



Home Builders Association
of Greater Toledo, Inc.

Build Your Future

STANDARD BUILDING CONTRACT

Standard Contract for Use by Registered Builder
Members of the Home Builders Association of Greater Toledo, Inc.
Where the Contract Price is \$25,000.00 or Greater

THIS CONTRACT, entered into this _____ day of _____, 20____ (the "Contract"),
between _____ (the "Contractor"),
and _____ (the "Owner") provides as follows:

1. HOME CONSTRUCTION SERVICE: The Contractor will build for the owner in a workmanlike manner, as defined by Ohio Revised Code § 4722.01(G), a One-Family Dwelling Two-Family Dwelling Three-Family Dwelling and/or Accessory Construction (the "Home Construction Service") on the following described property (the "Home Construction Site"):

Address: _____

Description: _____

_____ according to the specifications and plans, marked Exhibit "A" (the "Plans and Specifications"), which Plans and Specifications are made a part of this Contract as signed and approved by the Contractor and the Owner. The Contractor will furnish at his expense all labor and material necessary to carry out this contract to final completion, except as otherwise provided in this Contract or in the Plans and Specifications.

2. CONTRACT PRICE: In consideration of the fulfillment of this Contract by the Contractor the Owner hereby agrees to pay to the Contractor the "Contract Price", which shall be determined and paid as follows [select one]:

Cost of Work Plus Contractor Fee: The Contract Price shall be the actual costs of the Home Construction Service (the "Cost of Work") plus a fee of \$_____ (the "Contractor's Fee", which shall be either a percentage or a stipulated fee). The total estimated Contract Price is \$_____. This estimated Contract Price is is not a guaranteed maximum price. The Cost of Work shall include, but not be limited to, wages of construction workers directly employed by the Contractor, wages or salaries of supervisory and administrative personnel approved by Owner, costs paid or incurred by the Contractor for taxes, insurance contributions, assessments and benefits paid for or on behalf of construction workers, costs paid or incurred by Contractor in accordance with subcontracts, costs of materials and equipment incorporated or to be incorporated in the Home Construction Site in connection with the Home Construction Service, rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers that are provided by the Contractor, costs of removal of debris from the Home Construction Site, administrative costs related to the Home Construction Service, fees and assessments for building permits and for other permits, licenses and inspections, legal costs, including attorney's fees, other than those arising from disputes between the Owner and Contractor or the Contractor and any Subcontractor, reasonably incurred by the Contractor in the performance of the Work and with Owner's prior written approval. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option shall be sold by the Contractor; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

Owner will make an initial deposit of \$_____. Thereafter, Contractor shall submit periodic applications for payment as the job progresses for all work performed up to the application date. Each application will include labor and equipment used or furnished through the day prior to the application date; materials used, furnished or installed or stored at the real estate through the day prior to the application date; and a portion of the Contractor's Fee equal to the percentage of the work that is completed or the percentage of the Cost of Work, as the case may be.

Fixed Fee: The sum of \$ _____, which Contract Price does not include the following cost of installation, delivery or other costs: _____

IF AT ANY TIME A HOME CONSTRUCTION SERVICE REQUIRES EXTRA COSTS ABOVE THE COST SPECIFIED OR ESTIMATED IN THE CONTRACT THAT WERE REASONABLY UNFORESEEN, BUT NECESSARY, AND THE TOTAL OF ALL EXTRA COSTS TO DATE EXCEEDS FIVE THOUSAND DOLLARS OVER THE COURSE OF THE ENTIRE HOME CONSTRUCTION CONTRACT, YOU HAVE A RIGHT TO AN ESTIMATE OF THOSE EXCESS COSTS BEFORE THE HOME CONSTRUCTION SERVICE SUPPLIER BEGINS WORK RELATED TO THOSE COSTS. INITIAL YOUR CHOICE OF THE TYPE OF ESTIMATE YOU REQUIRE:

Written Estimate: Initials _____ Oral Estimate: Initials _____

Payments of the Fixed Fee Contract Price shall be due upon Contractor's submission to owner of an application for payment following Contractor's achievement of the construction benchmarks in accordance with the following schedule:

_____ % deposit (not to exceed 10% of the contract price)

_____ % when foundation is ready for sills.

_____ % when roof is applied.

_____ % when wallboard is installed.

_____ % when ready for paint.

_____ % upon final completion subject to provisions of Paragraphs 8 and 14.

3. **CHANGES OR ADDITIONS:** All changes or additions to the plans and specifications made after the signing of this Contract shall be submitted by the Owner to the Contractor in writing. Before the work outlined in the change or addition is done or the materials are purchased, both the work and the price therefore shall be approved in writing by the Contractor and the Owner. At Contractor's option, Owner will either: (1) pay the Contractor in cash prior to installation; or (2) furnish Contractor evidence of a deposit with the construction mortgage sufficient in amount to cover the costs of any such additions or changes. Any costs that the Contractor incurs due to circumstances that are inherent to the Home Construction Site that are not evident prior to the commencement of construction will be handled as an extra, change or addition.

