

## CONTRACT FOR REPAIRS AND/OR ALTERATIONS

**THIS CONTRACT FOR REPAIRS AND/OR ALTERATIONS** ("Contract") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ ("Remodeler") and \_\_\_\_\_ of \_\_\_\_\_ ("Owner"). The Remodeler and the Owner, for the considerations hereinafter named, agree as follows:

1. **Scope of the Work.** The Remodeler shall furnish all labor and materials required for the performance of remodeling work ("the Work") at \_\_\_\_\_ ("Premises") in a workmanlike manner, subject only to tolerances and deviations customary in the remodeling industry, in accordance with the attached signed plans and specifications dated \_\_\_\_\_ ("Plans and Specifications"), which are part of this Contract. The Remodeler shall provide and pay for all materials, labor and tools needed to complete the Work, unless otherwise stated in this Contract. The Remodeler shall not be responsible for any materials and labor supplied by the Owner. No work shall be done except as specified herein or on the Plans and Specifications or as expressly agreed to by the Remodeler in writing. This Contract may not be modified except in writing, signed by the Owner and the Remodeler.
  
2. **Contract Sum and Payments.** The Owner shall pay to the Remodeler 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 Remodeler's Fee (as defined below), subject to any adjustments made in accordance with this Contract (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 Contract ("Down Payment"). The remaining balance of the Contract Sum shall be paid in monthly installments within seven (7) days following the date of the Remodeler's application for payment to the Owner. The Remodeler 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 Remodeler'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 Remodeler'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 Remodeler shall keep such full and detailed accounts of the Contract Sum as are reasonably necessary for managing and documenting the Contract Sum.
  
3. **Cost of the Work and Remodeler's Fee.** The Remodeler'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 Remodeler in the performance 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 Remodeler in

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the performance of the Work; **(b)** wages or salaries of Remodeler'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 Remodeler'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 the Remodeler 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 Remodeler at the site of the Residence, whether rented from the Remodeler or others, and incurred in the performance of the Work; **(h)** the cost of the premiums for all insurance and surety bonds the Remodeler 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 Remodeler's negligence; **(k)** 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 Remodeler and the Owner, which result from the Remodeler's performance of the Work; **(o)** all other costs directly incurred in the performance of the Work which are not included in the Remodeler's Fee and which are reasonably inferable from this Contract 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 Work requested or made necessary by the Owner. All discounts for prompt payment, cash discounts, trade discounts, rebates and refunds, shall accrue to the Remodeler and shall not be credited against the Cost of the Work.

4. ***Late Charges on Delinquent Payments.*** The Owner shall pay a delinquency late charge of 2% per month on any delinquent payment, as set forth above, that remains unpaid fifteen (15) days or more after its due date.
  
5. ***Changes, Alterations and Extras.*** All changes in or departures from the Plans and Specifications shall be in writing. Where changes in, or departure from, Plans and Specifications requested in writing by the Owner, shall result in furnishing of additional labor and materials, the

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Owner shall pay the Remodeler for such extras at a price agreed upon in writing before commencement of the change, if possible, and if not possible, the cost for such extras shall be the cost of labor and materials plus \_\_\_\_\_% for the Remodeler's overhead and fee. Where such change results in the omitting of any labor or materials, the Remodeler shall allow the Owner a credit at a price agreed to in writing before commencement of the changes.

