

STATE OF INDIANA
COUNTY OF HAMILTON

) IN THE HAMILTON SUPERIOR COURT
) SS:
) CASE NO.: 29D02 1602 CT 1262

HOOSIER CONTRACTORS, LLC

Plaintiff,

v.

SEAN GARDNER,

Defendant.

TAMMY BAITZ
CLERK
HAMILTON COUNTY COURTS

FILED
FEB 12 AM 10:32

COMPLAINT FOR DAMAGES

Come now the Plaintiff Hoosier Contractors, LLC, by undersigned counsel and hereby requests this Court to award damages for the breach of contract by the Defendant Sean Gardner and in support thereof states the following:

1. Hoosier Contractors, LLC ("Hoosier") is a registered Limited Liability Company of Indiana, located in Hendricks County, Indiana. Plaintiff has a Hendricks County address of 1551 N. Green St., Ste. F, Brownsburg, IN 46112.

2. Defendant Sean Gardner ("Mr. Gardner") upon information and belief is a resident of Marion County, Indiana residing at 7726 Spring Ridge Drive, Indianapolis, IN 46278.

3. This Court has jurisdiction over this matter pursuant to Indiana Trial Rule 75 is set in Hamilton County per the venue clause set on the contract. The Defendant resides in Marion County and the amount in controversy is exceeds \$6,000.00.

4. On or about December 12, 2015, a representative from Hoosier met with Mr. Gardner at his home.

5. On December 12, 2015, Mr. Gardner signed a contract with Hoosier to complete the work his insurance approved a claim for the property loss. See Exhibit A, First Contract.



6. On or about December 22, 2015, Mr. Gardner signed an updated contract as the claim he presented to Hoosier was over two years old and he had changed his insurance provider. See Exhibit B, Updated Contract.

7. On December 22, 2015, Hoosier contacted Mr. Gardner's Insurance, Cincinnati Insurance Company, to open a new claim.

8. A representative from Hoosier met with Mr. Gardner's insurance adjuster on January 6, 2016, and got a claim approved for the roof, all of the gutters and downspouts, two garage doors, painting for interior damage, an AC comb and miscellaneous personal items.

9. Mr. Gardner repeatedly asked representatives from Hoosier to cover his deductible when he realized his deductible was \$5,000.00.

10. Representatives from Hoosier informed Mr. Gardner that under IC §24-5-11, they are not allowed to wave or pay any part.

11. Hoosier has not yet been allowed to schedule the work to be conducted on Mr. Gardner's home in accordance with the insurance scope for repair.

COUNT I: Breach of Contract

12. Plaintiff restates and reaffirms the preceding paragraphs as if the same were wholly set out herein.

13. Hoosier has a valid contract with the Defendant.

14. Hoosier has not be allowed to conduct the work on Defendant's home in accordance with the contract.

15. Hoosier has on multiple occasions attempted to schedule the work to be completed on Defendant's home.

16. Defendant attempted to convince Hoosier violate IC §24-5-11 by requesting Hoosier pay for Defendant's deductible.

17. Hoosier repeatedly informed Defendant they could not pay for his deductible.

18. Defendant has breached his contract with Hoosier because they would not pay Defendant's deductible.

19. Now Defendant wants to void the contract with Hoosier to solicit another contractor to cover his deductible.

20. Hoosier has suffered damages related to the breach committed by Defendant.

WHEREFORE, Plaintiff, Hoosier, prays this Court grant Plaintiff's request for damages in the amount determined by the Court, awards costs, reasonable attorney's fees in accordance with the contract signed by Defendant, and for all other relief as is just and proper in the premise.

