



## BUILDING CONSTRUCTION CONTRACT

### 1. THE PARTIES & DATE OF AGREEMENT.

BUYER (and hereinafter called the "Buyer") is:

Name:	_____	Residence Phone:	_____
	_____	Fax Number:	_____
Address:	_____	Cell Phone:	_____
	_____	Business Phone:	_____
Email:	_____		

BUILDER (and hereinafter called the "Builder") is:

Name:	<u>Joseph Douglas Homes and</u>	Phone:	<u>(262)783-4700</u>
	<u>Remodeling LLC</u>	Fax Number:	<u>(262)78-4716</u>
Address:	<u>N50 W13740 Overview Dr. Suite D</u>	Email:	_____
	<u>Menomonee Falls, WI 53051</u>		

This agreement (the "Contract") is made between Buyer and Builder on this \_\_\_\_ day of \_\_\_\_, 20\_\_.

### 2. LEGAL DESCRIPTION.

In consideration of the covenants and agreements herein contained, the Buyer (being the owner of) or (is acquiring title to) the following property:

Lot, \_\_\_\_, block \_\_\_\_, of \_\_\_\_ Subdivision; or Otherwise described as \_\_\_\_\_

hereby agrees to employ the Builder to construct and erect on said building site a building described as \_\_\_\_\_

(the "Building") substantially similar to certain basic plans and specifications which the Buyer has examined and approved and which are incorporated as part of this Contract by reference. Slight deviations from plans and specifications shall be construed as substantial compliance with the Contract. Builder and Buyer mutually agree to the following terms and conditions for the total Contract price shown:

Buyer's Initials \_\_\_\_\_

### 3. BASE PRICE AND ADDITIONS.

<b>BASE PRICE OF BUILDING</b> -----	\$
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Buyer agrees to the following additions to the base plans and specifications and to the base price stated above:

	<u>Check if</u> <u>Included</u> <u>In Base</u> <u>Price</u>	<u>Amount Included</u> <u>in Base Price</u>	OR <u>Amount Added</u> <u>to Base Price</u>
Interior Painting: Walls & Ceiling _____	<input type="checkbox"/>	\$ _____	\$ _____
Interior Woodwork- Painting _____	<input type="checkbox"/>	_____	_____
Interior Woodwork: Staining _____	<input type="checkbox"/>	_____	_____
Exterior Painting & Staining _____	<input type="checkbox"/>	_____	_____
Caulking _____	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	_____	_____
<b>TOTAL ADDITIONS</b> -----			\$

### 4. DELETIONS AND CREDITS.

Buyer agrees to the following deletions from the base plans and specifications and credits to the base price stated above:

	<u>Reduction</u> <u>Amount</u>
_____	\$
_____	_____
_____	_____
<b>TOTAL DELETION CREDITS</b> -----	\$

<b>TOTAL PRICE OF BUILDING AND ADDITIONS (LESS CREDITS FOR DELETIONS)</b> -----	\$
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### 5. ALLOWANCES.

Site Condition Allowances per Schedule A-----	\$
Other Allowances per Schedule B-----	\$
<b>TOTAL ALLOWANCES</b> -----	\$

<b>TOTAL CONTRACT PRICE INCLUDING ADDITIONS, DELETIONS, AND ALLOWANCES</b> -----	\$
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## **Schedule A – Site Condition Allowances**

Buyer agrees to pay for the following items in addition to the above and agrees that the following amounts are allowance estimates:

	<u>Check if</u> <u>In Base</u> <u>Price</u>	<u>Amount Included</u> <u>in Base Price</u>	OR	<u>Amount Added</u> <u>to Base Price</u>
Survey _____	<input type="checkbox"/>	\$ _____		\$ _____
Building Permits / Bonds and/or Fees _____	<input type="checkbox"/>	_____		_____
Erosion Control _____	<input type="checkbox"/>	_____		_____
Culvert _____	<input type="checkbox"/>	_____		_____
Tree & Brush Removal _____	<input type="checkbox"/>	_____		_____
Stripping Top Soil _____	<input type="checkbox"/>	_____		_____
Temporary Drive / Culvert _____	<input type="checkbox"/>	_____		_____
Excavation/Trucking _____	<input type="checkbox"/>	_____		_____
Garage Fill _____	<input type="checkbox"/>	_____		_____
Backfill / Gravel _____	<input type="checkbox"/>	_____		_____
Concrete Pumping _____	<input type="checkbox"/>	_____		_____
Rough Grading _____	<input type="checkbox"/>	_____		_____
Sanitary Sewer and Water Laterals _____	<input type="checkbox"/>	_____		_____
Storm Sewer Connection _____	<input type="checkbox"/>	_____		_____
Well, Pump, Hookup & Wiring _____	<input type="checkbox"/>	_____		_____
Percolation Tests _____	<input type="checkbox"/>	_____		_____
Septic System Hookup & Wiring _____	<input type="checkbox"/>	_____		_____
Gas Co. Connections _____	<input type="checkbox"/>	_____		_____
Electric Co. Connections _____	<input type="checkbox"/>	_____		_____
Dumpster _____	<input type="checkbox"/>	_____		_____
Cleanup _____	<input type="checkbox"/>	_____		_____
_____	<input type="checkbox"/>	_____		_____
_____	<input type="checkbox"/>	_____		_____
<b>TOTAL SITE CONDITION ALLOWANCES-----</b>				<b>\$ _____</b>

