

CONSTRUCTION CONTRACT

Construction Contract by and between _____, having a mailing address at _____, MA, (hereinafter collectively referred to as "**Owner**") and **J.F. Basnett Co., Inc., dba Basnett Design-Build-Remodel**, having a mailing address at **14 Gilson Rd., Littleton, MA 01460** (hereinafter referred to as "**Contractor**").

1. Compliance

This Construction Contract is in compliance with the Seventh Edition of the Massachusetts State Building Code (One and Two Family Dwelling Code) 780 CMR 110.R6.5 as adopted by the Massachusetts State Board of Building Regulations and Standards.

a. Contractor shall comply with all building code and sanitary laws and federal, state, county, and municipal laws, rules, ordinances, and regulations, including the provisions of Massachusetts General Laws (M.G.L.) Chapter 142A, (Regulation of Home Improvement Contractors) and Massachusetts Residential Code 780 CMR 110.R6 (Regulation and Enforcement of Home Improvement Contractor Program), with the exception of requirements of inspectors and/or officials that exceed documented requirements. Any such requirements that create additional cost shall be considered a change order and billed separately from the provisions of this contract.

b. All home improvement contractors and subcontractors shall be registered by the director. Any inquiries about a contractor or subcontractor relating to a registration should be directed to:

Director
Home Improvement Contractor Registration
One Ashburton Place, Room 1301
Boston, MA 02108
(617) 727-8598

c. Licenses and Registrations

- 1) Massachusetts Construction Supervisor License: 43436
- 2) Massachusetts Home Improvement Contractor Registration: 132490

d. Certifications

- 1) EPA Lead-Safe Certification: NAT-53288-1
J.F. Basnett Co., Inc.
14 Gilson Road
Littleton, MA 01460
Federal Identification: 04-3509321
- 2) EPA Certified Renovator: R-I-18398-10-03029
James F. Basnett Jr.

e. Permit Notice

- 1) In accordance with the Seventh Edition of the Massachusetts State Building Code 780 CRM, it shall be the obligation of the Contractor to obtain all necessary construction-related permits as the Owner's agent.
- 2) Required construction-related permits to be obtained by Contractor are listed in the Project Specifications.
- 3) Owners who secure their own construction-related permits or deal with unregistered contractors will be excluded from the guaranty fund provisions of M.G.L. Chapter 142A.

2. Scope of Work

Contractor shall furnish all of the materials and perform all of the work necessary for the specified build-out; the furnishing of said materials and the performing of said work (hereinafter collectively referred to as the "Contractor's Work"), said Contractor's Work to be performed in accordance with the drawings and floor plans prepared for Owner by Contractor, and in any written change orders (signed by both Owner and Contractor) after execution of this Construction Contract; Specifications; and Standards; (the Plans, Specifications, Standards, and Change Orders hereinafter collectively referred to as the "Plans and Specifications"). In the event there is a question as to the interpretation of the Plans and Specifications, the party who prepared the Plans or Specifications shall make the interpretation, as long as such interpretation does not materially change the size, scope or cost of the project. In the event the party who prepared the Plans or Specifications cannot or will not interpret the Plans or Specifications, and Contractor and Owner cannot agree on how to resolve the question of interpretation, then one or both of the parties may elect to proceed in accordance with section 14 of this contract.

3. Materials and Workmanship

Contractor agrees to perform Contractor's Work in a good, workmanlike manner. All equipment, materials, and articles incorporated into the Residence and covered by this Construction Contract are to be new and of the grade as called for in the Plans and Specifications. Contractor reserves the right to substitute equivalent or better products or materials specified products and materials are no longer available or cannot be acquired by Contractor in a timely manner so as to allow time to complete Contractor's Work on schedule. This does not, however, dismiss Contractor's responsibility to account for lead times typical to the industry. Contractor shall, if requested by the Owner, furnish such evidence as to kind and quality of substitute materials.

