

RESIDENTIAL CONSTRUCTION LUMP SUM CONTRACT

PARTIES:

“Owner”

Name:

Address:

Phone No:

Email:

“Contractor”

Name:

Address:

Phone No:

Email:

“PROPERTY”

Address:

County:

Tax Parcel No:

DATE:

I. CONTRACT DOCUMENTS. The “Contract Documents” consist of this Residential Construction Lump Sum Contract (this “Agreement”), construction documents including plans, drawings, and specifications, budgets, all addenda issued prior to execution of this agreement and all written change orders and modifications issued and signed by both parties. These contract documents represent the entire agreement of both parties and supersede any prior oral or written agreement.

II. SCOPE OF PROJECT.

2.1 The Project. Contractor agrees to furnish the necessary materials, labor, equipment, tools, and supervision (the “Work”) necessary to complete the construction of a single-family residence on the Property (the “Project”) as specified in the Construction Documents.

2.2 Permits. [Owner or Contractor] shall obtain the governmental approvals of the Construction Documents including all necessary permits for construction of the Project. Owner is responsible for the cost of all necessary permits.

III. PRICE AND PAYMENT.

3.1 Contract Price. Contractor shall perform the Work for a total cost of DOLLARS (\$) (the “Contract Price”). A detailed summary of the Contract Price is attached to this Contract as **Exhibit A**.

3.2 Down Payment. Owner shall pay Contractor

DOLLARS (\$) prior to commencement of the Work as a down payment. Such down payment shall be credited against the Final Payment (defined below).

3.3 Progress Payments. Owner shall make progress payments to Contractor as billed monthly. Contractor shall provide to Owner a payment invoice which shall be equivalent to the percentage of the Work complete during the billing period, less amounts paid in prior billing periods (the "Payment Invoice"). Owner shall pay the full amount billed no later than fourteen (14) calendar days from the date of receipt of each Payment Invoice. Contractor shall apply Owner's progress payments to the costs and fees of this Project only.

3.4 Lien Release. Contractor shall provide Owner with an unconditional waiver and lien release form signed by Contractor and by each subcontractor and supplier claiming **DOLLARS (\$)** or more in payment, verifying Owner's payment, in full, from Owner's prior month's Payment Invoice to Contractor. A form of conditional lien release is attached as **Exhibit B**.

3.5 Final Payment. Within ten (10) days after Contractor provides notice to Owner that the Work is Substantially Complete (defined below), Owner shall inspect the Work with Contractor and deliver to Contractor a comprehensive list of items to be completed or modified prior to authorization for Owner's final occupancy (the "Punch List"). The Punch List and any remaining Work shall be finished by Contractor within twenty (20) days of Contractor's receipt of the Punch List. Final Payment shall be due fourteen (14) days after Contractor completes the Work in accordance with the Contract Documents and provides Owner with final lien releases from Contractor and all subcontractors and suppliers conditioned on receipt of Final Payment. A form of final lien release is attached as **Exhibit C**. If requested, Contractor shall make available to Owner a summary and/or documentation of Actual Costs supporting the final cost of the Work.

"Substantially Complete" or "Substantial Completion" means the stage in the progress of the Work when Owner has legal occupancy and full and unrestricted use and benefit of the Project for its intended purpose with only minor incidental work or correction or repair remaining to be performed by Contractor.

3.6 Failure of Payment. Payment shall be made in a prompt and timely manner. Payment may be withheld only on account of work not in accordance with the Contract Documents, then only in an amount equal to Contractor's reasonable approximation of the sums necessary to cure any defect, and all other sums are due and payable in full. Contractor shall provide seven (7) days written notice to Owner of failure to make any progress payments, change order, or final payment when due.

After seven (7) days written notice, any nonpayment shall be a material breach of this Contract and shall fully excuse Contractor's performance of the Work. Owner shall pay all of Contractor's collection costs and reasonable attorney fees in any collection or lien foreclosure action resulting from Owner's nonpayment. Payments due and unpaid under the Contract Documents shall bear interest at the rate of twelve percent (12%) per annum from the date payment was due until paid.

