



HOME CONSTRUCTION CONTRACT

In consideration of the mutual covenants and obligations, this Home Construction Contract (the “**Contract**”) is made as of the date set forth below, by and among the named Builder and Owner set forth below.

1. BUILDER/OWNER/SIGNATURE/ACCEPTANCE

WARNING: DO NOT SIGN PRIOR TO READING THE ENTIRE CONTRACT. BY SIGNING THIS SECTION 1, THIS CONTRACT BECOMES LEGALLY BINDING ON THE BUILDER AND THE OWNER, AND EACH PARTY AGREES TO THE TERMS AND CONDITIONS SET FORTH HEREIN.

Builder:	Owner:
Builder's Company Name:	Name (print):
Builder's Sales Representative and Title:	Name (spouse or additional owner):
Signature:	Signature:
	Signature (spouse or additional owner):
Address:	Address:
Phone Number:	Phone Number:
Date:	Date:

2. CONTRACT PRICE

Cost Plus: Owner agrees to pay Builder the actual costs incurred to complete the Work plus an additional amount of ____ percent (___%) of the cost of the Work (the “Contract Price”). The pre-construction estimate to complete construction of the Work, including the additional percentage, is approximately _____.

The parties acknowledge and agree that this approximate amount is merely an estimate and that the Contract Price will vary depending on the actual cost for labor, materials and other costs to complete the Work. Attached as Attachment 1 is the schedule of estimated costs for allowances, materials and specific portions of the Work.

3. PROJECT / WORK / PROJECT SITE

- A. **Project.** Owner enters into this Contract for the construction of the following: _____
 _____ (the **"Project"**) as more specifically set forth in the plans and specifications dated and identified as _____
 _____ (insert date and information that will identify the plans and specifications (the **"Plans and Specifications"**)).
- B. **The Work.** Subject to the terms and conditions of this Contract, Builder shall provide the labor, materials, equipment, and services necessary to complete the construction of the Project consistent with the Plans and Specifications (the **"Work"**). Slight, non-material deviations from the Plans and Specifications shall be construed as substantial compliance with this Contract.
- C. **Project Site.** The Builder shall complete the Work for the Owner at the following property (the **"Project Site"**) (clearly mark appropriate box):

- Address: _____

- Lot ____ of the _____ (name of subdivision plat or certified survey map no.) recorded in the office of the _____ County Register of Deeds as Document No. _____.
- See legal description attached as Attachment ____ to this Contract.

4. START DATE / COMPLETION DATE

- A. **Start / Substantial Completion.** Unless the parties mutually agree otherwise, the Work shall start and be substantially completed as follows:

Start Date: _____

Substantial Completion Date: _____

Builder shall not be required to commence working on the Start Date unless the following preconditions have been met: (i) execution of this Contract; (ii) satisfaction or waiver of all contingencies set forth in this Contract; (iii) payment of the Initial Payment; and (iv) Owner deposits with the Escrow Agent any loan proceeds or cash equivalent payment if required per the Escrow Agreement set forth under Section 6. Owner shall not be given possession of the Project until Builder receives Final Payment excluding any retainage.

Subject to any delay provisions set forth in this Contract, the Builder shall accomplish Substantial Completion of the Work no later than the Substantial Completion Date. **"Substantial Completion"** means the earlier of the following: (i) the date Owner takes possession of the Project; (ii) the date completion of the Work allows for the Project to be occupied or used for its intended purpose; or (iii) the issuance of an occupancy permit by the applicable governmental entity.



- B. **Final Walk-Through.** At a reasonable, agreed to time after Substantial Completion, Builder and Owner shall conduct a walk-through to inspect the Project to determine that the Builder completed the Work, and that there are no Construction Defects. If there is any unfinished Work and/or there are any Construction Defects, Builder shall complete the Work and/or cure the Construction Defects within a reasonable amount of time. The **"Final Completion Date"** shall be the later date of either the Final Walk-Through or the completion of or curing of any unfinished Work or Construction Defects identified at the Final Walk-Through.
- C. **Delays.** Builder shall give Owner timely notice of any impending delay in performance of the Contract in the form of a written Change Order if performance will be delayed beyond a deadline specified in the Contract. The notice must specify the reason for the delay, and must specify a new proposed Substantial Completion date. Owner shall sign any reasonable request for delay in the performance of the Contract.