6. ***Hidden Damage/Hazardous Material Removal.*** The Remodeler shall not be obligated to correct hidden damage caused by termites, other pests, dry rot, water infiltration or mold, or any other cause. Neither the Remodeler nor any subcontractor shall be required to remove any asbestos or other hazardous material discovered during the course of the job.
7. ***Matching Materials.*** The Remodeler cannot guarantee that it can match materials, textures, colors or sheens with respect to plaster, stucco, concrete, siding, brick, shingles, wood and finishes. The Remodeler shall obtain materials that match as close as reasonably possible from readily available local stock. While the Remodeler shall use reasonable efforts to match existing materials, textures, colors and planes, exact duplication is not promised.
8. ***Electrical Service.*** Unless specifically included, electrical work contemplates no change to existing service panels other than the addition of circuit breakers or fuse blocks to distribute electric current to new outlets. The cost incurred in changing any point of service, main switch or meter that may be required by an inspector or utility company shall be paid to the Remodeler by the Owner as an extra in accordance with Paragraph 5. Changes to existing wiring in areas undisturbed by alterations are not included in the Work.
9. ***Filled Ground, Rock or Springs.*** Unless otherwise stated, the Contract Sum does not include unusual excavation or grading costs resulting from underground springs, relocation of utility lines, rock removal or other such conditions. If such work is required, the Remodeler shall inform the Owner of the unusual conditions necessitating such work and the Owner shall pay for such work as extra work in accordance with Paragraph 5.
10. ***Underground Pipes.*** The Remodeler shall not be responsible for damage to, or removal of, hidden pipes, sprinkler lines, water or sewage disposal piping and/or systems, wires, or conduits in excavation and grading areas.
11. ***Property Lines.*** The Owner shall furnish, at the Owner's expense, all necessary surveys and assume responsibility for the accuracy of all boundary markers unless otherwise agreed in writing by the Owner and the Remodeler.
12. ***Conduits, Pipes, Ducts.*** Unless specifically indicated, the Contract Sum does not include re-routing vents, pipes, ducts or wiring conduits, or correcting other hidden conditions that may be discovered through removing, or cutting openings in walls.

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13. **Access to Work.** The Owner shall grant free access to work areas for workers and vehicles and shall allow areas for material and rubbish storage. The Owner shall keep driveways clear and available for movement and parking of trucks during normal working hours.
14. **Requirement of Public Bodies/Permits.** Any change or alterations of the Plans or Specifications required by any public bodies, utilities, historical preservation groups, associations, inspectors, or any other private or governmental organizations or agencies, shall constitute an extra and the cost thereof shall be treated as extra work in accordance with Paragraph 4 and paid by the Owner. The Remodeler and the Owner acknowledge that such extra work may cause a delay in the construction schedule. In such circumstances, the Remodeler shall be entitled to a change order.
15. **Materials Removal; Rubbish.** All materials removed from structures in the course of the Work shall be disposed of by the Remodeler, except those items designated in writing by the Owner prior to commencement of the Work. All construction rubbish shall be removed by the Remodeler at the conclusion or earlier termination of the Work and the Premises shall be left in broom-clean condition.
16. **Fire and Liability Insurance.** Prior to commencement of the Work, the Owner shall have the Remodeler listed as a loss payee on any existing fire and comprehensive insurance policy by means of endorsement, and shall furnish a waiver of subrogation for fire and those items covered under a comprehensive policy including vandalism; or shall purchase a separate policy to protect the Remodeler's interests. In the event the Owner fails to do so, the Remodeler may procure such insurance, and the Owner shall reimburse the Remodeler for the cost thereof. The Remodeler shall carry, at its own expense, worker's compensation and public liability insurance. Certificates of such insurance shall be filed with the Builder. 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 in accordance with Paragraph 5. It is specifically agreed that the Contract Sum shall be adjusted to reflect increases in labor, materials, overhead and other costs since the date of this Contract in calculating payment for replacement of the injured Work.
17. **Toilet Facilities; Utilities.** The Owner shall furnish toilet facilities to all workers or compensate the Remodeler for cost of rented units. Electricity, water and other utilities shall be furnished to the Remodeler by the Owner.
18. **Existing Conditions.** Any existing plaster, drywall or other wall coverings that are to remain in place during the execution of the Work are deemed to be correctly installed, in good condition, and not to be repaired as part of the Work, unless otherwise required by the Plans and Specifications. In addition, the parties agree that the existing walls and ceilings of areas to be affected by the Work are reasonably plumb, level, straight, and in plane, and no shimming, furring, reframing or other repair of such walls or ceilings is part of the Work, unless otherwise required by the Plans and Specifications.