3.7 Contractor's Registration. The Contractor's Disclosure Statement Notice to

Customer ("Notice") is attached as **Exhibit D**. Washington law requires the Owner's signature on the Notice acknowledging receipt of the Notice and Contractor's compliance with the disclosure requirements.

IV. CHANGE IN WORK.

4.1 Change in Work. If Owner desires a change in the Work or Contractor believes that a change is necessary, (a "Change"), the Parties shall adhere to the following procedure:

a. The party initiating the Change shall provide written notice to the other which notice shall contain a description of the Change (the "Change Notice");

b. Prior to executing the Change, the Contractor shall provide Owner with an estimate of the cost and time impact of the requested Change;

c. Owner and Contractor shall execute a Change Order, in the same form as attached as **Exhibit E**, as written confirmation of their agreement to the Change, the additional costs, and the time extension. If the Change cannot be performed on a fixed-price basis, the Contractor shall identify the agreed method of compensation in the Change Order.

4.2 Exception. Changes to work caused by an emergency involving safety or property damage shall be permitted without undergoing the above procedure and without necessitating a Change Order form.

V. SCHEDULE.

5.1 Initial Project Schedule. Contractor shall commence the Work in accordance with the initial Project schedule ("Schedule") attached as **Exhibit F**. Subject to the permitted extensions and delays provided in the Contract Documents, Contractor shall Substantially Complete the Work in accordance with the Schedule. The Schedule shall include a coordinated schedule of subcontractor activity, deadlines for Owner's decisions on material selections, and expected dates for delivery of materials.

5.2 Liquidated Damages. Contractor agrees that the Schedule provides sufficient time for completion of the Work. If Contractor fails to achieve Substantial Completion of the Work by the date set forth in the Schedule, Owner will suffer substantial damages. Contractor further agrees that the amount of damages is difficult to precisely estimate and as such agrees to pay Owner liquidated damages at a daily rate of _____ DOLLARS (\$ _____); provided, however, the total liquidated damages paid to Owner shall not exceed _____ DOLLARS (\$ _____), if Contractor fails to meet the Substantial Completion date. The parties agree that liquidated damages are not a penalty, but rather a reasonable estimate of the amount of damages Owner will suffer in the event of delay. Owner shall have the right to withhold the amount of liquidated damages from any sums due to Contractor.

5.3 Owner's Delay. In the event of delays caused in the Work by circumstances beyond the direct control of Contractor, the Substantial Completion date shall be extended for a period reasonably equivalent to the time lost by such delay. Contractor shall be entitled to

payment for its actual costs resulting from Owner's delay caused by the act, neglect, or default of Owner or its agent.

5.4 Force Majeure. Neither party shall be liable for any delay that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy. For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

5.5 Notice of Delay. Within a reasonable time following the date Contractor becomes aware of delay, but in no event longer than seven (7) days, Contractor shall give notice to Owner of the extension of time resulting from such delay.

VI. INSURANCE

6.1 Contractor's Insurance. The Contractor shall be responsible for purchasing and maintaining its own liability insurance as described below. Contractor shall purchase and maintain insurance for the entirety of the Project as described above from an insurer admitted to do business in Washington with an A.M. Best financial strength rating of A-, VII or better, that will protect Contractor from bodily injury or property damage claims arising out of its performance of the Work whether the Work is being performed by the Contractor, its consultants, or subcontractors, or by anyone for whose acts any of them may be liable.

a. Commercial General Liability insurance providing bodily injury liability and property damage liability with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence.

b. Automobile liability insurance with a minimum limit of liability of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) per occurrence for all owned, non-owned and hired automobile.

6.2 Owner's Insurance. Owner shall maintain or cause to be maintained a policy or policies of builders' risk insurance in an amount equal to the value upon completion of the Work, insuring against the risks customarily insured against under such insurance, including theft, fire, vandalism, malicious mischief, sprinkler leakage, lightning, and windstorm. Said insurance coverage to be kept in full force and effect at all times until the completion of construction of the Improvements.

6.3 Insurance Waiver. Owner and Contractor hereby waive their rights of subrogation against one another for losses covered by the required insurance policies except that Contractor shall be liable for the builders' risk insurance deductible if a claim is made against such insurance and that claim arises out of Contractor's negligence.