~~Site condition allowance amounts are estimates for the completion of the above referenced items and are not guaranteed. Site condition allowances will be charged at Builder's total cost plus \_\_\_\_\_% for Builder's markup. If Builder is collecting monies for allowances the Builder must provide documentation to justify the charges. Allowances provided for in this Contract are subject to adjustment upon completion of the particular work involved. When the final costs, including Builder's markup, for allowance items exceed the total allowance, Buyer shall pay the difference within \_\_\_\_\_ days after the date of Builder's invoice for the additional amount due. Should costs be less than allowance, Buyer will receive credit for the difference at final closing prior to occupancy. Allowance items are estimates and are often affected by unknown and unforeseen conditions which are not under the control of the Builder; therefore, they are difficult to measure.~~

## Schedule B - Other Allowances

	<u>Check if Included In Base Price</u>	<u>Amount Included in Base Price</u>	OR <u>Amount Added to Base Price</u>
Appliances _____	<input type="checkbox"/>	\$ _____	\$ _____
Light Fixtures _____	<input type="checkbox"/>	_____	_____
Plumbing Fixtures _____	<input type="checkbox"/>	_____	_____
Cabinet Hardware _____	<input type="checkbox"/>	_____	_____
Door Hardware _____	<input type="checkbox"/>	_____	_____
Bath Accessories _____	<input type="checkbox"/>	_____	_____
Mirror and Shower Doors _____	<input type="checkbox"/>	_____	_____
Carpet, Pad & Installation _____	<input type="checkbox"/>	_____	_____
Vinyl & Installation _____	<input type="checkbox"/>	_____	_____
Ceramic Tile _____	<input type="checkbox"/>	_____	_____
Wood Flooring _____	<input type="checkbox"/>	_____	_____
Decorative Stone _____	<input type="checkbox"/>	_____	_____
Brick _____	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	_____	_____
<b>TOTAL OTHER ALLOWANCES-----</b>			<b>\$ _____</b>

Other allowance amounts are estimates for the completion of the above-referenced items and are not guaranteed. Other allowances will be charged at Builder's total cost plus \_\_\_\_\_% for Builder's markup. If Builder is collecting monies for allowances the Builder must provide documentation to justify the charges. Allowances provided for in this Contract are subject to adjustment upon completion of the particular work involved. When the final costs, including Builder's markup, for allowance items exceed the total allowance, Buyer shall pay the difference within \_\_\_\_\_ days after the date of Builder's invoice for the additional amount due. Should costs be less than allowance, Buyer will receive credit for the difference at final closing prior to occupancy. Allowance items are estimates and are often affected by unknown and unforeseen conditions which are not under the control of the Builder; therefore, they are difficult to measure. Some allowance items are affected by Buyer's choices.

**6. DOWN PAYMENTS.**

Total Contract Price of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

Down payments shall be made in the following manner: To Be Paid Herewith  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

and an additional down payment of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

on or before closing of construction financing or opening of escrow.

SUBTOTAL (DUE BUILDER) \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

**7. WORK CREDITS.**

Buyer shall receive work credits against the total Contract price for the following labor and/or materials to be performed and/or supplied:

_____	\$
_____	\$
_____	\$
_____	\$

<b>TOTAL WORK CREDITS----- \$</b>
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Buyer agrees to perform the labor and/or furnish materials as set forth within a reasonable time after notice from the Builder that such work must be performed or materials furnished or to provide a cash escrow for such work or materials. Work and/or materials shall be acceptable to the Builder and appropriate inspection authorities, etc. Buyer is responsible for determining that any party other than Builder or Builder's subcontractors who performs work and/or supplies material carries Worker's Compensation Insurance to the extent required by law as well as Liability Insurance covering operations at the building site in the amount Builder is required to carry under Section 12 hereof.

Buyer agrees to hold Builder harmless from any and all claims, demands, actions, liabilities, losses, and damages to person or property arising out of or related to any act or omission of Buyer or any agent, contractor or subcontractor of Buyer in, on or about the Building site in connection with the performance of work or the furnishing of materials for the construction of the Building. Buyer is responsible for the protection of, and/or repair of, damage to any materials or labor supplied by Buyer or Buyer's Agent. The work performed by Buyer or Buyer's subcontractors, or damage to any of Builder's work caused by Buyer or Buyer's subcontractors, may void the Builder's warranty.

