

Buyer Initials _____
Contractor Initials _____



Landmark Real Estate & Dev., Inc.
320 Main Ave., Suite 300, De Pere, WI 54115
Phone: 920.337.9566 Fax: 920.337.9568

BUILDING CONSTRUCTION AGREEMENT

THIS AGREEMENT is made this _____ day of _____, _____ by and between **Landmark Real Estate & Dev., Inc.**, hereinafter referred to as Contractor and _____ hereinafter referred to as Buyer.

WITNESSETH

WHEREAS, Buyer, is the owner of or will be acquiring title to real estate located in the _____ of _____, _____ County, Wisconsin, and more particularly described as: _____

WHEREAS, Buyer desires to have certain buildings and improvements constructed on such real estate.

WHEREAS, Contractor is in the building construction business.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

ARTICLE I DESCRIPTION OF WORK

The Contractor shall provide all materials and perform all work reasonably necessary to construct and erect improvements on the real estate according to Plan # _____ dated _____ and specifications dated _____, hereinafter referred to as "the work."

The contract specifications and plans referenced above shall be attached hereto and shall become part of the contract documents. Contractor shall construct and erect the above mentioned improvements in accordance with such contract specifications and plans. The brochure, "Wisconsin's Framework for Successful Communications Between Consumers and Contractors" is attached hereto and shall become part of the contract documents.

ARTICLE II PAYMENT

Buyer shall pay Contractor for the performance of this contract \$_____ subject to additions and deductions as provided in any subsequent change orders and subject to deviations from allowances. Such contract price shall be payable as follows:

- a. \$_____ at the execution of this contract;
- b. \$_____ to be paid _____
- c. \$_____ to be paid _____

- d. \$ _____ to be paid _____
- e. \$ _____
- f. \$ _____
- g. \$ _____
- h. Final payment prior to occupancy, unless otherwise agreed to in writing by Contractor.

Notwithstanding Article II. h., in order to provide occupancy as soon as possible, occupancy may occur prior to total cost being known. Therefore, Contractor reserves the right to bill amounts it is otherwise entitled to under this Contract, regardless of the date of actual occupancy.

ARTICLE III
START AND COMPLETION DATE

Construction under this contract will commence on approximately _____ and should be substantially completed _____. If Contractor is delayed in the commencement or the completion of the work for any reason beyond the sole control of the Contractor, then the time of commencement or completion shall be extended for a reasonable period accordingly.

Buyer is cautioned that the failure of Buyer to make selections in a timely manner will extend the construction period. In the event commencement or completion of construction is delayed for any reason beyond the sole control of the Contractor during the contract period and by reason of such delay the costs of labor and materials are increased over original contract price, the increased costs shall be charged as an extra subject to the terms of Article II. Contractor shall notify Buyer of such increase at the time the increase occurs and upon Buyer's request shall furnish the Buyer with copies of invoices or other documentary evidence to verify such increased costs.

ARTICLE IV
CONTINGENCIES

A. Contractor's obligation to perform this transaction is contingent upon the following:

- (1) Receipt of proof of financing.

Buyer shall furnish Contractor with a written loan commitment from a responsible lending institution evidencing a loan amount not less than the contract price within fourteen (14) days of the execution of this contract. If such loan commitment is in an amount less than the contract price, Buyer shall furnish Contractor with other evidence satisfactory to Contractor, of Buyer's ability to pay such difference within such 14-day period.

- (2) Receipt of evidence of title.

If Buyer is the owner of the real estate at the time of executing this contract, Buyer shall furnish Contractor, within fourteen (14) days of execution of this contract, evidence of Buyer's title to the above-described real estate in a form satisfactory to Contractor. If Contractor, in its sole discretion, disapproves of the form of such title, it may terminate this contract and retain the down payment.

- (3) Acquisition of all permits.
- (4) Receipt of certificates of insurance pursuant to Article VIII.B.

(5) _____

(6) _____

If any of the contingencies in Article IV.A. are not satisfied, Contractor, at it's option, may terminate the Contract and retain any down payment. Contractor may also seek damages for any and all costs incurred by Contractor related to work actually performed and lost profits to the extent these items exceed the amount of the down payment.

