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AGREEMENT TO REMODEL HOME

This Agreement To Remodel Home (the "Agreement") entered into this _____ day of _____, 20_____, by and between _____, a(n) _____ organized under the laws of the State of Ohio and having an office and place of business located at _____ ("Remodeler , also alternatively referred to herein and/or various related documents as "builder", "contractor", "seller" or "supplier") and _____, resident(s) of the State of Ohio having such residence located at _____ (referred to herein collectively as the "Owner" if more than one). Remodeler and Owner are sometimes individually referred to as "Party" or collectively referred to as "Parties." Remodeler is further defined as a "Home Construction Services Supplier" within the meaning of Ohio Revised Code Chapter 4722 and a "Residential Contractor" under Ohio Revised Code Chapter 1312.

BACKGROUND INFORMATION

I. Owner desires to remodel part of the home, construct an addition or improve the property commonly known as, (The "Premises") _____ (Address of property).

II. Owner has contracted with Remodeler to provide construction services and/or other services as indicated: _____

Such services are referred to herein as the "Project" or the "Work", with these terms being used interchangeably, and as defined by the Plans and Specifications and Excess Costs/Change Orders described below.

In consideration of the mutual covenants contained herein, Owner and Remodeler hereby agree as follows:

1. SCOPE OF WORK. Remodeler agrees to perform and furnish all labor, supervision, materials, equipment, tools, scaffolding, machinery, transportation and supplies necessary to perform the Work under Construction Representations defined in section 2 below and as described in the Plans and Specifications (attached hereto as Exhibit "A"), according to the estimate dated the _____ day of _____, 20_____. Owner acknowledges that Remodeler's ability to meet the approximated project completion date of _____, 20_____, and the project/construction schedule as described in the attached Exhibit "B" will be directly affected by any Excess Costs/Change Order(s) requested by Owner (see section 3 of this Agreement for definition and additional discussion of Excess Costs/Change Orders), Owner's failure to timely select any options not heretofore specified within the Plans and Specifications, and/or Owner's interference with the construction process itself. The construction schedule shall also be impacted and adjusted accordingly by the actual date of construction commencement, which is estimated to be the _____ day of _____, 20_____.

Further, Remodeler shall not be liable for any delay in the commencement or completion of construction caused by the above or by weather, fire, or other casualty or act of God, nor shall Remodeler be liable for any delay in the commencement or completion of the construction caused by governmental control, inability to obtain materials or supplies, or other regulations, restrictions, or conditions over which Remodeler has no reasonable control.

Delays in construction arising as a result of the events described in the two immediately preceding paragraphs and in section 2 below are hereinafter sometimes collectively referred to as "Excused Construction Delays".

In this respect, Remodeler shall not be obligated to make, provide, or compensate Owner for alternative housing accommodations necessary, if any, as a result of Excused Construction Delays. Nor shall Remodeler be liable for any other losses or damages, of any kind whatsoever, to Owner arising as a result of such delays, including but not limited to, increased loan costs, inspection or reinspection fees, additional interest carry or increased interest rates arising or associated with Excused Construction Delays.

Construction shall be deemed complete ("Substantial Completion") upon the earlier of the approval of the final inspection of the Work by the applicable building authority or the approval of the Project by the Owner. Owner hereby agrees that Remodeler's failure to complete minor, punch-out items shall not be grounds to withhold final payment from the Remodeler.

2. CONSTRUCTION REPRESENTATION/WORKMANSHIP/ORC CHAPTER 4722 REQUIREMENTS. Construction of the Work shall be done in a workmanlike manner as defined by Ohio Law and in conformity with the rules promulgated under Ohio Revised Code Chapter 4722 and with all local, state and national codes having jurisdiction over the Premises, and shall substantially conform to the Plans and Specifications, allowing for minor deviations occasioned by expediency, practicality, and the availability of labor and materials provided Remodeler agrees not to deviate from the Plans and Specifications without first notifying Owner of the same. In the event Owner does not thereafter notify Remodeler of Owner's objection to the same in writing within seventy-two (72) hours, Owner shall be deemed to have agreed to the same. Further, Remodeler expressly reserves the right to make such modifications, additions, or deletions to the Plans and Specifications as may be required by a mortgagee which holds a mortgage upon the Premises, or as may be necessary in order to meet any applicable federal, state, city and local building or zoning code requirements. [These items being further defined as "Excused Construction Delays" as provided in section (1.)] The costs of any changes arising as a result of the requirements of any mortgagee holding a mortgage upon the Premises, or as are necessary to comply with applicable laws, codes and rules as described in this section, shall be governed by section (4) below and paid by Owner. In the event that a substantial physical modification or deviation from the Plans and Specifications is necessary due to soil or other lot conditions (building setback lines, easements, developer or utility requirements, etc.), Remodeler may, at its option, elect to terminate this Agreement and refund to Owner the Deposit, as such term is hereafter defined, subject to the adjustments hereafter described, in which case all parties hereto shall be relieved of any further obligations hereunder.

Notwithstanding the foregoing, should the Owner and Remodeler decide a construction standard, specification or tolerance is desired that is equivalent to, or superior than, an item or items addressed in the rules promulgated under ORC 4722, such variance shall be documented and agreed to through a separate addendum or addenda executed by both parties, attached hereto and incorporated into this Agreement.

