

BUILDING CONTRACT

NOW COME the parties to this agreement, \_\_\_\_\_  
of

\_\_\_\_\_ (hereafter Contractor), and \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_ (hereafter Owner), and

agree to the following:

1. **SUBJECT PROPERTY:** The work shall be performed by the Contractor for the Owner on property located at \_\_\_\_\_.

2. **SCOPE OF WORK:** The Contractor will perform for the owner the following work and materials as described in the attached Exhibit A to this contract. The work will be performed in a workmanlike manner and if the materials described in this Exhibit are not available or not specified, the contractor may use whatever materials are available for use in the construction project. Unless work is specifically listed as to be performed by the Contractor, it is to be performed by the Owner at his or her expense. No work shall be implied, but must be specifically set forth in this Exhibit. The Contractor has no responsibility for obtaining any permits or other approvals from governmental entities unless specifically provided.

3. **PAYMENT.** The Owner shall pay a total price of \$\_\_\_\_\_ for the work and materials outlined in schedule A. The price will be paid with the following payments:

At the time of signing the contract (1/3rd of the contract price);

When the foundation is completed: \_\_\_\_\_

When the building is weather tight: \_\_\_\_\_

When the rough electrical, rough plumbing and rough HVAC is completed: \_\_\_\_\_

When the dry wall and a primer coat is completed: \_\_\_\_\_

When the painting is completed: \_\_\_\_\_

When the flooring is completed: \_\_\_\_\_

When the finish electrical, plumbing, and HVAC is completed: \_\_\_\_\_

When the job is completed: \_\_\_\_\_.

OR The Owner shall pay the Contractor time and materials. The Contractor shall invoice the Owner no more than weekly. Whenever the Owner receives an invoice he or she has seven days from the date of receipt, or ten days from the date it is mailed to the Owner, to pay the invoice in full. The Contractor shall bill out his carpenters at \$\_\_\_\_\_ per hour. He shall bill for any time spent related to this job, including picking up materials. Any subcontractors shall be marked up 20% and any materials purchased by the contractor shall likewise be marked up 20%.

4. **ALLOWANCES** Any allowances for certain materials, including, but not limited to, flooring, lighting, plumbing fixtures, heating fixtures, kitchen and bath fixtures, cabinets, counter tops, sinks, windows and doors, shall be outlined in attached Exhibit B. The allowance is not part of the contract price. The Owner shall choose any materials he or she wants, and shall pay the Contractor upon ordering any materials. Any amount over the allowance shall be paid by the Owner, and any amount under the allowance shall not be due by the Owner. The 20% markup does apply to any allowance items.

5. **TIME FOR WORK:** The estimated date for commencement of the work is \_\_\_\_\_ and the estimated date for completion of the work is \_\_\_\_\_. The Contractor is not responsible for any delays due to acts of god, weather, subcontractor or supplier delay, or other delays not caused by him or out of his control. Regardless of the cause of any delay, the Contractor shall not be responsible to pay any damages to the Owner for any delay in the completion of this project. The Owner acknowledges that some work (such as painting, masonry, excavation, etc.) cannot be completed during certain weather and this will be a delay caused by weather, not by the Contractor.

6. **WARRANTY:** In addition to any additional warranties agreed to by the parties, the contractor warrants that the work will be free from faulty materials, constructed according to the standards of the building code applicable for this location, constructed in a skillful manner and fit for habitation or appropriate use. The warranty rights and remedies set forth in the Maine Uniform Commercial Code apply to this contract.

7. **RESOLUTION OF DISPUTES:** Should the Owner believe that the Contractor has failed to comply with an terms of this contract, including, but not limited to, failure to complete work outlined in this contract, or completing the work in an unworkmanlike or deficient manner such that it needs to be corrected, the Owner must first provide written notice to the Contractor of the failure to comply with terms of this contract in satisfactory detail to inform the Contractor of the dispute. Should the Owner seek to withhold payment and post it in an escrow account as provided for later in this contract, then the Owner must provide this written notice at or prior to posting the money in an escrow account. Then, after the Contractor receives this notice, the Contractor has seven days to address the Owner in writing with regard to what the Contractor will do and when that will be done, which must be within a reasonable period of time. For any work the Contractor will not do he must provide a reason why the Contractor will not do this work. Should the Owner's request require third-party intervention to determine whether any work needs to be done then the Contractor shall have a reasonable time to respond to the Owner on this issue.

If a dispute arises concerning the provisions of this contract or the performance by the parties that may not be resolved through a small claims action, then the parties agree to settle this dispute by jointly paying for one of the following (check only one):

(1) Binding arbitration under the Maine Uniform Arbitration Act, in which the parties agree to

accept as final the arbitrator's decision (\_\_\_\_\_);

(2) Nonbinding arbitration, with the parties free to reject the arbitrator's decision and to seek a solution through other means, including a lawsuit (\_\_\_\_\_);

(3) Mediation, in which the parties negotiate through a neutral mediator in an effort to resolve their differences in advance of filing a lawsuit. (\_\_\_\_\_).

