

SAMPLE CONTRACT

MINIMUM PERFORMANCE GUIDELINES

Revised November 20, 2019

Housing First Minnesota is pleased to provide you with this up-to-date contract template. It was produced by attorneys with expertise in residential construction and is designed to be a starting point for your own business contracts. We encourage you to review these with your legal counsel and modify them to best fit your business practices.

Housing First Minnesota's mission is to help our member businesses grow through marketing, advocacy and industry connections and these contracts are designed to protect your business and help you grow.

Our vision is to be the leading voice for builders and remodelers.

For a complete set of contract templates and Housing First Minnesota's Minimum Performance Guidelines, visit batc.org.

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Minimum Performance Guidelines Builders Association of the Twin Cities

Housing First Minnesota, a Minnesota non-profit corporation has adopted these Minimum Performance Guidelines (the “Housing First Minnesota Guidelines” or “Guidelines”). The Housing First Minnesota Guidelines are made available to all Housing First Minnesota members.

Under Minnesota law, all licensed residential builders and remodelers are required to have written performance guidelines. See Minnesota Statutes § 326B.809. The performance guidelines must be included, or incorporated by reference in, a written contract between the customer and the builder or remodeler.

The Housing First Minnesota Guidelines establish the minimum standards that apply to the work and materials covered herein. The Housing First Minnesota Guidelines apply to the one year period beginning on the date the customer first takes title to, or possession of, the new home, (whichever occurs first) or, on remodeling projects, the one year period beginning on the date that a remodeling project is substantially completed. For purposes of these Housing First Minnesota Guidelines, a remodeling project is substantially completed when the improvements constructed by the remodeler are completed to the point where they may be used for the purposes intended.

All new and remodeled homes are covered by statutory warranties. Please see Minnesota Statutes § 327A for additional information. These Housing First Minnesota Guidelines are in addition to the warranties contained in Minnesota Statutes § 327A.

Excluded from these Housing First Minnesota Guidelines are manufacturer warranties, product warranties or other similar third party warranties, such as warranties that apply to appliances and building components. Also excluded are work and materials performed or supplied by the home owner or a third party hired by the home owner. Any damage resulting from the home owner’s acts or omissions, including, without limitation, failure to maintain temperature controls within the new home or remodeled home within acceptable industry standards.

These Housing First Minnesota Guidelines do not apply to the extent damage or conditions are caused by fire, flood, windstorm or other similar weather events. To the extent that any of the Housing First Minnesota Guidelines conflict with the Minnesota State Building Code, Energy Code, or any other Code governing the construction of the new or remodeled home at the time a building permit is issued (the “Codes”), the terms and conditions of the Codes shall control.

The Housing First Minnesota Guidelines may not be modified and still used as the Housing First Minnesota Guidelines. Therefore, if Housing First Minnesota members or their customers wish to make revisions in these Housing First Minnesota Guidelines, all references to Housing First Minnesota must be removed from the document, as the modified document will no longer reflect the performance guidelines as approved by Housing First Minnesota. Housing First Minnesota claims no copyright in the attached Housing First Minnesota Guidelines but does insist that, if revisions are made, that its name be removed from any modified version of these guidelines.

Revised 1/1/2017

MINIMUM PERFORMANCE
GUIDELINES

1. SITE WORK

A. Site Grading

Settling of ground around foundation walls, utility trenches or other filled areas shall not interfere with water drainage away from the home.

If the Builder provides final grading, the Builder shall fill settled areas affecting property drainage prior to occupancy. If final grading before closing is not possible, a reasonable completion date for final grading shall be established at the closing. Builder is not responsible for any areas that were not disturbed by the construction. Builder is not responsible for drainage or grading problems resulting from changes or modification to the grading made by the home owner or third parties, including, for example, landscaping contractors.

B. Site Drainage

The necessary grades and swales shall have been established by the Builder to insure proper drainage away from the home. Standing or ponding water shall not remain for extended periods in the immediate area after a rain (generally no more than 24 hours) except in swales which drainage can be anticipated (generally no more than 48 hours). The possibility of standing water after an unusually heavy rainfall should be anticipated. No grading determination shall be made while there is frost or snow on the ground, or while the ground is saturated. Builders shall comply with approved grading plans established by the local government authority, if applicable.