## **8. CONSTRUCTION PAYMENTS.**

The balance of the total Contract price, less down payment and work credits is \$ \_\_\_\_\_. ~~Said balance shall be paid as construction progresses. Builder shall be entitled to \_\_\_\_\_ draws from the lender or escrow agent at the following times:~~

~~[Enter Draw Times]~~

~~The Buyer shall make or authorize payment to the Builder within \_\_\_\_\_ days after the receipt of each progress payment request provided for above. Builder shall furnish proper waivers of lien to the escrow agent or lender to the extent authorized by the progress payment. If timely payment is not received, Builder shall be entitled to stop work and/or extend Contract time, which shall be treated as a work stoppage to which Section 22 applies. In the event of non payment, Buyer will be responsible for payments of all progress draws not authorized and received. Buyer is responsible for payment in full for the services provided, including but not limited to written and verbal change orders, prior to taking occupancy.~~

## **9. CONTINGENCIES.**

### **A. Financing**

This Contract ☐ is ☒ is not contingent upon the securing of financing.

If financing is required, this offer is contingent upon the Buyer or Builder on Buyer's behalf, securing a \_\_\_\_\_ mortgage commitment for at least the sum of \$ \_\_\_\_\_ for a term not less than \_\_\_\_\_ years, with payment amortized over a period of about \_\_\_\_\_ years, in monthly installments for principal and interest with interest computed at not more than an initial rate of \_\_\_\_\_ per annum, plus mortgage insurance premium, if any, plus 1/12 of the estimated real estate taxes and 1/12 of one (1) year insurance premium. Upon execution of said mortgage, which may include a rate adjustment clause and prepayment clause, interest thereon shall be borne by the Buyer, in addition to all other necessary financing costs charged by the lender, all of which shall be paid as required. Regardless of whether any delay was caused by Builder, Buyer, or a third-party, Builder cannot be held responsible for change of mortgage interest rate during the building process regardless of time it takes to complete construction.

### **B. Cash Sale**

This Contract ☒ is ☐ is not a cash sale.

Buyer and Builder understand and agree that financing is not required and that this transaction shall be a cash sale to Buyer.

### **C. Financing Commitment / Escrow**

If a financing commitment or escrow agreement is not obtained within 30 days from the date hereof, either party may rescind this Contract, in writing, and all monies paid hereunder shall be refunded to Buyer. However, Buyer shall pay Builder the expenses incurred by Builder in carrying out Builder's obligations hereunder, plus mark-up, including, but not limited to, the following: survey, building permits, erosion control, dumpsters, credit report, any required tests, and the cost

of plans or specifications prepared for Buyer. Buyer agrees to sign all documents necessary to obtain a mortgage or establish an escrow and to authorize the disbursement of proceeds from same as provided in Section 8 herein.

**D. Sale of Other Property**

This Contract ☐ is ☐ is not contingent upon the sale of other property at:

[Enter Property Address]

**E. Builder Ability to Terminate Contract Based On Lender or Title Company Used**

If Buyer selects a lender or title company that imposes unduly burdensome requirements upon the Builder, Builder shall notify Buyer of Builder's objections prior to the start of construction. Buyer shall have the right to cure Builder's objection within five (5) working days of such notification. In the event Buyer fails to cure Builder's objection, Builder shall have the right to terminate this Contract. Upon termination of this Contract, Builder shall return all funds deposited with the Builder to the Buyer. However, Builder may retain funds equal to Builder's costs for time and materials incurred to date. If Builder is collecting monies for time and material costs, the Builder must produce documentation to justify the charges.

**F. Financing or Closing Delay**

The total Contract price shall remain in full force and effect only if the financing referred to above is closed as provided above, time being of the essence. In the event financing is not closed on or before the stated date, Builder reserves the right to revise such price to cover any increased material and labor costs. If such increase is not consented to by Buyer, Builder may, at its option, cancel this Contract and return Buyer's funds, less amounts as provided in Section 9(c).

**G. Additional Contingencies**

This Contract is further contingent upon: \_\_\_\_\_

**10. FINANCIAL CLOSING DATE.**

~~Financing shall be closed, prior to the start of construction, at the office of the Buyer's mortgagee, on or before the day of \_\_\_\_\_, or such time and place as may be mutually agreed upon by the parties hereto in writing. Time is hereby made of the essence.~~

**11. ESCROW.**

~~Whether or not financing is required, the parties agree that the total contract price, less the aforementioned downpayment (when paid), shall be deposited with an escrow agent selected mutually by Buyer and Builder naming Builder as the escrow proceeds recipient. Buyer shall pay any fees or charges for said escrow and agrees to authorize the disbursement of withdrawals from the escrow as set forth in Section 8. Construction shall not commence until Builder receives written verification, satisfactory to Builder, that the escrow has been established.~~