5. CONSTRUCTION PAYMENTS

- A. **Initial Payment.** Owner agrees to make an initial payment to Builder to pay a portion of the initial costs of design, permitting, labor and materials in the amount of \$_____ (the **"Initial Payment"**) prior to the Start Date.
- B. **Progress Payments.** Unless a different method is set forth in a separate Escrow Agreement under Section 6, the Owner shall make progress payments every ____ days (each period a **"Payment Period."** The Builder shall submit a **"Progress Payment Request"** for each Payment Period ending on the final day of the Payment Period, which shall include a description of the completed portion of the Work and the payment amount for the portion of the Work subject to the request. The Owner shall make or authorize payment to Builder for the requested amount within 3 days after receipt of the Progress Payment Request. Builder shall furnish a partial lien waiver for Builder's work to the Owner in the amount of the progress payment with the Progress Payment Request. Each partial lien waiver from Builder shall be limited to the actual amount of payment in good funds, and shall be conditioned upon Owner's payment of the progress payment to Builder. Any lien waiver provided by Builder to Owner shall automatically be null and void if payment in good funds is not received within three days.
- C. **Final Payment.** The final payment (the **"Final Payment"**) shall be paid at the time of Substantial Completion of the Work except for the agreed to amount retained by Owner until the Final Completion Date. Owner may retain ____ percent (____ %) of the Contract Price from the Final Payment, which amount shall be paid to Builder on the Final Completion Date.

6. ESCROW AGREEMENT (CLEARLY MARK BOX IF APPLICABLE)

-] The parties agree that the total Contract Price, less the aforementioned Initial Payment (when paid), shall be deposited with or available to the escrow agent (the **"Escrow Agent"**) acceptable to Owner and Builder pursuant to a fully executed escrow agreement (the **"Escrow Agreement"**). The Escrow Agreement shall name Builder as escrow proceeds recipient. Owner shall pay any fees or charges for said escrow and agrees to authorize the disbursement of withdrawals from the escrow as set forth in Paragraph 5. Escrow Agent may be the bank or selected by the bank providing financing.



7. PERMITS/OWNER'S WORK

- A. **Permits.** Builder hereby informs Owner that depending on the scope of Work necessary to complete the Project, it may be necessary for either the Builder or the Owner to obtain certain permits, including without limitation, building and construction permits, sanitary and well permits (if a private sewage system or well is used), a driveway permit, an occupancy permit, other local permits and _____.

(Clearly mark appropriate box)

- Builder shall be responsible for obtaining all necessary permits that are required for the Work. Owner shall be responsible for any and all building and construction permits that are required for Owner's Work (defined below).
- Owner shall be responsible for obtaining all necessary permits that are required for the Work and Owner's Work.

- B. **Owner's Work and Materials / Credits.** Owner shall receive work credits against the total Contract Price for labor and materials provided by Owner, and for any portion of the Work to be completed by Owner ("**Owner's Work**"). The amount of each credit shall be set forth in Attachment 2, and agreed to prior to the execution of this Contract.

Owner agrees to perform Owner's Work within a reasonable time after notice from the Builder that such work must be performed. Owner shall complete Owner's Work subject to appropriate inspection by the proper governmental authority. Owner is responsible for insuring that any party other than Builder who performs work and/or supplies material at the Project Site carries the necessary worker compensation insurance to the extent required by law and general liability insurance to cover all operations at the Project Site in the same amount Builder is required to carry under Attachment 3. Owner agrees to defend, indemnify and hold Builder harmless from any and all claims, demands, actions, liabilities, losses, and damages including, without limitation, actual, reasonable attorneys' fees and costs incurred, to persons or property arising out of or related to any act or omission of Owner or any agent, contractor, or subcontractor of Owner in, on, or about the Project Site, in connection with the performance of Owner's Work or the furnishing of materials for Owner's Work. Owner's Work is excluded from the Warranty provided under this Contract. Any damage to the Work caused by Owner, Owner's agents, Owner's contractors and subcontractors or caused by Owner's Work is excluded from the Warranty. Such damages shall be the sole responsibility of Owner.