The Builder is responsible only for establishing the initial proper grades and swales. The home owner is responsible for maintaining such grades and swales once they have been properly established.

2. CONCRETE

A. Concrete Walls

1. Foundation walls

Shrinkage or cracks are not unusual in concrete foundation walls. Such cracks greater than 1/4 inch in width shall be repaired by the Builder.

2. Basement floors

Minor cracks in concrete basement floors are normal. The Builder shall repair all cracks exceeding 3/16 inch in width or 1/8 in vertical displacement by surface patching or other methods as required. This guideline shall not apply to saw cuts or other areas where joint control measures are taken.

3. Vapor Barrier

All basement floors shall require a minimum of six (6) mill polyethylene before concrete is poured.

4. Garage slabs

Minor cracks in garage floors are normal. The Builder shall repair cracks in garage slabs in excess of 1/4 inch in width or 1/4 inch in vertical displacement by surface patching or other methods as required. This guideline shall not apply to saw cuts or other areas where joint control measures are taken.

5. Concrete floors

Except for basement floors or where a floor or portion of floor has been designated for specific drainage purposes, concrete floors in rooms designed for habitability shall not have depressions or areas of unevenness exceeding 1/4 inch in 32 inches. The Builder will correct or repair them to meet these specifications.

6. Concrete floors with finished flooring

Cracks which rupture the finished flooring material shall be repaired. The Builder will repair cracks, as necessary, so as to not be readily apparent when the finish flooring materials are in place.

7. Other concrete work

The Builder will take whatever corrective action necessary to repair or replace defective concrete surfaces. The Builder is not responsible for deterioration caused by salt, chemicals, mechanical implements and other factors beyond its control.

8. Stoops, steps or garage floors

Minor cracks in stoops, steps, or garage floors are normal. Stoops, steps or garage floors shall not settle, heave or separate in excess of one (1) inch from the house structures assuming grading established by the Builder is maintained by the home owner. The Builder is not responsible for deterioration caused by salt, chemicals, mechanical implements and other factors beyond its control.

Water should drain from outdoor stoops and steps. The possibility of minor water standing on stoops for a short period after rain can be anticipated.

The Builder shall take corrective action to meet these Guidelines.

9. Concrete flat work

All exterior concrete flat work is excluded from these Guidelines.

3. MASONRY

A. Masonry Block

1. Basement or Foundation walls

Small cracks not affecting structural stability are not unusual in mortar joints of masonry foundation walls.

The Builder will repair cracks in excess of 1/4 inch by pointing or patching.

2. Masonry walls or veneer

Small hairline cracks due to shrinkage are common in mortar joints in masonry construction.

The Builder will repair cracks in excess of 3/8 inch by pointing or patching. Builder will not be responsible for color variation between old and new mortar.

4. WOOD AND PLASTIC

A. Rough Carpentry

1. Floor squeaks

Floor squeaks and loose subfloor are often temporary conditions common to new construction. A squeak-proof floor cannot be guaranteed.

2. Unevenness of Subfloors

Subfloors shall not have more than 1/4 inch ridge or depression within any 32-inch measurement when measured parallel to the joists. Allowable floor and ceiling joist deflections are governed by the applicable building code.

The Builder will correct or repair to meet these specifications.

3. Bowing of walls

All interior and exterior walls have slight variances on their finished surfaces. Bowing of wall should not detract from or blemish the wall's finished surface. Walls should not bow more than 1/4 inch out of line within any 32-inch horizontal or vertical measurement.

The Builder will correct or repair to meet these specifications.

4. Vertical plumb of walls

Walls should not be more than 1/4 inch out of plumb for any 32-inch vertical measurement. The Builder will repair to meet this specification.

B. Interior Finish Carpentry

Joints in moldings or joint between moldings and adjacent surface shall not result in open joints exceeding 1/8 inch in width.