4. **POSSESSION:** Both Contractor and Owner agree that occupancy shall be given to Owner only upon payment of the total Contract Price pursuant to Paragraph 2, along with all amounts due to Contractor for all changes or additions as provided in Paragraph 3. Occupancy of the dwelling or use of the accessory structure, as applicable, by the Owner prior to the payment in full to the Contractor as aforesaid shall constitute complete acceptance by Owner without any further obligation on the part of the Contractor to give the warranty provided for in Paragraph 13 hereof, except that owner and Contractor may agree to earlier occupancy pursuant to Paragraph 17 hereof.

5. **LIENS:** The contractor will keep the Home Construction Site free from any mechanic's liens, which might be filed against the Home Construction Site as a result of labor or material used or furnished by the Contractor.

6. **CONTRACTOR'S INSURANCE:** The contractor shall maintain such insurance as will protect the Contractor from claims under Worker's Compensation Act and will also maintain general liability insurance of at least \$250,000 to protect Contractor and Owner from any claims for damages to persons or property that may arise on the Home Construction Site during the construction period. A copy of the Contractor's certificate of insurance shall be attached as Exhibit "B".

7. **OWNER'S INSURANCE:** Before any work is begun, the Owner shall procure and maintain such insurance as will protect Owner, Contractor and Mortgagee, if any, from loss by fire and other hazards customarily insured against under similar circumstances in a reliable insurance company or companies. Such insurance benefits shall be payable to all parties having an insurable interest in the Home Construction Site as their interest may from time to time appear.

8. COMMENCEMENT AND COMPLETION OF WORK: Subject to inclement weather conditions and Owner's failure to timely make selections, said construction shall commence on _____, 20____, and shall be completed within _____days from start of construction. The contractor shall not be responsible for any delay in the completion of the total work contemplated when such delay results from any act of omission of the Owner or their agents or employees, from changes ordered in the work, from strikes, lockouts, fire, unusual delay in transportation, acts of God, terrorism, acts of the U.S. government or any agency thereof, or any other cause beyond the control of the Contractor. The completion date may also be extended by the issuance of change orders which expressly contemplate the extension of the completion date. The Contractor shall send the Owner a notice in writing of the completion of the Home Construction Service after issuance of a certificate of occupancy (in the case of Accessory Construction, the notice will simply be given upon completion). The Owner has seven (7) days from receipt of the notice to inspect the Home Construction Site for defects and ten (10) days from receipt of the notice to deliver to the Contractor a written list of all defects that must be corrected before the Owner will accept the Home Construction Site. Failure of the Owner to deliver to the Contractor a list of defects within the stated time will constitute approval of the Home Construction Service and acceptance of the Home Construction Site fully completed. Omission from the list of any apparent defects or defects that should be apparent on reasonable inspection will constitute acceptance of the residence with those defects. On correction of timely listed defects to the satisfaction of the Owner, the residence will be deemed complete.

9. CONDITION OF HOME CONSTRUCTION SITE: The Contractor shall, at the completion of its work, remove all its rubbish, tools and surplus materials from the lot and the building(s) and shall leave its work "broom-clean".

10. DISPUTE RESOLUTION: In case any dispute or claim arises between the parties hereto under or growing out of this contract or the performance thereof that cannot be resolved amicably between or among the parties, such dispute or claim shall be subject to [select one]:

- Arbitration conducted by a neutral arbitrator jointly selected by the parties from the American Arbitration Association under its Construction Industry Arbitration Rules then in effect. Each party hereby acknowledges that by agreeing to arbitrate the parties waive any right to a trial by jury, and that judgment by a court having jurisdiction may be entered on the award. The arbitration shall be governed by the laws of the State of Ohio.

_____ Owner Initials _____ Contractor Initials

- Litigation in a court of competent jurisdiction.

