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Doc#: 1017247017 **Fee:** \$80.25
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 06/21/2010 08:49 AM Pg: 1 of 22

Property of Cook County Clerk's Office

Sellers: Atherton Industries LLC Contract
6515 Firepoint
Tinley Park, IL 60477
Buyers: Sustek/Bartkowski
\$32,000 Earnest Money given

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BUILD/RENOVATE CONTRACT

THIS AGREEMENT, Made as of September 2nd In the Year of 2009

Between the Owner: Kristopher Sustek, 14732 Kenton, Midlothian, 708-932-1554
Debra Bartkowski, 14858 Parkside, Oak Forest, 708-687-7295
Lauren Bartkowski, 14732 Kenton, Midlothian, 708-642, 1199

And the Contractor: Atherton Industries, LLC
18620 S. 81st Avenue
Tinley Park, Illinois 60487
708-364-9404

For the Project: Craftsman Style Home to be built @6515 Pine Point, Tinley Park

ARTICLE 1. CONTRACT DOCUMENTS

- 1.1 The contract documents consist of this agreement, general conditions, construction documents, specifications, allowances, finish schedules, construction draw schedule, information disclosure statement, all addenda issued prior to execution of this agreement and all change orders or modifications issued and agreed to by both parties. All documents noted herein shall be provided to the Contractor by the Owner. These contract documents represent the entire agreement of both parties and supersede any prior oral or written agreement. Customer acknowledges that general specifications on page 1 of Blueprints are guidelines only and may not apply to their project. Customer should read and understand all special notes on Page 1 (cover page) of Blueprints. Compliance is essential. It is the sole responsibility of the owner to read and understand this contract in its entirety.
- 1.2 The agreed upon budget between the owner and the contractor which is included as part of these contract documents is the dominant document which the owner shall refer to and abide by as it relates to their expenditures on the project. While it is possible to shift monies between sub-categories of the budget in no terms can the base budget be increased or modified (change Orders signed & funded exempted) without a specified addendum to this contract. Atherton shall be obligated to abide by the budget only and should the budget not provide for certain functions, materials etc. to complete the project then Atherton shall not be held responsible to complete these tasks or projects. The limitations of the budget documents are the limitations to the project and its completion.
- 1.3

ARTICLE 2. SCOPE OF WORK

- 2.1 The Owner agrees to purchase and the Contractor agrees to construct the above mentioned structure and fixtures attached thereto in the Village of Tinley Park, located in Cook County and the State of Illinois according to the construction documents, allowances, finish schedules, all addenda, change orders, modifications and specifications set forth in the scope of work.

Scope of Work:

To be completed according to the guidelines of the Contractors Statement and the Budget as outlined.

Home will be Craftsman Style with at least 3 bedrooms, 2.5 baths. 3rd floor recreation room.

Initialed by Owner

Contractor

AS [Signature]

[Signature]

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Build/Renovate Contract
 Sustek, D. Bartkowski & L. Bartkowski Project
 Page 2 of 12
Open Floor Plan. 2+ car garage.

Atherton Design Group has produced a permit ready set of blue prints which the customer will review and approve. The broad scope of work is essentially included within the body of the blueprints, but may be modified or changed via written change order or budget considerations. . . . Contractor retains the right to modify or change specifications on the blueprints as field conditions or budget constraints warrant. It will be imperative that the customer make product selections within the budget and project total document (UDA) which is being provided as part of this contract.

My Applicable *AB* *KS*

Atherton will use Blueprints provided by Atherton Design Group. Project is subject to modification by our Designers and Field Conditions.

Base Price of the Project shall be \$350,000.00

INCENTIVES: To Include

7% discount off build budget. \$5,000.00 per \$100,000 in rebate.

The Build Contract will be predicated on the ability of the Homeowner, Bartkowski to secure financing for the project with terms and conditions acceptable to the Homeowner, Bartkowski and Atherton Industries. Should owner be unable to secure financing, then Atherton retains the right to do so on behalf of the owner.

Atherton shall not be responsible for monitoring or controlling in any form or fashion, the owners' budget, finances, financing etc. It is the sole responsibility of the owner to maintain proper fiscal control over the project and its related financial issues. It is implied that the owner shall maintain adequate financial capabilities to pay for the project in its entirety including a increased scope of work, change orders etc.

The customer agrees that the gross budget number and the accompanying UDA budget schedule represents the sum total (subject to Change Orders) for the project. As such the customer acknowledges that Atherton's profit margin (24%) is included in that gross budget number and actual usable funds for the project shall be net of that 24%. The customer acknowledges that over runs in certain sub-categories of the budget or customer initiated discretionary transfers between sub-categories of the budget shall not alter the gross project number or Atherton's profit.

Optional

60% of the Design Fee may be rebated to the Customer as part of the build contract should the Customer proceed with proposed project. If owner does not proceed, Atherton shall retain entire fee. The rebate will be taken into consideration at the time of the final reconciliation and accounting..

My Applicable *AB* *KS*

ARTICLE 3. TIME OF COMPLETION

3.1 The approximate commencement date of the project shall Fall of 2009. The **approximate** completion date will be Spring of 2010, however any change orders and/or unusual weather might delay or otherwise affect the completion date.

Initialed by Owner Contractor *My*

AB *KS*

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Build/Renovate Contract
Sustek, D. Bartkowski & L. Bartkowski Project
Page 3 of 12

ARTICLE 4. THE CONTRACT PRICE

- 4.1 The purchase price of the project shall be set at the sum of Three Hundred Fifty Thousand Dollars (**\$350,000.00**) subject to additions and deductions pursuant to authorized change orders and allowances. Closing costs shall be paid by the Owner.

Customer to pay Two Hundred Fifteen Thousand Dollars, (\$215,000.00 for the property located at 6515 Pine Point in Tinley Park, IL., the balance to be used for the construction budget.