Respectfully submitted,



David E. Miller (SBN: 31855-32)

SAEED & LITTLE LLP

1433 N. Meridian St., Ste. 202

Indianapolis, IN 46149

(317) 721-9214

david@slawfirm.com

EXHIBIT A

File #80996

Hoosier Contractors, LLC

1551 N. Green St. Suite F
Brownsburg, IN 46112

(317)677-4755

HoosierRoof.com

Install@HoosierRoof.com



Account Manager

Contact #

Insurance Company Information

Company

Policy#

Claim#

Mortgage Company Information

Company

Loan Number

REPLACEMENT WORK AGREEMENT

Owner(s):	SEAN GARDNER		Primary Phone:	317-698-3466	ALT Phone:	NA
Address:	7726 SPRING Ridge dr.		City / State / Zip:	Indpls IN 46278		
Email Address:	SGARDNER@ACILLC.NET		Roof RCV Amount:			
Estimated Total Roof Squares:	Slope:	Story:	Drip Edge Color:	Gutter Color:		
770	12	2	NA	CLAY		
Shingle Brand / Series / Color:	GAF Timberline NATURAL Shadow Weathered wood					

THE PARTIES AGREE THAT IF OWNER'S INSURANCE COMPANY DOES NOT AGREE TO PAY FOR THE PROPOSED REPAIR AND/OR REPLACEMENT WORK CONTEMPLATED BY THIS AGREEMENT, THEN THIS AGREEMENT SHALL BE NULL AND VOID.

BY SIGNING THIS AGREEMENT BELOW, OWNER GRANTS HOOSIER CONTRACTORS, LLC d/b/a HOOSIER CONTRACTORS ("HOOSIER") ACCESS TO AND THE RIGHT TO INSPECT OWNER'S HOME AND PROPERTY TO DETERMINE IF ANY DAMAGE HAS BEEN CAUSED TO OWNER'S HOME THAT MAY BE COVERED BY OWNER'S HOMEOWNER'S INSURANCE POLICY.

IF HOOSIER DETERMINES THAT DAMAGE HAS BEEN CAUSED TO OWNER'S HOME THAT MAY BE COVERED BY OWNER'S HOMEOWNER'S INSURANCE POLICY, OWNER WILL CONTACT OWNER'S INSURANCE COMPANY REGARDING HOOSIER'S FINDINGS AND OPINIONS AND MAKE A CLAIM TO OBTAIN A 'SCOPE OF WORK.'

REPAIR/REPLACEMENT WORK AND PRICE: Subject to the terms and conditions set out below and on the reverse side of this Agreement, Hoosier agrees to furnish all the materials and labor necessary to perform all the repair/replacement work set forth in the "Scope of Work" (or other similarly named document provided Owner's prepared and approved by Owner's Insurance Company ("Project"). Hoosier will complete the Scope of Work for the Project, subject to any "Supplements" approved by Owner's Insurance Company and also subject to any changes or extras approved by Owner outside of the "Scope of Work." The "Scope of Work" and any "Supplements" provided by Owner's Insurance Company on this Project are incorporated in and made a part of this Agreement by reference. The Project will be completed by Hoosier for the Replacement Cost Value ("RCV"), plus approved profit and overhead costs ("Contract Price"), as determined by Owner's Insurance Company and set out above. Hoosier's work will begin within thirty (30) days of the latter of the date of the "Scope of Work" (or approved "Supplements" from Owner's Insurance Company) or the issuance of any permit or approval that may be required to complete the Project. Hoosier's work will be completed within ninety (90) days of the commencement of its work, weather and site conditions permitting, subject to any delays caused by the Owner or Owner's Insurance Company, or delays caused by conditions beyond Hoosier's direct control. The final amount due to Hoosier on the Project will be the total of the RCV including any approved profit and overhead, approved supplements and any changes or extras requested by Owner outside of the Scope of Work.

MORTGAGE AUTHORIZATION: Owner and/or Owner's mortgagor, grant authorization for STOCK YARDS ("Mortgagor") to communicate with Hoosier on all matters concerning Owner's claim and the payment of any sums by and through said Mortgagor.

INSURANCE AUTHORIZATION: Owner grants authorization for Hoosier to communicate with their Insurance Company regarding the Owner's claim, supplements, and/or release of any payments. Due to the complexities of the Insurance Claims Process, Owner agrees to not impede Hoosier in any way working with their Insurance Company including but not limited to the supplement or appraisal process without first consulting Hoosier.

