

STANDARD CONSTRUCTION CONTRACT

**CLEVELAND RESTORATION SOCIETY
HERITAGE HOME PROGRAM**

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THIS Standard Construction Contract ("Agreement") dated _____, 20__ is entered in by and among _____, (Tax ID No. _____, phone number: _____) having principal place of business located at: _____, hereinafter called the "Contractor", and _____ (phone number: _____) hereinafter called the "Owner", with property located at _____ herein after called the "Property."

Cleveland Restoration Society ("CRS") is not a party to this Agreement; however, the terms and conditions herein shall be required as a condition of the Heritage Home Program Loan.

NOW THEREFOR, the parties agree to the following terms and conditions:

1. ESCROW ADMINISTRATOR. CRS shall be the escrow administrator for the Owner and is authorized to collect, hold, and to disburse payments for the Work upon the direction of the Owner. See ESCROW AGREEMENT for terms and conditions.

2. CONTRACTOR REQUIREMENTS.

a. **ASSIGNMENT OF AGREEMENT.** The Contractor shall NOT assign this Agreement without prior written consent of Owner and CRS.

b. **SUBCONTRACTORS.**

- 1) Contractor may hire subcontractors to complete portions of the Work provided all terms and conditions of this Agreement are met.
- 2) Contractor agrees that Contractor is responsible to Owner for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them.
- 3) Contractor shall be solely responsible for any and all payments to subcontractors and submitting to Owner each subcontractor's release of liens.

c. **CONTRACTOR'S LIABILITY INSURANCE.**

- 1) The Contractor shall maintain general commercial liability insurance in amounts required pursuant to Owner's Loan and in any event not less than [\$500,000] per incident and [\$1,000,000] in the aggregate to protect Contractor, the Owner, and CRS from claims for damages because of bodily injury, including death, and from claims for damages to property, any or all of which may arise out of or result from the Work, whether such operations be by Contractor or by any subcontractor or anyone directly or indirectly employed by either of them. In the event Contractor's general commercial liability insurance policy does not include builder's risk, CRS recommends that the Owner add builder's risk to its homeowner's policy during the term of the Construction Contract to insure the loss to the improvements during the construction.
- 2) All insurance required pursuant to this Section 2(d) and (e) shall be written for not less than the limits of liability required by the municipality in which the Work is performed (the "Municipality"), _____.
- 3) The insurance maintained by Contractor shall name Owner and CRS as additional named insureds.

_____ Owner Initials
_____ Contractor initials

- 4) Prior to commencing Work, Contractor shall provide Owner and CRS with all certificates of insurance for the policies required pursuant to this Section 2(c) and (d).
 - 5) The Contractor shall defend, indemnify, and hold harmless the Owner, and CRS, including its officers and employees, from liability and claims for damages because of bodily injury, death, property damages, sickness, disease, or loss and expense arising from the Contractor's operations under this Agreement.
- d. **WORKER'S COMPENSATION.** The Contractor shall carry Worker's Compensation coverage for all Contractor's employees in accordance with the laws of the State of Ohio and shall require any sub-contractors engaged in the Work to carry Worker's Compensation coverage for their employees in accordance with the laws of the State of Ohio.
 - e. **EQUAL EMPLOYMENT** The Contractor shall abide by federal and local regulations pertaining to Equal Employment. The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin.
 - f. **COMPLIANCE WITH LAWS:** The Contractor shall comply with any applicable Anti-Kickback Laws, including the Copeland Anti-Kickback Act which prohibits anyone involved in this Agreement to give up a portion of their compensation for any purpose, including, but not limited to, "flower funds" and contributions. Contractor shall comply with Ohio Revised Code Chapter 4722 and all other applicable laws and ordinances related to consumers and residential construction.
 - g. **CONTRACTOR INSPECTION OF SITE AND CONTRACT DOCUMENTS:**
 - 1) By signing this Agreement, the Contractor hereby represents and warrants that it has done the following:
 - i. Visited the site of the Work
 - ii. Fully acquainted itself with the existing conditions relating to the Work
 - iii. Thoroughly examined all of the Contract Documents
 - iv. Verified the Scope of the Work outlined in Paragraph 4 (below) exactly matches the work included in the Contract Sum
 - v. Examined and verified all areas, dimensions, and quantities before submitting a Contract Sum and executing this Agreement.
 - 2) The Contractor, by execution of this Agreement, shall in no way be relieved of any obligation under the Contract Documents due to failure to visit the site and acquaint itself with the conditions existing, latent or otherwise. Owner shall be justified in rejecting any claim based on "site conditions".
 - 3) The Contractor shall make allowances for conditions as found and shall not, at any time after the execution of this Agreement, make claims based upon insufficient data or incorrect assumed conditions.
 - 4) Having examined both the site and Work, the Contractor shall not claim any misunderstanding in regard to the nature, conditions, or character of the Work.
 - 5) The Contractor will assume all risks resulting from any damages that may occur during the progress of the Work.