Owner's Funding Sources is:

Bank Cash Construction Loan

Other (Specify) _____

The Owner and the Contractor acknowledge that the Owner will pay a sum of Twenty Thousand Dollars (\$20,000.00), upon signing of this contract and before construction begins as a deposit and part of the purchase price of the project.

- 4.2 Permit costs are unknown at the time of this contract and shall be paid for as part of the contract price.
- 4.3 Owner acknowledges that the contract price is approximate and shall be modified (if applicable) by changes in the scope of Work, budget constraints and/or Change Orders.

NOTES:

- 1) Owner must purchase property prior to the commencement of construction. Failure to do so may result in the loss of any applicable tax credits.
- 2) Site, Utility, or engineering upgrades which may be required by the local municipality is not included in the construction budget, and will be added as a change order should the municipality require such upgrades.

Competitive Pricing

Owner acknowledges that Atherton retains the right to renegotiate or terminate the contract should the owner "take control" of any aspect of the project without the express written consent of Atherton. The owner shall not have the authority to contract any or all portions of the project or engage in owner "sweat equity" as it relates to the project in part or whole without the express written consent of Atherton. The owner shall not be authorized to purchase, barter, trade, swap etc. for any labor and/or material related to the project without the express written consent of Atherton. A termination of this contract does not relieve the owner of payment or prior payments due Contractor.

Surcharge

Customer acknowledges that Atherton Industries LLC adds a 15% surcharge to any and all material purchases related to the project whether or not these material purchases are completed by either Atherton, the owner or any third party, whether included in the budget, change orders, revised scope of work, special purchases etc. All material purchases directly related to the project are subject to this surcharge.

ARTICLE 5. PROGRESS PAYMENTS

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Contractor

SB [Signature]

[Signature]

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Build/Renovate Contract
Sustek, D. Bartkowski & L. Bartkowski Project
Page 4 of 12

The Owner, after the initial agreed to Down Payment, shall agree to a Draw schedule (i.e. progress payments as the job progresses).

- 5.1 The Owner will make payments to the contractor pursuant to the attached construction draw schedule as work required by said schedule is satisfactorily completed. Owner shall make draw payments to contractor within Five (5) days after request by contractor. Should the owner fail to make payment, contractor may charge a penalty of (12%) annually upon the unpaid amount until paid.
- 5.2 If payment is not received by the Contractor within Five (5) days after delivery of payment demand for work satisfactorily completed, contractor shall have the right to stop work or terminate the contract at his option. Termination by Contractor under the provisions of this paragraph shall not relieve the Owner of the obligations of payments to Contractor for that part of the work performed prior to such termination. Termination by Owner under the provisions of this paragraph shall not relieve the Owner of the obligations of payments to Contractor for that part of the work performed prior to such termination.
- 5.3 Should the owners financing for the project consist of a formalized Bank Construction Loan with or without Title Company involvement, then Atherton shall be entitled to a fee in order to defray Atherton expenses related to the increased costs necessary to comply with the bank financing.

V.V. APB
E. J. W. APB
Applicable

Not Applicable

ARTICLE 6. DUTIES OF THE CONTRACTOR

- 6.1 All work shall be in accordance to the provisions of the plans and specifications. All systems shall be in good working order. All systems (i.e. plumbing, electric HVAC) shall be in good working order. Normal processes needed to make old and new construction mate shall be anticipated and executed (within reason). Owner acknowledges that substantial modifications or code violations on the existing structure/systems fall outside the normal scope of work needed to upgrade electrical, plumbing, HVAC system etc. Furthermore the owner acknowledges and represents that no major structural or foundation deficiencies exist in the structure. Should evidence of major damage or deficiencies be present, then solution and cost models shall be discussed and agreed upon as additional cost and time considerations to the contract.
- 6.2 All work shall be completed in a workman like manner, and shall comply with all applicable national, state and local building codes and laws.
- 6.3 All work shall be performed by licensed individuals to perform their said work, as outlined by law.
- 6.4 Contractor shall obtain all permits necessary for the work to be completed.
- 6.5 Contractor shall remove all construction debris and leave the project in a broom clean condition.
- 6.6 Upon satisfactory payment being made for any portion of the work performed, Contractor shall furnish a full and unconditional release from any claim or mechanics' lien for that portion of the work for which payment has been made.
- 6.7 Contractor shall secure the premises against the effects of weather upon the structure and its contents to the best of its abilities, however, the contractor states and the owner acknowledges and accepts that the structure and its contents cannot be practically or fully protected from adverse weather conditions and agrees to hold Atherton harmless for

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Contractor

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Build/Renovate Contract
Sustek, D. Bartkowski & L. Bartkowski Project
Page 5 of 12

weather related damages to the structure and/or its contents. Should owner request an after hours crew to re-secure tarps etc. a fee of \$150.00 per hr. for a two man crew shall apply.

- 6.8 Contractor agrees to perform practical protective measures against theft and damage to the structure and its contents during the project, however, the contractor states and the owner accepts. The fact that these measures have limitations and as such agree to hold Atherton harmless for any theft or damage to the structure and its contents.