In addition, it is noted that Ohio Law and the rules promulgated under ORC 4722 cover a limited number of construction tolerances and items, and the parties may also agree and define other construction standards or tolerances that are not covered by the ORC Chapter 4722 rules as meeting the “good and workmanlike” or “workmanlike” manner for construction performance on their own terms and through separate addenda.

3. CONTRACT PRICE AND PROCEDURES RELATED TO PAYMENT OF THE CONTRACT PRICE. Owner and Remodeler agree that the Contract Price for the work shall be _____

Dollars (\$ _____), not including Excess Costs/Change Orders. The Contract Price shall be due and payable as follows:

A. \$ _____ construction deposit due upon execution of this Agreement (the “Deposit”). Remodeler retains the right to use the Deposit for construction or other purposes, and Owner acknowledges that the Deposit shall not be subject to any escrow, trust, or security agreement, nor shall interest accrue thereon.

NOTWITHSTANDING THE FOREGOING, PRIOR TO THE COMMENCEMENT OF REMODELER’S PERFORMANCE UNDER THIS CONTRACT, ORC 4722.04 PROHIBITS THE REMODELER FROM TAKING A DEPOSIT OR DOWNPAYMENT IN EXCESS OF TEN PERCENT (10%) OF THE CONTRACT PRICE. THIS PROVISION DOES NOT APPLY TO SPECIAL ORDER ITEMS THAT ARE NOT RETURNABLE OR USABLE PRIOR TO THE REMODELER’S PERFORMANCE, IN WHICH CASE A DEPOSIT OF 75% OF THE TOTAL COST OF ITEM IS PERMISSIBLE.

B. Installation, delivery or other costs not included in the above estimated contract price include the following: (Not applicable if not filled in.)

2. The remainder of the Contract Price shall be paid as follows:

Percentage	Dollar Amount	Status of the Work
_____ %	\$ _____	Upon completion of the foundation (basement dug, footers dug and poured, block laid and sealed)
_____ %	\$ _____	Upon completion of the framing (floor joists, sub-flooring, framing, windows, doors, roof trusses, exterior wall sheating and roof and vents installed)
_____ %	\$ _____	Upon completion of the drywall (siding, rough plumbing, rough wiring, heating ducts, insulation and drywall)
_____ %	\$ _____	Upon completion of the finish trim and cabinets
_____ %	\$ _____	Upon Substantial completion of the Work

Subject to the limitations herein provided, Owner will pay and/or will authorize Owner’s lender to pay the amount described above within three (3) business days after Remodeler submits the Application for Payment. Owner or Owner’s lender’s inspector may inspect the work described in any Application for Payment submitted by Remodeler; provided, however, such inspection shall not suspend, delay or otherwise affect Owner’s obligation to make such payment within the time period described above, unless Owner or Owner’s lender can reasonably demonstrate that the Work has not been performed in accordance with the Plans and Specifications.

Owner agrees that the failure of Remodeler to complete any item not required by the appropriate governmental authority in order to issue a Certificate of Occupancy (including without limitation sod and landscaping) shall not operate to delay the payment of the monies due under this Agreement. Further, Remodeler shall not be obligated to establish an escrow for items which may be incomplete as of the date Remodeler requests the delivery of the final payment. Payments which are due and unpaid shall bear interest from the date such payment is due until paid in full at the Prime Rate as such rate is published in the Wall Street Journal on the first business day of each month, plus four percent (4%) per annum.

4. EXCESS COSTS AND WRITTEN CHANGE ORDER PROCEDURE. REQUIRED EXCESS COST NOTICE: UNDER OHIO REVISED CODE SECTION 4722.02 (B) (2), IF AT THE TIME A HOME CONSTRUCTION SERVICE REQUIRES EXTRA COSTS ABOVE THE COST SPECIFIED OR ESTIMATED IN THIS CONTRACT THAT WERE REASONABLY UNFORESEEN, BUT NECESSARY, AND THE TOTAL OF ALL EXTRA COSTS TO DATE EXCEEDS FIVE THOUSAND DOLLARS (\$5,000.00) OVER THE COURSE OF THE ENTIRE HOME CONSTRUCTION CONTRACT, OWNER (YOU) HAS THE RIGHT TO AN ESTIMATE OF THOSE EXCESS COSTS BEFORE THE HOME CONSTRUCTION SERVICE SUPPLIER (REMODELER) BEGINS WORK RELATED TO THOSE COSTS. SUCH ESTIMATES SHALL BE IN WRITING AND GOVERNED BY THE PROCEDURE OUTLINED IN THIS SECTION. HOWEVER, OWNER IS HEREBY NOTIFIED THAT IN FAILIING TO APPROVE AN EXCESS COST, COMPLETION OF WORK MAY NOT BE POSSIBLE AND A CHARGE MAY BE IMPOSED FOR ANY DISASSEMBLY, REASSEMBLY, OR PARTIALLY COMPLETED WORK, WHICH SHALL BE DIRECTLY RELATED TO THE ACTUAL LABOR OR PARTS INVOLVED.

