

812362

CONSTRUCTION AGREEMENT

THIS AGREEMENT, made and entered this 17th day of July, 1985, by and between T-K BUILDERS, INC., and TIMOTHY K. HENDERLONG, hereinafter referred to as the "Contractor" and MIKE and DOROTHY PAUNOVICH, hereinafter referred to as the "Owner".

WHEREAS, the Contractor is in the business of constructing single-family dwellings in the area of Valparaiso, Indiana, and desires to construct a single-family residence on real property owned by the Owners; and,

WHEREAS, the Owner owns real property commonly known as Lot 568-S, Shorewood Forest, Valparaiso, Indiana, and more fully described as follows:

Lot 568 in Shorewood Forest Section 16, as shown in Plat File 16-A-3C, Porter County, Indiana and commonly known as: 493 Ashford Lane, Valparaiso, Indiana

WHEREAS, the Parties desire to enter into a Contract for the erection of a single-family residence on said lot in Valparaiso, Indiana;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Construction and Plans. The Contractor shall construct a single-family residence, hereinafter referred to as the "project", on the real property owned by the owner, described above, according to the plans, specifications and drawings which have been agreed upon and initialed by the Contractor and the Owner, and which are attached hereto and incorporated herein by reference as Exhibit "A", and upon the terms set forth in this Agreement. The Contractor shall be responsible for ensuring that the plans and specifications comply with the applicable building codes and any other applicable laws or regulations.

2. Purchase Price. The total purchase price to be paid by the owner to the Contractor for the completed residence is Ninety-two Thousand Two Hundred Fifty-five (\$92,255.00) Dollars. The Owner shall pay or shall authorize the Owner's mortgagee to pay, directly to the Contractor, the following sums at the following times which shall be credited against the total purchase price:

- (a) Upon preparation of the blueprint plans and specifications, receipt of which is hereby acknowledged by the Contractor \$ 500.00
- (b) Upon execution of this Agreement, as a deposit, receipt of which is hereby acknowledged by the Contractor \$ 5,000.00
- (c) Upon pouring of basement and foundation \$ 5,500.00
- (d) Upon roof enclosure \$30,000.00
- (e) Upon completion as defined in Paragraph 5 hereof \$51,755.00

the final payment of the purchase price shall take place at the office of the Owner's mortgagee within ten (10) days after the completion of construction of the project as defined in Paragraph 5 hereof.

3. Owner's Mortgage. This Agreement is contingent upon the Owner arranging for construction draws and securing a conventional mortgage in the amount of Seventy-two Thousand Two Hundred Fifty-five Dollars (\$72,255.00) for a term of 30 years, and paying Twenty Thousand and no/100 Dollars (\$ 20,000.00 ) down plus all mortgage costs, prepaid items, and adjustments, in cash. The Owner shall apply, at his own expense, for such mortgage within ten (10) days after the execution of this Agreement. If a commitment for such

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD  
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RUDOLPH CEAY  
RECORDER

ALLEN & SARKISIAN  
ATTORNEYS AT LAW  
5825 BROADWAY  
MERRILLVILLE, IN  
46410  
310 981-1718

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mortgage is not obtained within thirty (30) days after the date of execution of this Agreement, this Agreement shall immediately become null and void and the deposit shall be returned to the owner, unless, before the time for obtaining said commitment has expired, an extension of time has been agreed upon and acknowledged in writing by all parties hereto. The Owner agrees to execute all mortgages, notes, and other documents reasonably required by the mortgagee pursuant to its commitment.

4. Time for Completion. The project shall be completed by the Contractor within four (4) months from the date Owner obtains a mortgage commitment; provided, however, that the Contractor shall not be responsible for delays due solely to causes beyond its control, to-wit: strikes, lockouts, unavailability of materials, fire, storm, theft, vandalism or other Acts of God. The financial inability of the Contractor to perform any act shall not be deemed beyond the control of the Contractor. The Contractor shall send the Owner a notice in writing of the completion of the project after issuance of a Certificate of Occupancy. The Owner has five (5) days from receipt of said notice to inspect said project for defects and fifteen (15) days from receipt of said notice to deliver to the Contractor a written list of all defects that must be corrected before the Owner will accept the project. Failure of the Owner to deliver to the Contractor a list of defects within the stated time will constitute acceptance of the project fully completed. Omission of any apparent defects or defects which should be apparent upon reasonable inspection from said list will constitute acceptance of the residence with those defects. Upon correction of those defects to the satisfaction of the Owner, the residence will be deemed complete.

