

COST -- PLUS BUILDING CONSTRUCTION AGREEMENT

THIS COST—PLUS BUILDING CONSTRUCTION AGREEMENT is made this _____ day of _____, 200____, between _____ ("Builder"), and _____ ("Owner").

The Builder and the Owner, for the considerations hereinafter named, agree as follows:

1. *The Scope of the Agreement:* The Builder shall furnish to the Owner all of the labor and material required for the erection of a new residence ("Residence") to be erected at _____ according to the plans and specifications to be subsequently prepared by Builder, approved in writing by Builder and Owner and attached to this Agreement ("Plans and Specifications"), subject only to tolerances and deviations customary in the building industry (the "Work"). The Plans and Specifications are incorporated into this Agreement by reference. The Builder shall provide and pay for all materials, labor and tools needed to complete the Work, unless otherwise stated in this Agreement. In the event that the Builder is unable to obtain from its usual or ordinary sources of supply the exact materials specified in the Plans and Specifications, the Builder shall have the right to substitute said materials with materials of similar pattern, design and quality.

2. *Construction Loan and Financing Arrangements:* The Owner either has or will obtain a construction loan to finance the Work to be performed under this Agreement. If adequate financing has not been arranged within 30 days of the date of this Agreement, or the Owner cannot provide evidence to the Builder of other financial ability to pay the full Contract Sum (as defined below), then the Builder at its option may treat this Agreement as null and void, and retain the Down Payment (as defined below). The Owner shall provide the Builder written specifications of the payment schedule of the Owner's lender.

3. *Contract Sum and Payments.* The Owner shall pay to the Builder for furnishing the labor and materials needed to complete the Work a sum equal to (a) the Cost of the Work (as defined below) and (b) the Builder's Fee (as defined below), subject to any adjustments made in accordance with this Agreement (collectively the "Contract Sum"). A portion of the Contract Sum in the amount of \$_____ shall be paid by the Owner upon the execution of this Agreement ("Down Payment"). The remaining balance of the Contract Sum shall be paid in monthly installments within seven (7) days following the date of the Builder's application for payment to the Owner. The Builder shall submit to the Owner an application for payment consisting of the portion of the Cost of the Work performed up to the last day of the preceding month along with a proportionate share of the Builder's Fee. Each application for payment shall be accompanied by a written summary of invoices for labor and materials for the portion of the Work for which payment is sought and shall identify the proportionate share of the Builder's Fee for which payment is requested. Final payment of the Contract Sum shall be made upon completion of the Work and before the Owner takes occupancy of the Residence. The Builder shall keep such full and detailed accounts of the Contract Sum as are reasonably necessary for managing and documenting the Contract Sum.

4. *Cost of the Work and Builder's Fee.* The Builder's Fee is a sum equal to _____ percent (_____%) of the Cost of the Work or \$_____ (choose one). The Cost of the Work shall mean all costs incurred by the Builder in the performance and supervision of the Work. The Cost of the Work shall include, but not be limited to, the following items and any other amounts approved by the Owner by change order: (a) wages paid for labor in the direct employ of Builder in the performance of the Work; (b) wages or salaries of Builder's supervisory and administrative personnel who are engaged in the performance of the Work (whether working at the site of the Residence or away from the site of the Residence); (c) the cost of employee benefits and taxes, including but not limited to, workers compensation, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements or paid under Builder's standard employment policies, for employees who are included in the Cost of Work under subsection (a); (d) the cost of all materials, equipment and supplies incorporated into the Work, including inspection and test costs not provided by the Owner and transportation, storage and handling costs; (e) payments made by Builder to any subcontractor performing any portion of the Work, including any insurance and bond premiums incurred by such subcontractors and consultants; (f) the cost of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers which are used or consumed in the performance of the Work; (g) rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by workers which are provided by the Builder at the site of the Residence, whether rented from the Builder or others, and incurred in the performance of the Work; (h) the cost of the premiums for all insurance and surety bonds the Builder is required to procure or deems necessary; (i) sales, use, or other taxes or duties incurred in the performance of the Work; (j) permits, fees, licenses, tests royalties, and damages for infringement of patents and/or copyrights and deposits lost for causes other than Builder's negligence; (k) project design fees, reproduction costs, photographs, facsimile transmissions, long distance telephone calls, data processing services, postage and express delivery charges; (l) all water, power and fuel costs necessary for the Work, if not otherwise provided by the Owner; (m) the cost of removal of all non-hazardous substances, debris or waste materials; (n) legal, mediation and arbitration fees and costs, other than those arising from disputes between the Builder and the Owner, which result from the Builder's performance of the Work; (o) all other costs directly incurred in the performance of the Work which are not included in the Builder's Fee and which are reasonably inferable from this Agreement and the Plans and Specifications as necessary to produce the intended results; (p) losses, expenses, or damages to the extent not compensated by insurance or otherwise; and (q) the cost of corrective work and/or additional work resulting from redesigns of all or any portion of the Residence requested or made necessary by the Owner. All discounts for prompt payment, cash discounts, trade discounts, rebates and refunds, shall accrue to the Builder and shall not be credited against the Cost of the Work. Labor and equipment rates shall be charged to the Owner as provided in Appendix A attached to this Agreement and incorporated into this Agreement by reference.