Change Order Procedure: Prior to completion of the Work and except as permitted as further described under this Agreement, no alteration shall be made to the Plans and Specifications without the prior written approval of Remodeler and Owner. If Owner requests changes to the Plans and Specifications, Remodeler shall prior to commencing the alteration submit to Owner a written proposal and cost estimate or credit associated with the completion of such alteration. If Owner approves such proposal, the same shall be documented in writing and constitute a Change Order (the “Change Order”) and the Contract Price, Scheduled Completion Date and the Work to be performed hereunder shall be amended accordingly, and such alterations shall thereafter be completed by Remodeler in accordance with the requirements of this Agreement. If Owner does not approve such proposal, Remodeler shall not be obligated to construct such alterations. Owner shall pay in full for the cost of any Excess Cost/Change Order at the time of approving such proposal unless otherwise mutually agreed by Owner and Remodeler; provided; however in no event shall the payment for such Change Order be made later than at the time the next progress payment is made. If more than one Owner has executed this Agreement, each Owner specifically authorizes the other Owner to execute Excess Costs/Change Orders, and each Owner agrees that he/she is jointly and severally liable for any Excess Costs/Change Orders executed by the other Owner.

5. PERMITS. Owner hereby acknowledges that Remodeler has obtained or will obtain the necessary permits from applicable building authorities necessary in order to provide the services set forth in this Agreement. However, the preceding sentence shall apply only to the review of construction plans, building permits and inspections necessary for the construction process. Any zoning, variance, historic reviews, appeal process, neighborhood design review or developer design review, or any other review outside of the construction process shall be the responsibility of the Owner. Owner hereby acknowledges that any and all costs associated with obtaining permits necessary to provide the construction services set forth in this Agreement are at Owner’s expense..

6. INSURANCE. Remodeler shall at Remodeler’s cost maintain workers’ compensation insurance for its employees and commercial general liability insurance in an amount of not less than Two-Hundred and Fifty Thousand (\$250,0000) as required by ORC section

4722.02 (A)(8). A copy of Remodeler's certificate of insurance showing such general liability coverage is attached and made an exhibit to this Agreement and provided to Owner in compliance with ORC Chapter 4722. Remodeler shall also maintain so-called "Builders All Risk" insurance for the work in the full amount of the Contract Price and charge the cost of this coverage to the Owner. Owner shall maintain fire, extended coverage and general liability insurance for the portion of the Home which is not the subject of the work. Owner shall assure that the company issuing the fire, extended coverage and general liability insurance for the balance of the Home (excluding the work) shall waive any rights of subrogation against Remodeler, and/or name Remodeler as and an "additional insured" thereunder, or if Owner cannot accomplish the same, then Remodeler may at Remodeler's option obtain at Owner's cost the so-called "Builders All Risk" insurance for the work including the balance of the Home. The Remodeler's cost of doing same shall be chargeable to the Owner.

7. UNFORESEEN CONDITIONS. Owner acknowledges that should unforeseen and/or concealed conditions, including, but not limited to, the presence of mold, asbestos or other environmental and health hazards, code violations, substandard previous construction and/or structural problems, be encountered in the performance of the construction services as set forth herein and the same are in conflict with the plans and specifications set forth in Exhibit "A", that Remodeler shall notify Owner, either orally or in writing, of such condition and the same shall be addressed, remediated, eliminated or adjusted at Owner's cost and expense and/or treated as excess cost/change order herein if Remodeler performs any related work. Such unforeseen conditions or such delays shall extend the contract delivery date or estimated project completion date by the same amount of time that becomes necessary to address such issues.

8. LEAD PAINT. Relative to houses constructed prior to January 1, 1978, Remodeler has notified Owner and provides owner certain information regarding lead paint. Remodeler is not responsible for investigating or testing for the presence of lead based paint in Owner's home. Should Remodeler be required to stop providing construction services as set forth herein due to the presence of lead based paint, (i) Remodeler shall not resume work until such time as the lead based paint does not pose a health risk to Remodeler's employees, agents and/or assigns; (ii) Owner shall provide, at Owner's sole cost and expense, for the removal or containment of such lead based paint; (iii) the construction schedule shall be adjusted accordingly to provide that estimated completion date is delayed a number of days equal to the number of days Remodeler is delayed from performing construction services as set forth herein. In the event the Remodeler is delayed 30 days or more, Remodeler shall have the right to terminate this Agreement and be paid its costs associated with any construction services provided to the date of last performance plus a fifteen percent (15%) administrative fee.

Owner hereby provides that it has no present knowledge of lead based paint in Owner's home. Owner hereby releases Remodeler from any and all liability arising from injury and/or death caused by the presence of lead based paint due to the construction services provided by Remodeler as set forth in this Agreement.

Owner(s) Initials

9. MOLD AND OTHER ENVIRONMENTAL POLLUTANTS. Mold, fungi, bacteria and other similar micro-organisms ("Organisms") commonly exist in homes (and may be found in the Home being remodeled under this Agreement) as a result of rain, humidity and other moisture in the home and on materials delivered to the home site and installed during the course of remodeling and construction.

