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BIA ARBITRATION RULE ADDENDUM

This BIA Arbitration Rules Addendum is designed to further detail, be a part of and govern the binding Arbitration provisions and proceedings of all BIA form contracts between BIA member Builders, Remodelers or Contractors and those Home Buyers, Home Owners and Property Owners under contract.

RULE 1. Acceptance, Intent and General Rules

A. Acceptance and Intent. Arbitration is a process in which an impartial, private third Party facilitates, communication, negotiation and adjudication, and assists the disputing Parties with reaching a voluntary resolution and/or agreement. This process of alternative dispute resolution can be more timely and less expensive than the civil justice system while still effecting just results. The Owners' acceptance of this Agreement constitutes their acceptance of these rules and the purpose of arbitration.

B. Construction. These rules shall be construed and applied to effect just results by eliminating unfair surprise, unnecessary delay, unnecessary expenditures of time and money and all other impediments to the prompt and inexpensive administration of justice.

C. Impartiality. The Arbitrator agrees that the arbitration process shall be impartial and he/she will conduct the arbitration in a fair and balanced manner under these rules.

D. Conflict of Interest. In the event of a perceived conflict of interest, the Arbitrator shall inform the Parties and the Chairman of The BIA of Central Ohio's Professional Standards Committee within three (3) days of learning about such conflict. Upon learning of such conflict, the Chairman shall select a new Arbitrator within a reasonable amount of time in order to comply with the timelines set forth herein.

E. Amendment. These rules are promulgated by the Building Industry Association of Central Ohio and may be amended or clarified by such organization at any time.

RULE 2. Arbitrator Qualifications

A. The Arbitrator selected shall not be a member of the Building Industry of Ohio's Professional Standards Committee. The Arbitrator shall be an attorney licensed in the State of Ohio and have background or experience in residential construction or cases related to same. The Chairman of the Building Industry of Ohio's Professional Standards Committee shall have sole discretion, subject to the requirements of these rules, to name an impartial, appropriate and competent Arbitrator.

B. Compensation. Any and all fees due to the arbitrator for his/her services, including reasonable transportation costs, costs for preparation and costs for arbitration of the dispute shall be split evenly between the Parties.

RULE 3. Hearing and Notice.

A. After completion of investigation and review by a Contractor, and after Owner has fully cooperated and provided Contractor with a right to cure and/or elect remedies as provided in any agreements between the Parties, and it is determined that disputes remain unresolved and Arbitration is necessary, one or more of the Parties or their agents to the dispute shall in writing notify the Chairman of the Building Industry Association of Central Ohio's Professional Standards Committee that he/she needs to select an Arbitrator.

B. Within five (5) business days following notification, the Chairman of the Building Industry Association of Central Ohio's Professional Standards Committee shall select an Arbitrator in accordance with Rule 2.

C. All arbitrations shall be held at a time designated by the selected Arbitrator at the Building Industry Association headquarters, or upon agreement by all Parties, at another designated place, such as a law office. Parties shall arbitrate such disputes not less than thirty days but not more than sixty days after the Chairman is notified that Arbitration is necessary. Upon selection of the place and time, the Arbitrator shall notify all Parties in writing of the selected time. Such notification shall be given at least fourteen (14) days prior to the scheduled hearing.

RULE 4. Duties and Oath of Arbitrators

A. The Arbitrators shall:

1. Perform their duties fairly, impartially and diligently; and

2. Be patient, dignified and courteous to all who come before them; and
3. Be faithful to the law; and
4. Be unswayed by personal interests or fear of criticism; and
5. Not identify themselves as Homebuyer/Homeowner or Builder/Contractor Arbitrator.
6. An Arbitrator may subpoena witnesses or documents as authorized by law and may do so at the request of any party or on the Arbitrator's own determination.

B. The Arbitrator's sole function is to consider the evidence, to apply the facts to the law in a fair and impartial manner and to render a just decision.

C. When the Arbitration Parties are assembled and before the hearing begins, the Arbitrator shall take an oath or affirmation, as follows:

"I solemnly affirm that I will faithfully and fairly hear and examine the matter in controversy and that I will make a just decision to the best of my understanding and ability."

This oath shall not be waived. Any arbitrator who fails to take this oath shall not be entitled to any compensation for serving as an arbitrator.

D. There shall be no communications by counsel or the Parties with any Arbitrator concerning the merits of the controversy prior to the commencement of the arbitration hearing nor following the conclusion of the arbitration hearing until the Report and Award/Decision have been filed and served on all Parties.