5. *Selections:* The Owner shall finalize all necessary selections from the choices offered by the Builder. Changes after selections are finalized are subject to the Builder's approval and will result in a change order fee. If any selection chosen by Owner is unavailable, the Owner will be informed and make an alternate selection of equal value within five (5) business days.

6. *Start of Construction and Completion:* The Builder shall commence construction of the Residence as soon as practical after signing of this Agreement and adequate financial arrangements satisfactory to the Builder have been made. The Builder shall complete the Work as expeditiously as possible, provided that nothing contained herein shall render the Builder liable for any delay caused by acts of arbitration, failure of any subcontractor or materialman, fire, strikes, legal acts of public authorities, war, inclement weather, allocation of materials or material priorities, delays or defaults by public or private carriers, shortages of material or labor, acts of the Owner or of persons employed or hired by the Owner, acts of God, or other work stoppages, casualties, or other causes beyond the control of the Builder. The foregoing list is illustrative of causes for delay in construction and is not intended to be all inclusive.

7. *Supervision of Work:* The Owner agrees that the direction and supervision of the working forces, including subcontractors, rests exclusively with the Builder, or its duly designated agent, and the Owner agrees not to issue any instructions to, or otherwise interfere with, the same. The Owner further agrees not to negotiate for additional work with the Builder's subcontractors nor to engage other builders or subcontractors except with the Builder's consent and in such manner as will not interfere with Builder's completion of Work under this Agreement.

8. *Changes, Alterations and Extras:* All changes in or departures from the Plans and/or Specifications shall be in writing. Where changes in, or departure from, Plans and Specifications requested in writing by the Owner, will result in furnishing of additional labor and materials, the Owner shall pay the Builder for such extras at a price agreed upon in writing before commencement of said change. Where such change results in the omitting of any labor or materials, the Builder shall allow the Owner a credit therefore at a price agreed to in writing before commencement of said changes. Any changes, alterations or extras from the plans or specifications which may be required by any public body or inspector, shall constitute an extra and shall be paid for the same as any other extra as provided in this Paragraph. Adjustments to the Contract Sum shall be made for changes and extras.

9. *Possession of Residence Upon Completion:* On final payment by the Owner and upon the Owner's request, the Builder will provide the Owner with an affidavit stating that all labor, materials and equipment used in the construction have been paid for or will be paid for in full by the Builder unless otherwise noted. The Builder shall not be required to give possession of the Residence to the Owner before final payment by the Owner. Final payment constitutes acceptance of the Residence and the Work as being satisfactorily completed unless a separate agreement is executed between the parties stipulating the unfinished items.

Notwithstanding anything in this Agreement to the contrary, payment in full to the Builder shall not be delayed due to uncompleted, weather related, exterior items such as final grading, landscaping, concrete, asphalt and painting. Upon the Builder's approval, the Owner's lender may escrow exact amounts for uncompleted exterior work until completed. The lender's escrow agreement shall be in a form satisfactory to the Builder. Minor repair or completion items identified during the pre-settlement walk-through shall not delay payment in full to the Builder and no escrow shall be made for such items.