PUBLIC ADJUSTER/3RD PARTY ESTIMATOR: Owner, by signing the Authorization below, agrees to hire a third party estimator and/or public adjuster that is recommended by Hoosier. As Owner's third party representative for public adjusting and/or estimation of the claim for property loss this third party has an associated fee that will be represented by their addendum contract presented with this contract. Owner authorizes this third party to negotiate with the Owner's Insurance Company regarding the above captioned claim. This communication authorization grants the third party the right to communicate with the Contractor and the Owner's Insurance Company regarding the claim, any supplements, and any additional damaged discovered during the construction process.

Authorization:

Printed Name: SEAN GARDNER Owner's Signature: X Date: 12/12/15

PAYMENT SCHEDULE: Owner agrees to pay Hoosier based on the following schedule: (i) The full ACV check issued by the Insurance Company is to be provided upon the commencement of work; (ii) the Contract Price, less the deposit and any applicable depreciation retained by Owner's Insurance Company, plus upgrade costs and supplemental payments issued by the Insurance Company, due and payable to Hoosier upon completion of each trade; and (iii) Owner's Insurance Deductible. Insurance Checks should be endorsed directly to Hoosier from the Owner. The Insurance Scope will act as the invoice regarding each trade and a final invoice shall be provided along with the warranty packet.

HOOSIER CONTRACTORS, LLC

By:

CHASE BENSLEY Account Mgr (Printed Name, Title & Date)

By signing below Owner acknowledges that Owner has read and reviewed this Agreement, including the "Terms and Conditions" are accepted. Owner further acknowledges that Owner has received, read and understands the Agreement (in duplicate) and the forms referenced in the Terms and Conditions. This Agreement constitutes the entire agreement between the parties and that any modifications to this Contract must be made in writing and signed by all parties to be effective.