VII. WARRANTIES.

7.1 Contractor's Warranty. Contractor warrants that the Work shall be performed in accordance with the Contract Documents. If any Work does not conform to the provisions of the Contract Documents, Contractor shall make necessary corrections at its sole expense so that such Work will so conform, and in addition will correct any defects caused by faulty materials, equipment, or workmanship in work supervised by Contractor or by a subcontractor. **This express limited home warranty (the "Warranty"), which is attached to this Contract as Exhibit G, shall continue until one (1) year after the date of Substantial Completion of the Work or within such longer period as may be prescribed by law or as may be provided for by applicable special guarantees in the Contract Documents (the "Warranty Period").**

7.2 Exclusions. Contractor expressly disclaims responsibility and shall not be liable for any of the following items: (1) consequential damages; (2) manufactured products (which often have their own warranties); (3) construction, design, workmanship or functionality of existing items, structures, subsurface conditions (in the event that Contractor is completing a project from another contractor. In this circumstance, Owner also agrees to indemnify Contractor for any and all damages arising from or Owner to the previous contractor's work and designs); (4) mildew, fungus, mold, pest problems; (5) permits (regardless of who is responsible for obtaining a permit, work cannot and shall not begin before a permit is secured if required); (6) **this warranty expressly excludes all other warranties available under Washington or federal laws, including any express or implied warranties of fitness, merchantability, or habitability;** (7) Contractor warranties that its labor not materials and manufacturers warrant materials; (8) Owner waives all warranty rights if final invoice is not paid within thirty (30) days of final invoice.

7.3 Cure of Defect. Owner must promptly notify Contractor in writing of any defect discovered during the Warranty Period (the "Warranty Defect Notice"). Owner must provide Contractor with an opportunity to inspect the defect. Upon inspection, Contractor may elect to either cure the defect according to industry standards or pay to Owner, according to its own estimate, the cost of repair or replacement of the defect. This Warranty Defect Notice shall serve as the written notice of claim described required by RCW 64.50. In no event shall Contractor's liability exceed the fair and reasonable cost of repair or replacement of the defect. Contractor shall not be liable for costs incurred by Owner unless Contractor has received the Warranty Defect Notice and has been afforded reasonable opportunity to cure the defect or to pay the cost of repair and replacement as set forth in this Section 7.3.

7.4 Assignment of Product Warranties. All product warranties, if any, have been assigned from Contractor to Owner, which assignment is attached as **Exhibit H.**

7.5 Disclaimer of Warranty. **THIS WARRANTY EXPRESSLY EXCLUDES ALL OTHER WARRANTIES AVAILABLE UNDER WASHINGTON OR FEDERAL LAWS, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF FITNESS, MERCHANTABILITY OR HABITABILITY, OR OTHERWISE.**

7.6 Waiver of Consequential Damages. Notwithstanding any other provision of this Contract, and to the fullest extent permitted by law, neither the Contractor nor Owner, their agents, shall be liable to the other or shall make any claim for any incidental, indirect or consequential

damages arising out of or connected in any way to the Project. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both Contractor and Owner shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and sub-contracts with others involved in this Project.

7.7 Notice of Defect Claim. WASHINGTON LAW, CHAPTER 64.50 RCW, CONTAINS IMPORTANT REQUIREMENTS THAT OWNER MUST FOLLOW BEFORE OWNER MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST CONTRACTOR. FORTY-FIVE (45) DAYS BEFORE OWNER FILES A LAWSUIT, OWNER MUST DELIVER TO CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS OWNER ALLEGES ARE DEFECTIVE AND PROVIDE CONTRACTOR THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. OWNER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT OWNER'S ABILITY TO FILE A LAWSUIT.