The Builder will repair defective joints, as defined. Caulking or puttying is acceptable.

C. Exterior Finish Carpentry

Joints between exterior trim elements, including siding and masonry, shall not result in open joints in excess of 3/8 inch, except as allowed or required by manufacturers specifications. In all cases the exterior trim, masonry and siding shall be capable of performing its function to exclude the elements.

The Builder shall repair open joints, as described above. Caulking is acceptable.

5. THERMAL AND MOISTURE PROTECTION

A. Waterproofing

Leaks resulting in actual trickling of water shall be repaired. The Builder is not responsible for leaks caused by improper landscaping or failure to maintain proper grades. Dampness of the walls or floors may occur in new construction and is not considered a deficiency.

The Builder will take such action as necessary to correct basement leaks except where the cause is determined to result from home owner action or negligence.

B. Roofing and Siding

1. Roofs or flashing leaks

Roofs or flashing shall not leak under normally anticipated conditions, except where cause is determined to result from home owner action or negligence.

The Builder will repair any verified roof or flashing leaks not caused by home owner action or negligence.

2. Standing water on flat roof

Water shall drain from a flat roof, except for minor ponding immediately following rainfall or when the roof is specifically designated for water retention, except where cause is determined to result from home owner action or negligence.

The Builder will take corrective action to assure proper drainage of roof.

3. Separations and delaminations shall be repaired or replaced.

The Builder will repair or replace siding as needed unless caused by home owner's neglect to maintain siding properly. The repaired area may not match in color and/or texture. For surfaces requiring paint, the Builder will paint only the new materials. The home owner can expect that the newly painted surface may not match the original surface color.

4. Stucco siding

Hairline cracks in stucco or masonry siding are not unusual. Any cracks in excess of 1/8 inch or greater shall be repaired one time only. Flashing requirements to windows, walls and wall-to- roof connections shall be applied per code. Maintenance of caulking is the home owner's responsibility.

C. Metal and Gutters (if installed by Builder)

1. Gutters and downspouts

Gutters and downspouts shall not leak, but gutter may overflow during heavy rain.

The Builder will repair leaks. It is a home owner's responsibility to keep gutters and downspouts free of leaves and debris, which could cause overflow.

2. Water standing in gutters

When gutter is unobstructed by debris, the water level shall not exceed one (1) inch in depth. Consequently, it is entirely possible that small amounts of water will stand in certain sections of gutter immediately after rain.

The Builder will correct to meet these Guidelines.

D. Sealants

Joints and cracks in exterior wall surfaces and around openings shall be properly caulked to exclude the entry of water.

The Builder will repair and/or caulk joints or cracks in exterior wall surfaces as required to correct deficiencies one time only. **Even properly installed caulking will shrink and must be maintained during the life of the home by the home owner.**

6. DOORS AND WINDOWS

A. Wood and Clad Doors

1. Warpage of exterior doors

Exterior doors will warp to some degree due to temperature differential on inside and outside surfaces. However, they shall not warp to the extent that they become inoperable or cease to be weather resistant or exceed National Woodwork Manufactures Association Standards.

The Builder will correct or replace and refinish defective doors.

2. Warpage of interior passage and closet doors

Interior doors (full openings) shall not warp in excess of National Woodwork Manufactures Association Standards.

The Builder will correct and replace and refinish defective doors to match existing doors as nearly as possible.

3. Shrinkage of raised panels

Panels will shrink and expand and may expose unpainted surface. Builders are not responsible for this exposure.

4. Split in door panel

Split panels shall not allow light to be visible through the door.

The Builder will, if light is visible, fill split and match paint or stain as closely as possible.

B. Glass

1. Broken glass

Broken or scratched glass not reported to the Builder prior to occupancy is the home owner's responsibility.

The Builder will replace or repair all such broken or scratched glass, if given notice prior to occupancy.

C. Garage Doors on Attached Garages

Garage doors shall be installed as recommended by the manufacturer. Some entrance of light and/or the elements can be expected.

D. Wood, Vinyl and Metal Windows

1. Operation of windows

Windows shall operate with reasonable ease, as designed. The

Builder will correct or repair as required.