Printed Name: SEAN GARDNER Owner's Signature: X Date: 12/12/15

*****TERMS AND CONDITIONS*****

1. **DEDUCTIBLE:** It is the Owner's responsibility to pay the Insurance Deductible and any upgrades not covered by the Insurance Company to Hoosier. Hoosier cannot pay, waive, or rebate, or promise to pay, waive, or rebate all or any part of Owner's insurance deductible applicable to the insurance claim for payment for the repair/replacement costs on the Owner's property. Owner acknowledges that if they have an Actual Cash Value ("ACV") Policy that they will still owe the Recoverable Cash Value ("RCV") total. If the Owner has an ACV Policy, Hoosier will work to the best of their ability to complete the work but in no way is this an attempt by Hoosier to cover the deductible of the Owner and only applies to the difference of the ACV and RCV.
2. **OWNER'S DECLARATION OF INTENT:** Owner acknowledges and agrees that upon approval of any repair and/or replacement work by Owner's Insurance Company Hoosier shall perform the work included in the Scope of Work provided by Owner's Insurance Company ("Project"). Owner agrees that Hoosier is not obligated to start the Project until it receives payment of funds from Owner's Insurance Company or Mortgage Company, including Supplements.
3. **ACCEPTANCE OF TERMS:** Owner agrees to provide Hoosier with the Scope of Work generated by Owner's Insurance Company and authorizes and grants full access to Owner's property to Hoosier for the purpose of staging and completing the Project. This Agreement supersedes any other agreements, written or verbal, between Owner and Hoosier. Any change to the Agreement must be done in writing and signed by both parties.
4. **SUPPLEMENTS:** Owner grants Hoosier the right to file supplemental claims with Owner's Insurance Company in the event that the Insurance Company's Scope of Work is incorrect or additional damages and needed repairs are discovered before or after Hoosier's work begins on the Project. The supplemental claim amount (herein "Supplements"), in addition to any depreciated amounts held by the Insurance Company, shall be due to Hoosier upon payment by the Insurance Company.
5. **APPRAISAL PROCESS:** Hoosier reserves the right to conduct all necessary steps to ensure the approval of an Owner's claim. This includes but is not limited to working with a third party estimator and/or a public adjuster. It is common for Insurance Companies to deny a valid claim and Hoosier reserves the right to zealously pursue the approval of a claim. Should the Owner's Claim be denied after all administrative options have been exhausted, you may cancel this contract at any time before midnight on the third business day after you have received written notification from your Insurance Company that all or any part of the claim or contract is not a covered loss under the insurance policy. See attached notice of cancellation form for an explanation of this right.
6. **OWNER'S PROPERTY:** Owner is solely responsible for removing any breakable/valuable objects from the landscaping/exterior of the building, as well as pictures and valuables that may hang on interior walls or mantles of the home before Hoosier commences its work on the Property. See Hoosier's Notice provided.
7. **PAYMENT:** Owner is solely responsible for retaining payments received from the Owner's Mortgage and/or Insurance Company and releasing payments to Hoosier by 10a.m. (EST) on the day work commences on the Project. If the Project is not fully paid for within 30 days of completion or if Owner advises Hoosier that Owner does not intend to pay, Hoosier may record a mechanic's lien on the Property for the unpaid balance.
8. **COSMETIC OR ORNATE CHANGES:** Owner agrees that any cosmetic or ornate changes shall not be construed as a delay in work. Owner is obligated to pay upon completion of any trade and cannot withhold funds when the trade as a whole is complete.
9. **NOISE, VIBRATION & DAMAGES:** Hoosier shall have no liability or responsibility for noise or vibration on the Project due to the performance of the work contemplated by this Agreement or for damages to any personal property of the Owner. Hoosier is not responsible for any damage to Owner's Property below the roof due to leaks caused by excessive wind, ice, or hail.
10. **DELAYS IN COMPLETION:** Hoosier shall not be liable for delays or failure to perform hereunder due to labor controversies, strikes, fire, weather, other acts of God, war, governmental actions, inability to obtain materials from usual sources, or any other circumstances beyond the control of Hoosier.
11. **WARRANTY:** A Warranty form is provided as part of this Contract. In the event of that there are extreme weather conditions (acts of nature, such as hail, fire, winds (including gusts) over 60mph, or ice damming above the areas of your roof deck, or impact of foreign objects, the labor warranty is void. The Warranty is non-transferable.