ARTICLE 7. OWNER

- 7.1 The Owner shall communicate with subcontractors only through the Contractor.
- 7.2 The Owner will not assume any liability or responsibility, nor have control over or charge of construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the project, since these are solely the Contractor's responsibility.
- 7.3 (If Applicable) Should the owner elect to remain in the premises being renovated, then the owners shall acknowledge and agree to the following and extend this agreement to any persons that the owner shall have on the premises:
- 1) Atherton shall make its best efforts to protect the structure and its contents from weather and security issues. However, given the fact that the premises shall not be secure and subject to multiple parties having access to the site, then Atherton shall not be responsible beyond the normal scope of its responsibilities as a contractor to secure the project site.
 - 2) Atherton cannot nor shall not be responsible for damage or theft to the existing home and its contents.
 - 3) The owner acknowledges that remaining on site during the renovations may be an extreme disruption to their lives & daily routines. Owner acknowledges and accepts those disruptions.
 - 4) Atherton shall not be responsible for any personal injury or medical ailment should it occur to any occupants of the home during renovation. Atherton has no control over the movement around the site by occupants.
 - 5) Owner acknowledges that disruption in mechanical services is likely and that the loss of mechanicals and any resulting damages shall not be the responsibility of Atherton.
 - 6) Dirt, dust & debris is a by-product of construction. The owner acknowledges that these conditions do and will exist on a construction site and agree to hold Atherton harmless for these conditions. Atherton agrees to keep the job site as clean and safe as practical and will leave job site broom-clean upon completion.

Accepted N/A (if applicable)

ARTICLE 8. CHANGE ORDERS AND FINISH SCHEDULES

8.1 A Change Order is any change to the original plans and/or specifications. All change orders need to be agreed upon in writing, including cost, additional time considerations, approximate dates when the work will begin and be completed, a legal description of the location where the work will be done and signed by both parties. **All change order costs shall be added to the base price of the project and payable at 100%, due upon signing of the Change Order and a 12% flat fee shall be added to ALL Change Orders and budget (or other) overages in excess of initial contract allowances.** Should owner order extra work by the use of a Change Order and it is signed by owner, then it is the responsibility of the owner to secure a copy of said Change Order signed by a Project Manager or officer of Atherton, failure on the part of the owner shall in no way diminish or invalidate the Change Order for the benefit of Atherton.

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Build/Renovate Contract
Sustek, D. Bartkowski & L. Bartkowski Project
Page 6 of 12

8.2 Completed Finish Selection Schedules shall be submitted to the Contractor as follows/or as needed.

8.2.1 Schedule #1 within four weeks after site clearing begins.

8.2.2 Schedule #2 within eight weeks after site clearing begins.

8.3 Any delays or changes in finish selection schedules will delay the projected completion date.

8.4 Atherton shall not order, procure, install any materials or perform any tasks until such times as a signed and funded Change Order is completed, no exceptions. Should a delay in procuring a customer requested Change Order occur, the customer agrees to pay Atherton for any and all delays on the project and its completion.

ARTICLE 9. INSURANCE

9.1 The Owner will keep in force a Builder's Risk Insurance Policy on the said property to protect both the owner's and the contractor's interests until construction is completed.

9.2 The Owner will purchase and maintain property insurance to the full and insurable value of the project, in case of a fire, vandalism, malicious mischief or other instances that may occur.

ARTICLE 10. GENERAL PROVISIONS

Owner acknowledges that this renovation is not "new" construction in the classic definition, but is accurately defined as a "major renovation". As such, certain aspects of the property or project (i.e. landscaping, foundation, grading, exterior walls, etc.) may be incorporated into the renovation. Unless specified in the contract, Atherton Industries shall not be responsible for changing, modifying, upgrading etc. these pre-existing conditions.

10.1 If conditions are encountered at the construction site which are subsurface or otherwise concealed physical conditions or unknown physical conditions of an unusual nature, which differ naturally from those ordinarily found to exist and generally recognized as inherent in construction activities, the Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, and/or time required for, performance of any part of the work, will negotiate with the Contractor an equitable adjustment in the contract sum, contract time or both.

10.2 The buyer will be named "general contractor" on any permit applications where the buyer will ultimately be responsible for securing the final completion certificate, occupancy permit or other final approval with their respective building departments. In such an instance where the owner is completing a portion of the work on the project, then the owner shall be responsible to comply with and ultimately secure a final inspection or occupancy permit.

10.3 Atherton shall not be responsible for any taxes, fees, property related payments, etc. which may be owing by the owner before, during or after the project.

10.4 Atherton shall not be responsible for modification, repair or upgrades to any and all existing site utilities such as water and sewer unless this function is included in the scope of work and is named specifically to perform that modification, repair or upgrade.

10.5 Final payment shall be made upon "substantial completion" of the project. Substantial completion is the date when the work under the contract is substantially completed, (regardless of whether the property still requires detailing, such as painting, landscaping, decoration or execution of a "punch" list), no payment under the contract shall be

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Build/Renovate Contract


Sustek, D. Bartkowski & L. Bartkowski Project

Page 7 of 12

- withheld because of 1) any inspection required by the municipality, 2) any occupancy or use permit has not been issued, 3) because of any product malfunction or work being performed on the property by the owner or any third party other than Atherton.
- 10.6 Atherton retains the right to make appropriate variations and/or modifications to work tasks as needed. Atherton retains the right to substitute materials or brand name of equal or better quality, utility or color without consent of buyer.
- 10.7 Atherton retains the right to make any changes in construction as may, in Atherton's judgment, be required by material shortages, design or construction processes considerations, other emergency situations or other causes deemed disruptive to the build and its schedule at the discretions of Atherton, without invalidating the contract.
- 10.8 Atherton employees or sub-contractors do not have the authority to bind Atherton to any waiver, Change Order, amendment or addendum to the contract.
- 10.9 Owner authorizes all necessary changes to the plans or specifications. All will be in compliance with all local, state and federal codes and ordinances.
- 10.10 The owner agrees to make available without cost to the contractor the use of any and all utilities on the project site including but not limited to water, heat, electric, etc.
- 10.11 The owner may cancel (in writing to Atherton) this transaction at any time prior to midnight of the Third (3rd) business day after the signing of this contract. Cancellation (subject to Atherton approval) of this contract by the owner after the third business day will result in a loss of any and all deposits by the owner as well as acknowledging that Atherton retains the right to seek redress for any and all damages or profits lost as a result of that cancellation. Losses include, but are not limited to any and all expenses incurred by Atherton on behalf of the owner.