## **12. INSURANCE.**

~~The Buyer shall, prior to commencement of the work and until full payment is made to the Builder, keep the Building insured by a Builders Risk Policy Special Form, naming the Builder as an "additional insured" or a "party with an interest" in an amount not less than \$ \_\_\_\_\_ and to deposit with Builder a Certificate of Insurance. If the Buyer fails to effect or maintain insurance as provided above or to issue the Certificate of Insurance, the Buyer assumes any and all liability. However, the Builder may insure its interest in the construction and charge the cost to the Buyer as an extra. The Builder shall maintain Comprehensive General Liability Insurance of not less than \$1,000,000.00, Bodily Injury/Property Damage Insurance, and Workers Compensation Insurance. Builder shall not be liable for uninsured damages or losses, or any other condition or occurrences that are not within the control of the Builder. Buyer shall be responsible for payment of all losses, including the deductible owed under the Builders Risk Insurance Policy.~~

## **13. VALIDITY OF LOT OWNERSHIP.**

Where Buyer is the owner of the lot, Buyer shall furnish to the Builder within ten (10) days after acceptance of this Contract a copy of the recorded deed restrictions, easements, covenants, and location of utilities. Evidence of valid title relating to this lot shall be submitted to the Builder by the Buyer prior to the start of construction. Buyer shall be responsible for furnishing an approved site for construction called for by this Contract. The Buyer shall hold harmless and indemnify the Builder from any and all liability either to the Buyer or any other person or governmental body concerned if the Buyer fails to comply with the conditions of this Section.

## **14. DEFAULT PRIOR TO START OF CONSTRUCTION.**

In the event Buyer fails to fulfill Buyer's obligations under this Contract prior to the start of construction, the down payment shall, at the option of the Builder, be forfeited as liquidated damages. Builder is also entitled to payment for any time and material costs in addition to the Builder's markup of \_\_\_\_\_% for Builder's time and material costs incurred to date. If Builder is collecting monies for time and material costs, the Builder must provide documentation to justify the charges.

This Section shall not apply in the event that the Buyer's default is due to the inability to secure financing or as a result of the inability to sell existing property as set forth in Section 9 above. Buyer understands and agrees that Buyer's attempts to secure financing or sell existing property must be made in good faith and with due diligence.

## **15. LIEN NOTICE.**

**AS REQUIRED BY THE WISCONSIN CONSTRUCTION LIEN LAW, BUILDER HEREBY NOTIFIES BUYER THAT PERSONS OR COMPANIES PERFORMING, FURNISHING, OR PROCURING LABOR , SERVICES, MATERIALS, PLANS, OR SPECIFICATIONS FOR THE CONSTRUCTION ON BUYER'S LAND MAY HAVE LIEN RIGHTS ON BUYER'S LAND AND BUILDINGS IF NOT PAID. THOSE ENTITLED TO LIEN RIGHTS, IN ADDITION TO THE UNDERSIGNED BUILDER, ARE THOSE WHO**

**CONTRACT DIRECTLY WITH THE BUYER OR THOSE WHO GIVE THE BUYER NOTICE WITHIN SIXTY (60) DAYS AFTER THEY FIRST PERFORM, FURNISH, OR PROCURE LABOR , SERVICES, MATERIALS, PLANS OR SPECIFICATIONS FOR THE CONSTRUCTION. ACCORDINGLY, BUYER PROBABLY WILL RECEIVE NOTICES FROM THOSE WHO PERFORM, FURNISH, OR PROCURE LABOR, SERVICES, MATERIALS, PLANS, OR SPECIFICATIONS FOR THE CONSTRUCTION, AND SHOULD GIVE A COPY OF EACH NOTICE RECEIVED TO THE MORTGAGE LENDER, IF ANY. BUILDER AGREES TO COOPERATE WITH THE BUYER AND THE BUYER'S LENDER, IF ANY, TO SEE THAT ALL POTENTIAL LIEN CLAIMANTS ARE DULY PAID.**

## **16. CHANGE ORDERS.**

Changes in the plans or specifications often occur during construction.

A **written change order** should be utilized in instances where the cost or financial impact of the change or alteration exceeds \$\_\_\_\_\_. A written change order shall set forth a description of the change, detail the cost or credit and any additional construction time associated with the change. The cost associated with the change will be an agreed upon price or the Builder's cost plus \_\_\_\_\_% markup. The Buyer also agrees to pay a surcharge of \$\_\_\_\_\_ per individual written change order.

If a **verbal change order** is requested by the Buyer and is performed prior to the parties reaching an agreed upon amount in writing, the change shall be charged at Builder's cost plus \_\_\_\_\_% for Builder's markup. If Builder is collecting monies for work performed pursuant to a verbal change order, the Builder must provide documentation to justify the charges.

Any changes shall extend the time to complete the construction. All changes are subject to a delinquency charge at a monthly periodic rate of 1.5% if not paid by due date. In the event of non-payment, Builder shall be entitled to stop work pursuant to Section 22, and/or treat the non-payment and stoppage of work as a delay to which Section 17 applies.