12. **WARRANTY CLAIMS:** Should Owner discover any default or issue with the work conducted by Hoosier, Owner must immediately contact Hoosier and report a warranty claim. Hoosier shall not be responsible for damage not immediately reported by Owner.
13. **PREEXISTING CONDITIONS, EXTRAS & CHANGES:** If Owner's roof has a wavy appearance it is due to the roof decking installed at the time of original construction or as a part of a prior roof replacement. Hoosier will not be liable for construction issues resulting from previous construction issues, including improper installation or damaged roof decking, including improper ventilation. Replacement or repair of damaged decking, fascia boards, roof jacks, rafters, ventilators, flashing, chimneys, gutters or other such materials, unless otherwise expressly stated in this Agreement are not included. If requested Owner will be charged as an extra on a time and material basis or as contained in written change order signed by Hoosier and Owner. If Owner makes a change in shingle color within less than 72 hours of Hoosier's commencement date on the Project, Owner agrees to pay a change fee of \$175 which will be due and payable to Hoosier at the time of the change.
14. **QUALITY OF WORK:** Hoosier will perform all repairs and/or replacements in a professional, workmanlike manner according to industry standards. All materials are warranted as specified by the manufacturer.
15. **TERMINATION RIGHTS:** Hoosier reserves the right to terminate this Agreement should the RCV proposed by Owner's Insurance Company fail to meet actual minimum replacement cost as determined by Hoosier or any of its agents.
16. **RIGHT TO CURE:** Owner is legally responsible for providing Hoosier with a "Right to Cure" notice under Indiana Code 32-27-3, before Owner commences a lawsuit against Hoosier for Hoosier's alleged failure to complete its work on the Project in a quality, workmanlike manner.
17. **FEES & EXPENSES:** If Hoosier is required to take legal action to enforce any section of this Agreement and the matter is referred to Hoosier's attorney, all of Hoosier's reasonable attorney's fees, expenses and costs shall be paid by Owner.
18. **LIMITATION OF LIABILITY:** Hoosier shall have no liability for damages resulting from fires, windstorms, or other hazards which are normally contemplated to be covered by homeowner's insurance. In no event shall Hoosier, its officers, directors, shareholders, representatives, employees, attorneys, affiliated entities or insurers be liable to Owner for incidental, indirect, special or consequential damages arising out of or related to the performance, nonperformance or termination of this Agreement, no matter what the cause, nor for any reason, under any circumstances, in an amount in excess of the amount Hoosier receives from the Owner as payment under this Agreement.
19. Each party here to acknowledges and agrees that any controversy which may arise under this agreement is likely to involve complicated and difficult issues, and Parties hereby irrevocably and unconditionally waive any right they may have to a trial by jury in respect of any litigation directly or indirectly arising out of or relating to this agreement and any of the agreements or addendums delivered in connection herewith or the transactions contemplated hereby or thereby.
20. **COMPLETION OF WORK:** Upon completion of the Project, Hoosier will make diligent efforts to remove all debris and excess materials. Hoosier also agrees to perform a magnetic sweep of the eve line and walkways surrounding the Project area. Hoosier does not guarantee the removal of all nails from the Project area.
21. **FINAL PAYMENT:** Upon completion of the Project, it is the Owner's responsibility to make certain that Hoosier has been paid in full. Owner agrees to endorse the Insurance or Mortgage Company's check(s) when received and pay the same over to Hoosier.
22. **ASSIGNMENT:** This Agreement shall not be assigned by Owner.
23. **VENUE:** Indiana Law applies to all disputes arising out of this Agreement and all disputes shall be litigated in the Courts of Indiana, in Hamilton County, Indiana.
24. **LIQUIDATED DAMAGES:** Because the actual damages would be uncertain, difficult, or impossible to ascertain if Owner breaches any of his/her obligations under this Agreement, the parties agree in good faith that the sum of twenty percent (20%) of the total contract price would be reasonable and just compensation for the harm caused by such breach. Owner acknowledges the specialized expertise Hoosier possesses regarding the insurance claim and supplement process, which Hoosier has used to the benefit of Owner. Therefore, Owner promises to pay, and Hoosier agrees to accept, the sum of twenty percent (20%) of the total contract price as liquidated damages, and not as a penalty, with the total amount paid to Hoosier not exceeding twenty percent (20%) of the total contract price. This is non-negotiable.