4. Time of Completion

Performance of Contractor's Work shall commence at a mutually agreeable time to be determined after receipt of contract deposit; and shall be substantially completed no later than _____ days after commencement, (hereinafter the "Completion Date"). If Contractor is delayed in completing Contractor's Work by reason of strikes, work stoppages, inability to procure materials, restrictive governmental acts or regulations, riots, war, flood or any other reasons beyond Contractor's reasonable control, Contractor may extend the Completion Date for such time as is reasonably required to enable Contractor to complete Contractor's Work.

5. Contract Price

Owner shall pay Contractor for the performance of Contractor's Work, subject to additions and deductions hereinafter provided or subsequently agreed to in writing, the sum of \$_____ (hereinafter the "Contract Price").

6. Terms

- a. Progressive Payments:** Owner shall make payments on account of this Construction Contract in accordance with the Progressive Payment Schedule. Each of said progress payments shall be due and payable within five working days of Contractor's delivery to Owner of Contractor's requisition documentation, which documentation shall include, if and when appropriate, the approval of Contractor's Work to which the inspector, Owner, and such documentation as Owner's Bank may reasonably request. Ongoing work shall not proceed if invoices remain unpaid beyond 5 days. The value of any particular portion of Contractor's Work for which Contractor has submitted requisition documentation shall be determined by reference to the Progressive Payment Schedule.
- b. Final Payments:** Final payments shall be due as defined in the Progressive Payment Schedule. Said schedule defines payment at time of substantial completion, and makes provision for reasonable holdback in the event that there are details which cannot be immediately completed. Substantial completion shall be defined as suitable for Owner to use for its intended purpose. Corresponding payment shall be due when invoiced, subject to terms contained herein. Payment corresponding to delayed detail completion shall be amount stipulated in Payment Schedule, and shall be due upon completion of a list of outstanding details as agreed between Contractor and Owner in Project Completion and Acceptance Agreement, incorporated herein by reference. (Sample attached.) Contractor shall give written notice as necessary to Owner and/or Bank that Contractor's Work is completed and, if required, shall supply lien releases or receipts evidencing payment in full be filed relative to Contractor's Work. Owner and/or Bank shall have the right to make final

inspection of Contractor's work within seven days after receipt of notice of completion and upon acceptance thereof by Owner and Bank, payment shall be made of the remaining balance due. Such acceptance shall not be unreasonably withheld and in the event Owner and/or Bank refuses to accept, Owner and/or Bank as the case may be shall within said seven day period notify Contractor in writing of such refusal and shall specify the reasons therefore. Contractor shall within the next ten days take appropriate steps to remedy any deficiencies set forth as reasons for refusal and upon completion thereof to the satisfaction of Owner and/or Bank shall be entitled to prompt payment of any remaining balance due.

- c. **Finance Charges:** A 1.5% per month carrying charge shall be applied to outstanding balances over 30 days.

7. Modifications

There shall be no modification, amendment, or change order made relative to this Construction Contract, Contractor's Work, or the Plans and Specifications without the express mutual modification signed by Owner and Contractor.