The Contractor shall furnish to the Owner assignments of all warranties in connection with any and all fixtures, equipment, appliances, and personal property installed by the Contractor on or about the project. The contractor shall be entitled to possession of the premises herein-described until the full purchase price has been paid to the Contractor. The Owner shall not occupy the premises until the project is complete and payment of the final installment of the purchase price has been made pursuant to Paragraph 2(e) of this Agreement, except as provided hereinafter.

5. Changes and Extras. Any and all additions, changes, and/or extras desired by the Owner shall be expressly authorized in writing and paid for in full by Owner at cost plus Ten (10%) percent prior to said additions, changes, and/or extras being constructed or installed by the Contractor. Upon the prior written approval of the Owner, any material specified in this Agreement or Exhibit "A" that the Contractor is unable to supply as a result of a national emergency may be substituted with materials of like kind and quality, and any differences in price will be adjusted at the time of final payment, such payments to be in addition to or deducted from any amount owing under this Agreement.

6. Insurance During Construction. The Contractor shall procure and maintain "all risk" insurance against loss of or damage to all work performed and materials delivered to the project including, but not limited, losses caused by fire, theft, vandalism and malicious mischief, in the amount of the total cost of the work, to ensure the Parties hereto and the mortgagee as their interests may appear. The Contractor shall procure and maintain in addition, insurance for bodily injury, property damage and automobile liability, and shall hold the Owner harmless from any and all liability arising from the performance of Contractor's obligations under or pursuant to this Agreement. The Contractor shall comply with the Workmen's Compensation laws of the State of Indiana.

7. Materials and Remedy of Defects. The Contractor warrants and guarantees to the Owner that all materials and fixtures will be new unless otherwise specified, and that all work will be of good quality and free from false or defects and in accordance with the requirements of the plans, specifications and drawings as shown in Exhibit "A". After final payment is made pursuant to this Agreement and prior to the expiration of one (1) year after the date of completion, as herein-defined, upon notice from the Owner, the Contractor shall, without cost to the Owner, remedy any defects in workmanship, provided, however, that the Contractor shall not be responsible for conditions, defects or damage to the project which are the result of contraction, expansion or other normal and/or ordinary characteristics of building materials, or normal wear and tear.

8. Permits and Fees. The Contractor shall pay for all permits and permit bonds necessary for the construction of the project to be constructed pursuant to this Agreement.

9. Substantial Completion and Occupancy. In the event that the Owner desires to occupy the project when it has been substantially completed, although lacking full completion as to existing cement work, grading, exterior painting or other similar items, the completion of which is prevented by weather or other conditions beyond the control of the Contractor, then the Owner may at his option occupy the premises providing that he shall pay the balance of the purchase price to the Contractor less the amount owing for the uncompleted items, and the Contractor shall furnish to the Owner a work order which specifies all work and/or materials remaining to be furnished, and which states that upon the completion of the items listed in the work order, the Owner shall pay the Contractor the amount specified.

10. Trees. The Contractor shall not be held liable for the removal, damage, or life of any tree or trees before, during or after construction, and also the Contractor may remove any tree or trees, if in his judgment it is deemed necessary for the proper construction of the single-family dwelling or driveway or for surface drainage.

11. Owner's Power to Terminate Contract. If the Contractor commits any of the acts specified in this paragraph, the Owner may, by giving ten (10) days notice in writing thereof to the Contractor, without prejudice to any other rights or remedies given the Owner by law or by this Agreement, terminate the services of the Contractor under this Agreement; take possession of all materials, tools and appliances located on such premises; and complete said project by whatever method the Owner may deem expedient. The Contractor shall be deemed to have committed an act specified in this paragraph if he shall:

(a) Make a general assignment for the benefit of his creditors or become insolvent;

(b) Refuse or fail to supply enough properly skilled workers or proper materials to complete said project in the time specified in this Contract;

(c) Fail to make prompt payment to sub-contractors, laborers or materialmen for labor performed on or materials furnished to this project;

(d) Persistently disregard any law or ordinance relating the project or the completion thereof; or,

(e) Otherwise commit a substantial violation of any provision of this Agreement.

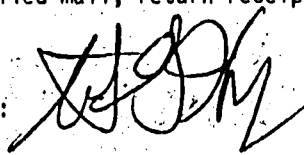
Should the Owner terminate the services of the Contractor and complete the project, the Contractor shall not be entitled to receive any further payment under this Agreement until the project is fully completed. On completion of the project by the Owner, if the unpaid balance of the contract price exceeds the expenses incurred by the Owner in completing said project, including any compensation paid by the Owner for managerial, administrative or supervisory services in completing said project, such excess shall be promptly paid by the Owner to the Contractor. If, however, on completion of the project by the Owner, the expenses incurred by the Owner in completing said project, as aforesaid, exceed the unpaid balance of the contract price, such excess shall be promptly paid by the Contractor to the Owner.