EXHIBIT B

Hoosier Contractors, LLC
1551 N. Green St. Suite F
Brownsburg, IN 46112
(317)677-4755
HoosierRoof.com
Install@HoosierRoof.com

File #80996



Account Manager Chase
Contact # 317-919-3110
Insurance Company Information
Company Chase
Policy# 411-50058
Claim# 2581185
Mortgage Company Information
Company Stock Yards
Loan Number N/A

REPLACEMENT WORK AGREEMENT

Owner(s): <u>SEAN GARDNER</u>	Primary Phone: <u>317-698-3466</u>	ALT Phone: <u>N/A</u>
Address: <u>7726 SPRING Ridge dr.</u>	City / State / Zip: <u>Indpls IN 46278</u>	
Email Address: <u>SGARDNER@ACILLC.NET</u>	Roof RCV Amount:	
Estimated Total Roof Squares: <u>170</u>	Slope: <u>12</u>	Story: <u>2</u>
Shingle Brand / Series / Color: <u>GAF Timberline NATURAL Shadow Weathered wood</u>	Drip Edge Color: <u>N/A</u>	Gutter Color: <u>CLAY</u>

THE PARTIES AGREE THAT IF OWNER'S INSURANCE COMPANY DOES NOT AGREE TO PAY FOR THE PROPOSED REPAIR AND/OR REPLACEMENT WORK CONTEMPLATED BY THIS AGREEMENT, THEN THIS AGREEMENT SHALL BE NULL AND VOID.

BY SIGNING THIS AGREEMENT BELOW, OWNER GRANTS HOOSIER CONTRACTORS, LLC d/b/a HOOSIER CONTRACTORS ("HOOSIER") ACCESS TO AND THE RIGHT TO INSPECT OWNER'S HOME AND PROPERTY TO DETERMINE IF ANY DAMAGE HAS BEEN CAUSED TO OWNER'S HOME THAT MAY BE COVERED BY OWNER'S HOMEOWNER'S INSURANCE POLICY.