Owner acknowledges that: (i) that Organisms exist in every environment, indoors and outside; (ii) Owner has been advised by Remodeler that it may be in Owner's best interest that Owner become informed about Organisms and other environmental pollutants found in homes and the measurement or reduction of Organisms or other environmental pollutants, or the risks associated with exposure thereto; (iii) there can be no assurance that any system, device or method incorporated into the Home for the purpose of reducing Organisms or other environmental pollutant levels will be effective as such relate to the persons that comprise Owner and those who may reside at the home with Owner, and that accordingly, Remodeler shall have no responsibility therefore, unless set forth otherwise herein; (iv) Remodeler makes no warranty, either expressed or implied, regarding the presence of Organisms or other environmental pollutants in or about the area of the Home being remodeled or constructed hereunder, nor does Remodeler have any knowledge of special health conditions of any persons that comprise Owner or of those who may reside in the Home with Owner; (v) in the event of any person that comprises Owner or any person who may reside with Owner in the Home shall have special medical conditions which are known to Owner or become known to Owner which may adversely affect such person or persons who may reside in the Home, Owner should consult, at Owner's cost, with appropriate medical authorities concerning the habitation of the Home being remodeled under this Agreement. Any testing, remediation or system desired by Owner shall be at Owner's expense and risk, unless specified otherwise herein, unless Remodeler asserts Remodeler's Right to Cure as specified in this Agreement and/or in the Limited Warranty Agreement executed between the parties and specifically agrees in writing to cover such items.

10. OWNER'S DISTURBANCE. Owner hereby acknowledges that Remodeler is providing such construction services to Owner's existing Home and that Owner intends to reside in the Home during such time as Remodeler is providing construction services to Owner. Owner hereby acknowledges that during construction it may be necessary for Remodeler to create and make loud and disturbing noises and generate dust and debris in order to complete the renovations set forth in the plans and specifications. Remodeler hereby agrees to use reasonable efforts to minimize disturbances to Owner.

11. LIMITED WARRANTY. Upon completion of the Project, Remodeler will provide to Owner a limited warranty as set forth in Exhibit ____ attached hereto. The Limited Warranty Agreement is made part of this transaction, and represents an independent contract with separate and sufficient consideration exchanged between the parties. Owner approves and accepts the form of such Warranty by the execution of this Agreement and the Limited Warranty Agreement. In so accepting, Owner acknowledges that in order for Remodeler to perform warranty service, Owner must fully cooperate with Remodeler's Right to Cure as defined in the Limited Warranty Agreement and efforts to resolve alleged defects and warranty service claims, including providing access to the home during normal business hours and at reasonable times, and allowing ongoing access and service attempts when problems are difficult to pinpoint, diagnose and finally address without several attempts. Further, upon receipt of the final payment due hereunder, Remodeler will deliver, assign, and transfer to Owner all appropriate manufacturer's warranties on appliances and equipment installed in the home or other available manufacturers' warranties on any of the materials or supplies incorporated into the Project. Contractor's limited warranty referenced above shall not cover those appliances, equipment, or consumer products which have separate warranties provided by manufacturers or suppliers and are assigned to Owner by Remodeler on or after the date of closing. Owner is hereby notified that service or warranty work, if any, performed on items where a manufacturer's warranty is effective shall not be performed by the Remodeler. THE WARRANTIES PROVIDED PURSUANT TO THE APPLICATION OF THIS SECTION SHALL BE THE SOLE EXPRESS WARRANTIES PROVIDED BY REMODELER TO OWNER RELATIVE TO THE WORK.

12. OWNER'S USE OF ARCHITECT/ENGINEER; EFFECT ON LOCAL CODE/INDUSTRY STANDARDS. In the event Owner retains (or has retained) an architect to provide or modify the plans and specifications and/or an engineer to seal or certify the plans and specifications, Remodeler assumes no responsibility to assure that the plans and specifications are drawn or written by the architect, or as sealed or certified by the engineer (as applicable) in accordance with industry standards, applicable laws, statutes or local building code requirements or regulations. To this end, notwithstanding any terms or conditions of this Agreement to the contrary, Remodeler shall not be liable for any costs, expenses or damages arising to Owner in the event such plans and specifications fail to comply with applicable laws, ordinances, codes and regulations and/or industry standards provided Remodeler completed the work in accordance with such plans and specifications.

13. REMEDIES IN THE EVENT OF DEFAULT. The following occurrences shall constitute events of default under this Agreement:

- A. Owner fails to pay any progress payment as it becomes due;
- B. Remodeler fails to timely satisfy or bond-off a mechanic's lien; and
- C. A party fails to perform any other duty or obligation undertaken herein within ten (10) days after receipt of written notice thereof from the other Party.

D. In the event of a default by Owner, Remodeler shall, in addition and without limitation to all of the rights and remedies at law or in equity available to Remodeler, at the sole option of Remodeler, be entitled to elect one or more of the following remedies:

(i). In the event the Start of Construction has not occurred:

(a) To retain the Construction Deposit as liquidated damages, it being agreed to by the Parties that the actual damages which would be suffered by Remodeler would be difficult or impossible to ascertain as of the date of execution of this Agreement, that the amount of the proposed liquidated damages are reasonable and not so disproportionate as to constitute a penalty, and that the same is fair and equitable; or

(b) To apply the Construction Deposit on the account of Owner and proceed with an action at law or in equity for damages for breach of contract.