IMPORTANT NOTICE: Under the Illinois Home Repair and Remodeling Act 815-ILCS 513/1, a consumer has the right to cancel this signed contract within three (3) business days. The consumer is urged to review this contract within that three day time period. Furthermore the government provided a pamphlet "Home Repair" know your consumer rights is available on line at www.ilga.gov

I HAVE READ AND ACKNOWLEDGE THIS RIGHT OF CANCELLATION


 Owners Signature

- 10.12 All dimensions shown in the blueprints are approximate and subject to modifications as dictated by build & field conditions. As variations color shade and finish are inherent in all products, Atherton shall not be responsible for these fluctuations.
- 10.13 Owner authorizes Atherton to display promotional signs and to take photographs of the project for both documentation as well as promotional without compensations to the owner; and agree to allow a sign to remain on site for up to one year.
- 10.14 Owner agrees to make product selections or any other general decisions in a timely manner so as to not disrupt the flow or build schedule of the project. Should the owners fail to provide the necessary product selections or decisions as needed, then the owner agrees to pay Atherton 1% of the contract value for each 10 calendar days of delay. If the delay exceeds 30 days, then Atherton retains the right to terminate the contract. Termination of the contract does not release the owner from any monies or penalties due

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Build/Renovate Contract

Sustek, D. Bartkowski & L. Bartkowski Project

Page 8 of 12

Atherton.

- 10.15 Atherton calls to the owner's attention the limitations of matching new product and material selection in matching existing materials on the project. While Atherton shall make its best effort, Atherton cannot guarantee an exact match.
- 10.16 Owner will not hold Atherton responsible for any damage to driveways, landscaping or other personal property on site and in proximity to the build project. The owner is encouraged to remove or protect any affected landscaping or personal property.
- 10.17 Owner agrees to remove any shrubs, flowers, plants, decks, fences, play equipment, personal property etc. which may hinder Atherton work on the project. Owners failure to protect or remove these items shall cause the owner to hold Atherton harmless from any damages, monetary or otherwise.
- 10.18 Owner acknowledges and accepts the limitations of Atherton's best effort to protect the property and contents of said property from weather damages. As such, owner agrees to hold Atherton harmless from any and all recourse or damages caused by weather damage to the property, structure and contents. Owner also agrees to extend the hold harmless agreement to acts of theft, vandalism and/or any other security issues. The owner is encouraged to secure, remove and protect all personal property or contents of the home and property prior to the build start.
- 10.19 **Limited Liability.** Atherton shall not be responsible for damage caused by the owner, acts of God, riots, acts of war, terrorism, vandalism, abnormal weather conditions, rain or water damage to owners property, if roofs and walls cannot be closed up in time (reasonable time). Atherton shall not be responsible for expansions cracks, putty spotting or freezing of concrete work. Atherton shall not responsible for delays or additional costs caused by material being supplied by owner of work being performed by other sub-contractors, (unless specifically stated in the contract) on behalf of owner.
- 10.20 Atherton is not responsible for final site grading. Atherton shall not be responsible for sub-soil settlement, sub-soil water or flooding. Owner represents and warrants that the soil conditions of the property will permit the work, if requested by Atherton - owner agrees to pay for and provide soil tests. Unless specified in the contract, Atherton shall not be responsible for any damage to the interior of the house during construction. Risk of loss for work and material installed in or on structure is on the owner. All surplus material remains Atherton property.
- 10.21 **Existing Conditions** Atherton calls attention of the owner to the possibility of presently existing conditions which violate building codes or other regulations. Owner agrees to pay Atherton for any additional work performed by Atherton required by any official inspections to correct such violations. Owner further agrees that should prevailing building codes require additional items to be done other than those specifically contracted for, such items are to be done by owner or priced as extras by Atherton. Unless specifically stated elsewhere in the contract, upgrades to existing electric, mechanical, water or other utility service that may be required are not included and owner will pay any additional cost. If unusual or unforeseen subsoil conditions or obstructions below grade, such as clay sewer pipes, cistern, old concrete footings, etc., require changing by local building department or to allow completion of the contract, cost of making these changes are the owner's responsibility. Owner is responsible for charges from utility companies for relocations and/or upgrades of utility services. Owner will not unreasonably withhold approval of additional work or additional items as provided above.
- 10.22 **Unforeseen Work** Unless specifically stated in this contract, Atherton will not be responsible to correct or relocate hidden structural or mechanical items located in areas of demolition, breakthroughs, or construction tie-ins or for additional work required by

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Build/Renovate Contract

Sustek, D. Bartkowski & L. Bartkowski Project

Page 9 of 12

other contractors. Owner shall pay the additional the additional cost for Atherton to correct and/or relocate such items. Atherton is not responsible for the inspection, discovery, abatement, introduction or removal of any hazardous materials, including but not limited to, asbestos, lead paint, radon, mold, mildew or other allergens, and that the owner, to the best of their knowledge, represents and warrants, that the Real Estate to be improved is free from any such hazardous materials. Owner further covenants and agrees not to prosecute or aid any action against Atherton based upon such hazardous materials. Atherton shall not be liable for damages if prevented from installing products through any act or negligence of the owner, any acts of God, and reasons beyond Atherton's control or by reason of any rule or regulation restricting use of materials made by any board or agency regulating same.