8. CHANGES TO THE WORK

- A. **Change Orders.** After execution of this Contract, any changes to the Work shall be accomplished by agreement of Builder and Owner pursuant to a change order (each a "**Change Order**"). Each written Change Order shall be signed by the Builder and Owner and shall set forth the Change in the Work, adjustments to the Contract Price and the adjustment to the Substantial Completion Date. Parties shall endeavor to document each Change Order.
- B. **Oral Change Orders.** In the event a change to the Work is orally requested by the Owner and the parties do not agree upon an amount in writing for the cost, the cost shall be the actual costs incurred to complete the change to the Work plus an additional amount of _____ percent (___%) of that cost.



9. FINANCING / EVIDENCE OF ABILITY TO PAY

- A. **Financing.** (clearly mark box only if applicable)
 [] This Contract is contingent upon the Owner securing a commitment for a construction loan in an amount equal to ____ percent (____ %) of the Contract Price no later than _____ (insert date).
- B. **Evidence of Ability to Pay.** Upon request from Builder, Owner shall provide Builder assurances and evidence of Owner's ability to pay the Contract Price and/or for any Change Order that increases the Contract price. If Owner does not provide adequate assurance and evidence of Owner's ability to pay, then Builder has the absolute right to terminate this Contract and receive payment for the cost of the labor and materials provided to date plus an additional amount of ____ percent (____ %) of that cost.

10. SITE CONDITIONS

- A. **Differing Site Conditions.** A "**Differing Site Condition**" is any physical condition at the Project Site that is materially different from those implied in the Plans and Specifications or those normally encountered in the construction of this type of Project. Differing Site Conditions may include, without limitation, abnormal soil conditions, undocumented or incorrectly documented sewer or water laterals, the need to remove and transport excess fill, the need for water pumping, etc.

If Builder encounters a Differing Site Condition, Builder shall provide notice to Owner as soon as reasonably possible. Builder will not disturb the Differing Site Condition prior to notification and direction from Owner except as necessary to protect the safety of individual, the Project Site and the Work. Any changes to the Contract Price and the Substantial Completion Date as a result of the Differing Site Condition should be done by a written Change Order.

If a Differing Site Condition is encountered by Builder when performing the Work, then the Contract Price and the Substantial Completion Date shall be adjusted as follows: (i) the Contract Price shall be adjusted to include the additional costs incurred by Builder plus an additional amount of ____ percent (____ %) of the additional costs; and (ii) the Substantial Completion Date shall be extended a reasonable number of days necessary to complete the Work as a result of the Differing Site Condition.

- B. **Environmental Site Condition.** Builder is not responsible for environmental conditions at the Project Site, including without limitation, storm water and wetland issues affecting the site, contaminated soils, radon, existing lead paint, asbestos, molds, or any other unknown environmental hazards. Owner represents and warrants the site is not in a floodplain or floodway, and that any storm water runoff from the Project Site after construction will not adversely affect any other property owner. Owner shall indemnify, defend and hold harmless the Builder against any claims or damages, including without limitation, reasonable, actual attorneys' fees, that are based on or result from any environmental site condition set forth under this Section.
- C. **Weather Conditions.** Any abnormal, adverse weather that affects Builder's ability to complete the Work shall be treated in the same manner as a Differing Site Condition. In the event that Builder must take immediate action to preserve the Project Site as a result of adverse weather and Builder is unable to notify Owner, Owner shall be responsible for all costs incurred by Builder.



