subcontractors or material suppliers unless such persons are designated as authorized representatives of the Contractor.

**3.6** The Owner shall furnish to the Contractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Contractor to evaluate, give notice of or enforce contractual rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

**3.7** If the Owner asserts or defends a claim against the Contractor which relates to the Work of the Contractor, the Owner shall make available to the Contractor information relating to the claim.

## CLAIMS BY THE OWNER

**3.8** Liquidated damages for delay, if provided for in Paragraph 9.3 of this Agreement, shall be assessed against the Contractor only to the extent caused by the Contractor or any person or entity for whose acts the Contractor may be liable, and in no case for delays or causes arising outside the scope of this Contract.

**3.9** The Owner's claims for services or materials provided the Contractor shall require:

- 1 seven days' prior written notice except in an emergency;
- 2 written compilations to the Contractor of services and materials provided and charges for such services and materials no later than the fifteenth day of the following month.

## OWNER'S REMEDIES

**3.10** If the Contractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within three working days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after three days following receipt by the Contractor of an additional written notice, and without prejudice to any other remedy the Owner may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due to the Contractor.

## ARTICLE 4 CONTRACTOR

### EXECUTION AND PROGRESS OF THE WORK

**4.1** The Contractor shall cooperate with the Owner in the scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work by other Contractors or Owner's own forces on the Project.

**4.2** The Contractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or other Contractors.

**4.3** The Contractor shall submit to the Owner a schedule of values allocated to the various parts of the Work of this Contract, aggregating the Contract Sum, made out in such detail as the Owner and Contractor may agree upon or as required by the Owner, and supported by such evidence as the Owner may require. In applying for payment, the Contractor shall submit statements based upon this schedule.

**4.4** The Contractor shall furnish the Owner periodic progress reports on the Work of this Contract as mutually agreed, including information on the status of material and equipment which be in the course of preparation, manufacture or transit.

**4.5** The Contractor agrees that the Owner will have the authority to reject Work of the Contractor which does not conform to the Contract.

**4.6** The Contractor shall pay for all materials, equipment, and labor used in connection with the performance of this Contract through the period covered by previous payment received from the Owner, and shall furnish satisfactory evidence, when requested by the Owner, to verify compliance with the above requirements, as further referenced in Section 12.2.

**4.7** The Contractor shall cooperate with the Owner, other Contractors and the Owner's own forces whose Work might interfere with the Contractor's Work. The Contractor shall participate in the preparation of coordinated drawing in areas of congestion, if required, specifically noting and advising the Owner of potential conflicts between the Work of the Contractor and that of other Contractor's or Owner's own forces.

## LAWS, PERMITS, FEES AND NOTICES

**4.8** The Contractor shall give notices and comply with laws, ordinances, rules, regulations and orders of public authorities bearing on performance of the Work of this Contract. The Contractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Contractor's Work, the furnishing of which is required of the Owner by this Agreement.

**4.9** The Contractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Contract.

#### **SAFETY PRECAUTIONS AND PROCEDURES**

**4.10** The Contractor shall take reasonable safety precautions with respect to performance of this Contract, shall comply with safety measures initiated by the Owner and with applicable laws, ordinances, rules regulations and orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Contractor shall report to the Owner within three days an injury to an employee or agent of the Contractor which occurred at the site.

**4.11** If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, the Contractor's Subcontractors or anyone directly or indirectly employed by them, the Contractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Owner in sufficient detail and time to permit compliance with such laws by the Owner, other Contractors and other employers on the site.

**4.12** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, IMMEDIATELY STOP Work in the affected area and report the condition to the Owner. When the material or substance has been rendered harmless, the Contractor's Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately.

**4.13** The Contractor hereby indemnifies and holds harmless the Owner, its subsidiaries, affiliates, and their officers and employees, from any damages, claims, liabilities, and costs, including reasonable attorney's fees or losses of any kind or nature whatsoever which may in any way arise from the services performed by the Contractor, or any breach or alleged breach by Contractor, including the warranties set forth herein.

**4.14** The Owner shall not be liable for injury or death occurring to the Contractor or any of its employees or other subcontractors in the course of performing this Agreement.

#### **CLEANING UP**

**4.15** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Contract. The Contractor shall not be held responsible for unclean conditions caused by other Contractors or Subcontractors.

**4.16** As provided under Subparagraph 4.13, if the Contractor fails to clean up as provided in the Contractor Documents, the Owner may charge the Contractor for the Contractor's appropriate share of cleanup costs.