IF HOOSIER DETERMINES THAT DAMAGE HAS BEEN CAUSED TO OWNER'S HOME THAT MAY BE COVERED BY OWNER'S HOMEOWNER'S INSURANCE POLICY, OWNER WILL CONTACT OWNER'S INSURANCE COMPANY REGARDING HOOSIER'S FINDINGS AND OPINIONS AND MAKE A CLAIM TO OBTAIN A "SCOPE OF WORK."

REPAIR/REPLACEMENT WORK AND PRICE: Subject to the terms and conditions set out below and on the reverse side of this Agreement, Hoosier agrees to furnish all the materials and labor necessary to perform all the repair/replacement work set forth in the "Scope of Work" (or other similarly named document provided Owner's prepared and approved by Owner's Insurance Company ("Project"). Hoosier will complete the Scope of Work for the Project, subject to any "Supplements" approved by Owner's Insurance Company and also subject to any changes or extras approved by Owner outside of the "Scope of Work." The "Scope of Work" and any "Supplements" provided by Owner's Insurance Company on this Project are incorporated in and made a part of this Agreement by reference. The Project will be completed by Hoosier for the Replacement Cost Value ("RCV"), plus approved profit and overhead costs ("Contract Price"), as determined by Owner's Insurance Company and set out above. Hoosier's work will begin within thirty (30) days of the latter of the date of the "Scope of Work" (or approved "Supplements" from Owner's Insurance Company) or the issuance of any permit or approval that may be required to complete the Project. Hoosier's work will be completed within ninety (90) days of the commencement of its work, weather and site conditions permitting, subject to any delays caused by the Owner or Owner's Insurance Company, or delays caused by conditions beyond Hoosier's direct control. The final amount due to Hoosier on the Project will be the total of the RCV including any approved profit and overhead, approved supplements and any changes or extras requested by Owner outside of the Scope of Work.

MORTGAGE AUTHORIZATION: Owner and/or Owner's mortgagor, grant authorization for Stock Yards ("Mortgagor") to communicate with Hoosier on all matters concerning Owner's claim and the payment of any sums by and through said Mortgagor.

INSURANCE AUTHORIZATION: Owner grants authorization for Hoosier to communicate with their Insurance Company regarding the Owner's claim, supplements, and/or release of any payments. Due to the complexities of the Insurance Claims Process, Owner agrees to not impede Hoosier in any way working with their Insurance Company including but not limited to the supplement or appraisal process without first consulting Hoosier.

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Authorization: SEAN GARDNER Owner's Signature: X Date: 12/12/15

PAYMENT SCHEDULE: Owner agrees to pay Hoosier based on the following schedule: (i) The full ACV check issued by the Insurance Company is to be provided upon the commencement of work; (ii) the Contract Price, less the deposit and any applicable depreciation retained by Owner's Insurance Company, plus upgrade costs and supplemental payments issued by the Insurance Company, due and payable to Hoosier upon completion of each trade; and (iii) Owner's Insurance Deductible. Insurance Checks should be endorsed directly to Hoosier from the Owner. The Insurance Scope will act as the invoice regarding each trade and a final invoice shall be provided along with the warranty packet.

HOOSIER CONTRACTORS, LLC By: Chase Benslag Account Mgr (Printed Name, Title & Date) 12/12/15

By signing below Owner acknowledges that Owner has read and reviewed this Agreement, including the "Terms and Conditions" are accepted. Owner further acknowledges that Owner has received, read and understands the Agreement (in duplicate) and the forms referenced in the Terms and Conditions. This Agreement constitutes the entire agreement between the parties and that any modifications to this Contract must be made in writing and signed by all parties to be effective.