2. Condensation on windows

Windows will collect condensation on interior surfaces when extreme temperature differences and high humidity levels are present. **Condensation is usually the result of climatic conditions or humidity conditions created by the home owner.**

Unless directly attributed to faulty installation, window condensation is a result of conditions beyond the Builder's control. No corrective action is required.

E. Weather-Stripping and Seals

Some air filtration is normally noticeable around doors and windows, especially during high winds. Poorly fitted weather-stripping shall be adjusted or replaced. It may be necessary for the home owner to have storm doors and windows installed to provide solutions in high wind areas.

The Builder will adjust or correct poorly fitted doors, windows and poorly fitted weather-stripping.

7. FINISHES

A. Lath and Plaster

Hairline cracks are not unusual in interior walls and ceiling surfaces.

The Builder will repair cracks exceeding 1/8 inch in width as required, one time only.

B. Gypsum Wallboard

Slight "imperfections" such as nail pops, seam lines and cracks not exceeding 1/8 inch in width are common in gypsum wallboard installations and are considered acceptable.

The Builder will only repair defects exceeding 1/8 inch in width, one time only.

C. Ceramic Tile

Ceramic tile shall not crack or become loose.

The Builder will replace cracked tiles and re-secure loose tiles, unless the defects were caused by the home owner's action or negligence. Builder will not be responsible for discontinued patterns or color variations in ceramic tile.

Cracks in grouting of ceramic tile joints are commonly due to normal shrinkage conditions. The Builder will not be responsible for color variations or discontinued colored grout. **Regrouting of cracks is a maintenance responsibility of the home owner during the life of the home.**

D. Finished Wood Flooring

The Builder will repair cracks in the wood in excess of 1/8 inch by filling or replacing, at Builder's option. The Builder will not be responsible for problems caused by home owners neglect or abuse. Gapping in wood floors can be expected as a normal part of the expansion and contraction of wood floors due to climatic and other seasonal changes.

E. Resilient Flooring

1. Nail pops on surface of resilient flooring

Builder will correct nail pops, which have broken the surface. The Builder will repair or replace, at the Builder's sole option, resilient floor covering in the affected area with similar material. The Builder will not be responsible for discontinued patterns or color variations in the floor covering.

2. Depressions or ridges in resilient flooring due to subfloor irregularities

Readily apparent depressions or ridges exceeding 1/8 inch shall be repaired. The ridge or depression measurement is taken as the gap created at one end of a six-inch straight edge placed over the depression or ridge with three (3) inches of the straight edge on one side of the defect, held tightly to the floor.

The Builder will take corrective action as necessary, to bring the defect within acceptable tolerance so that the affected area is not readily visible. The Builder will not be responsible for discontinued patterns or color variations in floor covering.

3. Adhesion of resilient flooring

Resilient flooring shall not lift, bubble or become unglued.

The Builder will repair or replace, at Builder's sole option, the affected resilient floor as required. The Builder will not be responsible for discontinued patterns or color variation of floor covering, or for problems caused by home owner neglect or abuse.

4. Gaps or seams at joints

Gaps shall not exceed 1/16 inch in width in resilient floor covering joints. Where dissimilar materials abut, a gap not to exceed 1/8 inch is permissible.

The Builder will repair or replace, at Builder's sole option, the affected resilient flooring as required. The Builder will not be responsible for discontinued patterns or color variations of floor coverings, or for problems caused by home owner neglect or abuse.

F. Painting

1. Peeling or fading of exterior paint

Exterior paints or stains should not fail during the first year. However, fading is normal and the degree of fading is dependent on climatic conditions.

If paint or stain is defective, the Builder will prepare and refinish affected areas, matching color as closely as possible. Where finish deterioration affects the majority of the wall area, the whole area will be refinished.

2. Painting required as corollary repair because of other work

Repairs required under these Housing First Minnesota Guidelines should be finished to match surrounding areas as closely as possible.