- D. **Validity of Lot Ownership.** Owner represents and warrants that he/she has the requisite authority and interest (for example, fee simple ownership of the Project Site) to enter into this Contract for performance of the Work on the Project Site. Owner further represents and warrants that there are no recorded deed restrictions, easements, or covenants that would prohibit or impair performance of the Work. Owner shall be responsible for furnishing an approved site for construction of the Work. The Owner shall defend, indemnify and hold harmless the Builder from any and all liability and damages, including reasonable, actual attorneys' fees, incurred as a result of Owner's breach of this section.
- E. **Compliance With Local Restrictions and Zoning.** Owner represents that the Project described herein at the Project Site complies with all applicable zoning and use regulations, and Owner shall hold the Builder harmless from any and all claims, demands, actions, liabilities, losses, and damages arising out of or related to such regulations. If a survey is necessary to determine any set back lines, or other zoning matter, then the Owner shall provide an acceptable survey at Owner's cost.
- F. **Interior Conditions. WARNING:** Energy efficiency is achieved by construction methods which reduce air infiltration and air circulation. This may result in a concentration of water vapor from cooking, showering, etc., which, at excessive levels, can cause property damage, concentration of mold, radon or chemical compounds released from soil, household furnishings, personal possessions, and building materials. Owner can minimize adverse effects by proper utilization and maintenance of ventilation fans and/or other ventilation devices installed by the Builder and by opening doors and windows to increase ventilation. OWNER HEREBY ACKNOWLEDGES THAT OWNER HAS BEEN INFORMED OF SUCH HEALTH RISK AND OWNER ASSUMES ALL RISKS OF DAMAGE OR INJURY WHICH MAY ARISE AS A RESULT OF, OR IN ANY WAY CONNECTED WITH SUCH CONSTRUCTION METHODS AND HEREBY FULLY, FINALLY AND FOREVER RELEASES AND DISCHARGES BUILDER, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, AND AGENTS FROM AND AGAINST ALL CLAIMS, LIABILITIES AND EXPENSE AND DAMAGES WHATSOEVER, WHETHER NOW KNOWN OR HEREAFTER KNOWN, WHICH OWNER OR ITS ASSIGNS MAY HEREAFTER HAVE AGAINST BUILDER, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, AND AGENTS REGARDING TO THE MATTERS REFERRED TO IN THIS PARAGRAPH.

11. WARRANTY

- A. **Warranty.** Contractor warrants that the Work shall be free from Construction Defects for a period of one (1) year from the Substantial Completion Date subject to the limitations set forth below (the "**Warranty**").
- B. **Construction Defects.** A "**Construction Defect**" means a deficiency or omission in the completion of the Work that results from defective materials, a violation of applicable building codes or a failure to follow the current adopted standards set forth in the Construction Industry Quality Standards of the Wisconsin Builders Association.
- C. **Notice and Repair/Replacement of Construction Defect.** For a Construction Defect to be covered by this Warranty, Owner shall give written notice of the Construction Defect (the "**Notice**") to Builder prior to the date of expiration of this Warranty. Upon receipt of the Notice from Owner, the Builder shall either replace or repair the Construction Defect, at Builder's sole discretion, in a reasonably prompt manner subject to the terms and conditions of this Contract. Any Construction Defect, latent or



otherwise, for which Notice is not provided prior to the expiration of this Warranty shall not be covered by this Warranty. If Owner does not give Builder Notice of the Construction Defect and the opportunity to either repair or replace the Construction Defect, at Builder's sole discretion, then the Builder shall not be liable for the Construction Defect.

- D. **Exclusions.** Builder shall not be obligated to replace or repair any Construction Defect or pay for the replacement or repair of any Construction Defect caused, in whole or in part by: (i) Owner's improper or insufficient maintenance of the Project or improper or insufficient maintenance or operation of any of the Project's systems; (ii) natural occurrences beyond Builder's control; (iii) defects in materials supplied by anyone other than the Builder or agents acting on the Builder's behalf; (iv) any work performed by Owner or Owner's contractors, subcontractor's or agents; (v) normal wear and tear and normal usage; and (vi) materials, products or systems covered by other warranties such as manufacturers' warranties. Builder's Warranty is not assignable or transferable to any subsequent owner of the Project without the Builder's prior written consent.
- E. **Other Warranties.** Builder hereby assigns to Owner any and all manufacturers' warranties pertaining to any fixtures, appliances and equipment and other products covered by a manufacturer's warranty that are part of the Project (collectively, the **"Warranted Products"**). In the event Builder repairs, replaces or pays the cost of repairing or replacing any defect covered by this Warranty which is covered by other insurance or other warranties, then Owner shall assign the proceeds of such insurance or warranties to Builder to the extent of the cost to the Builder for such repair or replacement, or the extent of the payment.
- F. **Exclusive Remedy.** This Warranty shall be the sole and exclusive remedy under this Contract for any and all Construction Defects regardless of the form of the claim (i.e., whether based on statute, contract, or tort (negligence, strict liability or otherwise)). THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, STATUTORY (INCLUDING WITHOUT LIMITATION ANY WARRANTIES SET FORTH UNDER 706.10(7) OF THE WISCONSIN STATUTES), EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, USE, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE) AND ANY AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED.