10.23 Arbitration any controversy or claim arising out of, or relating to this contract, or the breach thereof ("claim") shall be resolved by binding arbitration. All arbitrations shall be conducted in Chicago, Illinois before an arbitrator selected in accordance with, and shall be conducted pursuant to, the Construction Industry Arbitration Rules of the American Arbitration Association (www.adr.org) or any other alternative dispute resolution firm, at Atherton's sole discretion. The arbitrator will have no authority to award punitive damages or any other damages not measured by the greater of the prevailing party's liquidated, contractual or actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of the Contract. Costs and fees of arbitration may be awarded to the prevailing party. "Costs and fees" means all reasonable pre-award expenses of arbitration including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, and witness fees, but shall not include either party's attorney's fees. The arbitration award shall be in writing and shall specify the factual and legal basis for the award. In rendering the award, the arbitrator shall determine the rights and obligations of the parties in accordance to the substantive laws of Illinois. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof and the costs incurred in connection with any action to confirm the arbitration award shall be awarded by the court. Neither party nor the arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Atherton and the owner both agree that they will not, under any circumstances, make false comments or remarks about the other to third parties, or interfere with any third party relationships.

10.24 Termination If owner terminates this contract, owner shall pay Atherton that portion of the Contract amount equal to the portion of the work completed (including design, management and architectural services) plus all charges and expenses incurred plus a sum equal to 25% of the Contract Amount as liquidated damages and not as a penalty. The preceding terms do not apply to termination permitted under Federal Law where applicable. Upon such termination this Contract shall be null and void and both Atherton and the owner shall be deemed to have expressly waived any and all rights hereunder against each other relating to this Contract. In the event of default by Owner, Atherton shall be entitled to be reimbursed for all costs, expenses, and reasonable attorney's fees incurred by Atherton by reason of such default. Interest shall accrue and be paid by the owner at the rate of 1.5% per month on the amount due Atherton after any default by the Owner.

In the event that the owner terminates this contract, owner shall not be entitled to any refund of design retainers or design fees paid to Atherton regardless of the manner of payment including credit card charges and owner shall be responsible for full payment to Atherton of any outstanding design retainers or design fees. Atherton retains ownership of all plans including all text, drawings, concepts and ideas, forming a part of the plans, and the selections and arrangement thereof ("the plans") prepared by Atherton for the owner in the event the owner terminates this contract. Any use of the plans without the prior written permission of Atherton is strictly prohibited.

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Build/Renovate Contract
 Sustek, D. Bartkowski & L. Bartkowski Project
 Page 10 of 12

As stated in Article 10.11 - *The Owner may cancel (in writing to Atherton) this transaction at any time prior to midnight of the third (3rd) business date after the signing of this contract.*

- 10.25 Contract Payments** If the owner elects for payments under the Sales Contract to be made through a construction escrow or other form of escrow, owner agrees that Atherton may, as determined, in its sole and absolute discretion, specify the escrowee, the frequency and manner of payment disbursement, and charge the owner, in addition to the Contract Amount, a charge equal to One Hundred Fifty (\$150.00) Dollars per each escrow staged payout, for Atherton's administrative time and expense in complying with the escrow requirements and providing documentation to the escrowee, which charge will be added to and included on each draw request to the escrowee. Owner understands and agrees that no contract payments after the initial down payment can be made by credit card. Owner understands and agrees that Atherton is not a "creditor" within the meaning of the Truth in Lending Act, and is not a "creditor" within the meaning of the Truth in Lending Act, and is not a "credit services organization" within the meaning of the Credit Services Organization Act. Owner is solely responsible for obtaining any financing necessary to fund this Contract and in accordance with the Contract terms hereof. If owner fails to make any stage payment within Five (5) days after such payment is due, Atherton may exercise any appropriate remedy or remedies, including but not limited to suspending work. Acceptance of any late payment or waiver of any breach or default shall not constitute a waiver of another or any continuing, recurring, or subsequent breach or default.
- 10.26 Rights** Atherton retains all rights under the Illinois Mechanics Lien Law. Atherton acceptance of a note as evidence of debt or its taking a security shall not deprive Atherton of rights under the Illinois Mechanics Lien Law. Atherton may assign this Contract and obligations under the Contract, without the owners consent. The venue of this Contract shall be Cook County, Illinois.
- 10.27 Renovation Limitations.** Atherton states and the customer acknowledges and accepts that this project constitutes a renovation to an existing structure. As such, pre-existing conditions to the structure which require upgrades, rework, relocations, shoring, modifications, demolition etc. which must be performed in order to make the old and new structure, shall be considered extras (Change Orders) and not part of this contract unless specified in the scope of work attached to this contract.
- 10.28 Customer Completion (Sweat Equity)** Under certain agreed upon instances between the contractor and the owner, Atherton may allow the owner to complete certain and limited aspects of the project, such as paint work, interior trim, etc. This agreement must be specific and in writing. The customer will hold Atherton harmless for any and all changes to the existing new work, any insurance claim or personal injury issues or delays in work schedule. Atherton shall not be delayed in completing its scope of work. Atherton shall not be responsible to perform any tasks or install any products which the customer is providing as part of their "sweat equity" portion of the project unless specified and included in the contract documents.
- 10.29 Entire Agreement.** This written Contract together with the separate written specifications, purchase orders and warranty of Atherton constitute the entire agreement and understanding of the parties unless amended in writing by a change order or rider approved by the owner and an officer of Atherton. If any provision of the Contract or the warranty shall become or be held by any court to be illegal, invalid, unenforceable, or against public policy for any reason, then such provision shall be severed. The remaining provisions shall not be affected and shall remain in full force and effect. In lieu of each severed provision, there shall be automatically added a provision as similar in substance to the objectionable provisions as may be possible and still be legal, valid, enforceable, and in compliance with public policy. No waiver of, or change in the Contract terms shall be binding on Atherton unless evidenced in writing signed by an officer of

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Build/Renovate Contract

Sustek, D. Bartkowski & L. Bartkowski Project

Page 11 of 12

Atherton. The execution or failure to execute a completion certificate shall in no way affect the rights of Atherton hereunder.