## **17. CONSTRUCTION TIME & CONSTRUCTION DELAYS.**

### **A. Construction Time**

Builder agrees to commence excavation of the Building within \_\_\_\_\_ working days after acceptance of this Contract and after all contingencies beyond the control of the Builder which may prevent commencement are satisfied or waived, including, but not limited to, financing, insurance, lot ownership, Builder's receipt of down payment (if any), escrow verification, building permits, change orders, plan revisions or subcontractor agreements. The Builder shall be the authority for the proper usage, arrangements and placements of fixtures, equipment and materials in accordance with recognized standards. The Building shall be completed in a good workmanlike manner in quality equal to the standards of the industry as expressed in the Construction Industry Quality Standards published by the Metropolitan Builders Association of Greater Milwaukee, Inc. (the "MBA"). Construction shall be Substantially Complete, as defined in Section 18(b) within \_\_\_\_\_ working days of commencement ("Construction Time").

## **B. Substantial Completion**

Construction of the Building shall be deemed to have reached "Substantial Completion" on the earlier of (i) the date when the Building is sufficiently complete in accordance with this Contract and related documents so that the Buyer can occupy or utilize the Building for its intended purpose, or (ii) the date the occupancy permit or other approval, if any, is issued by the appropriate government authority.

## **C. Construction Delay**

The Construction Time shall be extended for reasons including, without limitation, changes that cause delay and delays requested or caused by the Buyer, acts or missions of government or military authority, acts of God, material shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes beyond the reasonable control of the Builder, so long as the Builder use its best efforts to remedy such failure or delays (a "Construction Delay"). In the event of a Construction Delay, the date for performance of the services will be extended by the time necessitated by the delay.

**Buyer is cautioned that the failure of Buyer to make selections in a timely manner will extend the Construction Time and will be treated as a Construction Delay.**

## **D. Cost Increases As A Result of Construction Delay**

If the Builder experiences an increase in cost as a result of a Construction Delay, the increased costs shall be paid by the Buyer. Builder shall notify Buyer of such increase at the time the increase occurs. Upon Buyer's request, the Builder shall furnish the Buyer with documentation to verify such increased costs.

## **18. BUILDING SITE CONDITIONS.**

~~In the event abnormal Building site conditions are encountered, Buyer agrees to pay the cost of any additional work or materials. This does not constitute a change in plans and specifications as detailed in Section 16. Buyer agrees to pay for the additional costs caused by or resulting from site conditions, including, but not limited to, the following: abnormal soil conditions, removal of trees, providing fill or cutting to grade, trucking fill, frost breaking, water pumping, concrete pumping, excavation cave-in corrections, snow removal, and any related costs. Site condition allowances will be charged at Builder's total cost plus \_\_\_\_\_% for Builder's markup. If Builder is collecting monies for abnormal site conditions, the Builder must provide documentation to justify the charges. Unless otherwise provided in this Contract, the Buyer shall not be reimbursed for any excess ground removal from the site, nor shall Builder be required to remove, store or replace topsoil or other surface objects. Builder will not be held responsible for unknown or unforeseen subsoil conditions.~~

## **19. WEATHER CONDITIONS.**

~~Buyer agrees to pay Builder all additional charges for additional work and materials which may be required due to weather conditions including, but not limited to, service trips to hook up furnace before finish, haying footings and foundation, frost breaking, snow plowing, etc.~~

## **20. SUPERVISION OF WORK.**

Buyer agrees that the direction and supervision of the working forces, including subcontractors, rest exclusively with the Builder, and Buyer agrees not to issue any instructions to, or otherwise interfere with the same. The Buyer shall, at any reasonable time, during working hours have the right to inspect the work. When entering the site to inspect the work, the Buyer shall adhere to all safety requirements posted at the job site and take all necessary precautions to insure the Buyer's safety and any other individual on the job site during the Buyer's inspection. Builder shall not be responsible for any injury to Buyer or any guests of the Buyer during said inspections. CAUTION: A BUILDING SITE CAN BE A DANGEROUS PLACE. The Buyer further agrees not to negotiate for additional work with the subcontractors nor engage other builders or subcontractors except with the Builder's prior consent and in such manner as will not interfere with the Builder's completion of work under this Contract.

## **21. UTILITIES.**

~~Builder will apply for water, gas, and electric services to be installed in Buyer's name. Buyer agrees to pay for all costs for the installation and use of these services during construction. Any additional services requested by Buyer are the responsibility of Buyer.~~

## **22. WORK STOPPAGE OR DEFAULT.**

In the event work is stopped by any court or public authority, by Buyer's instructions, or by Buyer's failure to fulfill Buyer's obligations under this contract (a "Work Stoppage"), Builder shall have the right to stop work or terminate this Contract. Builder is entitled to receive from the Buyer payment for all work performed and materials ordered or delivered up to the date of the Work Stoppage or termination, together with \_\_\_\_\_% mark-up. If Builder is collecting monies for time and material costs, the Builder must provide documentation to justify the charges. Buyer is responsible for payment in full of all charges prior to taking occupancy. If Builder elects to stop work only, stoppage shall be considered a Construction Delay, as set forth in Section 17(c). A Work Stoppage shall not extend the time of any warranties that were given to the Buyer under this Contract.