12. WISCONSIN'S RIGHT TO CURE LAW

Notice Concerning Construction Defects

Wisconsin law contains important requirements you must follow before you may file a lawsuit for defective construction against the contractor who constructed your dwelling or completed your remodeling project or against a window or door supplier or manufacturer.

Section 895.07 (2) and (3) of the Wisconsin statutes requires you to deliver to the contractor a written notice of any construction conditions you allege are defective before you file your lawsuit, and you must provide your contractor or window or door supplier the opportunity to make an offer to repair or remedy the alleged construction defects. You are not obliged to accept any offer made by the contractor or window or door supplier. All parties are bound by applicable warranty provisions.

Owner acknowledges receipt of the Notice Concerning Construction Defects and the brochure prepared by the Wisconsin Department of Commerce titled "Wisconsin's Framework for Successful Communications Between Consumers and Contractors."



REMINDER: Builder must provide brochure "Wisconsin's Framework for Successful Communications Between Consumers and Contractors."

13. ARBITRATION

[] If this section is marked, then any dispute or controversy between Builder and Owner arising out of or related to the Contract shall be decided through binding arbitration, based on the final decision of a neutral arbitrator agreed to by the parties. If the parties cannot agree on an arbitrator, each party shall name one attorney unrelated to this matter (an attorney not representing either party) who is a member of the Wisconsin State Bar. The two named attorneys shall then select another attorney who is experienced in construction law to act as the arbitrator. Judgment on any arbitration award may be entered in any court of competent jurisdiction. Once an arbitrator is selected, the parties shall agree to rules to govern the arbitration; provided, however, if the parties cannot agree to such rules, then the arbitration shall be conducted pursuant to the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association. If either party refuses to submit a claim to arbitration, or fails to abide by all of the rules adopted, the non-breaching party shall be entitled to recover all costs, including reasonable, actual attorneys' fees, incurred in seeking further action to enforce the terms of this provision and/or to compel arbitration. Nothing in this section precludes or requires the parties to mediate this matter prior to invoking their right to arbitration.

14. NOTICE OF LIEN

AS REQUIRED BY THE WISCONSIN CONSTRUCTION LIEN LAW, CLAIMANT HEREBY NOTIFIES OWNER THAT PERSONS OR COMPANIES PERFORMING, FURNISHING OR PROCURING LABOR, SERVICES, MATERIALS, PLANS, OR SPECIFICATIONS FOR THE CONSTRUCTION ON OWNER'S LAND MAY HAVE LIEN RIGHTS ON OWNER'S LAND AND BUILDINGS IF NOT PAID. THOSE ENTITLED TO LIEN RIGHTS, IN ADDITION TO THE UNDERSIGNED CLAIMANT, ARE THOSE WHO CONTRACT DIRECTLY WITH THE OWNER OR THOSE WHO GIVE THE OWNER NOTICE WITHIN 60 DAYS AFTER THEY FIRST PERFORM, FURNISH, OR PROCURE LABOR, SERVICES, MATERIALS, PLANS, OR SPECIFICATIONS FOR THE CONSTRUCTION. ACCORDINGLY, OWNER PROBABLY WILL RECEIVE NOTICES FROM THOSE WHO PERFORM, FURNISH, OR PROCURE LABOR, SERVICES, MATERIALS, OR SPECIFICATIONS FOR THE CONSTRUCTION, AND SHOULD GIVE A COPY OF EACH NOTICE RECEIVED TO THE MORTGAGE LENDER, IF ANY. CLAIMANT AGREES TO COOPERATE WITH THE OWNER AND THE OWNER'S LENDER, IF ANY, TO SEE THAT ALL POTENTIAL LIEN CLAIMANTS ARE DULY PAID.