VIII. INDEMNITY.

8.1 Owner's Indemnification of Contractor. Owner shall defend, indemnify and hold Contractor harmless from any and all liability, claims, damage, losses and expenses, whether direct, indirect or consequential (including, but not limited to attorney's and consultant's fees and other expenses of litigation or arbitration) arising from, resulting from, or connected with services performed or to be performed under the Construction Documents, to the fullest extent permitted by law, and subject to the limitations provided below. Owner's duty to indemnify Contractor shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Contractor or Contractor's employees. Owner's duty to indemnify Contractor liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) Contractor or Contractor's employees, (b) Owner, or (c) any third parties other than Contractor or Owner shall apply only to the extent of negligence of Owner or such third parties.

8.2 Contractor's Indemnification of Owner. Contractor shall indemnify, defend, and hold Owner harmless against all claims, damages, losses, and expenses, including but not limited to attorney's fees and court costs arising out of or in any way related to the Work; provided, that such indemnification shall not apply to claims, damages, losses or expenses that arise out of bodily injury to persons or damage to property to the extent caused by Owner's, or its agents, sole negligence; provided further that Owner shall indemnify Contractor against liability for damages, losses, or expenses arising out of bodily injury to persons or damage to property and caused by or resulting from the concurrent negligence of Owner or its agents, and Contractor, or the Contractor's subcontractors agents or employees, or both only to the extent of the negligence of parties other than Contractor.

In addition to the foregoing, Contractor further agrees to defend, indemnify and hold Owner harmless from all claims brought under the Washington Industrial Safety and Health Act

or other related claims, demands, proceedings, violations, penalties, assessments, or fines that arise out of or relate to Contractor's failure to adhere to safety-related laws, ordinances, rules, regulations, orders, or its obligations hereunder.

For purposes of this Section VIII only, Contractor waives any immunity it may be granted under state law for claims brought by Owner against Contractor. The Contractor's indemnification obligations under this agreement shall not be limited in any way including by limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under applicable workers compensation acts, disabilities benefits acts, or other employee benefits acts. By executing this agreement, the parties agree that this clause was mutually negotiated.

IX. SAFETY. Contractor and its subcontractors shall take all reasonably necessary safety precautions, including compliance with applicable laws, ordinances, regulations, and orders issued by a public authority, whether federal, state, or local. Contractor shall at all times be responsible for providing a safe job site and be responsible for the work performance and safety of all employees, personnel, equipment, and materials within the care, custody, or control of Contractor or its subcontractors of any tier. Contractor and its subcontractors shall furnish all required safety equipment and ensure all of its employees and lower-tier subcontractors' employees have and wear personal protective equipment in compliance with applicable safety requirements. Contractor shall promptly provide Owner with written notice of safety hazard(s) or violation(s) found on the job site or of any injury to its or its subcontractors' workers incurred on the job site.

X. TERMINATION FOR CAUSE.

10.1 Termination by Owner. Owner may terminate this Agreement for cause if the Contractor breaches any material provision of this Agreement or persistently fails or neglects to carry out the Work. Prior to terminating this Agreement for cause under this Section X, Owner shall first provide Contractor fourteen (14) days' written notice of the alleged breach. If Contractor fails to cure such alleged breach within fourteen (14) days of receipt of such written notice or fails to commence and diligently continue with cure efforts if the breach cannot reasonably be cured within fourteen (14) days, the Owner may terminate this Agreement. Owner shall have the right to proceed against Contractor for the recovery of all damages incurred as a result of the breach, including reasonable attorneys' fees and costs and other legal remedies.

10.2 Termination by Contractor. Contractor may terminate this Agreement for cause if the Owner breaches any material provision of this Agreement, including nonpayment. Prior to terminating this Agreement for cause under this Section X, Contractor shall first provide Owner seven (7) days' written notice of the alleged breach. If Owner fails to cure said breach within seven (7) days of receipt of such written notice, or fails to commence and diligently continue with cure efforts if the breach cannot reasonably be cured within seven (7) days, the Contractor may terminate this Agreement. Contractor shall have the right to proceed against Owner for the recovery of all damages incurred as a result of the breach, including for the Work executed on behalf of the Owner, for proven loss with respect to materials, tools, construction equipment and machinery, including reasonable overhead, profit and damages under this Agreement, reasonable attorneys' fees and costs, and legal remedies.