B. Buyer's obligation to perform this transaction is contingent upon the following:

(1) Financing.

Buyer's obligations under this Contract are contingent upon Buyer being able to obtain financing within fourteen (14) days of execution of this Contract in the amount of 90% of the total cost of this contract and 90% of any real estate costs, at prevailing rates for a term of not less than thirty (30) years amortized over thirty (30) years. Buyer shall use his or her best efforts to obtain financing.

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.

The total contract price provided for in this Contract 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, Contractor reserves the right to revise such price to cover any increased material and labor costs. If such increase is not consented to by Buyer, Contractor may, at its option, cancel this Contract and return Buyer's funds, less amounts as provided in Article IV.A.

(2) _____

(3) _____

If Buyer cannot satisfy any of the contingencies listed above, Contractor shall be entitled to all out of pocket expense incurred by Contractor.

ARTICLE V INSPECTION AND DEFECTS

Buyer shall exercise all reasonable diligence in inspecting, discovering and reporting to Contractor as the work progresses, all materials and labor which are not satisfactory to Buyer, so as to avoid unnecessary trouble and cost to Contractor in making good on defective work. If Buyer does not fulfill its obligations under this Article, any objection to the quality or nature of work shall be deemed to have been waived. Work found not in compliance with the contract documents shall be corrected by contractor, as its sole cost and expense.

ARTICLE VI 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 OBLIGATED TO ACCEPT ANY OFFER MADE BY THE CONTRACTOR OR WINDOW OR DOOR SUPPLIER. ALL PARTIES ARE BOUND BY APPLICABLE WARRANTY PROVISIONS.

**ARTICLE VII
OCCUPANCY**

The Buyer shall not occupy or take possession of the improvements or the real estate until final payment, pursuant to Article II, has been received by the Contractor and all other obligations of Buyer have been fulfilled, an approved final inspection has been completed by a certified building inspector, if applicable, and a Certificate of Occupancy has been obtained. Occupancy of the real estate by the Buyer in violation of this Article shall constitute unconditional acceptance of the project, a waiver of any defects or uncompleted work and obligate the Buyer to immediately pay the Contractor in full for the full contract price, including lost profit less Contractor's savings for work not completed.

**ARTICLE VIII
WARRANTY**

In the Event the contract price has been paid in full prior to occupancy and obtaining a Certificate of Occupancy, Contractor warrants the work completed under this Agreement, and any change orders thereto, to be performed in a workmanlike manner. The work shall be deemed to have been performed in a workmanlike manner if it is in compliance with the Residential Construction Performance Guidelines, Homeowner's Reference, existing at the time of execution of this Contract, as published by the National Association of Home Builders. If any work does not meet the above referenced performance guidelines, the corrective measure shall be limited to that referenced in the guidelines. Contractor's warranty under this paragraph is limited to a period of one (1) year from approved occupancy.

Notwithstanding the above, the Buyer's sole remedy relating to any and all items, including but not limited to, windows, security systems, shingles, appliances, siding, plumbing and heating components, which are covered by a manufacturer's warranty, shall be to assert a claim under that manufacturer's warranty. These items are not covered under the warranty provided by the Contractor.

Notwithstanding the above, due to the inevitable acts of nature, any and all concrete work is not within the scope of this warranty.

Notwithstanding the above, due to naturally occurring shrinkage and expansion of the underlayment, vinyl floor seams may become visible and are not covered under this warranty.

Notwithstanding the above, due to naturally occurring shrinkage and expansion, painted surfaces may require touch up and maintenance. Any maintenance or touch up work to painted areas resulting from shrinkage or expansion is not covered under this warranty. Painted and finished surfaces shall be free of observable mildew and fungus at the time the job is completed. However, mildew or fungus may form on painted surfaces over time because of heat and moisture.

Notwithstanding the above, there is no warranty relating to shade and grain variations of cabinetry, doors, molding and other woodwork due to the fact that the nature of wood and stains result in a certain degree of shade and grain variation.

All warranties provided hereunder are between Contractor and Buyer and are, therefore, not transferable to subsequent owners of the real estate and improvements.