- a. **Required Change Orders:** The Specifications represent Contractor's best effort to be complete in detailing the scope of work to be performed. However, this contract is based solely on observable conditions of the structure in its status at time of Contract preparation. If additional concealed, unknown conditions are discovered in the course of construction, Contractor shall point out these conditions to Owner so Owner and Contractor can execute a Change Order for any additional work. Such orders shall specify additional fees, materials, labor and services, and become part of this contract. Additional costs, if any, shall be paid for by Owner in advance of execution of work specified in said Change Order. Failure of Contractor to request such payments in advance shall not be deemed a waiver of payments due. Any delays in Contractor's Work caused by required change orders shall not be deemed the responsibility of Contractor, and shall automatically extend the time of completion. Additional time required shall be stipulated within the Change Order.
- b. **Additional Work Authorizations:** In the event that required work cannot be priced in advance of completion of such work, (i.e. discovery of rot needing repair), an Additional Work Authorization shall be executed. Such orders shall describe work to be completed, and shall specify method of calculating additional fees, materials, labor and services to be charged upon completion, and become part of this contract. Payment shall be due upon presentation of Contractor invoice. Any delays in Contractor's Work caused by required change orders shall not be deemed the responsibility of Contractor, and shall automatically extend the time of completion. Additional time required shall be estimated and stated within the Additional Work Authorization.
- c. **Requested Change Orders:** If after the execution of this agreement, Owner requests changes to the same, Owner shall sign a Request for Change Order Pricing describing the nature of work and authorizing Contractor to price such change, and shall pay a non-refundable Change Order processing fee of \$100 to initiate the request. The processing fee for any Requested Change Order that requires more than two hours to process shall be invoiced at \$50 per hour in excess of two hours. An invoice for additional processing fees, if any, shall be presented with the written Change Order and shall be payable whether or not Change Order is approved. Owner and Contractor shall execute all such requests as written Change Orders. Such orders shall specify additional fees, materials, labor and services, and become part of this contract. Additional costs, if any, shall be paid for by Owner in advance of execution of work specified in said Change Order. Failure of Contractor to request such payments in advance shall not be deemed a waiver of payments due. Any delays in Contractor's Work caused by change order requests shall not be deemed the responsibility of Contractor, and shall automatically extend the time of completion. Additional time required shall be stipulated within the Change Order.
- d. **Allowances:** Allowances indicated in Specifications represent Contractor's best effort to fully anticipate and calculate costs to be encountered. However, the number of variables inherent in the categories covered by allowances makes it impossible to give solid assurances regarding the final outcome of allowance cost. Therefore Owners expressly indicate their understanding of the changeable nature of allowances, and hereby expressly accept monetary responsibility for all overruns.

- 1) Contractor Cost for allowances shall be defined as all costs associated with the performance of work on relevant categories; more specifically as follows:
 - All materials, supplies, and one-time use tools and materials.
 - All subcontracted services.
 - All rental costs of temporary facilities, machinery, tools, and equipment.
 - All use of Contractor-owned heavy equipment and associated implements.
 - Contractor-owned heavy equipment cost shall be defined as \$40.00 per running hour, with a minimum charge of 4 hours per use.
 - All direct labor, which shall be all services performed by any Contractor's field personnel, cost defined as follows:
 - \$75.00 per hour per Project Supervisor or Master Builder.
 - \$60.00 per hour per Journeyman Builder.
 - \$50.00 per hour per Apprentice Builder.
 - Contractor shall be solely responsible for assignment of tasks to personnel. Labor rate shall be based on personnel assigned, regardless of type of task.
- 2) Upon completion of the work on allowance categories, their costs shall be summarized and the result added to or subtracted from contract's allowance amount. Any difference shall be invoiced separately as follows.
 - All materials, subcontracted services, and rentals shall be invoiced at Contractor's cost plus 25%.
 - All Contractor direct labor and use of heavy equipment shall be invoiced at rates given.
- 3) Payment shall be due upon receipt of invoice.

8. Additional Contractor Responsibilities

a. Project Management and Facilitation:

- 1) Contractor shall continuously employ a sufficient number of competent employees and subcontractors so as to ensure completion of Contractor's Work by the stated completion date or any extension thereof. Contractor, in subcontracting any portion of Contractor's Work, shall not be relieved from responsibility for the work performed or materials supplied by any subcontractor and shall be bound by the terms of this Construction Contract notwithstanding any subcontract. Contractor shall properly direct and control any subcontractors, being responsible for the coordination of Contractor's Work and any subcontractor's work.
- 2) Contractor represents that it owns or has available the proper tools and equipment to perform Contractor's Work.
- 3) Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of Contractor's Work; including but not limited to: timely ordering of products and materials and coordination of their deliveries; coordination of trade specific and provisional services; coordination of and participation in required inspections; and troubleshooting of unforeseen circumstances or circumstances beyond Contractor's control.
- 4) Contractor shall provide Owner, Owner's Bank, and their agents with access to the work site at all reasonable times for purposes of conducting inspections and monitoring the progress of Contractor's Work.