Should any dispute arise between the parties, and the Owner escrows any funds and follows the contract as required, then performance by the Contractor shall be suspended pursuant to the contract until the dispute is resolved.

8. **CHANGE ORDERS:** Any alteration or deviation from the above contractual specifications that results in a revision of the contract price will be executed only upon the parties entering into a written change order.

9. **INSULATION:** If this construction includes installation of insulation in an existing residence, the Contractor shall provide the following disclosures:

- a. The resistance factor of the insulation per inch and the thickness in inches to be installed \_\_\_\_\_;
- b. The type of insulation to be installed: \_\_\_\_\_;
- c. An estimate of the square footage of area to be covered by insulation: \_\_\_\_\_;
- d. The degree of flammability of the insulation to be installed: \_\_\_\_\_;
- e. The method of installation of the insulation is as follows \_\_\_\_\_;
- f. The type of ventilation for the insulation, and if no ventilation this is to be stated: \_\_\_\_\_;
- g. Whether the installed insulation is guaranteed against settling, and if so for how long and to what degree, and if not the contract shall state there is no guarantee against settling: \_\_\_\_\_;
- h. The type of vapor barrier to be installed, and if non then this is to be stated: \_\_\_\_\_;
- i. The areas of the dwelling to be insulated: \_\_\_\_\_;
- j. A list of any construction, reconstruction or structural changes required to install the insulation: \_\_\_\_\_;
- k. A list of any restoration, finishing or cleanup work to be performed following the installation of the insulation: \_\_\_\_\_;
- l. The provision of any warranties for the insulation and insulation work: \_\_\_\_\_;
- m. If formaldehyde insulation is to be used this box is checked here (\_\_\_\_), and if this box is checked the following information is provided to the owner or lessee:  
-Formaldehyde may cause the occupants to experience harmful side effects, including respiratory

problems, dizziness, nausea, eye and throat irritations and cancer, and these symptoms may develop anywhere from a few days to more than 6 months after installation. If an allergic reaction to formaldehyde develops the contractor will take the following action, if any: \_\_\_\_\_

Maine law, 10 M.R.S.A. 1411, establishes minimum energy efficiency building standards for new residential construction, and this new building or addition to existing building will meet or exceed those standards.

10. **DEFAULT.** Should the Owner fail to make any payments when required by this contract, or escrow the proceeds and/or follow the Resolution of Disputes paragraph in this contract, or otherwise breach any terms in this contract, then the Owner shall be in default of this contract and the Contractor shall have no further liability or responsibility pursuant to this contract. This action voids all provisions in this contract benefitting the Owner, including but not limited to, the warranty provisions and any requirement that the Contractor remedy or repair any work. The Contractor shall have no further responsibility to do work and shall pull his equipment and workers from the jobsite, whatever the condition of the site, and shall not be responsible or liable for anything further related to this contract. The Owner shall still be responsible for all payments for work performed or invoices pursuant to the contract.

Should the Contractor breach any terms of this contract, and if the Owner shall have performed all terms of this contract as required herein, then the Owner shall be entitled to the reasonable and necessary cost to complete any work not completed by the Contractor, and reasonable and necessary cost to repair any work not repaired by the contractor as required by this contract, plus whatever the Owner has paid the Contractor pursuant to the contract and change orders, minus the face amount of the contract and change orders (or the total amount invoiced if this is a time and materials contract).. There shall be no further damages.

Should either party have to hire an attorney to enforce the terms of this contract, the prevailing party shall be entitled to reasonable attorney's fees. Interest on any payments owed by the Owner to the Contractor shall accrue at 1 ½% per month.

11. **ESCROW OF ANY AMOUNT IN DISPUTE:** Should the Owner dispute all or any portion of any invoice or payment due to the Contractor, then this payment must still be made in a timely manner as required by this contract, but may be placed in an escrow account of the Owner's attorney, or if no attorney is involved then the parties agree that the funds will be placed in the escrow account of the Contractor's attorney, \_\_\_\_\_  
\_\_\_\_\_. The Owner's failure to escrow any amount in dispute within the time required for payment to the Contractor is treated as failure to pay and is breach of the contract as outlined in this contract. Any escrowed proceeds shall be held until both parties agree to the release of the funds, or a final judgment or order of the court requires the release of the funds.

12. **INSURANCE:** The Contractor shall procure insurance against loss or damage caused the negligence of his employees, servants, or subcontractors.