RULE 5. Default of a Party

The Arbitration may proceed in the absence of any Party who, after due notice, fails to be present or obtain a continuance or to present evidence. An award shall not be made solely on the default of a Party. The Arbitrator shall require the other Party to submit such evidence as it may require for the making of an award or rendering a decision.

RULE 6. Transcript of Testimony

The Arbitrator shall not be required to make a transcript of the hearing. If any Party desires a transcript, that Party shall provide a reporter and cause a record to be made. The Party requesting the record shall pay the expenses. Any Party desiring a copy of any transcript shall be provided with it by the reporter upon payment of the usual charges for a copy of a deposition, plus the Party's proportionate share of the cost of the reporter's attendance.

RULE 7. Continuances of Hearing, Inability of Hearing to Proceed

The Arbitrator may continue a hearing date only upon a showing by a Party or Parties of extraordinary reasons. In such event, it shall be the responsibility of the Party requesting the continuance to reschedule the hearing at a date and time not later than forty-five (45) days, mutually agreeable to the Arbitrator and the Parties. The Arbitrator shall then provide written notice of the rescheduled hearing date and time.

RULE 8. Conduct of Hearing – General Powers

A. Strict conformity to the Rules of Evidence is not necessary. However, except as indicated below, there shall be substantial compliance with the Ohio Rules of Evidence.

Evidence received shall be given such weight as the Arbitrator deems appropriate after consideration of any objections. Rulings upon objections shall be made by the Arbitrator. All evidence shall be taken in the presence of the Arbitrator and all the Parties except where any of the Parties is absent and consents, or is in default, or has waived the right to be present.

The Arbitrator may receive evidence in the following forms:

(1) Testimony. Testimony by competent witnesses, whether live or by deposition, signed and dated witness statements or transcripts of the same, or affidavits. The Arbitrator shall administer oaths or affirmations to all live witnesses;

(2) Documentary Evidence.

(a) The following documents may be offered and shall be received into evidence.

(i) Property Repair Bills or Estimates. Property repair bills or estimates, when identified and itemized setting forth the charges for labor and material used in the repair of the property.

(ii) Procedure in Case of Estimate. In the case of an estimate, the Party intending to offer the estimate shall forward with his or her notice to the adverse Party, together with a copy of the estimate, a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or part, attaching a copy of the receipted bill showing the items or repair made and the amount paid.

(b) Records relating to any and all correspondence between the Parties and/or their agents with the exception of any documents as protected by the attorney-client privilege.

(c) Any and all public records including but not limited to those documents filed with the applicable zoning or building authority.

(d) Reports of any proposed experts. The Arbitrator shall have sole discretion in determining whether or not the proposed material qualifies as expert testimony.

(e) Similar materials. Any reports and/or records and/or other materials that are substantially similar to any of the items specifically set forth in Rule 8, or that the Arbitrator finds is relevant and material to the matter, may be offered and shall be admitted into evidence.

B. All written or documentary evidence as listed above must be served upon the adverse Parties or their counsel at least fourteen (14) days before the hearing, unless the Parties otherwise agrees to a shorter time period. Failure to give such notice or serve that evidence upon opposing Parties can be sufficient grounds for exclusion of the evidence, at the discretion of the Arbitrator. The Arbitrator shall not exclude evidence unless it unfairly surprises the non-offering Party or otherwise unfairly prejudices the non-offering Party or is not relevant or material to the matter.

C. Arbitration Briefs. The Arbitrator may, but shall not require, the Parties to submit arbitration statements and/or briefs related to the subject matter of such dispute.

D. Where documentary evidence including, but not limited to, the types of evidence referred to above, will be offered for admission at the hearing, counsel for the Party offering the evidence shall provide a copy of each document to the arbitrator.

RULE 9. Report and Award

Within thirty (30) days after the hearing, the Arbitrator shall render written findings of fact and shall transmit via mail copies of such findings to the Parties or where applicable, their counsel.

RULE 10. Legal Effect of Report, Award and/or Decision

The Parties agree in accordance with this Agreement that any award or decision entered between the Parties shall be final and binding between the Parties.

RULE 11. Confidentiality

The arbitration between the Parties is privileged and is not subject to discovery or admissible as evidence in a proceeding unless such confidentiality is waived voluntarily and in writing by all Parties to the Arbitration, or as required for court proceedings.