#### **WARRANTY**

**4.17** The Contractor warrants to the Owner and Architect (if any) that materials and equipment furnished under this Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work of this Contract will be free

from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

#### REMEDIES FOR NONPAYMENT

**4.18** If the Owner does not pay the Contractor through no fault of the Contractor, within seven working days from the time payment should be made as provided in this Agreement, the Contractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Owner, stop the Work of this Contract until payment of the amount owing has been received.

#### ARTICLE 5 CHANGES IN WORK

**5.1** The Owner may make changes in the Work by issuing Modifications to the Contract. Upon receipt of such Modification issued subsequent to the execution of the Contract Agreement, the Owner shall promptly notify the Contractor of the Modification. Unless otherwise directed by the Owner, the Contractor shall not thereafter order materials or perform Work which would be inconsistent with the changes made by the Modifications to the Contract Agreement.

**5.2** The Contractor may be ordered in writing by the Owner, without invalidating this Agreement, to make changes in the Work within the general scope of this Agreement consisting of additions, deletions or other revisions, the Contract Sum and Time being adjusted accordingly.

**5.3** The Contractor shall make all claims promptly to the Owner for additional cost, extensions of time and damages for delays or other causes in accordance with the Contract Documents.

#### ARTICLE 6 MEDIATION AND ARBITRATION

**6.1** Any claim arising out of or related to this Contract, except those waived in this Contract, shall be subject to mediation as a condition precedent to arbitration or the institution of legal equitable proceedings by either party.

**6.2** The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Contract and the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**6.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### ARBITRATION

**6.4** Any claim arising out of or related to this Contract shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 6.1.

**6.5** Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules

of the American Arbitration Association currently in effect. Demand for arbitration shall be filed in writing with the other party to this Contract and with the American Arbitration Association, and a copy shall be filed with the Architect (if any).

**6.6** A demand for arbitration shall be made within the time limits specified in the conditions of the Contract Agreement as applicable, and in other cases within reasonable time after the claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.

#### LIMITATION ON CONSOLIDATION OR JOINER

**6.7** Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, any person or entity not a party to the Contractor under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete reliance is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity for the matter is not insubstantial, and (4) such person or entity is not the Architect, the Architect's employee, the Architect's consultant, or an employee or agent of any of them. The agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in another court having jurisdiction thereof.

#### CLAIMS AND TIMELY ASSERTION OF CLAIMS

**6.8** The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

#### JUDGMENT ON FINAL REWARD

**6.9** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### **ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE CONTRACT**

#### TERMINATION BY THE OWNER

**7.1** If the Contractor persistently or repeatedly fails or neglects to carry out Work in accordance with the Contract Documents or otherwise to perform in accordance with this Contract and fails within seven days after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after seven days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy the Owner may have, terminate the Contract and finish the Contractor's Work by whatever method the Owner may deem expedient. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Contractor's Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such expense and damages exceed such unpaid balance, the Contractor shall pay the difference to the Owner.

**7.2** If the Owner terminates the Contract for the Owner's convenience, the Owner shall deliver written notice to the Contractor.

**7.3** Upon receipt of written notice of termination, the Contractor shall:

- cease operations as directed by the Owner in the notice;
- take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-Contracts and purchase orders and enter into no further Sub-Contracts and purchase orders.

## ASSIGNMENT OF THE CONTRACT

7.4 The Contractor shall not assign the Work of this Contract without the written consent of the Owner, nor Contract the whole of this Contract without the written consent of the Owner, nor further Contract portions of this Contract without written notification to the Owner when such notification is requested by the Owner.

## ARTICLE 8 THE WORK OF THIS CONTRACT

8.1 The Contractor shall execute the following portion of the Work described in the Contract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

**SEE EXHIBIT A: BID PROPOSAL**

## ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

9.1 The Contractor's date of commencement is the date from which the Contract Time of Paragraph 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

9.2 Unless the date of commencement is established by a notice to proceed issued by the Owner, Contractor shall notify the Owner in writing not less than five days before commencing the Contractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

9.3 The Work of this Contract shall be substantially completed no later than:

and subject to adjustments of this Contract Time as provided in the Contract Documents.

9.4 With respect to the obligations of both the Owner and the Contractor, time is of the essence of this Contract.

9.5 No extension of time will be valid without the Owner's written consent after claim made by the Contractor in accordance with paragraph 5.3.

## ARTICLE 10 Contract SUM

Subject to the additions and deductions as provided in the Contract Documents.