ARTICLE 11. HAZARDOUS MATERIALS, WASTE AND ASBESTOS

11.1 Both parties agree that dealing with hazardous materials, waste or asbestos requires specialized training, processes, precautions and licenses. Therefore, unless the scope of this agreement includes the specific handling, disturbance, removal or transportation of hazardous materials, waste or asbestos, upon discovery of such hazardous materials the Contractor shall notify the Owner immediately and allow the Owner/Contractor to contract with a properly licensed and qualified hazardous material contractor. Any such work shall be treated as a Change Order resulting in additional costs and time considerations.

ARTICLE 12. ARBITRATION OF DISPUTES

12.1 Any controversy or claim arising out of or relating to this contract, or the breach thereof, 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.

12.2 Non-Compete & solicitation Agreement Customer/Owner agrees to neither engage Atherton Industries LLC personnel and/or subcontractors (with the exception of Management/Project Manager) in discussion related to the job particulars, its pricing, scheduling, design etc. Customer/owner further agrees to not solicit Atherton personnel or subcontractors for work, either related or non-related to the job. Atherton personnel and subcontractors are forbidden to accept or counsel customer of Atherton's on present or possible future work opportunities. Solicitation and therefore violation of this provision by either the customer OR Atherton personnel/subcontractors shall result in immediate suspension or termination of the job/contract. Atherton Industries LLC considers a violation of this provision to be a grievous violation of this contract and reserves the right to any and all remedies available under the Law.

ARTICLE 13. WARRANTY

13.1 At the completion of this project, Contractor shall execute an instrument to Owner warranting the project for One Year against defects in workmanship or materials utilized. The manufacturers warranty will prevail. No legal action of any kind relating to the project, project performance or this contract shall be initiated by either party against the other party after One Year beyond the completion of the project or cessation of work.

Atherton's Warranty is not transferable or assignable. Atherton is not liable for any direct, indirect, punitive, special, exemplary, incidental or consequential damages (including loss of profit, loss of use, revenue or economic advantages).

ARTICLE 14. TERMINATION OF THE CONTRACT

14.1 Should the Owner or Contractor fail to carry out this contract, with all of its provisions, the following options and stipulations shall apply:

14.1.1 If the Owner or the Contractor shall default on the contract, the non-defaulting party may declare the contract is in default and proceed against the defaulting party for the recovery of all damages incurred as a result of said breach of contract, including a reasonable attorney's fee. In the case of a defaulting Owner, the Earnest money herein

Initialed by Owner

Contractor

LB QNB KS

M

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Build/Renovate Contract
Sustek, D. Bartkowski & L. Bartkowski Project
Page 12 of 12

mentioned shall be applied to the legally ascertained damages.

14.1.2 In the event of a default by the Owner or Contractor, the non-defaulting party may state his intention to comply with the contract and proceed for specific performance.

14.1.3 The owner acknowledges that the contractor expends time, effort, money and resources upon signing of this contract. Owner also acknowledges that accommodations in the build schedules or reservations in personnel time and efforts shall have a negative monetary effect on the company (Atherton). Therefore Atherton retains the right to offset these costs and list profits against any deposits or earnest money the owner has provided previously or with the signing of this contract.

14.1.4 Should the owner cause there to be a breach in the contract and said contract goes into default, then owner will forfeit all pre-paid monies and be liable for proven damages to the contractor.

14.1.5 Should any conflict arise in reference of "Termination of the Contract", then any and all benefits shall fall to the advantage of the contractor, no conflict shall fall to the detriment of the contractor.

ARTICLE 15. ATTORNEY FEES

15.1 In the event of any arbitration or litigation relating to the project, project performance or this contract, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses.

ARTICLE 16. ACCEPTANCE AND OCCUPANCY

16.1 Upon completion, the project shall be inspected by the Owner and the Contractor, and any repairs necessary to comply with the contract documents shall be made by the Contractor.

16.2 The Owner shall not occupy the property until final payment has been received by the Contractor and a Certificate of Occupancy has been obtained.

16.3 Occupancy of the project by the Owner in violation of Article 16.2, shall constitute unconditional acceptance of the project and a waiver of any defects or uncompleted work.

WITNESS our hand and seal on this 21 day of Sept, 2009

Signed in the presence of:

Cynthia A Jordeh
Witness

[Signature]
Atherton Industries Representative

Witness

Kristopher Sustek
Kristopher Sustek

Debra Bartkowski
Debra Bartkowski

Lauren Bartkowski
Lauren Bartkowski

Initialed by Owner Contractor

OB [Signature] KJ

[Signature]

UNOFFICIAL COPY**Robin Philip Jesk & Associates**

ATTORNEYS AT LAW

15150 S. CICERO AVENUE
OAK FOREST, IL 60452-2402(708) 687-8600
FAX: (708) 687-8639**FACSIMILE TRANSMITTAL**

DATE: September 22, 2009

TO: Mr. Mark Hickey
Attorney at Law
(312) 469-8686RE: Buyers: Baszek and Bartkowski
Contractor: Atherton Industries, LLC
Property Address: 6515 Pine Point, Tinley Park, IL 60477

FROM: ROBIN PHILIP JESK

Page 1 of 3 page(s)

If you do not receive all pages, please contact the undersigned as soon as possible.

Ellen J. Boss

Dear Mark:

Attached hereto please find our proposed Rider "A" regarding the above-captioned matter.

Please contact me after you have had an opportunity to review with your client.

Sincerely,



ROBIN PHILIP JESK

EJB
Attachments

UNOFFICIAL COPY**RIDER "A"**

Here set within Rider "A" are the terms and conditions that are to supersede the terms and conditions of the herein Build/Renovate Contract dated September 2, 2009, by and between Kristopher Sustek, Debra Bartkowski and Lauren Bartkowski (Buyers) and Atherton Industries, LLC, also known as the Contractor (Seller).