10. **a. *Fire insurance With Extended Coverage:*** The Owner/Builder (**choose one**) shall effect and maintain fire insurance with extended coverage upon the entire structure on which the Work is to be done to one hundred (100%) percent of the insurable value thereof covering all Work incorporated in the Residence, all labor and materials connected therewith whether in or adjacent to the structure insured, and materials in place or to be used as part of the permanent construction. The loss, if any, is to be made adjustable with and payable to the Owner/Builder (**choose one**) as trustee for the insureds and the Owner/Builder (**choose the other**) and subcontractors as their interests may appear, except in such cases as may require payment of all or a portion of said insurance to be made to a mortgagee as its interest may appear. Certificates of such insurance shall be filed with the Builder. If the Owner fails to effect or maintain insurance as required in the preceding sentence, the Builder may insure its own interest and that of its subcontractors and charge the cost thereof to the Owner. (**Delete the last two sentences of this Paragraph where the Builder obtains the insurance required by this Paragraph.**)

b. *Liability Insurance:* The Owner shall effect and maintain general liability insurance in the amount of One Million Dollars (\$1,000,000.00). This policy shall name the Builder and its subcontractors as named insureds. Certificates of such insurance shall be filed with the Builder. If the Owner fails to effect or maintain insurance as required in the preceding sentence, the Builder may insure its own interest and that of its subcontractors and charge the cost of the insurance to the Owner.

If a loss occurs, whether covered by insurance or not, replacement of injured Work shall be ordered and executed as provided for in the case of changes in the Work. It is specifically agreed that the Contract Sum shall be adjusted to reflect increases in labor, materials, overhead and other costs, since the original date of this Agreement, in calculating payment for replacement of injured Work.

11. *Owner's Responsibility; Exclusions:* The Owner is solely responsible for the purchase and installation of any septic tank or other individual subsurface sewage disposal system that may be required on the property.

The Owner also agrees that, notwithstanding anything in this Agreement to the contrary, there is excluded from this Agreement the following items, for which the Builder shall have no responsibility:

12. *Late Charge on Delinquent Payments:* Should the Owner fail to pay any draw when due, or fail to pay for any change, alteration or extra before commencement of such work, or fail to pay the final payment upon completion of the Work, all said delinquent payments or any unpaid portion, shall be subject to a late charge calculated at the rate of one and one-half (1½%) percent per month until paid, and the Owner agrees to pay said late charge to the Builder.

13. *Builder's Right to Terminate the Contract:* Should the work be stopped by any public authority for a period of thirty (30) days or more, through no fault of the Builder, or should the work be stopped through act or neglect of the Owner for a period of seven (7) days, or should the Owner fail to pay the Builder any payment within seven (7) days after it is due, then the Builder upon seven (7) days' written notice to the Owner, may stop work or terminate this Agreement and recover from the Owner payment for all work executed and any loss sustained and reasonable profit and damages. The Builder shall also be permitted to terminate this Agreement, at the Builder's option, upon seven (7) days' written notice to the Owner if, prior to the commencement of grading and subsequent construction activity, the Sanitary Sewer Tap-In Contingency (as defined in Section 21) is not satisfied.

14. *Right to Cure:* If the Owner believes a construction defect exists in the Residence, the Owner shall comply with the requirements of the conciliation, mediation and arbitration provisions of this Agreement, the Limited Warranty and the provisions of Kentucky's Notice and Opportunity to Repair Act ("NORA"), Kentucky Revised Statutes §§411.250 to 411.266 in the manner set forth below. Under NORA and common law, the Builder is responsible for its acts or omissions or the acts or omissions of its agents, employees or subcontractors, but is not liable for any damages caused by:

- a. Acts or omissions of a person other than the Builder or its agents, employees or subcontractors;

- b. Failure of a person other than the Builder or its agents, employees or subcontractors to take reasonable action to reduce the damages or maintain the Residence;
- c. Normal wear, tear or deterioration;
- d. Normal shrinkage, swelling, expansion or settlement; and
- e. Any construction defect disclosed in writing to the Owner before payment in full of the Contract Sum for the Residence.

To comply with NORA and the dispute resolution provisions in this Agreement, the Owner and the Builder must take the following steps:

- a. The Owner shall describe the claim in writing in reasonable detail delivered to the Builder and shall offer to attempt to resolve the claim by either conciliation (as required under Section 19(a)) or mediation (as required under Section 19(b)); and
- b. Not less than twenty-one (21) days after receipt of that written notice, the Builder shall send a written response to the Owner to arrange an inspection, offer to correct the defect or compensate the Owner for the defect, or state in writing an intent not to take any remedial action. If the Builder intends to take no remedial action, the Builder shall agree to either resolve the claim through the conciliation process required under Section 19(a) or the mediation process required under Section 19(b). If the Owner and the Builder cannot resolve the claim or dispute by conciliation or mediation, as the case may be, then the parties shall arbitrate the dispute or claim as required under Section 19(c).