10.1 The Owner shall pay the Contractor in current funds for the performance of the Contract the Contract Sum of **(Amount)**

10.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and/or have been accepted by the Owner: **See Exhibit A: Bid Proposal with added Bilco Bil-Guard Hatch Rail System \$ - and Erico Pipe Supports installed -\$**

10.3 Unit prices, if any, are as follows: Per  
**Exhibit A and as Noted on  
Roofingprojects.com Bid Form**

## **ARTICLE 11 PROGRESS PAYMENTS**

**11.1** Based upon applications for payment submitted to the Owner by the Contractor, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**11.2** The period covered by each application for payment shall be one calendar month ending on the last day of the month.

**11.3** Provided an application for payment is received by the Owner not later than the *30th* day of the month, the Owner shall pay the Contractor for their Work as delineated on the Payment Request forms submitted to the Owner. The Owner shall pay the Contractor within 30 days of the receipt of the request for payment. If payment is not received, Contractor shall have the right to cease Work on the project, provided that notification is sent three days prior to ceasing work.

**11.4** Each application for payment shall be based upon the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contractor Sum among the various portions of the Contractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's applications for payment.

**11.5** Applications for payment submitted by the Contractor shall indicate the percentage of completion of each portion of the Contractor's Work as of the end of the period covered by the application for payment.

**11.6** Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- a. Take that portion of the Contract Sum properly allocable to the completed Work as determined by multiplying the percentage completion of each portion of the Contractor's Work by the share of the total Contract Sum allocated to that portion of the Contractor's Work in the schedule of values, less that percentage actually retained, if any from the payments to the Owner on account of the Work of the Contractor. Pending final determination of cost to the Owner of changes in the Work which have been properly authorized by the Owner, amounts not in dispute shall be included to the same extent provided in the Contract Agreement, even though the Contract Sum has not yet been adjusted.
- b. Add that portion of the Contract Sum properly allocable to the materials and equipment delivered and suitably stored at the site by the Contractor for subsequent incorporation in the Contractor's Work or, if approved by the Owner, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Owner to be applied to such materials and equipment in the Owner's application for payment.
- c. Subtract the aggregate of the previous payments made by the Owner, and
- d. Subtract amounts, if any, calculated under Subparagraph 11.6 or 11.6.a. which are related to Work of the Contractor for which the Owner has withheld or nullified, in whole or in part, a certificate of payment for a cause which is the fault of the Contractor.

**11.7** Upon the partial or entire disapproval by the Owner of the Contractor's application for payment, the Owner shall provide written notice to the Contractor. When the basis for disapproval has been remedied, the Contractor shall be paid the amounts withheld.

## SUBSTANTIAL COMPLETION

**11.8** When the Contractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of this Agreement, the Owner shall, upon application by the Contractor, make prompt application for payment for such Work. The Owner shall, make payment to the Contractor, deducting any portion of the funds for the Contractor's Work withheld in accordance with the certificate to cover the costs of items to be completed or corrected by the Contractor. Such payment to the Contractor shall be the entire unpaid balance of the Contract Sum.

## ARTICLE 12 FINAL PAYMENT

**12.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when the Contractor's Work is fully performed in accordance with the requirements of the Contract Documents.

**12.2** Before issuance of final payment, the Contractor shall submit evidence satisfactory to the Owner that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Contractor's Work have been satisfied.

## ARTICLE 13 INSURANCE AND BONDS

**13.1** The Contractor shall purchase and maintain insurance of the following types of coverage and limits of liability:

**See Exhibit C**

**13.2** Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Contractor's Work until date of final payment and termination of any coverage required to be maintained after final payment to the Contractor.

**13.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Contractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required by Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Contractor with reasonable promptness according to the Contractor's information and belief.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

**14.1** Retention and any reduction thereto is as follows:

*10% retainage to be withheld from each progress payment and paid with the final payment request or within ten working days of completion and acceptance by the Owner of the Project.*

**14.2** If any provision of this Agreement is not enforceable in whole or in part, the remaining provisions of this agreement shall not be affected thereby. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

## ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

**15.1** The Contract Documents, except for Modifications issued after execution of this Contract, are enumerated as follows:

This Agreement between the Owner and Contractor as written and dated as first entered on page 1.

The following modifications to the Agreement, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification N/A

**15.2** Other Documents, if any, forming part of the Contract Document are as follows:

**Exhibit A:** Attached proposal and schedule of values, **Exhibit B:** Attached Specifications from roofingprojects.com, **Exhibit C:** Certificate of Insurance

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

Cinemark USA, Inc.  
3900 Dallas Parkway, Suite 500  
Plano, TX 75098  
(972) 665-1071 phone

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(Print Name and Title)

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(Print Name and Title)

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(Signature)

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(Signature)