The owner shall procure insurance against loss by fire, theft, wind storm or other risks covered by extended coverage. The Contractor shall be listed in said policy as co-insured, or additional insured, as its interests may appear, if appropriate for this job.

13. **SURVEY AND CONDITIONS OF THE PROPERTY:** The Owner is responsible for having a survey done on the property and giving a specific location to the Contractor for the placement of any structures or other improvements (such as roadways, septic systems, etc.) on the parcel of land. The Owner is fully responsible for any failures of the survey, or to have a survey completed, should the placement of any structures or improvements be incorrect. The Owner shall flag the corners for the placement of any structures or improvements on the property.

Any estimates for work on the property are made assuming normal conditions of the property, i.e. normal soils, no ledge. water at the usual number of feet, etc. Should there be abnormal conditions of the property the Owner agrees to pay any additional charges related to the abnormal conditions on this site.

14. **OCCUPANCY OF THE PREMISES:** Should the owner or any other person occupy the premises where the construction was completed this shall be conclusive proof that all work was performed pursuant to the contract, and it was performed in a complete and workmanlike manner. Only any warranties pursuant to the contract for defects not known until after the Owner moves in shall be applicable, and the Contractor shall have otherwise satisfied all terms of the contract. No occupancy of the constructed premises shall occur until the Owner has paid the Contractor in full.

15. **MANUFACTURER WARRANTIES:** No warranty is given with respect to any products or goods placed in a home as fixtures or otherwise which provide a manufacturer's warranty, when the defect in the products or goods are inherent in, or caused by, the products or goods and not caused by the faulty installation or construction work of the Contractor. When the defect is inherent in, or caused by, the products or goods themselves, then the Owner shall make warranty claims directly to the manufacturer, with the Contractor participating in any way necessary in making these claims. All monies or work received shall be to the benefit of the Owner, and no further compensation shall be due by the Contractor. Where allowed the Contractor shall assign all manufacturer warranties to the Owner.

16. **LIMITATION ON WARRANTIES:** No warranty is given for normal construction results, including, but not limited to, imperfections due to shrinkage of the lumber such as nail pops, seam ridges, cracks in drywall, cracks in plaster or stucco, openings of joists in wood trim, stairs or hard wood floors, warping or cracking of doors and a cracking or falling away of the grout, imperfections due to settling of the subject structure (unless structural damage occurs), in

and around the foundation, such as concrete cracks in slabs, and walks, mortar, stucco, stained wood items, roofing, siding and paint.

17. **UTILITIES AND STORAGE:** The Owner shall provide electricity to the site as needed by the Contractor for work on the site at no charge to the Contractor. The Owner shall also provide water to the Contractor, if available. The Contractor shall be allowed to store any tools or other equipment at the site as long as the job is underway, and may place up to two signs on the property indicating that he is the Contractor performing work on this property.

18. **ADDITION OF CONTRACT TERMS REQUIRED BY LAW:** The parties agree that should any contract terms be required by the laws applicable at the time this contract was entered into, and these provisions are not part of the contract, then only those provisions required by law shall be incorporated as part of the contract herein.

13. **PARTIAL INVALIDITY:** Should any provisions or parts of this contract be declared invalid or illegal then that part shall be redacted or removed from this contract, and the remaining part of the contract shall be fully enforceable without the part of the contract deemed invalid.

14. **ENTIRE AGREEMENT:** This contract contains the entire understanding of the parties and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

15. **SITUS** This contract shall be construed and governed in accordance with the laws of the State of Maine.

16. **BINDING EFFECT:** All the provisions of this contract shall be binding upon the respective heirs, next of kin, and personal representatives of the parties..

17. **MODIFICATION AND WAIVER** A modification or waiver of any of the provisions of this contract shall be effective only if made in writing and executed with the same formality. The failure of any party to insist upon strict performance of any of the provisions of this contract shall not be construed as a waiver of any subsequent default of the same or similar nature.

**CONSUMERS ARE STRONGLY ADVISED TO VISIT THE ATTORNEY GENERAL'S PUBLICLY ACCESSIBLE WEBSITE TO GATHER CURRENT INFORMATION ON HOW TO ENFORCE THEIR RIGHTS WHEN CONSTRUCTING OR REPAIRING THEIR HOMES. THE ATTORNEY GENERAL'S PUBLICLY ACCESSIBLE WEBSITE IS [HTTP://WWW.MAINE.GOV/AG/](http://www.maine.gov/ag/) OR TELEPHONE (207) 626-8800. A COPY OF THE MAINE ATTORNEY GENERAL HOME CONSTRUCTION WARNING IS ALSO ATTACHED TO THIS CONTRACT AS EXHIBIT B.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Contractor

Date: \_\_\_\_\_

\_\_\_\_\_  
Owner

Date: \_\_\_\_\_

\_\_\_\_\_  
Owner

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