NORA CONTAINS IMPORTANT REQUIREMENTS YOU, AS OWNER, MUST FOLLOW BEFORE YOU MAY FILE A LEGAL PROCEEDING FOR DEFECTIVE CONSTRUCTION AGAINST THE BUILDER OF YOUR RESIDENCE. YOU MUST DELIVER TO THE BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE BUILDER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LEGAL PROCEEDING.

15. *Title Insurance:* Title insurance is designed to indemnify the policy-holder of the insurance for losses caused by defects in title to the real estate on which the Residence is located that are in existence on the date the policy is issued. Title insurance is different from property insurance, which insures the Owner's improvements from future events of fire or casualty. An owner's policy of title insurance at the time of closing is recommended, though not required. The Owner is encouraged to inquire about the benefits of title insurance for his or her benefit from an attorney or title insurance agent. The Owner should also be aware that a lender's policy, which may be required by the Owner's lender, does not provide the same level of protection as an owner's policy.

16. *Representations and Limited Warranty:* The Limited Warranty attached and incorporated by reference into the Agreement contains the sole warranty provided by the Builder to the Owner. The Limited Warranty shall have no force and effect until the Builder has received full payment of the Contract Sum, and the Limited Warranty will take effect at the time of closing. In exchange for this Limited Warranty, the Owner waives any right to incidental or consequential damages with respect to any claim under this Agreement or the Limited Warranty.

This Agreement and the Limited Warranty contains all of the representations, warranties and promises of the Builder. No agent or representative of the Builder is authorized to make any representation or promise on behalf of the Builder other than those contained in this Agreement, and the Builder makes no other warranties, express or implied, including but not limited to the warranties of good workmanship and habitability. Any implied warranties, including an implied warranty of workmanlike construction, an implied warranty of habitability, or an implied warranty of fitness for a particular use, are expressly waived and disclaimed.

17. *Radon Gas:* Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Kentucky. Additional information regarding radon and radon testing may be obtained from your county health department. The Builder will not be responsible for any damages caused by radon gas, or by some other agent, that may or may not be associated with defects in construction, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects.

18. *Soil Shrinkage/Expansion:* Builder is not responsible for and does not warrant against damage or defects caused by or resulting from rising or lowering of water tables, expansion or contraction of the soil or other soil conditions. Builder shall have no responsibility to Owner nor to any subsequent purchasers of the Residence under any circumstances for any damage which occurs or may occur as a result of any shifting or movement of slabs or foundation movement of the Residence caused in whole or in part by the quality or type of soil, or earth movement, soil or earth subsidence or expansion of any kind or by moisture of any kind, or from failure to maintain proper drainage adjacent to the Residence or from construction techniques when damage is caused in whole or in part by any of the above described causes or sources, such damage to include, but not be limited to, property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, adverse health effects, or any other effects.

19. *Dispute Resolution:*

- a. *Conciliation:* In the event of any claims, disputes or other matters in question between the parties involving compliance by the Builder with Industry Standards as contained in the Industry Standards Manual published by The Home Builders Association of Northern Kentucky, Inc. ("HBA"), the parties agree first to try in good faith to settle the dispute through the conciliation process established under the auspices of the HBA.
- b. *Mediation:* In the event of any claims, disputes or other matters in question between the parties with regard to this Agreement not otherwise covered under Paragraph 19(a), the parties agree first to try in good faith to settle the dispute by mediation. Any mediation conducted pursuant to this Section shall be conducted, if reasonably possible, by the Better Business Bureau, Cincinnati, Ohio, in accordance with its rules. Demand for mediation shall be filed in writing with the other party to this Agreement and with the Better Business Bureau. Any demand for mediation must be made within a reasonable time after the claim, dispute or other matter in question has arisen. The Owner and the Builder agree to use best efforts to reach a mediated settlement and fully cooperate with all requests and suggestions of the Better Business Bureau.