## **23. POSSESSION AND OCCUPANCY.**

Builder shall have the exclusive possession and control of the real estate from the time work is commenced until all sums due Builder under the Contract have been paid in full. If Buyer should occupy the real estate prior to making full payment, then Buyer will be deemed to have accepted all work done prior to occupancy and has agreed to void any warranties given to the Buyer from the Builder. The Builder then may, at its option, either terminate this Contract or stop work until Buyer vacates the real estate.

## **24. TERMINATION**

If Builder elects to terminate pursuant to the Contract, then Builder must notify the Buyer in writing via certified mail, return receipt requested. In the absence of any notice, Builder will have

elected to stop work. If the Builder terminates the Contract, the Builder need perform no further work. If the construction on the Building has, at the point of termination, reached the stage of Substantial Completion, the Buyer shall immediately pay to Builder the entire contract price, including change orders, less amounts previously paid. In the event that termination of the Contract occurs prior to Substantial Completion, the Buyer shall immediately submit payment to Builder for all work performed to date, and materials ordered or delivered, together with \_\_\_\_\_% mark-up. If Builder is collecting monies for time and material costs, the Builder must provide documentation to justify the charges. The termination of this Contract will also void any warranties given to the Buyer under this Contract or in any other agreement or document.

## **25. COLLECTION COSTS.**

Buyer is responsible for all costs of collection incurred by the Builder including interest at a monthly periodic rate of 1.5% and reasonable attorneys' fees, if payment is not received by the applicable due date.

## **26. WARRANTY.**

The home constructed under this contract shall be warranted as follows (check one):

☐ (A) After completion of the Building, final settlement and execution of the application for an insured warranty plan between Builder and Buyer, the Building shall be covered by the provisions of the insured warranty plan as set forth in the applicable documents; or

☐ (B) The Building constructed under this Contract shall be warranted by the Builder pursuant to the MBA Standard Builder's Residential Limited Warranty and the Construction Industry Quality Standards (as applicable), published by the MBA.

If neither (A) nor (B) is checked, Section (B) shall be the applicable warranty provision.

Builder does not warrant work performed by the Buyer or Buyer's subcontractor. Work performed by the Buyer or Buyer's subcontractor which causes damage to any work performed by Builder may void the Builder's warranty.

## **27. NOTICE OF CONSTRUCTION DEFECTS AND RIGHT TO REPAIR.**

Upon reaching Substantial Completion, Builder and Buyer agree to comply with Wisconsin Statute 895.07 with regards to requirements of Notice and the Right to Cure before commencing any formal proceeding to resolve the dispute. Buyer acknowledges that a copy of the State of Wisconsin brochure of Notice and Right to Cure has been given to the Buyer at the date that this Contract is signed.

Notwithstanding anything to the contrary in the Contract, Builder shall not be obligated to replace or repair any Defect, as defined below, or pay for the replacement or repair of the same if such Defect is caused, in whole or in part by: (i) Buyer's improper or insufficient maintenance of the Building or improper or insufficient maintenance or operation of any of the Building's systems; (ii)

natural occurrences beyond Builder's control; (iii) an act or omission of Buyer or any third parties not under Builder's control, including, but not limited to, work performed by the Buyer or by Buyer's subcontractors; or (iv) normal wear and tear and normal usage.

In the event of an alleged construction or design defect arising out of or relating to the Contract, including, but not limited to, breach of warranty, incomplete work, or any other condition of the Building (the "Defect"), Buyer shall notify Builder through written notice of any such Defect, regardless of the cause or source, promptly upon Buyer's discovery of the Defect. Buyer shall thereafter provide Builder with reasonable access during normal working hours to the Building for the purpose of investigating, testing and examining the Defect. If the Defect is covered by the Builder's warranty then Builder shall be given reasonable access to the Building and a reasonable amount of time to, at Builder's sole option, replace or repair the Defect. The replacement or repair of the Defect shall be Buyer's sole and exclusive remedy for a Defect. Buyer waives any and all incidental and consequential damages arising out of or relating to a Defect. Any corrections or repairs undertaken by Builder shall be in compliance with the MBA Construction Industry Quality Standards.

## **28. DISPUTES AND RESOLUTIONS.**

The following provisions apply to any dispute between the parties arising out of or relating to this Contract, including, but not limited to: the meaning of this Contract; the enforceability of this Contract; the rights or obligations of any party under this Contract; claims against any officers, owners, shareholders, directors, employees, successors, members, or agents of Builder; the performance of any aspect of this Contract or the construction work, or any disagreements regarding charges for changes; and any other dispute arising from this Contract.