b. Provisional Services and Materials:

Unless otherwise directed by the Plans and Specifications, Contractor shall provide the following:

- 1) Construction equipment transportation and materials delivery;
- 2) Consumable construction supplies and fuels, and one-time-use materials as needed to properly perform Contractor's work;
- 3) Portable toilet service for workers use;
- 4) Services to accommodate the removal of construction debris.

c. Protection and Safety:

Unless otherwise dictated by the Plans and Specifications, Contractor shall, where applicable,

- 1) Provide supervisory oversight to assure safe workman practices and worksite conditions;

- 2) Erect temporary steps, railings, platforms, and other structures and signage as needed to promote safety during work progress;
- 3) Ensure appropriate handling of and maintain orderly storage of on-site construction equipment and materials to promote efficiency and safety during work progress;
- 4) Provide tarps and coverings as needed to protect structures and materials from outdoor weather conditions;
- 5) Appropriately protect existing finished floors around work areas and over passageways to work areas and cover existing immovable fixtures;
- 6) Erect temporary barriers as best as possible to separate and seal work areas from areas of Owner occupancy;
- 7) Keep driving and parking areas clear of construction fasteners that might puncture equipment and vehicle tires.

d. Cleaning:

Unless otherwise dictated by the Plans and Specifications, Contractor shall

- 1) Leave the worksite picked up, organized, and secure every day work is performed;
- 2) Leave the worksite swept, raked, organized, and secure for each weekend;
- 3) Cover any fixtures or areas that may be adversely affected by plasterwork;
- 4) Clean up immediately after all plasterwork;
- 5) Provide 24-hour indoor air filtration on the Owner-occupied side of temporary barriers when inside work is being performed;
- 6) Provide 24-hour indoor air filtration with carbon filtration when interior painting and/or floor finishing are being performed in an Owner-occupied area;
- 7) Remove all rubbish and waste material and leave Premises clean and ready for use upon completion of Contractor's work.

e. Assignment of Contract:

Contractor shall not assign this Construction Contract or part hereof without the written consent of Owner.

f. Materials Become Property of Owners:

When Contractor shall have received payment of any requisition; all materials referenced therein shall become the property of Owner and shall not be removed from the Premises.

g. Care of Premises:

From the time of the commencement of Contractor's Work until Contractor's work is completed and accepted by Owner, Contractor shall have the care of the Premises subject to the rights of the Owner.

9. Additional Owner Responsibilities

Unless otherwise dictated by the Plans and Specifications, Owner shall be responsible for the following:

- a. Providing utilities service as needed and as practical for Contractor's use in performance of Contractor's work;
- b. Relocation of any small plants requiring delicate handwork as needed prior to commencement of Contractor's work;
- c. Maintenance of decorative landscape plants temporarily moved and stored to allow performance of Contractor's work;
- d. Moving and storage of personal property as needed to allow unobstructed work areas prior to commencement of Contractor's work in a particular area;
- e. Owner assumes responsibility for replacement of lost or damaged items that are not removed from affected areas and/or areas that Contractor must access in order to perform construction services .
- f. Providing unimpeded access to the work site, including clearing of snow from driveways, at all reasonable times for purposes of enabling Contractor's Work and allowing inspections;
- g. Attendance at all predetermined meetings during regular working hours;
- h. Making and authorizing selections from the appropriate Contractor-designated vendors by the deadline date specified by Contractor;

- i. Parking of vehicles in Contractor-designated areas and promptly moving vehicles to accommodate construction work when asked by Contractor;
- j. Keeping pets, family, and third party individuals out of and safely away from areas where construction work is underway;
- k. Working in coordination with Contractor to resolve unforeseen and/or unplanned circumstances.
- l. Where specifications call for Owner to provide any materials or information, Owner shall be responsible for supplying such materials or information in a timely manner to allow for ordering and installation.
- m. Unless otherwise directed by Contractor, Owner shall not make inquiries with or give direction to any outside service contractor or Contractor personnel subordinate to the Project Supervisor.