- c. *Arbitration:* Any claim, dispute or other matter in question not resolved by mediation or conciliation shall be decided by arbitration in accordance with Chapter 417 of the Kentucky Revised Code. The arbitration process and hearing must be initiated through the Circuit Court of the County in which the Residence is located ("Circuit Court"). Hearings on all mediation and arbitration matters must be held in Northern Kentucky. A demand for arbitration may be made concurrently with a demand for mediation and must be made within a reasonable time after the claim, dispute or other matter in question has arisen.
- d. *Discovery:* The parties shall allow and participate in discovery in accordance with the Kentucky Rules of Civil Procedure for a period of ninety (90) days after the filing of an answer or other responsive pleading. All issues regarding compliance with discovery requests shall be decided by the arbitration panel appointed under the auspices of the Circuit Court.
- e. *Arbitration Award:* The arbitration panel shall have the authority to award any remedy or relief, other than the awarding of punitive damages, that a court of the State of Kentucky could order or grant, including, without limitation, specific performance of any obligation created under this Agreement, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process. The arbitration award must be in writing and must specify the factual and legal basis for the arbitration panel's decision. The award rendered by the arbitration panel shall be final upon approval by the Circuit Court, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.
- f. *Fees and Expenses:* The parties shall share equally the expense of the mediation fees, the arbitration fees and filing fees. Each party shall be responsible for all expenses of its experts and witnesses and the preparation and presentation of its proofs. The prevailing party shall be entitled to an award of reasonable attorney fees. In the event that both parties are determined to be at fault, awards for reasonable attorney fees may be equitably allocated by the arbitration panel. The arbitration panel may also determine that no attorney fees are due from either party.
- g. *Additional Parties:* The Builder shall have the right to include (i) the Owner as a party in any mediation or arbitration between the Builder and its subcontractors or suppliers and (ii) any subcontractors or suppliers as parties in any mediation or arbitration between the Builder and the Owner.

20. *Notice, Disclosure and Disclaimer:* The Builder's Notice, Warranty and Disclaimer is attached and incorporated into this Agreement by reference.

21. *Sanitary Sewer Tap-In Contingency.* The obligations of the Builder under this Agreement are expressly conditioned upon the Builder being able to connect the sanitary sewer lines for the proposed Residence to the existing public sanitary sewer system closest to the Residence ("Sanitary Sewer Tap-In Contingency"). Should the Builder, for any reason, be denied the right to or otherwise prohibited from tapping the Residence into an existing sanitary public sanitary sewer system located closest to the site on which the Residence is or is to be constructed prior to the commencement of grading and subsequent construction activity, the Builder may, at the Builder's sole option, terminate this Agreement upon seven (7) days written notice to the Owner.

22. *Statute of Limitations:* Notwithstanding anything in this Agreement to the contrary, with regard to all acts or failures to act by the parties to this Agreement, any statute of limitations governing claims related to such acts or omissions or failures to act shall commence to run and any cause of action accrue upon the last of the following occurrences: (a) the Date of Substantial Completion of the Work; (b) the issuance of a Certificate of Occupancy for the Residence; or (c) the date the Owner takes occupancy of the Residence.

23. *Survival of Terms:* The terms of the Limited Warranty, Notice, Warranty and Disclaimer, and Sections 14, 16, 17, 18, 19 and 20 shall survive transfer of possession of the Residence to the Owner and remain enforceable after such occurrence.

24. The Owner(s) acknowledge that they have read and fully understand the provisions of this Agreement.

IN WITNESS, the Builder and the Owner have executed this Agreement.

BUILDER _____

OWNER _____

OWNER _____

This form approved by the Home Builders Association of Northern Kentucky, Inc., for use by its Registered Builder Members.

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NOTICE, DISCLOSURE AND DISCLAIMER

What Homeowners Should Know About Mold

Mold. Lately, mold has been in the news. Mold is a type of fungus. It occurs naturally in the environment, and it is necessary for the natural decomposition of plant and other organic material. It spreads by means of microscopic spores borne on the wind, and is found everywhere life can be supported. Residential home construction is not, and cannot be, designed to exclude mold spores. If the growing conditions are right, mold can grow in your home. Most homeowners are familiar with mold growth in the form of bread mold, and mold that may grow on the bathroom tile.

In order to grow, mold requires a food source. This might be supplied by items found in the home, such as fabric, carpet or even wallpaper, or by building materials, such as drywall, wood and insulation, to name a few. Also, mold growth requires a temperature climate. The best growth occurs at temperatures between 40° F and 100° F. Finally, mold growth requires moisture. Moisture is the only mold growth factor that can be controlled in a residential setting. By minimizing moisture, a homeowner can reduce or eliminate mold growth.