Terms and conditions are as follows:

- * 1. The total cost of the residence, including all remodeling and renovation, but excluding extra's, will be \$350,000.00, and should the Buyers lender not authorize \$210,000.00 to be apportioned to the purchase of the real estate in its current condition, then in that event the contractor agrees to accept such lesser sum as the lender authorizes. (u)
2. This Contract is contingent on the buyers obtaining a "203K Renovation Loan" in the amount of \$370,000.00 within thirty (30) days of this contract's acceptance by Contractor, upon terms acceptable to Buyers. In the event this loan is not obtained by the Buyers, then this Contract is null and void and all deposits will be returned to the Buyers, and the contractor will not have the option of obtaining the Buyers a loan with alternate terms.
3. Any and all payments from the Buyers 203K Renovation Loan shall be paid from an escrow account set up by the lender, and it will be the contractor's obligation to comply with the lender's conditions with respect to obtaining payments from said escrow.
4. The final payments from the escrow account will not be paid until the Contractor has obtained an occupancy permit from the Village of Tinley Park, Illinois, the property has passed all required inspections, and the Contractor has provided full and proper waivers of lien for all labor and materials.
5. The Contractor agrees to provide to the Buyers a one year warranty on the materials and workmanship regarding the work performed by the Contractor with a five (5) year warranty on the foundation and structural components of the residence.
6. Handling, disturbance, removal or transportation of hazardous materials, waste or asbestos is included in the Contract. Contractor is responsible for remediation of said conditions and will contract with a properly licensed and qualified hazardous material contractor.
7. The contractor will obtain and furnish the owners with proof of general liability, builder's risk, and worker's compensation insurance, and agrees to indemnify and hold the Buyers harmless from claims made against the Buyers with respect to this project.
8. Atherton shall be responsible for the modification and/or relocation, repair or upgrades to any and all existing site utilities such as water and sewer, electric and gas. New water lines and sewer lines if required are included in the purchase price of the property. Additionally, any defect in

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major structural components and/or foundation deficiencies will be the responsibility of Atherton.

9. Contractor represents and warrants that the soil conditions of the property will permit the work, if requested - Contractor agrees to pay for and provide soil tests and will pay for any required excavation and/or fill necessary.

10. This Contract is subject to the Buyers approval of the renovations plans; and the completion date is to be agreed to by the parties.

11. 60% of design costs shall be rebated to Buyer for signing a design/build contract. Buyer shall also receive an incentive package of a front porch at no cost.

12. Contractor is to confirm that all systems shall be in good working order.

13. Contract is contingent on Village of Tinley Park issuing permit to Contractor for work.

* 14. The earnest money will be reduced from \$20,000.00 to ~~\$5,000.00~~ to be used later as earnest money for mortgage

15. That the Contractor agrees to provide a closing cost credit to the Buyers in the amount of \$7,785.00.

nqk
9/27/09

Dated: 9/27, 2009

Dated: 9/27, 2009

[Signature]
Seller
for Atherton Investments

[Signature]
Buyer

Seller

[Signature]
Buyer

[Signature]
Seller
manoj mohan

[Signature]
Buyer

* - See attached E-mail to M. Hickey

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September 23, 2009

SENT BY FACSIMILE (708) 687-8539

Robin Philip Jesk
Robin Philip Jesk & Associates
Attorneys At Law
15150 S. Cicero Ave.
Oak Forest, IL 60452

RE: 6515 Pine Point, Tinley Park, IL 60477

Dear Mr. Jesk:

I have reviewed your Rider A with Atherton Industries and they are requesting the following changes. Other than those listed below, the Rider is acceptable.

Changes

1. Add that, if lender does not authorize \$210,000.00 to be apportioned to the purchase of the real estate then Atherton Industries has the right to declare the contract null and void.
2. Add that, in the event the Buyers declare the contract null and void, all deposits less the sum of \$12,000.00 will be returned to the Buyers (\$12,000.00 represents the costs of designing and engineering all blueprints).

Rider A

Paragraph 14 is not acceptable. The deposit must reflect \$20,000.00.

Paragraph 15 is not acceptable

Please discuss these changes with your clients and advise me as to your position. I await your response.

Sincerely,

Mark T. Hickey

MTH/tg

Dated: 9/27, 2009

Seller

[Handwritten Signature]
for Atherton Industries

Seller

Seller

Dated: 9/27, 2009

Buyer

Buyer

Buyer

[Handwritten Signature]

[Handwritten Signature]

[Handwritten Signature]

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ADDENDUM TO CONTRACT

ADDENDUM ATTACHED TO AND MADE A PART OF REAL ESTATE SALE CONTRACT WHEREIN ATHERTON INDUSTRIES, LLC., IS THE SELLER, AND KRISTOPHER SUSTEK, DEBRA BARTKOWSKI ARE THE PURCHASERS.

PROPERTY ADDRESS: 6515 Pine Point, Tinley Park, IL 60477

Notwithstanding the Agreements contained in the Contract, other Rider(s), and Exhibits, the parties agree that if there is any conflict in terms or inconsistencies with those other portions of the Contract, then the terms of this Amendment shall prevail.

The Contract shall be amended as follows:

1. Atherton will make available to the project \$35,000.00 in labor and material for an interim period in conjunction with Sustek/Bartkowski's \$35,000.00 (\$20,000.00 already tendered and an additional \$15,000.00 to be forthcoming) for a total of \$70,000.00 into the project.
2. Atherton will begin the process of securing the permit and beginning construction.
3. Securing financing will continue during this period as a joint effort.
4. Once financing is completed, draw from the construction portion of the loan will be used to repay the interim funds that both parties have contributed to begin the build. *SEE ATTACHED EMAIL DATED 3-4-10.*
5. Both parties agree to work together in accordance to practical terms and conditions which may be presented by a lender in order to secure financing for the project.
6. The contract will incorporate the Recap Subtotals attached hereto as Exhibit "A".
7. The contract will incorporate the email dated Sunday, January 3, 2010 between Lauren Bartkowski and Bill and Sue of Atherton and Gerald Stewart attached hereto as Exhibit "B".