3. Deterioration of varnish or lacquer finishes

Natural finishes on interior woodwork shall not deteriorate for twelve months after application. However, varnish type finishes used on the exterior will deteriorate rapidly and are not the Builder's responsibility.

The Builder will retouch affected areas of natural finish interior woodwork, matching the color as closely as possible, one time only.

G. Wall Covering

Peeling of wall covering shall not occur.

The Builder will repair or replace defective wall covering applications.

The Builder will not be responsible for discontinued patterns or for problems caused by home owner neglect or abuse.

If a home owner adds wallpaper during the warranty period, the Builder remains responsible for correcting defects in the underlying Gypsum wallboard, but not removal, repair, or replacement of the home owner installed wallpaper, or other wall covering installed by the home owner. Home owners are encouraged to NOT add wallpaper until after the one-year warranty period has passed, so that the Builder has opportunity to adequately repair cracks or nail pops required under these Guidelines.

H. Carpeting

1. Open carpet seams

Carpet seams will show. However, no visible gap is acceptable and the Builder will correct the problem if the original installation was performed by the Builder.

2. Stretching or separation of seams

Wall to wall carpeting, installed as the primary floor covering, when stretched and secured properly shall not come up, become loose or separate from its point of attachment.

The Builder will re-stretch or re-secure carpeting as needed, if the original installation was performed by the Builder.

8. SPECIALTIES

A. Fireplaces

1. Draft

A properly designed and constructed fireplace and chimney shall function properly. It is normal to expect that high winds can cause temporary negative draft situations which can also be caused by obstructions such as large branches of trees too close to the chimney.

The Builder will determine the cause of malfunction and correct, if the problem is one of design or construction of the fireplace.

2. Chimney separation from structure to which it is attached

Newly built fireplaces will often incur slight amounts of separation. Separation shall not exceed 1/2 inch from the main structure in any 10-foot vertical measurement.

The Builder will determine the cause of separation and correct if standard is not met. Caulking is acceptable.

9. EQUIPMENT

A. Countertops and Cabinets

1. Countertop lamination

Countertops fabricated with high-pressure laminate coverings shall not delaminate.

The Builder will replace delaminated coverings. The Builder will be responsible for chips and cracks only if noted before occupancy.

Solid surface countertops, including quartz and granite, have naturally occurring variations and these variations are acceptable.

Scratches, chips or cracks in countertops or cabinets will be repaired only if documented prior to occupancy.

2. Kitchen cabinets

Warpage not to exceed 1/4 inch as measured from face with door or drawer front in closed position.

The Builder will correct or replace doors or drawer fronts.

3. Cabinets, ceiling or wall gaps

Gaps between cabinets, countertops, ceiling or walls shall not exceed 1/4 inch in width. Caulking or sealing is an acceptable repair. Maintenance of caulking or sealing material is the home owner's responsibility.

10. PLUMBING

A. Plumbing System

1. Leaks

No valve or faucet shall leak due to defects in workmanship and materials. The

Builder will repair or replace the leaking faucet or valve.

2. Defective plumbing fittings

The Builder will replace any defective fittings that do not meet acceptable standards, as defined by the manufacturer.

3. Noisy water pipes

There will be some noise emitting from the water pipe stem due to the flow of water. However, the Builder shall eliminate any harsh "water hammer" noise.

4. Cracking or chipping of porcelain or fiber surfaces

Chips and cracks on surfaces of bathtubs and kitchen sinks can occur when the surface is hit with sharp or heavy objects.

The Builder will not be responsible for repairs unless damage has been reported to the Builder prior to occupancy.

5. It is the home owner's responsibility to drain or otherwise protect lines and exterior faucets exposed to freezing temperatures.

B. Septic Tank System

Septic system shall function adequately during all seasons, under climate conditions normal or reasonably anticipated (based on local records) for the location of the home. Septic system shall be designed and installed to comply with applicable requirements.