3. PERMITS AND LICENSES. All Work shall be performed in compliance with the applicable local codes and requirements. See ESCROW AGREEMENT for details.

4. SCOPE OF WORK. The scope of work shall include all labor and materials necessary and incidental to the completion of the project, or subcontracted portion of the project, as outlined in the DETAILED DESCRIPTION OF PLANNED REHABILITATION (Form 3) of the Heritage Home Program Loan Application completed by the Owner along with any appendices and attachments (herein known as the "Work").

5. CONTRACT SUM. Owner or CRS, out of Escrow Funds, if directed by the Owner, shall pay the Contractor for the performance of all work described in, and in accordance with, the Contract Documents, subject to additions and deductions by any change order, the contract sum of \$ _____ (the "Contract Sum"). See ESCROW AGREEMENT for terms and conditions.

6. ENUMERATION OF CONTRACT DOCUMENTS. For purposes of this Agreement, the contract documents attached hereto (herein after known as "Contract Documents") are made a part of this Agreement by this reference, and what is required by any one, shall be as binding as if required by all. See ESCROW AGREEMENT for complete enumeration of Contract Documents.

- a. INTERPRETATION: Owner and Contractor acknowledge that they may sign additional agreements prepared by the Contractor. If so, **Owner and Contractor agree that in the event of any conflict between this Agreement and any other contract or agreement, the terms and provisions of this Agreement shall prevail** regardless of which agreement or contract was executed first and regardless of any other provision of either agreement related to resolving conflicts between them.

7. CONTRACT REVISIONS AND CHANGE ORDERS. All revisions to the Work, including any increase or decrease in the Contract Sum, shall be authorized by a written Change Order, signed by the Contractor, accepted by Owner, and reviewed by CRS for general compliance with CRS Minimum Design Standards. See ESCROW AGREEMENT for details.

- a. Ohio Revised Code, Section 4722.02, EXCESS COSTS: IF AT ANY TIME A HOME CONSTRUCTION SERVICE REQUIRES EXTRA COSTS ABOVE THE COST SPECIFIED OR ESTIMATED IN THE CONTRACT SUM THAT WERE REASONABLY UNFORESEEN, BUT NECESSARY, AND THE TOTAL OF ALL EXTRA COSTS TO DATE EXCEEDS FIVE THOUSAND DOLLARS (\$5000) OVER THE COURSE OF THE ENTIRE CONSTRUCTION CONTRACT, OWNER HAS A RIGHT TO A **WRITTEN** ESTIMATE OF THOSE EXCESS COSTS **BEFORE** THE CONTRACTOR BEGINS WORK RELATED TO THOSE COSTS.

8. PAYMENT. See ESCROW AGREEMENT for terms and conditions.

9. PROJECT SCHEDULE.

- a. GENERAL: Contractor shall submit a Project Schedule to Owner, showing the proposed Start Date and Completion Date, as well as interim performance dates.
- b. START DATE AND COMPLETION DATE:
 - 1) After Owner's loan application is accepted, the mortgage is filed, and funds are held in escrow by CRS, CRS shall issue a written PROCEED ORDER. If said PROCEED ORDER is not received by the Contractor within ninety (90) days from the date of this Agreement, the Contractor shall have the option of terminating this agreement (See Paragraph 17, "Termination").
 - 2) Contractor shall start the Work within twenty-one (21) days from the date of the receipt of the PROCEED ORDER.
 - 3) Contractor shall complete the Work within eighteen (18) months after commencement.
 - 4) Estimated Start Date: _____
 - 5) Estimated Completion Date: _____
- c. If any delay is caused by an act of neglect by Owner, or by changes in the Work by Owner, then the time of commencement or completion shall be extended for such reasonable time as Owner and the Contractor may decide.
- d. If any delay is caused by strike, lockout, fire, unusual delay in transportation, weather conditions, or unavoidable casualties, the Contractor shall not have a claim against Owner, and the Contract

Sum and Schedule may be modified only as approved and agreed upon by the Owner, the Contractor, and CRS via Change Order.

e. **WORKING HOURS:**

- 1) Normal working hours and days shall coincide with those established by the Municipality.
- 2) Should the Owner require that work be performed during other times or days, permission shall be gained from the Municipality for a specified period of time.
- 3) Work during such additional times and days shall continue only so long as necessary to complete the Work within the stipulated time period.
- 4) No extension of time will be granted if the Owner or Contractor fail(s) to gain Municipality approval causing the Work to be temporarily or permanently halted.