### **A. Mediation**

If mediation is requested by the Buyer or Builder in writing, the mediation shall be conducted by the Mediation Service of the MBA ("MBA Mediation Service"). After the written request for mediation occurs, the other party must proceed to mediate the dispute(s) at the MBA according to its rules and procedures. The parties agree, in the event the dispute proceeds to mediation, that they will make a good faith effort to resolve their dispute(s) through the mediation process. The parties agree that they will abide by the MBA Mediation Service policies and procedures. Proceeding to mediation does not waive or affect the obligation of the parties to resolve their dispute(s) by arbitration in the event mediation is not successful.

### **B. Arbitration**

Any dispute which is either not referred to mediation or is not resolved through mediation (other than enforcement of any insured warranty plan), shall be resolved by arbitration. The arbitration shall be conducted by:

- ☐ (A) The Construction Arbitration Board of the MBA; or
- ☐ (B) American Arbitration Association; or
- ☐ (C) \_\_\_\_\_

If none of the above is checked, the arbitration shall be conducted before the Construction Arbitration Board of the MBA. The decision of the arbitrators shall be binding, final and may be enforced in accordance with the applicable provisions of Chapter 788 of the Wisconsin Statutes. The filing of a lien claim shall not be considered an election by the Builder to waive its rights under this provision and the enforcement by the Builder of its lien rights is expressly exempted from the requirements of this provision. Any arbitration proceedings commenced pursuant to this provision shall be conducted in accordance with the rules adopted by the applicable arbitration body and the applicable provisions of Wisconsin law.

If either party refuses to submit a claim to arbitration, fails to abide by all of the rules adopted by the applicable arbitration body, or fails to abide by the decision of the arbitrators, the non-breaching party shall be entitled to recover all costs, including attorneys' fees, incurred in seeking further action to enforce the terms of this Contract and/or to compel arbitration. Builder and Buyer agree that, in the event the MBA is named as a party to any dispute between Builder and Buyer challenging the MBA's ability to arbitrate the matter or the enforcement of the decision, the MBA shall be awarded reasonable attorneys' fees and other costs associated with such proceeding if the challenge fails.

If the Construction Arbitration Board of the MBA is selected above as the appropriate venue for the disputes to be arbitrated, the Construction Arbitration Board of the MBA shall have the sole authority to determine what is an appropriate claim or item for its review and expertise.

## **29. AIR QUALITY.**

### **A. Warning**

Microorganisms, including, but not limited to, mold, mildew, spores, or any other form of fungi or bacteria ("Microorganisms"), occur naturally in the environment and may be present, during or after construction, in the indoor air and/or on the interior surfaces of the Building including, without limitation to, wall cavities, attics, windows, basements, and/or on the exterior surfaces of the Building, or any part thereof. Concentration of moisture in the Building may result from cooking, showering, or similar activities inside the Building, the outside atmosphere, and/or the design, construction means and methods, and/or the building materials used in the construction of the Building. This moisture may cause the growth, release, discharge, dispersal, or presence of Microorganisms which, at certain levels, can cause deterioration of building materials, damage to property, health hazards, personal injuries and/or other irritant effects such as, without limitation to, skin irritation, respiratory problems and/or allergic reactions. Likewise, concentrations of radon released from soil or chemicals released from household furnishings, appliances, mechanical equipment, personal possessions, or building materials may, at certain levels, create health hazards and/or other irritant effects such as, without limitation to, skin irritation, respiratory problems and allergic reactions. Because Microorganisms and radon occur naturally in the environment, Builder cannot eliminate the possibility that radon may be present or that Microorganisms may grow in, on, or about the Building. Buyer may minimize these effects by proper utilization and maintenance of heating, cooling, dehumidification, or ventilation equipment, interior maintenance and cleaning, and exterior maintenance such as, but not limited to, proper grading, landscaping, painting, and caulking. BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN INFORMED OF SUCH DEFECTS AND BUYER ASSUMES ALL RISKS OF DAMAGE, PERSONAL INJURY,

OR DESTRUCTION OF OR INJURY TO PROPERTY THAT MAY ARISE AS A RESULT OF OR IN ANY WAY CONNECTED WITH THE INDOOR AIR QUALITY OR THE PRESENCE OF MICROORGANISMS, RADON, OR CHEMICALS IN, ON OR ABOUT THE BUILDING.