The Builder will repair or otherwise correct, a malfunctioning or non-operating system, if failure is caused by inadequate design, faulty installation or other cause relating to actions of the Builder or subcontractors under the Builder's control. The Builder will not be responsible for system malfunction or damage which is caused by owner negligence, lack of system maintenance or other causes attributable to actions of the home owner or owner's contractors, not under the control of the Builder, including, but not necessarily limited to, the addition of fixtures, items of equipment, appliances or other sources of waste or water to the plumbing stem served by the septic system, and damage or changes to the septic system installation or surrounding soil conditions critical to the system's functioning.

C. Piping

1. Leaks

No leaks of any kind shall exist in any soil, waste, vent or water pipe. Condensation on piping does not constitute leakage, and is not covered.

The Builder will make repairs to eliminate leakage.

2. Stopped up sewers, fixtures and drains

Sewer fixtures and drains shall operate properly.

The Builder will not be responsible for sewers, fixtures and drains, which are clogged through the home owner's negligence. If a problem occurs, the home owner should consult the Builder for a proper course of action. Where defective construction is shown to be the cause, the Builder will assume the cost of the repair; where the home owner negligence is shown to be the cause, the home owner shall assume all repair costs.

3. Refrigerant lines

Refrigerant lines shall not develop leaks during normal operation.

The Builder will repair leaking of refrigerant lines and recharge unit, unless damage was caused by the home owner.

11. HEATING and COOLING

A. Heating

Heating system shall be capable of producing an inside temperature of 70 degrees F, as measured in the center of each room at a height of five (5) feet above the floor, under local outdoor winter design conditions as specified in the ASHRAE handbook. Federal, state or local energy codes shall supersede this standard where such codes have been locally adopted.

The Builder will correct heating system to provide the required temperatures. However, the home owner shall be responsible for balancing dampers, registers and the other minor adjustments, as well as changing filters to a minimum of every six (6) months.

B. Refrigeration

Where air-conditioning is provided, the cooling system shall be capable of maintaining a temperature of 78 degrees F, as measured in the center of each room at a height of five (5) feet above the floor, under local outdoor summer design conditions as specified in ASHRAE handbook. In the case of outside temperatures exceeding 95 degrees F, a differential of 15 degrees F from the outside temperature will be maintained. Federal, state or local energy codes shall supersede this standard where such codes have been locally adopted.

The Builder will correct cooling system to meet temperature condition, in accordance with specifications.

C. Condensation Lines

Condensation lines will clog eventually under normal use. This is a home owner maintenance item. The Builder shall provide unobstructed condensation lines at time of occupancy.

D. Evaporative Cooling

Equipment shall function properly at temperature set.

The Builder will correct and adjust so that the blower and water system operate as designed.

12. VENTILATION

A. Ventilation Systems

Ventilation systems shall be installed per code requirements.

The Builder shall correct ventilation systems to provide required ventilation rates if not performing to code. However, the home owner shall be responsible for maintenance to fans for ventilation, filter changes and intake and exhaust hoods.

B. Ductwork

When metal is heated it expands and when cooled it contracts. The result is “ticking” or “cracking” which is generally to be expected. However, stiffening of the ductwork and the gauge of the metal used shall be such that ducts do not “oilcan.” The booming noise by “oilcanning” is not acceptable. The Builder will correct to eliminate oilcanning.

13. ELECTRICAL

A. Outlets, Switches, and Fixtures

1. Drafts from electrical outlets

Electrical junction boxes on exterior walls may produce airflow whereby the cold air can be drawn through the outlet into a room.

2. Malfunction of electrical outlets, switches or fixtures

All switches fixtures and outlets shall operate as intended.

The Builder will repair or replace defective switches, fixtures and outlets.

B. Ground Fault and Arc Fault Interrupters

Ground fault interrupters and arc fault interrupters are sensitive safety devices installed into the electrical system to provide protection against electrical shock. These sensitive devices can be tripped very easily.

The Builder shall install ground fault interrupters or arc interrupters in accordance with the electrical code. Tripping is to be expected and is not covered, unless due to an installation defect.

We (I) received these Building Performance Guidelines as part of our Construction Contract or Purchase Agreement.

Signature of Homeowner: _____ Date _____

Signature of Homeowner: _____ Date _____

Contractor: _____ Date _____

By: _____ Date _____

Its: _____