



RESOLUTION SERVICES™

SPECIALIZING IN MEDIATION & ARBITRATION & DISPUTE REVIEW BOARDS

PO Box 8029
Santa Fe, NM 87504

New Mexico: 505-473-7733

Fax Phone: 505-474-9061

Website: www.constructiondisputes-cdrs.com

Toll Free: 888-930-0011

Email: cdrs@cdrsllc.com

SPECIAL GREEN CONTRACT CONSIDERATIONS

Although there will be the traditional “prescriptive” disputes concerning the quality of construction and the manner in which the construction is installed, the really true green disputes will be “performance” based and will center more around the performance of the building as it relates to green construction. These disputes will most likely relate to indoor air quality, the proper utilization and costs related to energy usage of the building, the utilization and sustainability of natural resources, such as water conservation and the recapture and use of gray water and other similar performance based issues. It is not only the contractor who may be the defendant in a green-related construction dispute, but will most likely also involve the building designer or architect, HERS Rater, the Green Verifier, Energy Star Rater and other individuals who perform the green related ratings and tests such as blower door, moisture and thermal testing. When people sue each other, anyone and everyone gets named in the suit as a potential source of funds for the plaintiff.

All contractors and other professionals who are involved in the construction of a green building must be careful to make certain that they do not make promises or provide misleading information to the public and especially to a buyer of a green building. Through proper contract language, a green professional or contractor can cover themselves as to exactly what they are providing to a customer. Misleading statements or misleading or inaccurate advertising claims that can't be backed up or proven to a customer may be viewed by the courts as not only false advertising but may also be construed as fraud, which in itself is usually considered a felony by the courts. What you say and what you advertise, print in your brochures, publish on your website, should be scrutinized to make certain that it is factual and is not misleading as to what you will be providing to the public.

CDRS always recommends that any information that you publish on your website, use in advertising or that you write in your contracts or agreements should be reviewed and approved by your attorney prior to its utilization. CDRS and the CDRS attorneys have written certain suggested contract provisions that we feel will assist the green professionals in making certain that they are not over-promising or misleading the public as to the services that they will be performing related to green construction and should help to protect them from green-related lawsuits or related disputes. Keep in mind that green construction is still a new and evolving industry and the perceptions of one person as to the meaning of green will most likely be interpreted differently by different people. Adding clarity through proper contract provisions can only assist the green professionals and their clients in having a better understanding of the roles and responsibilities of the green professional.

One of the following contract clauses is designed for the Rater or Verifier, one is written for the designer or architect and one is written for the contractor or subcontractor who will be doing the actual construction of the green building. All of these contract clauses can and should be modified to suit your own individual operation. The following contract clauses are examples of the contract language that you can specify in your construction contract or agreement to lessen your responsibility as to the performance of a green-built building. Your attorney should be able to assist you in developing the proper clauses for your contract to protect yourself from future green-related disputes developing.

PLEASE DO NOT UTILIZE ANY OF THE FOLLOWING CONTRACT PROVISIONS WITHOUT FIRST HAVING THEM APPROVED BY YOUR ATTORNEY.



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GREEN CONTRACT CLAUSES

RATERS AND VERIFIERS

The services provided by _____ company (your name) relate only to rating (verifying) the building according to the rating (verifying) system as provided by _____ (Energy Star, Resnet, Leeds, NAHB, etc.) The rating that we (I) will provide is calculated according to the aforementioned rating system and we (I) do not guaranty that the residence will be built to the guidelines, standards or codes as specified by the designer, architect, builder or municipality. In addition, _____ company (your name) does not guaranty any performance of the building related to the rating that we (I) have determined for the building. In addition, _____ company (your name) assumes no responsibility for the accuracy of the rating as the rating system allows for some flexibility and the rating for your building will be calculated based only on the information provided by the builder, designer or architect. If any dispute related to our (my) services should occur, the dispute shall be settled through binding arbitration as provided by and according to the Arbitration Rules and Procedures of Construction Dispute Resolution Services, LLC, a National/International construction dispute firm who has developed a special "National Green Panel" to specifically handle green-related disputes. The cost for the arbitration shall be shared equally by the parties although personal attorneys, experts or other personal expenses shall be paid directly by the party utilizing those special services. The parties acknowledge that they are giving up their right to utilize the court system to settle any disputes. The arbitration award shall be binding upon the parties and may be enforced in any court of competent jurisdiction.

DESIGNERS AND ARCHITECTS

The drawings, plans, and other technical documents supplied by _____ (your name) Company were designed or drawn utilizing the green-related information provided by the _____ green organizations (Energy Star, USGBC, NAHB, RESNET, etc). _____ company (your name) does not guaranty that the green building will meet the expected level of green construction that is indicated according to the green rating as planned for this building. In addition, _____ company (your name) assumes no responsibility for the accuracy of the rating as the rating system allows for some flexibility and the rating for your building will be calculated based only on the information provided related to the construction of the building. If any dispute related to our (my) services should occur, the dispute shall be

settled through binding arbitration as provided by and according to the Arbitration Rules and Procedures of Construction Dispute Resolution Services, LLC, a National/International construction dispute firm who has developed a special "National Green Panel" to specifically handle green-related disputes. The cost for the arbitration shall be shared equally by the parties although personal attorneys, experts or other personal expenses shall be paid directly by the party utilizing those special services. The parties acknowledge that they are giving up their right to utilize the court system to settle any disputes. The arbitration award shall be binding upon the parties and may be enforced in any court of competent jurisdiction.

BUILDER, CONTRACTOR, OR SUBCONTRACTOR

_____ company (your name) will attempt to build the building as specified by the plans, drawings and other documents provided for the construction of the building by a designer, architect or other individual or entity. As to the green aspects of the building, _____ company (your name) will utilize the materials specified and will endeavor to have the building perform as expected as a result of the green construction specified for this building. _____ company (your name) can not guaranty that the building will perform as expected as the green performance of a building depends on several other issues other than the construction of the building including but not limited to the use and maintenance of the building by the owner. If any dispute related to our (my) services should occur, the dispute shall be settled through binding arbitration as provided by and according to the Arbitration Rules and Procedures of Construction Dispute Resolution Services, LLC, a National/International construction dispute firm who has developed a special "National Green Panel" to specifically handle green-related disputes. The cost for the arbitration shall be shared equally by the parties although personal attorneys, experts or other personal expenses shall be paid directly by the party utilizing those special services. The parties acknowledge that they are giving up their right to utilize the court system to settle any disputes. The arbitration award shall be binding upon the parties and may be enforced in any court of competent jurisdiction.

KEEP IN MIND THAT EACH CONTRACT SHOULD BE MODIFIED FOR EACH BUILDING THAT IS CONSTRUCTED.

PLEASE DO NOT UTILIZE ANY OF THESE SAMPLE CONTRACT PROVISIONS WITHOUT FIRST HAVING THEM APPROVED BY YOUR ATTORNEY.

ADDITIONAL INFORMATION ON THE NATIONAL GREEN PANEL OF CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC CAN BE FOUND ON THEIR WEBSITE: WWW.CONSTRUCTIONDISPUTES-CDRS.COM OR BY CALLING CDRS AT 888-930-0011.

CDRS ASSUMES NO RESPONSIBILITY FOR ANY LEGAL ISSUES THAT MIGHT DEVELOP THROUGH THE UTILIZATION OF THE ABOVE CONTRACT CLAUSES.