Disclaimer. Contractor makes no implied or express warranty of merchantability or fitness for a particular use for any of the work completed under this Agreement except as set forth below. This disclaimer means that the only warranty being provided to the Buyer is the one specifically referenced in this Article VII.

ARTICLE IX
INSURANCE

A. Contractors Insurance.

Contractor agrees to keep in force at his own expense during the entire period of the work, general commercial liability insurance, commercial auto insurance and workman's compensation insurance for bodily injury and death, and for property damage, that may arise out of the Contractor's work under this Agreement.

B. Buyer's Insurance.

(1) Buyer agrees to maintain in full force his own liability insurance during the entire period of the work in an amount of not less than a combined single limit of \$1,000,000.00 per occurrence and shall list the Contractor as an additional insured on this liability policy.

(2) Within 14 days of entering into this Agreement, Buyer shall provide Contractor with certificates of insurance listing Contractor as an additional insured for the liability insurance referred in Article VIII. B.1 and property damage insurance if obtained by Buyer, pursuant to Article VIII.C.

C. Property Damage Insurance on Worksite/Builder's Risk Insurance.

Contractor Buyer (**check appropriate box**) agrees at all times material hereto, to maintain at his expense property damage insurance on the work at the site for its full insurable value, including the interests of Buyer and Contractor, against fire, collapse, theft, vandalism and other perils ordinarily included in all risk coverage. Such insurance shall include Contractor and Buyer as an additional insured as their respective interests appear.

ARTICLE X
INDEMNITY AND HOLD HARMLESS AGREEMENT

Buyer agrees to indemnify and hold harmless Contractor and its agents and employees, from and against all claims, damages, losses and expenses, attorneys' fees arising out of performance of the work herein which is for bodily injury, illness, or death, or for property damage, including loss of use, which are caused in whole or in part by the negligence, act or omission of the Buyer, or Buyer's architect or engineer or that of anyone employed by them for whose acts Buyer may be liable. Buyer's obligation hereunder shall be excused only if the claims, damages, losses and expenses stem from the Contractor's sole negligence.

ARTICLE XI
AIR QUALITY

WARNING: Energy efficiency in this home is achieved by construction methods that reduce air infiltration and air changes per hour. This may result in a concentration of water vapor from cooking, showering, etc., which, at excessive levels, can cause property damage. Likewise, concentrations of mold, radon or chemical compounds released from soil, household furnishings, personal possessions, and building materials, at excessive levels, may create irritant effects or health hazards. Buyer can minimize adverse effects by proper utilization and maintenance of ventilation fans and/or other ventilation devices installed by the Contractor and by opening doors and windows to increase ventilation. BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN INFORMED OF SUCH HEALTH RISK AND BUYER ASSUMES ALL RISKS OF DAMAGE OR INJURY WHICH MAY ARISE AS A RESULT OF, OR IN ANY WAY CONNECTED WITH SUCH CONSTRUCTION METHOD AND HEREBY FULLY, FINALLY, AND FOREVER RELEASES AND DISCHARGES CONTRACTOR, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, AND AGENTS FROM ANY AND ALL CLAIMS, LIABILITIES AND EXPENSE AND DAMAGES THEREFROM WHATSOEVER WHETHER NOW KNOWN OR HEREAFTER KNOWN, WHICH BUYER OR ITS ASSIGNS MAY HEREAFTER HAVE AGAINST CONTRACTOR, ITS

Buyer Initials _____
Contractor Initials _____

OFFICERS, EMPLOYEES, SUBCONTRACTORS, AND AGENTS. REGARDING THE MATTER REFERRED TO IN THIS PARAGRAPH, CONTRACTOR MAKES NO EXPRESS OR IMPLIED WARRANTY OF HABITABILITY, FITNESS OR GOOD WORKMANSHIP AS TO BUILDING MATERIALS AND/OR CONSTRUCTION METHODS.