Delays in construction or commencement of construction caused by Owner's failure to be timely in the above provisions shall not be deemed the responsibility of Contractor, and shall automatically extend the time of completion. Additional costs to Contractor, including but not limited to lost income created by untimely execution of the above Owner responsibilities, shall be borne by Owner.

10. Authority and Duties of Inspectors

Owner and inspectors employed by Owner shall be authorized to inspect all of Contractor's Work and all materials furnished. Such inspection may extend to all or any part of the work and preparation, fabrication, or manufacture of materials to be used in the performance of Contractor's Work. In the case of any dispute arising between Contractor and any inspector as to materials furnished, or the manner of performing the work, the inspector shall have the authority to reject materials or suspend work until Contractor and Owner resolve the dispute. Owner and inspectors employed by Owner are not authorized to revoke, alter, enlarge, or release any requirements of the Plans and Specifications, nor to approve or accept any performance of Contractor's Work, or to issue instructions contrary to the Plans and Specifications.

11. Insurance and Liability

- a. **Responsibility for Loss or Damage:** Owner shall not be responsible or accountable for any losses or damages that shall happen to Contractor's Work until Owner accepts such work. Owner shall not be responsible or accountable for any losses or damages that shall happen to Contractor's materials, tools, or equipment employed during the course of this Construction Contract.
- b. **Contractor's Insurance:**
 - 1) Contractor shall furnish and maintain such public liability and property damage insurance as shall protect Contractor and any subcontractor, performing work covered by this Construction Contract, from claims for damages for personal injury, including accidental death, except by persons protected by Worker's Compensation statute, and from claims for property damages, which may arise from operations under this Construction Contract, whether such operations be by Contractor or any subcontractor or by anyone directly or indirectly employed by either of them.
 - 2) Contractor shall maintain Worker's Compensation Insurance for all of its employees employed at the Premises and, in case any work is sublet, Contractor shall require any subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Contractor.
- c. **Owner's Insurance:**
 - 1) Owner may maintain such insurance as will protect them from contingent liability for damages to persons or property, which may arise from operations under this Contract.
 - 2) Owner shall effect and maintain for the benefit of the parties to this Contract, as their interests may appear, Fire and Extended Coverage Insurance to the extent of 100% of the value incorporated in the Residence as well as materials stored on the Premises, to be incorporated in the Residence, including form work in place, form lumber on the Premises, temporary structures, equipment and supplies incident to the construction of the Residence. Equipment owned or rented by Contractor, such as mixers, hoists, scaffolding, miscellaneous and small tools, canvasses, tarpaulins, forms and shores, the cost of which is not wholly included in the Contract Price, are not covered by this insurance.
- f. **Indemnity Clause:**
 - 1) Contractor shall not be liable for loss, damage, injury, or other incidental or consequential costs, expenses, or damages incurred by owner or any other person from any construction activity under this

Construction Contract other than for those explicit tasks Contractor is obliged to perform under this Construction Contract. Owner agrees to hold Contractor harmless for any such loss, damage or injury. Further, Owner agrees to indemnify Contractor for any such third party's loss, damage, or injury claims against Owner arising solely by reason of Contractor's prosecution of Contractor's Work.

- 2) Owner shall not be liable for loss, damage, injury, or other incidental or consequential costs, expenses, or damages incurred by Contractor or any other person from any construction activity under this Construction Contract other than those explicit tasks Owner is obliged to perform under this Construction Contract. Contractor agrees to hold Owner harmless for any such loss, damage, or injury. Further, Contractor agrees to indemnify Owner for any such third party's loss, damage, or injury claims against Owner arising solely by reason of Contractor's prosecution of Contractor's Work.

12. Acceptance

Except as provided for in Contractor's Limited Warranty, or as indicated on duly executed Project Completion and Acceptance form signed by Owner and Contractor, the acceptance of the Residence by Owner shall be deemed to be full performance and discharge of every agreement and obligation herein contained or expressed.