(ii). In the event the Start of Construction has occurred:

(a) Remodeler may at its option continue to work toward the completion of the Work, and be entitled to receive Progress Payments when due from Owner without the actions of Remodeler in continuing toward the completion of the Work acting as a waiver of any rights or remedies which Remodeler may have under this Agreement or at law or in equity, and without such actions otherwise being deemed as an admission by Remodeler of any liability or any continuing obligation to complete the Work. To this end, Remodeler may at Remodeler's sole option and discretion elect at any time thereafter to discontinue Remodeler's efforts to complete the Work as described herein and avail itself of any other right or remedy to which Remodeler may be entitled at law or in equity or under the terms of this Agreement, including but not limited to the rights of Remodeler to cease any further efforts to complete the Work as described in sub-paragraph (ii)(b) below.

(b) Remodeler may cease any further efforts to complete the Work and remove all of Remodeler's and Remodeler's subcontractor's and materialmen's tools, materials and supplies from the Premises as more specifically provided under this Agreement, and upon undertaking such action Remodeler shall be entitled to immediately receive payment in full for all Work completed through the date Remodeler discontinued efforts to complete the Work including but not limited to any and all monies due and payable to subcontractors and/or materialmen of Remodeler. Further, Remodeler shall be entitled in addition thereto to receive four percent (4%) of the Progress Payments remaining due and payable under the Agreement as liquidated damages, it being agreed to by the Parties that the actual damages which would be suffered by Remodeler would be difficult or impossible to ascertain as of the date of execution of this Agreement, that the amount of the proposed liquidated damages are reasonable and not so disproportionate as to constitute a penalty, and that the same is fair and equitable, and this is the intention of parties under this Agreement.

E. Notwithstanding whether or not the Start of Construction has occurred, Owner shall be responsible for any and all damages arising as a result of such default, including but not limited to direct, indirect, consequential, and/or incidental. To this end and without limitation Remodeler shall be entitled to recover from Owner as an element of the damages incurred by Remodeler the reasonable attorney fees and other professional fees including the fees of expert witnesses incurred by Remodeler as a result of such default.

F. Interest shall accrue on any sums arising as a result of the application of this paragraph as of the date such monies were first due and payable at a rate equal to the Prime Rate as published in the Wall Street Journal on the first business day of each month plus four percent (4%) per annum.

G. If Remodeler fails or refuses to perform Remodeler's obligations under this Agreement, if such default is substantial and material and does not fall within the provisions allowed under this Agreement, and if such default continues for ten (10) days after written notice of the default from Owner, then Owner shall be entitled to terminate this Agreement and to receive the return of the Deposit made by Owner hereunder, subject to payment for any Work which was completed prior to such termination.

H. Nothing in this Section shall be interpreted as limiting the Owner's or Remodeler's specific rights and responsibilities as provided in ORC Chapters 4722 and 1312. For a violation of an act prohibited under ORC sections 4722.02, 4722.03, or 4722.04 Owner may rescind this Agreement under certain circumstances or recover the Owner's actual economic damages plus an amount not to exceed Five Thousand Dollars (\$5,000.00) in non-economic damages. Any action for rescission must occur within a reasonable time after Owner discovers or should have discovered the grounds for it and before any substantial change in condition. A court may award reasonable attorney's fees to the prevailing party if Owner brought an action that is groundless and in bad faith, or if Remodeler knowingly committed an act or practice in violation of acts prohibited under ORC 4722.

14. WAIVER BY OWNER AND INDEMNIFICATION OF CONTRACTOR. In the event that as a result of the default of Owner, Remodeler voluntarily leaves the job in accordance with applicable sections of this Agreement, or in the event (except for those situations where the Remodeler is in default hereunder) Owner orders Remodeler to stop work, or otherwise removes Remodeler from the job (and notwithstanding whether or not Owner has complied with the Procedure in Case of Dispute provision of this Agreement), Owner waives any claims for subsequent damage to the Home or Project due to the stop work order, or the removal or withdrawal of Remodeler from the job, including but not limited to damage from the natural elements or as a result of third parties arising as the result of Work in progress not being adequately secured or protected, and Owner agrees to indemnify, defend and hold Remodeler harmless from any costs, expenses, (including attorney fees, and other professional fees) liabilities or damages arising as a result of Remodeler's pre-existing contractual arrangement with any subcontractor or materialmen.

15. LIENS. Provided Owner makes all payments when due hereunder, Remodeler shall maintain the Premises free of all mechanic's liens for labor or materials furnished pursuant to this Agreement. Notwithstanding the aforementioned, Owner agrees that Remodeler shall be entitled to negotiate for the removal of any such lien with the lienholder responsible therefore; provided, however, that within sixty (60) days after Owner notifies Remodeler that a mechanic's lien has been filed, Remodeler either:

A. shall remove such lien by payment of, or bonding off at Remodeler's expense, or

B. shall pay into escrow with an agent mutually selected by Remodeler and Owner a sum equal to the amount of such lien.

Notwithstanding the above provisions, Owner shall be liable for the cost of removing any liens filed against the Premises as a result of Owner's failing to make timely payments or Owner's otherwise interfering or delaying the progress of the Work performed pursuant to this Agreement.