10. WORKMANSHIP.

- a. The Contractor shall provide all labor, necessary and incidental, whether specifically indicated or not, to complete all aspects of the Work specified in the Contract Documents.
- b. All Work shall be performed by contractors skilled in their respective trades, in accordance with the best practices of such trades, the requirements of the Contract Documents, and in full compliance with all applicable ordinances and codes.

11. INSPECTIONS.

- a. Owner, the Municipality, or its designees shall at all times while this Agreement is in effect have access to the Work for the purpose of inspecting said work.
- b. Any Work completed but not approved, then hidden by further work, shall, at the request of the Owner, the Municipality, or its designees be uncovered for examination by the Contractor at its own expense.
- c. If Owner is the party requesting that such Work be uncovered, and the Contractor can show that the Work is in compliance with the Contract Documents, or that all defects were not caused by the Contractor or its subcontractors, then the Owner shall reimburse the Contractor in full for the aforementioned inspection expense.

12. SAFETY.

- a. **GENERAL:** The Contractor is solely responsible for the safety of their workers from any and all potentially hazardous working conditions. The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be solely responsible for all damages to persons and property, either on or off the site, which occur as a result of or incidental to the Work.
 - 1) If the Owner self-performs the Work or a portion of the Work, they shall be solely responsible for the protection of persons and property and for damages to persons and property, either on or off the site, which occur as a result of or incidental to the Work they performed.
- b. **LEAD-BASED PAINT:**
 - 1) The parties acknowledge that they have been made aware of the hazards of lead based paint and received the CRS LEAD-BASED PAINT WARNING.
 - 2) The Contractor shall contain, clean up, and dispose of paint dust and debris as required by federal, state and local law, at the end of each work day.
 - 3) Lead paint removal, handling, and cleanup shall be conducted by a lead-certified abatement contractor in accordance with all applicable regulations where required.
- c. **ASBESTOS:**
 - 1) Contractor shall notify Owner of any suspected asbestos-containing materials related to the Work prior to signing this Agreement.
 - 2) The Owner shall be notified of any suspected asbestos-containing materials uncovered during the course of the Work, and all work in the affected area shall stop immediately.

- 3) Identification, testing, and removal to a legal disposal site shall be done by a licensed asbestos abatement contractor in accordance with all applicable regulations.
- 4) Clearance reports shall be submitted to the Owner.

13. SITE PROTECTION.

- a. Contractor shall make every effort to protect the existing contents and occupants of the Property, including those on adjacent property, from damage or harm related to the Work.
- b. Site Protection includes, but is not limited to: buildings, grounds, plants, pavements, utilities, fixtures, and Work completed by others.
- c. Contractor shall cover all carpets, and furniture in the work area with clean drop cloths.
- d. Owner shall make a reasonable effort to move furniture, fragile articles, articles of value, and rugs to create working space for the Contractor.
- e. DAMAGES: Defects or damage created by the Contractor, his/her employees, or any subcontractor during the performance of the Work shall be corrected by the Contractor at no additional cost to Owner. Materials shall be replaced in kind, returning all Property to equal condition as existed before damage.
 - 1) If Owner elects to self-perform the Work or a portion of the Work, they shall be solely responsible for any damages related to said Work.

14. TEMPORARY FACILITIES.

- a. OWNER OCCUPANCY: Where buildings are furnished and occupied by Owner or Owner's tenants, the Contractor and its subcontractor shall make allowances for whatever inconvenience is occurred, (i.e., adjusting working hours to accommodate the daily routine of Owner or Owner's tenants, working around furniture, etc.).
- b. UTILITIES: The Owner shall permit the Contractor to use, at no cost, utilities such as light, heat, power and water necessary to the performance and completion of the Work. Activating the above services in unoccupied building shall be or become the direct responsibility of Owner.