12. Contractor's Power to Terminate Contract. If the Owner fails to pay to the Contractor any amount payable pursuant to this Agreement within five (5) days after it becomes due, the Contractor may, by giving ten (10) days written notice thereof to the Owner, terminate his services under this Agreement, and stop work on the project until all past due payments have been received by him and the Owner has posted a bond satisfactory to the Contractor for the payment of all amounts that will thereafter become due to the Contractor under this Agreement; or the Contractor may elect, at his option, to declare a forfeiture of this Agreement and retain any payments received as liquidated damages.


13. No-Lien Stipulation. Contractor for itself and all Parties claiming through Contractor who would be entitled to liens as provided in I.C. §32-8-3-1, agree with Owner that no liens shall attach to the land described herein or to any improvements now existing or to be constructed thereon in favor of any sub-contractor, mechanic, journeyman, laborer, material vendor, lessor of tools or equipment or any other party who may furnish work, material, services, tools or machinery for the construction of improvements on the land or pursuant to any subsequent agreement between the Owner and Contractor to furnish extras or additions, and hereby waives all right to or claims for mechanic's liens for such work, material, services and the use of tools or machinery.

14. Miscellaneous Provisions. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors, and assigns. The paragraph headings are inserted in this Agreement only for convenience, and in no way define or limit the scope or intent of any provision. If any term, paragraph or provision of this Agreement is held to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be impaired or invalidated thereby. Any notice or other communication required or desired to be given under this Agreement, shall be in writing and shall be deemed to have been sufficiently given or served, for all purposes, if sent by certified mail, return receipt requested, to the following addresses:

Contractor:

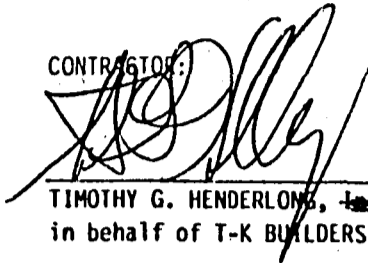
  
630 N. Main Street  
Hebron, Indiana 46341

Owner:


  
1447 Woodview Drive #3D  
Crown Point, Indiana 46307

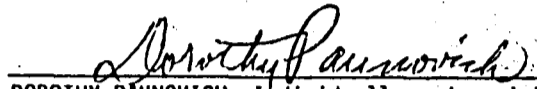
This Agreement supersedes any and all previous agreements, either oral or in writing, between the Parties hereto with respect to the subject matter of this Agreement. No changes or modifications of this Agreement shall be valid unless in writing and signed by all of the Parties to the Agreement.

CONTRACTOR:

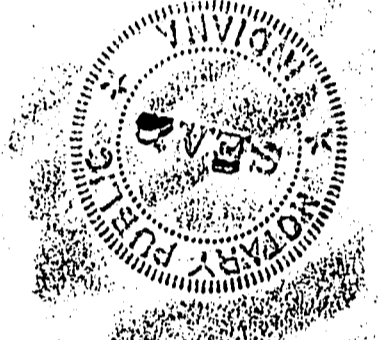
  
Treesdale  
TIMOTHY G. HENDERLONG, ~~Individually and~~  
in behalf of T-K BUILDERS, INC.

OWNERS:

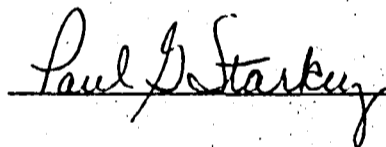
  
MIKE PAUNOVICH, Individually and as joint  
Tenant by the Entirety

  
DOROTHY PAUNOVICH, Individually and as joint  
Tenant by the Entirety

STATE OF INDIANA )  
  ) SS:  
COUNTY OF LAKE )



Before me, a Notary Public, in and for said County and State, personally appeared the foregoing TIMOTHY G. HENDERLONG, MIKE PAUNOVICH and DOROTHY PAUNOVICH, and acknowledged their signature and this act to be their true and voluntary deed.

  
Notary Public

My Commission Expires:      **PAUL G. STARKEY**  
  **NOTARY PUBLIC**  
My County of Residence:      My commission Expires Nov. 29, 1987  
  County of Residence - LAKE

This Instrument Prepared By:

Kenneth J. Allen, Esq.  
ALLEN & SARKISIAN  
Attorneys at Law  
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Merrillville, Indiana 46410  
(219) 981-1718

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