16. RIGHT TO REMOVE MATERIAL AND TOOLS. Notwithstanding any other language in this Agreement, in the event Owner orders Remodeler off the job, or in the event as a result of the default of Owner, Remodeler voluntarily leaves the job in accordance with this Agreement (or other applicable law), Remodeler reserves the right, and Owner agrees to allow Remodeler and Remodeler's subcontractors and materialmen to visit the home to retrieve tools, equipment, uninstalled materials and supplies which are rightfully the property of Remodeler and Remodeler's subcontractors and materialmen, provided, however, Remodeler agrees on behalf of Remodeler and Remodeler's subcontractors and materialmen not to remove any uninstalled materials and supplies for which Remodeler has already been paid by Owner pursuant to a this Agreement.

17. SELECTION OF SUBCONTRACTORS AND MATERIAL SUPPLIERS. In the event Owner selects and/or requests that Remodeler utilize the services or acquire materials from a particular subcontractor and/or materialmen, or in the event Owner elects independent of this Agreement to utilize the services or acquire materials from a particular subcontractor and/or materialmen, and in the event Remodeler consents to the same, then Owner by such request or action specifically waives any warranties, delays, responsibilities, or liabilities against Remodeler which may arise as a result of the use of such subcontractor and/or materialmen, and the portion of the Work and/or materials completed or supplied by such subcontractors and/or materialmen.

In addition, in such event, Owner shall be responsible for (and shall require each such subcontractor and/or materialmen to be responsible for) obtaining all licenses, permits and inspections associated with the portion of the Work completed by such subcontractors and/or materialmen, and maintaining liability insurance and benefit coverages (i.e., workers compensation coverages, unemployment compensation coverages, etc.) relating to such subcontractor and/or materialmen. To this end, Owner further releases, discharges, indemnifies and agrees to hold Remodeler and its employees, subcontractors and materialmen harmless from any and all claims, costs (including attorney fees and other professional fees), liability or damages arising as a result of the failure of Owner (or Owner's subcontractors and/or materialmen) to comply with the obligations of this Section.

Further, during the period such subcontractors and/or materialmen are working at the Home or on the Project, and thereafter upon completion of the portion of the Work undertaken by such subcontractor and/or materialmen, Owner shall be responsible for obtaining and shall require such subcontractor and/or materialmen to provide appropriate lien waivers attesting to the amount of the Work so completed, the number and names of sub-subcontractors, laborers, or other materialmen utilized, and the amount of monies received from the Owner for such Work to date.

The terms and conditions of this Section are intended to be applicable notwithstanding whether or not the subcontractor and/or materialmen receive the compensation due them directly from Owner, or indirectly from Owner by virtue of the payment of the same through Remodeler.

18. PROCEDURE IN CASE OF DISPUTES AND REMODELER'S RIGHT TO CURE. Remodeler hereby provides notice to Owner that under ORC Chapter 1312 Ohio law provides for the Remodeler's Right to Cure construction defects prior to Owner's commencement of legal action:

OHIO LAW CONTAINS IMPORTANT REQUIREMENTS YOU (OWNER) MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR COMMENCE ARBITRATION PROCEEDINGS FOR DEFECTIVE CONSTRUCTION AGAINST THE RESIDENTIAL REMODELER WHO CONSTRUCTED YOUR HOME. AT LEAST SIXTY DAYS BEFORE YOU FILE A LAWSUIT OR COMMENCE ARBITRATION PROCEEDINGS, YOU MUST PROVIDE THE REMODELER WITH A WRITTEN NOTICE OF THE CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER CHAPTER 1312 OF THE OHIO REVISED CODE, THE REMODELER HAS AN OPPORTUNITY TO OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER THE REMODELER MAKES. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR COMMENCE ARBITRATION PROCEEDINGS.

Thus, in consideration of ORC Chapter 1312 governing the Remodeler's Right to Cure and promises contained in this Agreement, Owner agrees that Remodeler has the right to receive notice of and respond in writing to alleged construction defects before Owner may invoke legal rights, commence a legal action under any legal theory, based on an allegation that Remodeler failed in its duty to construct the home in a workmanlike manner or in accordance with the rules promulgated under Ohio Revised Code Chapter 4722 or that the Remodeler was negligent in the construction of improvements.

A. OPPORTUNITY TO INVESTIGATE AND REMEDY. In the event Owner believes that Remodeler has provided Work which does not conform to workmanlike standards, and/or the rules promulgated under ORC Chapter 4722 or does not substantially conform to the Plans and Specifications or that Remodeler was negligent in the construction of improvements, Owner shall promptly provide written notice to Remodeler of the same specifying with reasonable certainty the nature and effect of such claims in compliance with ORC 1312.04. Thereafter, Remodeler shall be afforded a reasonable opportunity to review, investigate and evaluate such claims, and to the extent necessary to complete such evaluation, Remodeler may request additional information and/or a meeting with Owner and/or architect, engineer or expert (if applicable) at the Premises to discuss the same. After completion of such review and investigation to the extent Remodeler agrees with Owner, Remodeler shall notify Owner in writing of the proposed repairs, or alternatively, offer to pay for the cost of repairs, that Remodeler offers to address.