Moisture in the home can have many causes. Spills, leaks, overflows, condensation, and high humidity are common sources of home moisture. Good housekeeping and home maintenance practices are essential in the effort to prevent or eliminate mold growth. If moisture is allowed to remain on the growth medium, mold can develop within 24 to 48 hours.

Consequences of Mold. All mold is not necessarily harmful, but certain strains of mold have been shown to have adverse health effects in susceptible persons. The most common effects are allergic reactions, including skin irritation, watery eyes, runny nose, coughing, sneezing, congestion, sore throat and headache. Individuals with suppressed immune systems may risk infections. Some experts contend that mold causes serious symptoms and diseases which may even be life threatening. However, experts disagree about the level of mold exposure that may cause health problems, and about the exact nature and extent of the health problems that may be caused by mold. The Center for Disease Control states that a causal link between the presence of toxic mold and serious health conditions has not been proven.

What the Homeowner can do. The homeowner can take positive steps to reduce or eliminate the occurrence of mold growth in the home, and thereby minimize any possible adverse effects that may be caused by mold. These steps include the following:

1. Before bringing items into the home, check for signs of mold. Potted plants (roots and soil), furnishings or stored clothing and bedding material, as well as many other household goods, could already contain mold growth.
2. Regular vacuuming and cleaning will help reduce mold levels. Mild bleach solutions and most tile cleaners are effective in eliminating or preventing mold growth.
3. Keep the humidity in the home low. Vent clothes dryers to the outdoors. Ventilate kitchens and bathrooms by opening the windows, by using exhaust fans, or by running the air conditioning to remove excess moisture in the air, and to facilitate evaporation of water from wet surfaces.
4. Promptly clean up spills, condensation and other sources of moisture. Thoroughly dry any wet surfaces or material. Do not let water pool or stand in your home. Promptly replace any materials that cannot be thoroughly dried, such as drywall or insulation.
5. Inspect for leaks on a regular basis. Look for discolorations or wet spots. Repair any leaks promptly. Inspect condensation pans (refrigerators and air conditioners) for mold growth. Take notice of musty odors, and any visible signs of mold.
6. Should mold develop, thoroughly clean the affected area with a mild solution of bleach. First, test to see if the affected material or surface is color safe. Porous materials, such as fabric, upholstery or carpet should be discarded. Should the mold growth be severe, call on the services of a qualified professional cleaner.

DISCLAIMER AND WAIVER

Whether or not you as a homeowner experience mold growth depends largely on how you manage and maintain your home. Our responsibility as the Builder must be limited to things that we can control. As explained in our written Limited Warranty, provided by separate instrument, we will repair or replace defects in our construction (defects defined as a failure to comply with reasonable standards of residential construction) for a period of one (1) year. The builder will not be responsible for any damages caused by mold, or by some other agent, that may be associated with defects in our construction, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects. Any implied warranties, including an implied warranty of workmanlike construction, an implied warranty of habitability, or an implied warranty of fitness for a particular use, are waived and disclaimed.

This notice, disclosure and disclaimer agreement is appended to and made a part of the Building Construction Agreement. The consideration for this agreement shall be the same consideration as stated in the contract of sale. Should any term or provision of this agreement be ruled invalid or unenforceable by a court of competent jurisdiction, the remainder of this agreement shall nonetheless stand in full force and effect.

I acknowledge receipt of the notice, disclosure and disclaimer agreement. I have carefully read and reviewed its terms, and I agree to its provisions.

OWNER

DATE

OWNER

DATE

65443.2

Appendix A

COST – PLUS CONSTRUCTION AGREEMENT

Property Address _____

Labor Rates

Design \$ _____ (based on _____ hours) Subtotal \$ _____

Supervision \$ _____ (based on _____ hours) Subtotal _____

Carpenters \$ _____ (based on _____ hours) Subtotal _____

Assistants \$ _____ (based on _____ hours) Subtotal _____

Other: _____

Estimated Labor Costs \$ _____

<p>Please be advised that all labor costs are assessed from the time that contractor or the contractor's personnel travels from _____ (contractor's office) to _____ (job site) and returns to contractor's office.</p>

List of Equipment and Rates:

Estimated Equipment Costs \$ _____

Total Estimated Labor and Equipment Cost \$ _____

Note: Estimated Labor and Equipment Costs are subject to adjustment as provided in the attached Agreement.

Owner _____ Date _____

Owner _____ Date _____
654432