15. INSURANCE

Builder and Owner shall each obtain the insurance coverage set forth in [Attachment 3](#). Builder and Owner shall each be named as additional insured on each policy where applicable.

16. BREACH

A. **Breach by Builder.** In the event that Builder breaches the terms of this Contract, Owner shall be entitled to recover Owner's actual damages incurred as a result of Builder's default. Owner hereby waives all claims for consequential or incidental damages. This section is subject to the terms and conditions of the Warranty set forth under Section 11.



B. **Breach by Owner.** In the event that Owner breaches the terms of this Contract, Builder shall be entitled to recover Builder's actual damages, including without limitation, Builder's lost profit, incurred as a result of Owner's breach. Builder hereby waives all claims for consequential or incidental damages. This section is subject to the terms and conditions of the Warranty set forth under Section 11.

All sums due and owing more than fifteen (15) days from the due date shall bear interest at an annual rate of twelve percent (12%). Builder shall have the right to collect amounts due hereunder pursuant to all remedies available by law. To the extent not prohibited by law, Owner shall pay all reasonable costs and expenses of collection, including without limitation, reasonable, actual attorneys' fees and other legal expenses, incurred by the Builder in the enforcement of this Contract.

17. SIGNATURES

The signature of either Owner (if more than one) subsequent to the signing of this Contract shall be sufficient for all purposes under the Contract, including without limitation Change Orders, if any.

18. COPYRIGHT NOTICE

Owner represents and warrants to Builder that any plans, specifications, drawings and/or blueprints submitted to Builder by Owner for use in constructing the Project or any work that is the subject of this Contract are either owned by the Owner or have been properly obtained by the Owner for use by the Builder. Owner agrees to indemnify, defend and hold harmless the Builder against any and all claims, debts, obligations, costs, expenses, including without limitation, reasonable, actual attorneys' fees arising out of or in any way related to any claims relating to said materials or their use, including, but not limited to, copyright infringement, unfair competition and unjust enrichment.

19. CONTRACT DOCUMENTS

The following documents are incorporated into this Contract (mark appropriate box(es)):

- Plans and Specifications.
- Schedule of Allowances. Attachment 1.
- Owner's Work. Attachment 2.
- Insurance. Attachment 3.
- Special Conditions. Attachment 4.

20. CHOICE OF LAW

This Contract shall be interpreted and governed by the laws of the State of Wisconsin.

21. FINAL AGREEMENT

This Contract expresses all agreements between the parties concerning the subject matter hereof and supersedes all previous agreements, communications or understandings relating thereto, whether oral or written, including proposals, draft plans and specifications, brochures and other information, and shall be binding upon and shall inure to the benefit of the heirs, administrators, executors, successors and assigns of the parties hereto.



ATTACHMENT 3

Initials _____

INSURANCE

THE BELOW COVERAGE SHOULD BE REVIEWED AND MODIFIED WITH THE ADVICE OF THE BUILDER'S AND OWNER'S INSURANCE AGENTS.

BUILDER'S POLICIES

Prior to commencing the Work under this Contract, Builder shall maintain Commercial General Liability, Automobile Liability and Worker's Compensation insurance as required by the State of Wisconsin under its Dwelling Contractor Certification. Insurance coverage and certificates shall be provided prior to the commencement of any work.

OWNER'S POLICIES

Prior to the Commencement of the Work, Owner shall have the following coverage in place. The Builder shall be a named insured on the Builder's Risk policy.

Builder's Risk Insurance (Project Site coverage)

Owner shall, prior to commencement of the Work and until full payment is made or until Substantial Completion, whichever occurs first, keep the Work insured by a Builder's Risk Policy Special Form, with hydrostatic and collapse coverage, in an amount not less than \$_____ (the Contract Price plus 10% for debris removal).

Homeowner's Insurance

Owner shall obtain liability insurance for the Project Site on which the Work will be done. This coverage can be purchased via a stand alone general liability policy or Owner's current homeowner's policy can be endorsed to extend liability coverage for the Project Site.