B. REMODELER'S DUTY TO DILIGENTLY PROSECUTE REPAIRS AND OWNER'S DUTY TO COOPERATE. Owner and Remodeler further agree and recognize that some construction defects or problems are difficult to diagnose and address and/or repair without a process of elimination and/or several repair attempts. Owner shall allow ongoing access to the home for inspection and completion of repairs during regular business hours, share any inspection or evaluation reports produced by Owner's expert and cooperate with Remodeler's reasonable attempts to identify and remediate any defects. Remodeler shall use commercially reasonable efforts to diligently diagnose and prosecute repairs and Owner shall continue to fully cooperate with Remodeler's ongoing attempts to repair, so long as is necessary to allow good faith attempts to result in successful repairs, taking into account seasonal changes and weather factors.

C. OWNER BARRED FROM CLAIMS FOR FAILURE TO NOTIFY REMODELER OF DEFECTS AND/OR BASED ON REMODELER'S CURE. Owner is barred from commencing arbitration or filing civil actions against Remodeler unless at least sixty (60) days before commencing either action, Owner provides Remodeler with written notice of an alleged construction defect in compliance with ORC 1312.04. Should Owner choose to allow the Remodeler to cure alleged defects and accept an offer that Remodeler makes to compromise and settle a claim, or remedy alleged defects by paying for repair costs, and the Remodeler fulfills the offer in compliance with ORC Chapter 1312, the owner is barred from suing or bringing an arbitration action for such claim.

D CURE PROCEDURE FOR ITEMS NOT COVERED BY ORC 4722 RULES. The parties recognize, that outside of the standards promulgated under ORC Chapter 4722 as Ohio administrative rules which define "workmanlike" by law, for many components of the home to be constructed, Ohio law and rules do not specifically define in any quantifiable terms the meaning of the terms "good and workmanlike" or "workmanlike" manner. Because determining whether construction was completed in a "good and workmanlike" or "workmanlike" manner and defining such terms in all cases for residential construction would be difficult, costly, and would necessitate each party paying experts to provide opinions in each case for those issues not covered or addressed by rules promulgated under ORC Chapter 4722, the parties hereto agree that the Owner shall provide the Remodeler a reasonable opportunity to investigate and cure any such alleged construction defects prior to commencing arbitration or legal action. This opportunity to investigate and cure shall be governed by the same procedure as outlined in the Limited Warranty Agreement attached hereto and executed between the parties and include the following: (i) the Owner's prompt written notice to the Remodeler of the nature of the alleged defect; (ii) the Owner providing reasonable access to the home for the Remodeler's investigation and evaluation of the issue; (iii) in the case of Remodeler's undertaking remedial work, the Owner's providing ongoing access in order for the Remodeler to remedy the issue(s) and (iv.) the Remodeler using commercially reasonable efforts to diligently prosecute repairs until completion, taking into account seasonal and weather conditions, and the necessity of trial and error for issues more difficult to diagnose.

E. ARBITRATION IN THE CASE OF DISPUTES. In the event after completion of such investigation and review by Remodeler, and after the Owner has fully cooperated and provided Remodeler with the right to cure and/or elect remedies as required herein or the under the Limited Warranty Agreement, there remains a claim(s), dispute(s) or other matter in question not governed by rules promulgated under ORC 4722 over which Remodeler and Owner cannot agree to a resolution thereof, or in the event Owner and Remodeler cannot agree to the resolution of any other dispute arising under the terms of this Agreement, Owner and Remodeler agree that a decision as to the disputed item(s) shall be reached through binding arbitration based upon the rules (the "Rules") promulgated by the Columbus Bar Association, Construction Law Committee or other Committee, if applicable, or other mutually agreeable arbitration rules, which shall be conducted in a prompt and expeditious manner and in accordance with the following general guidelines. Owner and Remodeler agree that notwithstanding the Rules the Chairman of the BIA of Central Ohio's Professional Standards Committee shall select an arbitrator to perform the arbitration. To this end, Owner specifically acknowledges that neither the BIA of Central Ohio's Professional Standards Committee nor the BIA of Central Ohio itself will actually be requested to conduct such arbitration. Rather, they will only assist in naming the arbitrator. The fees of the arbitrator shall be split by Owner and Remodeler. Thereafter, a hearing shall be held. The decision of the arbitrator at such hearing shall be final and binding upon the parties. Owner and Remodeler additionally agree that in the case of such a claim or dispute time is of the essence and that the most

expeditious reasonable method of arbitration as set forth above shall be used, and further, that all of the parties shall be bound by the outcome of such arbitration.

19. OHIO CONSUMER SALES PRACTICES ACT NOT APPLICABLE. Under Ohio Law, Home Construction Service Contracts for the construction of residential dwellings, such as this Agreement, are excluded from the definition of “consumer transactions” for purposes of the Consumer Sales Practices Act. Rather, Home Construction Services Contracts are governed by ORC chapters 4722 and 1312.