**B. Disclaimer and Release of Claims**

NOTWITHSTANDING ANY OTHER CONTRARY PROVISION IN THE CONTRACT, BUYER FULLY, FINALLY, AND FOREVER RELEASES AND DISCHARGES, AND FURTHER AGREES TO INDEMNIFY AND DEFEND, BUILDER, ITS SUCCESSORS AND ASSIGNS, SUBCONTRACTORS, MATERIAL SUPPLIERS AND THE OFFICERS, OWNERS, SHAREHOLDERS, DIRECTORS, EMPLOYEES, MEMBERS, AND AGENTS OF EACH OF THEM, FROM AND AGAINST ANY AND ALL CLAIMS, OBLIGATIONS, DEMANDS, DAMAGES, CAUSES OF ACTION, LIABILITIES, LOSSES, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' AND EXPERT FEES, WHETHER NOW KNOWN OR HEREFTER KNOWN, FORESEEN OR UNFORESEEN, THAT BUYER OR ANY OCCUPANT OF THE BUILDING HAD, HAS, OR MAY HAVE IN THE FUTURE, IN LAW OR IN EQUITY (THE "CLAIM") THAT ARE ATTRIBUTABLE TO (1) BODILY INJURY, SICKNESS, EMOTIONAL DISTRESS, DISEASE, DEATH, OR ANY OTHER PERSONAL INJURY OR ADVERSE HEALTH EFFECTS, OR (2) INJURY TO OR DESTRUCTION OF TANGIBLE PERSONAL PROPERTY, INCLUDING LOSS OF USE THEREOF, ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH, INDOOR AIR QUALITY, MOISTURE, OR THE GROWTH, RELEASE, DISCHARGE, DISPERSAL, OR PRESENCE OF ANY MICROORGANISMS, RADON, OR ANY CHEMICAL OR TOXIN SECRETED THEREFROM, IN THE INDOOR AIR, ON THE INTERIOR SURFACES OF THE BUILDING INCLUDING, WITHOUT LIMITATION TO, WALL CAVITIES, THE ATTIC, WINDOWS, AND THE BASEMENT, OR ON THE EXTERIOR SURFACES OF THE BUILDING, OR ON ANY PART THEREOF. BUILDER MAKES NO EXPRESS OR IMPLIED WARRANTY OF HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR GOOD WORKMANSHIP AS TO BUILDING MATERIALS AND/OR CONSTRUCTION MEANS AND METHODS WITH REGARD TO INDOOR AIR QUALITY OR THE PRESENCE OF MICROORGANISMS, RADON, OR CHEMICALS INCLUDING, WITHOUT LIMITATION TO, ANY CHEMICAL OR TOXIN SECRETED THEREFROM IN, ON OR ABOUT THE BUILDING.

**30. WATER QUALITY AND WATER SUPPLY.**

Unless otherwise expressly provided in writing, Builder does not warrant or guarantee the quality of water at the Building, which includes but is not limited to: water quality, compliance with the provisions of the Safe Drinking Water Act or similar laws or ordinances relating to drinking water, sufficient water supply and pressure, well capacities, water clarity, water odor, radium and other chemical or mineral levels, or other unforeseen issues relating to water quality or water supply. Compliance with any applicable water-related law is Buyer's responsibility.

**31. SPECIAL CONDITIONS.**

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**32. SIGNAGE AND BUILDER PROMOTIONS**

Buyer agrees to allow Builder to display a construction sign at the Building site. Buyer agrees to allow Builder or a representative to photograph completed project and use such photographs in promotional materials, competition programs, or publications without restrictions or compensation to Buyer. All such photographs are the property of the Builder. It shall be the Buyer's option to allow use of their names in promotional materials.

**33. SIGNATURES.**

The signature of either Buyer (if more than one) subsequent to the signing of this Contract shall be sufficient for all purposes under the Contract, including change orders, if any.

**34. ENFORCEABILITY.**

If any part of this Contract is found to be unenforceable, it shall not affect the enforceability of the remainder of this Contract. The failure of either party to enforce any term or condition of this Contract, shall not constitute a waiver of any other breach of any right, claim, term or condition of this Contract.

**35. COPYRIGHT NOTICE.**

Buyer represents and warrants to Builder that the designs, plans, specifications, drawings and/or blueprints submitted to Builder by Buyer for use in constructing the Building are either owned by the Buyer or have been properly obtained by the Buyer for use by the Builder. Buyer agrees to indemnify, defend and hold harmless the Builder, its officers, owners, shareholders, directors, employees, successors, members, or agents of Builder from and against any and all claims, debts, obligations, costs, expenses and attorneys' fees arising out of or in any way related to any third-party claims relating to said materials or their use, including, but not limited to, copyright infringement, unfair competition and unjust enrichment.

Buyer acknowledges that Builder owns the plan and all rights to the plan. Any further use or reproduction of the plan without Builder's prior written consent is strictly prohibited.

**36. FINAL AGREEMENT.**

This Contract expresses all agreements between the parties concerning the subject matter hereof and supersedes all previous 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 of the parties hereto.

**ACCEPTANCES**

Joseph Douglas Homes and Remodeling LLC  
BUILDER

\_\_\_\_\_  
BUYER

BY \_\_\_\_\_

\_\_\_\_\_  
BUYER

Buyer hereby acknowledges receipt of the Notice and Right to Cure brochure from the Builder.

\_\_\_\_\_  
BUYER

\_\_\_\_\_  
DATE

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**DOWN PAYMENT RECEIPT**

Received of \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.