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19. **Damage to Property.** The Remodeler shall not be held responsible for any damage caused by the Owner, materials provided by the Owner, work performed by the Owner's other contractors, or by acts of God including, but not limited to, soil slippage, earthquake, or fire, or by riot or other civil disturbance, or by any exercise of governmental authority, or by any other cause beyond the control of the Remodeler. In addition, the Remodeler shall not be held responsible for any damage arising out of defective work or work performed by the Owner or the Owner's other contractors, including but not limited to, water damage, surface or subsurface materials' cosmetic appearance, squeaking floors, leaks, popping sheet metal, fire stopping work or materials, or any other work below or adjacent to materials supplied by the Owner or the Owner's other contractors.
20. **Extra Time.** The Remodeler agrees to pursue the Work diligently to completion, but shall not be responsible for delays for any of the following reasons: acts of neglect or omissions of the Owner, acts of God, stormy or inclement weather, strikes, lockouts, boycotts, or other labor union activities, extra work ordered by the Owner, acts of public governmental priority or allocation of materials or any other cause beyond the control of the Remodeler. The Owner acknowledges that the Contract Sum shall be increased to cover any additional costs incurred by the Remodeler in completing the extra work. Such additional costs will not include additional fees to the Remodeler.
21. **Work Stoppage.** Should the Work be stopped by any public authority for a period of thirty (30) days or more, through no fault of the Remodeler, or should the Work be stopped through an act or the neglect of the Owner for a period of fifteen (15) or more days, or should the Owner fail to make any payment within fifteen (15) days after it is due, then the Remodeler, upon seven (7) days' written notice to the Owner, may stop work or terminate this Contract and recover from the Owner payment for all work executed along with reasonable profit and damages.
22. **Sign.** The Remodeler may display its sign in the Owner's yard until completion of the Work.
23. **Substitutions and Allowances.** In the event any of the materials herein described are not readily available locally, the Remodeler reserves the right to make substitutions, providing the substitutions are equal to or exceed the quality of the items herein described. The Owner shall pay all taxes and shipping charges in excess of allowances.
24. **Pre-Existing Conditions.** The Owner shall be responsible for pre-existing code violations or conditions in the area in which the Work shall be performed within the scope of this Contract.
25. **Control and Use of Construction Personnel.** The Remodeler, or its duly designated agent, shall have sole control of construction personnel, including subcontractors. The Owner shall not issue any instructions or otherwise interfere with construction personnel. The Owner shall not negotiate for additional work with the Remodeler's subcontractors or engage another contractor

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or subcontractor except with the Remodeler's prior written consent and then only in such manner as will not interfere with the Remodeler's completion of the Work under this Contract.

- 26. *Default.*** If the Owner defaults on any obligation under this Contract, the Remodeler may, at its option, treat this Contract as null and void and retain all payments made hereunder, or may pursue any other legal remedy including, specific performance. The Owner agrees to indemnify and hold the Remodeler harmless from any and all loss, expense or costs, including but not limited to reasonable attorney fees, that the Remodeler incurs as a result of or arising out of any default by the Owner in the performance of its obligations under this Contract. If the Remodeler defaults on its obligations in this Contract, the Owner's sole remedy is to declare this Contract null and void and to seek a refund of the deposit.
- 27. *Successors and Assigns.*** The rights and obligations created under this Contract shall inure to and bind the heirs, administrators, executors, successors and assigns of the Remodeler and the Owner.
- 28. *Right to Cure:*** If the Owner believes a construction defect exists in the Premises, the Owner shall comply with 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 Remodeler 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 Remodeler or its agents, employees or subcontractors;
  - b.** Failure of a person other than the Remodeler or its agents, employees or subcontractors to take reasonable action to reduce the damages or maintain the Premises;
  - 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.

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

- a.** The Owner shall describe the claim in writing in reasonable detail delivered to the Remodeler and shall offer to attempt to resolve the claim by either conciliation (as required under Section 30(a)) or mediation (as required under Section 30(b)); and
- b.** Not less than twenty-one (21) days after receipt of that written notice, the Remodeler shall send a written response to the Owner to arrange an inspection, offer to correct the

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defect or compensate the Owner for the defect, or state in writing an intent not to take any remedial action. If the Remodeler notifies the Owner that the Remodeler intends to take no remedial action, the Remodeler shall agree to either resolve the claim through the conciliation process required under Section 30(a) or the mediation process required under Section 30(b). If the Owner and the Remodeler cannot resolve their 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 30(c).