15. MATERIALS & EQUIPMENT.

- a. The Contractor shall provide all materials necessary and incidental to complete the Work.
- b. All materials shall be new and of the quality specified, except where historic materials are salvaged from the original structure as approved by Owner, and shall comply with all federal, state, and local requirements.
- c. Materials shall be installed in accordance with manufacturer specifications and written instructions.
- d. The Contractor shall furnish material samples for the approval of Owner as requested.
- e. OWNERSHIP: Materials and equipment that have been removed and replaced as part of the Work shall belong to Owner, unless otherwise stated in the Contract Documents. All materials on which any payment has been made shall be in Owner's name.
- f. SUBSTITUTIONS. If the Contractor wishes to make substitutions, any material or any equipment substituted must be of equal or greater merit to those specified in the Contract Documents. The Contractor shall submit a request for approval of substitutions to Owner and CRS with complete product information and sample, if such sample is requested.
 - 1) If the Owner self-performs the Work or a portion of the Work, all material substitutions must be review by CRS for general compliance with CRS Minimum Design Standards.

16. CLEAN-UP.

- a. Cleaning products and tools shall not damage the Property or its contents.
- b. Job site shall be kept clean throughout construction.
- c. Passageways and hallways shall be kept clear of debris, lumber, and equipment.
- d. Final Clean-up: Remove all equipment, debris, and surplus materials not belonging to the Owner.

e. MATERIAL DISPOSAL:

- 1) All construction debris, scrap, and waste materials shall be removed from the site or placed in an on-site dumpster by the Contractor on a daily basis.
- 2) Dispose of all materials, including potentially hazardous materials, in accordance with federal, state, and local regulations.
- 3) The Owner's personal refuse containers shall not be used without prior Owner approval.
- 4) The Contractor shall not rely on the Municipality's weekly collection without prior Owner approval.

17. TERMINATION.

a. TERMINATION FOR CAUSE.

- 1) In the event the Contractor fails to perform its obligations in accordance with the provisions of the Contract Documents, Owner shall have the right to deliver to Contractor a written notice stating that Owner intends to declare the Contractor in default in the performance of his obligations under this Agreement. Said written notice shall contain the reason for the Owner's intent to declare the Contractor in default and, unless, within ten (10) days after the giving of said notice, the violation shall cease or arrangements satisfactory to Owner shall be made for its correction, the Contractor may be declared in default and its right to proceed under this Agreement terminated.
- 2) In the event the Contractor is declared to be in default, the Owner may, in addition to any other remedy available to Owner at law or in equity, proceed to have the Work completed, and, in such event, shall apply to the cost of having said Work completed any money due to the Contractor under this Agreement, and the Contractor shall be responsible for any damages to the Owner by reason of said default.

b. TERMINATION FOR CONVENIENCE. At any time, the Contractor and the Owner may terminate this Agreement through a Change Order signed by both and sent to CRS. If this Agreement is so terminated, the Contractor shall be paid a pro rata portion of the Contract Sum based upon the percentage of satisfactorily completed work, less payments of compensation previously made, as approved by the Owner.

18. ARBITRATION CLAUSE.

- a. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- b. Filing, hearing, postponement, processing, and administrative fees will be shared equally by the Owner and Contractor.
- c. CRS shall not be a party to such arbitration. In addition, such arbitration proceeding shall NOT be combined with any arbitration related to the Agreement between the Owner and CRS or the ESCROW AGREEMENT.
- d. The parties hereby agree that in the event that CRS is required to respond to any court action or arbitration without fault of CRS, then CRS shall be reimbursed for all its costs and expenses (including reasonable attorney fees), all of which shall be charged to the appropriate parties in accordance with the ESCROW AGREEMENT.

19. WARRANTY. The Contractor hereby guarantees that all Work performed pursuant to the Contract Documents shall be free from defects arising from the workmanship of the Contractor or any subcontractor, or the quality of the material, for a minimum period of one (1) year from the date of the Certificate of Completion. The Owner shall also be provided the benefit of all applicable warranties by the manufacturers of all materials used in the work performed. Additional warranty requirements are as follows:

- a. Roof replacement (shingled or membrane): 5 year labor warranty
- b. Basement exterior waterproofing: 10-year labor warranty
- c. New manufactured siding: 5 year labor warranty

The parties acknowledge that this document constitutes a binding and enforceable agreement among them and that they have carefully read and examined the foregoing provisions before affixing their signatures.

_____	_____
_____, Owner	Date
_____	_____
_____, Owner	Date
_____	_____
_____, Contractor	Date