13. Settlement of Disputes

This contract shall be interpreted under the laws of the Commonwealth of Massachusetts. In the event of any dispute arising hereunder as to whether Contractor's work complies with the Plans and Specifications or whether payment is properly due and the same is not settled within fourteen days, then the parties may elect to resolve said dispute by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining. There shall be a single arbitrator. The Judgment on any award rendered by the arbitrator may be entered in any court having jurisdiction. The parties hereby agree to use reasonable efforts to resolve any disputes so as to avoid the cost and delay associated with arbitration. There shall be no obligation to submit this matter to arbitration.

14. Default and Remedies

- a. **Contractor's Default:** Should Contractor abandon Contractor's Work for more than fourteen consecutive days (other than by reason of a dispute or for reasons beyond Contractor's control), or should Contractor become insolvent, make an assignment for the benefit of creditors or the like, or should Contractor file a voluntary petition in bankruptcy, or should an involuntary petition in bankruptcy be filed against Contractor, or should a receiver be appointed for Contractor by any court of competent jurisdiction, then Contractor shall be deemed in default hereunder. In the event of such a default, Owner may replace Contractor at the Owner's discretion in order to mitigate damages. If Contractor fails to correct any of Contractor's Work which is not in accordance with the requirements of the Plans and Specifications or on three or more occasions fails to carry out Contractor's Work in accordance with the Plans and Specifications, Owner may stop the prosecution of Contractor's Work by written stop order delivered to Contractor specifying the exact reasons for said order, whereupon Contractor shall stop all work and proceed to take such action as is necessary and appropriate to correct the work specified in Owner's stop order; which does not comply with the Plans and Specifications; provided, however, that should said stop order have been issued by Owner without good cause, then any delay caused thereby shall extend the Completion Date by the number of days equal to such a delay. The right of Owner to stop Contractor's Work shall not give rise to a duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity. If after receiving the Owner's stop work order Contractor defaults or fails to make such correction specified in Owner's stop order, Owner shall give written notice thereof to Contractor specifying the exact reasons for Contractor's alleged default, whereupon Contractor shall have ten days to cure any such default, if any, provided that such cure period shall be reduced to seven days in the case of Contractor's default by reason of failure to prosecute Contractor's obligations under this Construction Contract. In the event Contractor fails to cure any claimed default within the time provided for same, then Owner may terminate this Construction Contract and, after paying to Contractor all due moneys for delivered goods and satisfactorily completed services supplied by Contractor, take possession of the Premises and complete Contractor's Work, or take any other action necessary at the Owner's discretion.
- b. **Owner's Default:** Should Owner fail to make any payment provided for in this Construction Contract or should Owner attempt to terminate this Construction Contract without good cause, then Contractor shall have the following remedies, in addition to any remedies available at law or in equity:

- 1) Contractor may proceed to enforce this Construction Contract or seek damages for its breach in a court of competent jurisdiction.
- 2) Owner expressly agrees to pay Contractor, in addition to any moneys due for satisfactorily delivered goods and satisfactorily completed services, a sum equal to 50% of the remaining balance of the Construction Contract.
- 3) The unpaid balance of satisfactorily delivered goods and satisfactorily completed services shall accrue interest at the rate of 1.5% per month from the date of Owner's breach of this Construction Contract.

15. Collection of Outstanding Balances

In the event that Contractor has to undertake collection of any outstanding balance, or take legal action to enforce any of rights due Contractor under this Agreement, Owner shall pay, in addition to any outstanding obligation, reasonable costs and attorney's fees incurred by Contractor resulting from the necessity of having to take such action.

16. Captions

Captions of paragraphs and subparagraphs are for convenience only and should not be relied upon.

17. Merger

All prior negotiations, statements, representations, warranties, and agreements, if any, pertaining to any or all of the details of this transaction are superseded by and merged into this Construction Contract, which contract constitutes the entire agreement of parties.

Contractor

Date

DO NOT SIGN THIS CONTRACT IF THERE ARE ANY BLANK SPACES

Owner(s)

Date