Printed Name: SEAN GARDNER Owner's Signature: X Date: 12/12/15

*****TERMS AND CONDITIONS*****

1. **DEDUCTIBLE:** It is the Owner's responsibility to pay the Insurance Deductible and any upgrades not covered by the Insurance Company to Hoosier. Hoosier cannot pay, waive, or rebate, or promise to pay, waive, or rebate all or any part of Owner's insurance deductible applicable to the insurance claim for payment for the repair/replacement costs on the Owner's property. Owner acknowledges that if they have an Actual Cash Value ("ACV") Policy that they will still owe the Recoverable Cash Value ("RCV") total. If the Owner has an ACV Policy, Hoosier will work to the best of their ability to complete the work but in no way is this an attempt by Hoosier to cover the deductible of the Owner and only applies to the difference of the ACV and RCV.
2. **OWNER'S DECLARATION OF INTENT:** Owner acknowledges and agrees that upon approval of any repair and/or replacement work by Owner's Insurance Company Hoosier shall perform the work included in the Scope of Work provided by Owner's Insurance Company ("Project"). Owner agrees that Hoosier is not obligated to start the Project until it receives payment of funds from Owner's Insurance Company or Mortgage Company, including Supplements.
3. **ACCEPTANCE OF TERMS:** Owner agrees to provide Hoosier with the Scope of Work generated by Owner's Insurance Company and authorizes and grants full access to Owner's property to Hoosier for the purpose of staging and completing the Project. This Agreement supersedes any other agreements, written or verbal, between Owner and Hoosier. Any change to the Agreement must be done in writing and signed by both parties.
4. **SUPPLEMENTS:** Owner grants Hoosier the right to file supplemental claims with Owner's Insurance Company in the event that the Insurance Company's Scope of Work is incorrect or additional damages and needed repairs are discovered before or after Hoosier's work begins on the Project. The supplemental claim amount (herein "Supplements"), in addition to any depreciated amounts held by the Insurance Company, shall be due to Hoosier upon payment by the Insurance Company.
5. **APPRAISAL PROCESS:** Hoosier reserves the right to conduct all necessary steps to ensure the approval of an Owner's claim. This includes but is not limited to working with a third party estimator and/or a public adjuster. It is common for Insurance Companies to deny a valid claim and Hoosier reserves the right to zealously pursue the approval of a claim. Should the Owner's Claim be denied after all administrative options have been exhausted, you may cancel this contract at any time before midnight on the third business day after you have received written notification from your Insurance Company that all or any part of the claim or contract is not a covered loss under the insurance policy. See attached notice of cancellation form for an explanation of this right.
6. **OWNER'S PROPERTY:** Owner is solely responsible for removing any breakable/valuable objects from the landscaping/exterior of the building, as well as pictures and valuables that may hang on interior walls or mantles of the home before Hoosier commences its work on the Property. See Hoosier's Notice provided.
7. **PAYMENT:** Owner is solely responsible for retaining payments received from the Owner's Mortgage and/or Insurance Company and releasing payments to Hoosier by 10a.m. (EST) on the day work commences on the Project. If the Project is not fully paid for within 30 days of completion or if Owner advises Hoosier that Owner does not intend to pay, Hoosier may record a mechanic's lien on the Property for the unpaid balance.
8. **COSMETIC OR ORNATE CHANGES:** Owner agrees that any cosmetic or ornate changes shall not be construed as a delay in work. Owner is obligated to pay upon completion of any trade and cannot withhold funds when the trade as a whole is complete.
9. **NOISE, VIBRATION & DAMAGES:** Hoosier shall have no liability or responsibility for noise or vibration on the Project due to the performance of the work contemplated by this Agreement or for damages to any personal property of the Owner. Hoosier is not responsible for any damage to Owner's Property below the roof due to leaks caused by excessive wind, ice, or hail.
10. **DELAYS IN COMPLETION:** Hoosier shall not be liable for delays or failure to perform hereunder due to labor controversies, strikes, fire, weather, other acts of God, war, governmental actions, inability to obtain materials from usual sources, or any other circumstances beyond the control of Hoosier.
11. **WARRANTY:** A Warranty form is provided as part of this Contract. In the event of that there are extreme weather conditions (acts of nature, such as hail, fire, winds (including gusts) over 60mph, or ice damming above the areas of your roof deck, or impact of foreign objects, the labor warranty is void. The Warranty is non-transferable.
12. **WARRANTY CLAIMS:** Should Owner discover any default or issue with the work conducted by Hoosier, Owner must immediately contact Hoosier and report a warranty claim. Hoosier shall not be responsible for damage not immediately reported by Owner.
13. **PREEXISTING CONDITIONS, EXTRAS & CHANGES:** If Owner's roof has a wavy appearance it is due to the roof decking installed at the time of original construction or as a part of a prior roof replacement. Hoosier will not be liable for construction issues resulting from previous construction issues, including improper installation or damaged roof decking, including improper ventilation. Replacement or repair of damaged decking, fascia boards, roof jacks, rafters, ventilators, flashing, chimneys, gutters or other such materials, unless otherwise expressly stated in this Agreement are not included. If requested Owner will be charged as an extra on a time and material basis or as contained in written change order signed by Hoosier and Owner. If Owner makes a change in shingle color within less than 72 hours of Hoosier's commencement date on the Project, Owner agrees to pay a change fee of \$175 which will be due and payable to Hoosier at the time of the change.
14. **QUALITY OF WORK:** Hoosier will perform all repairs and/or replacements in a professional, workmanlike manner according industry standards. All materials are warranted as specified by the manufacturer.
15. **TERMINATION RIGHTS:** Hoosier reserves the right to terminate this Agreement should the RCV proposed by Owner's Insurance Company fail to meet actual minimum replacement cost as determined by Hoosier or any of its agents.
16. **RIGHT TO CURE:** Owner is legally responsible for providing Hoosier with a "Right to Cure" notice under Indiana Code 32-27-3, before Owner commences a lawsuit against Hoosier for Hoosier's alleged failure to complete its work on the Project in a quality, workmanlike manner.
17. **FEES & EXPENSES:** If Hoosier is required to take legal action to enforce any section of this Agreement and the matter is referred to Hoosier's attorney, all of Hoosier's reasonable attorney's fees, expenses and costs shall be paid by Owner.
18. **LIMITATION OF LIABILITY:** Hoosier shall have no liability for damages resulting from fires, windstorms, or other hazards which are normally contemplated to be covered by homeowner's insurance. In no event shall Hoosier, its officers, directors, shareholders, representatives, employees, attorneys, affiliated entities or insurers be liable to Owner for incidental, indirect, special or consequential damages arising out of or related to the performance, nonperformance or termination of this Agreement, no matter what the cause, nor for any reason, under any circumstances, in an amount in excess of the amount Hoosier receives from the Owner as payment under this Agreement.
19. Each party here to acknowledges and agrees that any controversy which may arise under this agreement is likely to involve complicated and difficult issues, and Parties hereby irrevocably and unconditionally waive any right they may have to a trial by jury in respect of any litigation directly or indirectly arising out of or relating to this agreement and any of the agreements or addendums delivered in connection herewith or the transactions contemplated hereby or thereby.
20. **COMPLETION OF WORK:** Upon completion of the Project, Hoosier will make diligent efforts to remove all debris and excess materials. Hoosier also agrees to perform a magnetic sweep of the eve line and walkways surrounding the Project area. Hoosier does not guarantee the removal of all nails from the Project area.
21. **FINAL PAYMENT:** Upon completion of the Project, it is the Owner's responsibility to make certain that Hoosier has been paid in full. Owner agrees to endorse the Insurance or Mortgage Company's check(s) when received and pay the same over to Hoosier.
22. **ASSIGNMENT:** This Agreement shall not be assigned by Owner.
23. **VENUE:** Indiana Law applies to all disputes arising out of this Agreement and all disputes shall be litigated in the Courts of Indiana, in Hamilton County, Indiana.
24. **LIQUIDATED DAMAGES:** Because the actual damages would be uncertain, difficult, or impossible to ascertain if Owner breaches any of his/her obligations under this Agreement, the parties agree in good faith that the sum of twenty percent (20%) of the total contract price would be reasonable and just compensation for the harm caused by such breach. Owner acknowledges the specialized expertise Hoosier possesses regarding the insurance claim and supplement process, which Hoosier has used to the benefit of Owner. Therefore, Owner promises to pay, and Hoosier agrees to accept, the sum of twenty percent (20%) of the total contract price as liquidated damages, and not as a penalty, with the total amount paid to Hoosier not exceeding twenty percent (20%) of the total contract price. This is non-negotiable.