_____ Owner Initials _____ Contractor Initials

11. LIMITED WARRANTY: No payment made by the Owner under this contract, excepting the final payment made upon completion shall be deemed to be conclusive evidence of performance of this contract by the Contractor, either wholly or in part, against any claims of the Owner by reason of any defective work or materials. The Contractor shall repair or replace any defective materials in accordance with the Home Builders Association One (1) Year Limited Warranty. The period of the warranty shall commence upon the earlier of: (i) the date final payment is made pursuant to this Contract; (ii) the date Owner takes possession of the Home Construction Site; or (iii) the date Owner accepts the Home Construction Site. Contractor shall not be responsible for any defect, damage or condition of the Home Construction Site and completed Home Construction Service resulting from contraction, expansion or other ordinary and inherent characteristics of building materials or ordinary wear and tear.

12. NO SALE BY OWNER; SUCCESSORS AND ASSIGNS: Owner shall not sell, transfer or convey the Home Construction Site until Owner has paid the Contract Price in full. The rights and obligations granted and assumed under this Contract shall apply to the heirs administrators, executors, successors and assigns of the Contractor and the Owner.

13. SUBSTITUTIONS: In the event the Contractor is unable to finish items herein specified due to shortages or governmental regulations the Contractor shall be permitted to substitute any such items without voiding the Contract existing between the Contractor and the Owner. In the event of substitution of items, they shall be as near the same quality as will be available at approximately the same costs. However, it is understood that the Contractor is permitted to use and install, new or advanced building products and materials such as fabricated component construction products, and use of improved equipment, materials and advanced construction technology.

14. OCCUPANCY UPON SUBSTANTIAL COMPLETION: In the event that the Owner desires to take possession and occupy the dwelling when it has been substantially completed, although lacking full completion as to cement work, grading, exterior painting, interior finishes, or similar items, the completion of which is prevented by weather or other conditions beyond the control of the Contractor, prior to taking possession and occupying the dwelling, the

Owner shall pay the balance of the Contract Price to the Contractor less the reasonable value of the uncompleted items as determined by the Contractor, and the Contractor shall furnish to the Owner a work order that specifies all work or materials remaining to be finished and that upon completion of the items listed in the Work Order, the Owner shall pay the Contractor the amount specified.

15. **DEFAULT BY OWNER:** If Owner fails to make any payment within ten (10) days of when due, Contractor shall be entitled to suspend the Home Construction Service until such payment is made, and the time for completion shall be extended a period of time equal to the number of days that work was suspended and the Contract Price shall be adjusted for any increases in cost caused by the suspension. If any payment required by this Contract remains unpaid for a period of thirty (30) days, or if Owner is otherwise in materially breach of this Contract, then Contractor shall be entitled to terminate this Contract and to recover from the Owner an amount equal to the actual cost of all labor, material and other services provided pursuant to this Contract plus an amount equal to Contractor's reasonable overhead and profit had the Home Construction Services been completed as contemplated by this Contract. The Contractor's Fee, if provided for above, shall be the Contractor's reasonable overhead and profit had the Home Construction Services been completed. The remedies herein provided are in addition to and shall not prevent Contractor from exercising its rights under the mechanics liens laws of the State of Ohio or pursuing any other remedy available at law.

16. **UTILITIES:** During Contractor's performance of this Contract, all utilities shall be placed in the name of Owner, including electric, gas and water, and Owner shall be responsible for same.

17. **ENTIRE AGREEMENT:** This Contract with the Exhibits attached hereto constitutes the entire agreement between the Owner and Contractor concerning the Home Construction Service, and there are no other agreements between the parties concerning the Home Construction Service except as expressly set forth herein. No amendment to this Contract will be effective unless in writing and signed by Contractor and Owner.

18. **APPROVED FORM:** This Standard Building Contract has been approved by the Home Builder's Association of Greater Toledo, Inc. as a standard form to use for home construction services with a contract price of \$25,000 or greater Toledo, Ohio metropolitan area. Changes to the standard form to adapt it to individual transactions must be clearly visible and must be made by clearly identifiable additions to or marks on the form as printed or typed in its entirety. No changes, omissions or additions to the printed form may otherwise be made without the prior written approval of the Home Builder's Association of Greater Toledo, Inc.

IN WITNESS WHEREOF, the parties named above hereunto set their hands on the day, month and year first written above.

OWNER:

Signature _____ Date: _____

Address: _____ Phone Number: _____

Signature _____ Date: _____

Address: _____ Phone Number: _____

CONTRACTOR:

Signature _____ Date _____

Name, Title: _____

Company: _____ Phone Number _____

Address: _____

EIN: _____