WARNING: PRODUCTS, INCLUDING BUT NOT LIMITED TO, STOVES, FIREPLACES, FURNACES, AIR CONDITIONERS, FANS, DRYERS, RANGE HOODS AND VENTS, SELECTED BY BUYER, MAY REQUIRE THE ADDITIONAL INPUT OF AIR INTO THE HOME, THE LACK OF WHICH MAY CAUSE HEALTH HAZARDS AND DAMAGE TO PROPERTY. BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN INFORMED OF SUCH HEALTH RISK AND DAMAGE TO PROPERTY AND ASSUMES ALL RISK OF INJURY OR DAMAGE WHICH MAY ARISE AS A RESULT OF THE INSTALLATION OF THE PRODUCTS IN THIS PARAGRAPH AS WELL AS OTHER PRODUCTS WHICH EFFECT THE QUANTITY OR QUALITY OF AIR IN THE HOME AND HEREBY, FULLY, FINALLY AND FOREVER RELEASES AND DISCHARGES CONTRACTOR, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS AND AGENTS FROM ANY AND ALL CLAIMS, LIABILITIES AND EXPENSE AND DAMAGES THEREFROM WHATSOEVER WHETHER NOW KNOWN OR HEREINAFTER KNOWN, WHICH BUYER OR ITS ASSIGNS MAY HEREAFTER HAVE AGAINST CONTRACTOR, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS AND AGENTS. REGARDING THE MATTER REFERRED TO IN THIS PARAGRAPH, CONTRACTOR MAKES NO EXPRESSED OR IMPLIED WARRANTY OF HABITABILITY, FITNESS OR GOOD WORKMANSHIP AS TO BUILDING MATERIALS OR CONSTRUCTION METHODS.

ARTICLE XII **CHANGE ORDERS**

Buyer reserves the right to order work changes in the nature of additions, deletions or modifications, without invalidating this agreement. Contractor reserves the right to refuse to honor any change orders if they are not in writing signed by both Contractor and Buyer. However, if Contractor completes any work changes, the Contractor preserves its right to collect all sums due and owing for that work regardless of whether or not the change order was in writing. The change order shall include reasonable conforming changes in the contract price and completion time.

Buyer agrees not to request any changes directly through subcontractors. If any changes in work are done by subcontractors at Buyer's request, Buyer agrees that it shall be solely responsible for all additional costs associated with that change plus an additional _____% of that additional cost. Additionally, Contractor shall not be liable for any defects or provide any guarantees relating to any additions, deletions or modifications requested directly by Buyer to be completed by subcontractor.

ARTICLE XIII **ALLOWANCES**

Allowances for some items and work have been set forth in this Agreement. Allowances are **only estimates** of the amount of money needed to complete the task. Each individual situation will dictate the actual cost of an allowance item. The Buyer's choices in the selection process and unforeseen performance cost will impact the final cost. The actual amount Buyer will have to pay for allowance items may therefore be greater than or less than the amount of the allowance specifically referenced in this Agreement. Buyer acknowledges that all allowance figures include the cost of materials and labor for that particular item. Contractor reserves the right to add _____% for overhead and markup on any amount exceeding the specified allowance. Therefore, Buyer should consider both the cost of materials, the cost to install those materials and overhead and markup when determining if he/she is over or above a particular allowance.

ARTICLE XIV **SUBCONTRACTORS**

If any subcontractor is selected by or recommended by Buyer, Contractor shall not be responsible for any delays or defects related directly or indirectly to that subcontractor's work. Notwithstanding the above, Contractor reserves the right to refuse to utilize any subcontractor selected by or recommended by Buyer. For the purpose of this Article, subcontractor shall include the Buyers to the extent the Buyer chooses to do any work in any way related to the

improvements. All subcontractors shall provide Contractor certificates of insurance confirming general liability, auto liability and workers compensation with coverage and limits satisfactory to Contractor and listing Contractor as an additional insured for this project, prior to the commencement of any work on this project.

ARTICLE XV
COPYRIGHT NOTICE

Buyer acknowledges that all drawings, plans, designs and architectural work is the property of the Contractor and cannot be reproduced or utilized by Buyer without the written consent from Contractor.