SELLERS:

For Atherton Industries, LLC.

BUYER

BUYER

Dated: 3/5/10

Dated: 3-5-10

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 03/04/2010 THU 17:28 FAX 708 614 1128 Atherton Industries <<< MARK HI

EXH. A

Borrower: Debra Bartowski & Kristopher Sussek

Consultant's File No.: 6515 Pine Point

RECAP SUBTOTALS

Construction Sub-Totals	Allowable Fees & Recap Totals
1. Masonry	3,335.00
2. Siding	11,650.00
3. Gutters/Downspouts	1,500.00
4. Roof	9,500.00
5. Shutters	0.00
6. Exterior	19,000.00
7. Walks	0.00
8. Driveway	4,500.00
9. Painting (Ext.)	0.00
10. Caulking	0.00
11. Fencing	0.00
12. Grading/Landscaping	0.00
13. Windows	7,000.00
14. Weatherstrip	0.00
15. Doors (Ext.)	2,500.00
16. Doors (Int.)	1,500.00
17. Partition Wall	0.00
18. Plaster/Drywall	(2,500.00)
19. Decorating	1,500.00
20. Wood Trim	3,500.00
21. Stairs	2,000.00
22. Closets	0.00
23. Wood Floors	7,500.00
24. Finished Floors	2,450.00
25. Ceramic Tile	4,600.00
26. Bath Accessories	0.00
27. Plumbing	19,000.00
28. Electrical	10,250.00
29. Heating	15,740.00
30. Insulation	5,575.00
31. Cabinetry	9,200.00
32. Appliances	0.00
33. Basements	0.00
34. Cleanup	1,800.00
35. Miscellaneous	0.00
Construction Cost Subtotal:	\$156,089.00

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 03/04/2010 THU 17:26 FAX 708 614 1128 Atherton Industries +>> MA

MARK T HICKEY

Exh. B

Lauren Bartkowski

From: Lauren Bartkowski [lauren.bartkowski@bartandmcd.com]
 Sent: Sunday, January 03, 2010 10:39 AM
 To: 'Bill'; 'Sue Atherton'; 'Gerald Stewart'; 'kristophersustek@comcast.net'
 Subject: 6515 Pinepoint

Hello All,

Bill and I had a conversation last week regarding our house and some of the budget issues that Gerald, Sue, Kris, and I have been running into.

Bill notified me that he has been able to get our final budget down to \$356,000.00 if the following concessions were made on our part:

- All priming done by Atherton. Finish costs done by Owner
- Hardware (i.e. toilet paper holders, towel bars, closet shelves, door hardware) furnished by Owner. Owner to furnish and Atherton to install. We will provide Atherton with all door hardware, they will install.
- Reduce garage windows at the street. The drawings show 3 on each side at 1st floor. It is unnecessary to have this many windows. Perhaps 1 large window on the 1st floor.
- On the 2nd Floor of the garage leave the front dormer but eliminate the back dormer.
- 2nd Floor of the garage: Frame/insulate only. No drywall
- The garage has 2 overhead doors. One large one in front and one small one in the back going out to the back of the lot. Eliminate smaller back overhead garage door leading out to back of lot.
- Leave everything on the front of the house as is.
- Leave the big gable on the back of the house, but eliminate the two (2) smaller dormers at the back of the house. According to Bill this will not decrease the square footage of the 3rd floor and will have no consequence on the bedroom on the 3rd floor given that the shed dormer added little head room.
- On the 3rd floor of the house: Drywall will be installed, but no floor covering. It will be plywood floor per drawing.
- On the 3rd floor the bathroom will be roughed in and the wet bar will be roughed in by Atherton. Owner will finish with toilet, sink, and fixtures.
- The \$356,000.00 is for very nice vinyl siding. It will still include the shakers and the stone veneer. Not the cementitious hardie-board siding.
- Everything else will be completed per the drawings and contract.

Gerald and Sue, with this information are you going to be able to complete the paperwork?

Thank you,
 Lauren B.

Lauren Bartkowski
 Principal

UNOFFICIAL COPY**Lauren Bartkowski**

From: wjs.atherton@gmail.com
Sent: Thursday, March 04, 2010 7:18 PM
To: Lauren Bartkowski
Subject: Re: Addendum

Lauren

We know this. #4 is fine. It will be treated as earnest money. Atherton has been down this road before. Do not worry. We discussed this issue internally. One way or another we will comply with what Bertram needs once we know what it is he needs.

Sent from my Verizon Wireless BlackBerry

From: "Lauren Bartkowski" <lauren.bartkowski@bartandmed.com>
Date: Thu, 4 Mar 2010 19:12:50 -0600
To: "Sue Atherton" <smo.atherton@yahoo.com>
Cc: "Bill" <wjs.atherton@gmail.com>; <kristophersustek@comcast.net>
Subject: RE: Addendum

Sue & Bill:

Bertram called Kris today and sent him an email. Said he believes 90% financing is going to happen. Kris relayed everything that Atherton and Bart/Sustek were doing internally. Bertram said that the 10% would have to be earnest money. He needs for us to be sure of this in order for the financing to happen. With that said I think that Item #4 needs to change in order to allow for Bertram to continue with financing. Thoughts on this?

Thanks.
Lauren B.

From: Sue Atherton [mailto:smo.atherton@yahoo.com]
Sent: Thursday, March 04, 2010 5:50 PM
To: Lauren
Cc: Bill
Subject: Addendum

Lauren,

Here is the addendum, please review. Bill can still meet you at 8:00am, please let us know.

Thanks.

Sue
Atherton Industries, LLC
18620 81st Ave., Suite B
Tinley Park, IL 60487
708-614-1108-office
708-614-1128-fax