20. OWNERSHIP OF PLANS. In the event Remodeler has provided the Plans and Specifications to be used under this Agreement, Owner acknowledges that Owner shall have no ownership rights in the Plans and Specifications, and that Owner shall be liable to Remodeler for the reuse or resale of the Plans and Specifications. In the event Owner has provided the Plans and Specifications to be used under this Agreement, Owner acknowledges that Owner shall have no claims against Remodeler for any deficiencies arising under the Plans and Specifications.

21. INDEPENDENT CONTRACTOR. Owner and Remodeler agree that Remodeler is serving as an independent contractor under this Agreement and that all employees, laborers, and subcontractors employed by Remodeler in connection with performing the Work, except as provided herein, shall be the employees or agents of and the responsibility of Remodeler. Owner agrees that it will refrain from directing the work of Remodeler’s employees, subcontractors and/or vendors in any way, without the express, written consent of Remodeler. Remodeler shall be responsible for satisfying all state and federal employment laws and regulations with respect to such laborers and employees hired by Remodeler, including without limitation all applicable income tax withholding requirements, social security withholding requirements, unemployment compensation premiums, workers compensation premiums, fair labor standards laws, employment discrimination laws, civil rights laws and occupational safety laws.

In executing this Agreement, the Owner hereby specifically recognizes and defers to Remodeler’s knowledge, expertise, qualifications, experience, background and training in the residential building industry in all building and construction matters relating to this Agreement. This shall include but shall not be limited to matters relating to building code interpretation, manufacturers’ recommendations for installation methods, local construction industry standards and any necessary repair protocols under the Limited Warranty Agreement executed between the parties, or otherwise.

21. MISCELLANEOUS.

- A. AMENDMENT AND WAIVER.** This Agreement may only be amended or modified by an instrument in writing executed by all of the Parties hereto.
- B. NOTICES.** Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally or sent by registered or certified mail, postage prepaid, addressed to the respective Parties at the addresses set forth above, or at such other address as shall be furnished in writing by any Party to the others, and shall be deemed to have been given as of the date so delivered or deposited in the United States mail, as the case may be.
- C. CHOICE OF LAW.** It is the intention of the Parties that the laws of Ohio should govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the Parties.
- D. SECTION AND OTHER HEADINGS.** Section, paragraph, and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- E. COUNTERPART EXECUTION.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.
- F. GENDER.** All personal pronouns used in this Agreement shall include the other genders whether used in the masculine or feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.
- G. PARTIES IN INTEREST.** All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the Parties hereto and their successors and assigns.
- H. INTEGRATED AGREEMENT.** This Agreement constitutes the entire agreement between the Parties hereto, and there are no agreements, understandings, restrictions, warranties, or representations between the Parties other than those set forth herein or herein provided for which relate to the subject matter of this Agreement.
- I. SEVERABILITY.** The invalidity or unenforceability of any provision of this Agreement in any particular respect shall not affect the validity and enforceability of any other provision of this Agreement or of the same provision in any other respect.
- J. MARKETING SIGNAGE.** During the life of this Agreement and until final completion of the work described herein, Owner hereby gives Remodeler permission to erect one marketing sign at a location agreed to by the Owner that is no more than nine square feet in total surface area, or that is not larger than the size and type as allowed by the local zoning or building codes or ordinances in effect in the local jurisdiction.

OWNER:

Name _____

Street Address _____

City / State / Zip _____

Home Phone / Home Fax _____

Work Phone / Work Fax _____

Cell Phone(s) / Pager(s) _____

CONTRACTOR:

Name _____

Street Address _____

City / State / Zip _____

Home Phone / Home Fax _____

Work Phone / Work Fax _____

Cell Phone(s) / Pager(s) _____

CONTRACTOR:

OWNER:

By: _____
Its: _____
Date: _____

Date: _____

THIS FORM HAS BEEN PREPARED BY THE BUILDING INDUSTRY ASSOCIATION OF CENTRAL OHIO, INC., AND IS FOR USE BY ITS MEMBERS ONLY. ANY OTHER USE OF THIS AGREEMENT BY INDIVIDUALS OR ENTITIES WHO ARE NOT MEMBERS OF THE BUILDING INDUSTRY ASSOCIATION OF CENTRAL OHIO, INC., AND IN GOOD STANDING, IS STRICTLY PROHIBITED.

This Agreement is designed to be executed in conjunction with a Limited Warranty Agreement between the issuing Remodeler and the Owner. It binds and is legally enforceable as to the executing parties only. The Building Industry Association of Central Ohio, Inc. is not a party to this Agreement. Thus, this Agreement does not represent any agreement by the Building Industry Association of Central Ohio, Inc. and shall not be interpreted or represented as a sales contract, warranty agreement, or promise of any kind to be fulfilled by the Building Industry Association of Central Ohio, Inc.

THE BUILDING INDUSTRY ASSOCIATION OF CENTRAL OHIO, INC. RECOMMENDS THAT ALL PARTIES TO THIS AGREEMENT BE REPRESENTED BY LEGAL COUNSEL.

DEPOSIT ACKNOWLEDGEMENT

REMODELER acknowledges receipt of the sum of _____ Dollars (\$_____) cash/ check which shall be held, deposited, and disbursed pursuant to Section 2 above. This amount represents Ten Percent (10%) or less of the total contract price prior to commencement of Remodeler’s performance.

Remodeler