XI. DISPUTES.

11.1 Arbitration/Mediation. Parties agree to make a good faith effort to resolve any dispute without necessitating litigation. As a condition precedent to any lawsuit, Owner must provide notice of any claim in writing to Contractor and provide Contractor a reasonable opportunity to correct or complete the Work as specified in Contract Documents. Either party may then request mediation. The requesting party shall give written notice to the other party requesting mediation and the parties agree to use their best efforts to conduct the mediation within sixty (60) days of the notice. The parties will share the cost of mediation equally. If a dispute cannot be resolved directly between the parties, it shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Both parties waive their right to file any appeal for trial de novo in superior court and specifically agree to accept the arbitrator's award as final and binding.

11.2 TIME LIMIT ON LAWSUIT. ANY LAWSUIT BASED ON CONTRACT, TORT, WARRANTY, OR INDEMNIFICATION MUST BE FILED IN A COURT OF COMPETENT JURISDICTION WITHIN TWO (2) YEARS FOLLOWING EXPIRATION OF THE WARRANTY PERIOD PROVIDED IN SECTION 7.1, OR SUCH CLAIMS AND CAUSES OF ACTION SHALL BE FOREVER WAIVED.

Owner's Initials:

XII. GENERAL PROVISIONS.

12.1 Survival. In the event any clause or provision of this Contract shall be held to be invalid, then the remaining clauses and provisions shall remain in full force and effect.

12.2 Entire Agreement. The Contract Documents contain the entire agreement between the parties with respect to the Project. All other agreements, oral or written, are hereby merged into, and superseded by this Contract. There are no other agreements which modify or affect the terms hereof.

12.3 Amendments. No amendment hereto shall be binding unless the terms thereof are in writing and signed by both parties. No verbal or other agreements modify or affect this Contract.

12.4 Binding Effect. This Contract shall be binding upon the Parties hereto, and their heirs, successors, executors, administrators, and assigns.

12.5 Assignment. Neither party shall assign nor transfer this Contract or any rights hereunder without the prior written consent of the other.

12.6 Notices. Any notice under or relating to the Contract Documents shall be given in writing and shall be deemed sufficiently given and served for all purposes when personally delivered or three Business Days after a writing is deposited in the United States mail, first class postage or other charges prepaid and registered, return receipt requested, addressed as follows:

(a) If to Owner:

(b) If to Contractor:

12.7 Governing Law, Venue. The performance and interpretation of this Contract shall be governed in accordance with the laws of the State of Washington. Any litigation arising out of or in connection with this Contract shall be conducted in the County where work is performed.

12.8 Counterparts. This Contract may be executed in counterparts.

12.9 Waivers. No waiver of any breach of any covenant or provision contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which will be extended by a period of time equal to the period of the delay.

12.10 Acknowledgement of Terms. Owner acknowledges that Owner has read this Contract, understands the terms of this Contract, and has had a reasonable opportunity to consult with legal counsel prior to signing this Contract.

12.11 Attorneys' Fees. If either party hereto files suit against the other for reasons related to this Agreement, then the prevailing party in such litigation shall be reimbursed by the other party for its reasonable attorneys' fees and costs of litigation.

CONTRACTOR:	OWNER:						
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Contractor Registration No.							

Exhibits:

- A – Summary of Contract Price
- B – Conditional Lien/Claim Release
- C – Final Lien Release
- D – Disclosure Statement Notice to Customer
- E – Change Order Form
- F – Initial Project Schedule
- G – Express Limited Home Warranty
- H – Assignment of Manufacturers' Warranty

EXHIBIT A
Summary of Contract Price

(Insert summary of contract price)

EXHIBIT B
Conditional Lien/Claim Release

(Insert in next page)

EXHIBIT C
Final Lien Release

(Insert in next page)

EXHIBIT D
Disclosure Statement Notice to Customer

(Insert in next page)

EXHIBIT E
Change Order Form

(Insert in next page)

EXHIBIT F
Initial Project Schedule

(Insert project schedule)

EXHIBIT G
Express Limited Home Warranty

(Insert in next page)

EXHIBIT H
Assignment of Manufacturers' Warranty

(Insert in next page)