These plans are copyrighted and are subject to copyright protection as an "architectural work" under Section 102 of the Copyright Act, 17 U.S.O. as amended December, 1990, and known as Architectural Works Copyright Protection Act of 1990. The protection includes but is not limited to the overall form as well as the arrangement and composition of spaces and elements of the design. Under such protection, unauthorized use of these plans, work or home represented can legally result in the cessation of such construction or buildings being seized and/or razed and/or monetary compensation to Contractor.

ARTICLE XVI
DEFAULT AND TERMINATION

A. Contractor may terminate this contract before the completion date hereof if:

- (1) Buyer is in default of any payment for a period of ten (10) days or more; or,
- (2) The work is stopped by the order of the Buyer, Buyer's architect or engineer, any court or public authority.

B. On such termination, Contractor may recover from Buyer payment for all work completed and for any loss sustained for materials, equipment, tools or machinery to the extent of actual loss thereon plus loss of a reasonable profit for entire project.

C. All sums due and owing for more than 5 days from the date specified in Article II, shall incur interest at the annualized rate of 18%. Contractor shall have the right to collect such monies by a suit at law or by foreclosure of any construction lien, which may be filed upon the real estate. To the extent not prohibited by law, Buyer shall pay all reasonable costs and expenses, including reasonable attorneys' fees and other legal expenses, incurred by contractor in the enforcement of any provision of this Agreement and in the event of foreclosure, such fees and expenses shall be included in the judgment. Buyer agrees to pay for 100% of the attorney fees incurred by Contractor in enforcing payment and any other provisions of this Agreement providing that Contractor receives a judgment in any amount against the Buyer.

ARTICLE XVII
WISCONSIN CONSTRUCTION LIEN NOTICE

AS REQUIRED BY THE WISCONSIN CONSTRUCTION LIEN LAW, CLAIMANT HEREBY NOTIFIES OWNER (BUYER) THAT PERSONS OR COMPANIES PERFORMING, FURNISHING OR PROCURING LABOR, SERVICES, MATERIALS, PLANS OR SPECIFICATIONS FOR THE CONSTRUCTION ON OWNER'S (BUYER'S) LAND MAY HAVE LIEN RIGHTS ON OWNER'S (BUYER'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 (BUYER) OR THOSE WHO GIVE THE OWNER (BUYER) NOTICE WITHIN 60 DAYS AFTER THEY FIRST PERFORM, FURNISH OR PROCURE LABOR, SERVICES, MATERIALS, PLANS OR SPECIFICATIONS FOR THE CONSTRUCTION. ACCORDINGLY, OWNER (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. CLAIMANT AGREES TO COOPERATE WITH THE OWNER (BUYER) AND THE OWNER'S (BUYER'S)

Buyer Initials _____
Contractor Initials _____

LENDER, IF ANY, TO SEE THAT ALL POTENTIAL LIEN CLAIMANTS ARE DULY PAID.

**ARTICLE XVIII
GOVERNING LAW**

This agreement shall be governed by the laws of the State of Wisconsin.

**ARTICLE XIX
BINDING EFFECT**

This agreement shall be binding upon and inure to the benefit of each of the parties hereto, their heirs, personal representatives, successors or assigns.

**ARTICLE XX
SEVERABILITY**

The provisions of this agreement are severable. In the event that any are held invalid by a court of competent jurisdiction, the remainder of this agreement shall be interpreted as if such invalid provisions were not contained therein.

**ARTICLE XXI
HEADINGS**

It is understood and agreed that the headings are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

**ARTICLE XXII
ENTIRE AGREEMENT**

Each of the parties hereto agree and represent that this Agreement comprises the full and entire Agreement between the parties effecting the work and that no other agreement or understanding of any nature concerning the same has been entered into or will be recognized and that all negotiations, acts, work performed or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by this Agreement. This Agreement may not be modified unless done so by written agreement.

With their signatures, the parties hereby acknowledge and agree to the terms of this construction agreement as of the date and year first above written.

In addition the parties hereby specifically agree to the interest terms and rate described in Article XV.C. above.

CONTRACTOR: Landmark Real Estate & Dev., Inc.

BUYER(S):

Signature
Name Typed: by _____
Date: _____

Signature
Name Typed: _____
Date: _____

Signature
Name Typed: _____
Date: _____

Buyer Initials _____
Contractor Initials _____