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

29. ***Representations and Limited Warranty.*** The Limited Warranty attached and incorporated by reference into this Contract contains the sole warranty provided by the Remodeler to the Owner. The Limited Warranty shall take effect upon substantial completion of the Work and shall expire one year from the date of substantial completion of the Work. Notwithstanding the foregoing, the Limited Warranty shall have no force and effect until the Remodeler has received full payment of the Contract Sum stated above. In exchange for this Limited Warranty, the Owner waives any right to incidental or consequential damages with respect to any claim under this Contract or the Limited Warranty.

This Contract and the Limited Warranty contains all of the representations, warranties and promises of the Remodeler. No agent or representative of the Remodeler is authorized to make any representation or promise on behalf of the Remodeler other than those contained in this Contract, and the Remodeler 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.

30. ***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 Remodeler shall 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,

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emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects.

**31. *Soil Shrinkage/Expansion.*** The Remodeler 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. The Remodeler shall have no responsibility to the Owner nor to any subsequent purchasers of the Premises 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 Premises caused in whole or in part by the quality or type of soil, or earth movement, soil or earth substance or expansion of any kind or by moisture of any kind, or from failure to maintain proper drainage adjacent to the Premises 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.

**32. *Dispute Resolution.***

- a. *Conciliation:*** In the event of any claims, disputes or other matters in question between the parties involving compliance by the Remodeler with Industry Standards as contained in the Performance 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 Contract not otherwise covered under Paragraph 30(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 Contract 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 Remodeler 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

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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 Contract, 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 Remodeler shall have the right to include (i) the Owner as a party in any mediation or arbitration between the Remodeler and its subcontractors or suppliers and (ii) any subcontractors or suppliers as parties in any mediation or arbitration between the Remodeler and the Owner.
33. **Notice, Disclosure and Disclaimer:** The Remodeler's Notice, Warranty and Disclaimer is attached and incorporated into this Contract by reference.
34. **Exhibition of Work in Tour of Remodeled Homes:** The Remodeler and the Owner agree that upon the prior agreement of both the Owner and the Remodeler, the Work may be exhibited in the annual Tour of Remodeled Homes sponsored by the HBA ("Remodeler's Show"). In the event the Owner and the Remodeler agree to exhibit the Work in the Remodeler's Show, the Owner waives its right to recover from the HBA or the Remodeler for any and all claims arising out of or in any way related to the use of the Work in the Remodeler's Show.

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35. **OWNER'S RIGHT TO CANCEL CONTRACT SOLICITED AT OWNER'S HOME UNDER STATE AND FEDERAL LAW:** The Owner may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached form for an explanation of this right.
36. **OWNER'S RIGHT TO RESCIND CONTRACT UNDER FEDERAL LAW: SEE ATTACHED FORM (IN DUPLICATE). THE OWNER ACKNOWLEDGES RECEIPT OF NOTICE OF CANCELLATION.**
37. **Lead Warning Statement.** Please see the attached lead warning statement entitled *Renovate Right* prior to executing this Contract. The parties agree the attached statement, acknowledgements and disclosures are incorporated into this Contract by reference.
38. **Miscellaneous.** The Remodeler shall not be obligated under this Contract by a salesman's signature. The Remodeler shall be obligated under this Contract only after the Remodeler has signed this Contract. The Owner certifies that Owner has read the entire contents of this Contract and acknowledges receipt of copy of this Contract. This is the only Contract between the Owner and the Remodeler, and no verbal agreements of any kind shall be binding on the parties hereto.
39. **Exhibits.** The following exhibits are made a part of this Contract.

_____	_____	_____	_____
Owner	Date Signed	Salesman	Date Signed
_____	_____	_____	_____
Owner	Date Signed	Accepted by: Remodeler	Date Signed
_____	_____		
Owner	Date Signed		
_____	_____		
Owner	Date Signed		

This form may be used only by a Registered Remodeler who is a current member of The Home Builders Association of Northern Kentucky, Inc.

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