**AGREEMENT FOR THE RENOVATION**

**OF A RESIDENTIAL DWELLING**

[Owner’s Land, Fixed Price Basis, No Guaranteed Maximum, AS-IS]

|  |
| --- |
| **DISCLAIMER: This document and the exhibits and attachments are not final or complete instruments, they include several options which may be included or deleted, and should not be executed in their present form. The HBAA and its local chapters do not assume any liability for damages arising from the use of this document and the exhibits and attachments thereto and give no opinion that any of the terms and conditions in this document and the exhibits and attachments should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated between the parties based upon the respective interests, objectives, and bargaining positions of all interested parties. Seek specific legal advice from your lawyer.** |

|  |
| --- |
| **OVERVIEW OF AGREEMENT: This Agreement provides for renovation of a residential dwelling on Property owned by the Owner in conformity with Plans and Specifications for the Renovation Work. There is no limited warranty provided and the work is done on an AS-IS Basis. The Commencement Date is provided for in Paragraph 2 and Completion is upon issuance of a Certificate of Occupancy or if there is no municipal building inspection department, then the reasonable determination by Contractor that the Renovation Work is substantially complete. The Job Cost is provided for in Paragraph 3 and this form provides for a Fixed Price Basis. There is no Guaranteed Maximum Price. Payment terms are provided for in Paragraph 8 and Change Orders are provided for in Paragraph 10. If the parties so elect, there are alternative remedies provisions in Paragraph 24 providing for dispute resolution by either Arbitration (with Mediation to precede such Arbitration) or standard remedies of each party availing themselves of the available remedies under applicable law.** |

This AGREEMENT FOR THE RENOVATION OF A RESIDENTIAL DWELLING (hereinafter “this Agreement”) is hereby bargained for, made, and entered into on the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as “Contractor”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter, whether one or more, referred to as “Owner”).

W I T N E S S E T H:

Owner holds legal title to the following described real property (the “Land”) situated in                                             County, Alabama, and more particularly described as follows:

Address:

Legal description:

(See attached Exhibit I for legal description of the Land if not inserted in the above space.)

together with all improvements thereon, if any (the Land and said improvements hereinafter referred to together as the “Property”). Owner has requested that Contractor renovate a residential dwelling (the “Dwelling”) on the Property in accordance with the provisions of this Agreement. As a part of the negotiation of the terms and provisions of this Agreement, Owner and Contractor have agreed that no warranty shall be provided by Contractor to Owner with respect to the Renovation Work (hereinafter defined) and have negotiated between themselves the terms and provisions of either **a Preoccupancy Inspection Agreement or Acknowledgment of Acceptance as described below and as attached hereto as Exhibit “C” and made a part hereof**.

NOW, THEREFORE, in consideration of the foregoing recitals, the agreements contained herein and attached hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Contractor do hereby agree as follows:

1. Renovation of the Dwelling/Plans and Specifications. Contractor hereby agrees to renovate the Dwelling on the Property in accordance with provisions of this Agreement and in general conformity with the Plans and Specifications attached hereto as, or identified on, the attached Exhibit A and incorporated herein by reference (hereinafter the “Renovation Work”). The Plans and Specifications have been signed and dated simultaneously with the execution of this Agreement by both Contractor and Owner. Any changes in the Plans and Specifications which have been agreed upon by both Contractor and Owner have been clearly shown and initialed by both Contractor and Owner. The Renovation Work shall not include the repair, replacement, or remedy of any existing condition of the Dwelling which is not specifically included in the Plans and Specifications, and Contractor shall have no responsibility or obligation with respect thereto.
2. Date of Commencement and Substantial Completion. Contractor shall commence the Renovation Work on or before the                     day of                                    , 20           (the “Commencement Date”) and shall cause the Renovation Work to be substantially complete on or before the                     day of                                    , 20           (hereinafter the “Completion Date”), subject to such extensions of the Completion Date as might occur pursuant to the provisions of this Agreement. The Renovation Work shall be deemed completed upon the issuance of a Certificate of Occupancy by the applicable governmental building inspection department, if there is such a department in the jurisdiction in which the Property is located, and, if no such department exists, then upon the reasonable determination by Contractor that the Renovation Work is substantially complete and ready for occupancy.
3. Consideration. Consideration. Owner shall pay to Contractor in current funds for the Renovation Work by Contractor the sum of                                                                                                                                           Dollars ($                                     ) (the “Consideration”), subject to increase as permitted by the provisions of this Agreement. The Consideration shall include the items described in paragraph 5 below.

1. This Section is Intentionally Deleted.

1. Cost of the Renovation. The term “Cost of the Renovation” shall mean costs necessarily incurred by Contractor in the Renovation Work. Such costs shall be at rates which Contractor has reasonably determined to be not higher than the standard paid in the community in which the Property is located except with the prior consent of Owner. The Consideration shall include the following items:
   1. Wages of renovation workers directly employed by Contractor to perform the Renovation Work, including welfare, unemployment compensation, worker’s compensation, social security, and other benefits.
   2. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completion of the Renovation Work; all discounts for cash or prompt payment shall accrue to Contractor.
   3. Payments made by Contractor to all subcontractors in accordance with the requirements of the subcontracts.
   4. Cost of all materials, temporary facilities, equipment, and hand tools not customarily owned by the renovation workers, which are provided by Contractor at the site and fully consumed in the performance of the Renovation Work.
   5. Rental costs for necessary temporary facilities, machinery, equipment, and hand tools used at the site of the Dwelling, whether rented from Contractor or others.
   6. That portion directly attributable to this Agreement of premiums for insurance and bonds.
   7. Losses and expenses not compensated by insurance or otherwise, sustained by Contractor in connection with the Renovation Work, provided they have resulted from causes other than default or neglect of Contractor.
   8. Costs of removal of debris from the site.
   9. Costs incurred in taking action to prevent threatened damage, injury, or loss in case of any emergency affecting the safety of persons and property.
   10. Costs of building permits, fees for access to and consumption of water, sewer, electric power, gas, telephone, and other utilities and costs of any other governmental or private licenses or permits necessary to the Renovation Work.
   11. Costs of surveys of the Property and with respect to the location of the Dwelling during renovation.
   12. Administrative expenses allocated by Contractor to the Renovation Work for salaries and other compensation of Contractor’s personnel stationed at Contractor’s principal office or offices other than the site office and other overhead of Contractor’s office allocated to the Renovation Work.
   13. Other costs incurred in the performance of the Renovation Work.
   14. Other costs:

Consideration shall not include the following items, which shall be paid by Owner in addition to the Consideration:

* + 1. Losses and expenses not compensated by insurance or otherwise, sustained by Contractor in connection with the Renovation Work, provided they have resulted from causes other than default or neglect of Contractor.
    2. Costs incurred in taking action to prevent threatened damage, injury, or loss in case of any emergency affecting the safety of persons and property, which is not the result of the default or neglect of Contractor.
    3. Costs incurred by Contractor as the result of changes in the Plans and Specifications, as permitted by the provisions of this Agreement.
    4. Increases in the Consideration or other costs to be paid by Owner as the result of rock or other subsurface conditions or as otherwise provided by the provisions of this Agreement.
    5. Other costs:

1. Discounts, Rebates, and Refunds. Cash discounts obtained on payments made by Contractor and trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to Contractor.
2. This Section is Intentionally Deleted
3. Payment of Consideration. Owner shall pay to Contractor, on or before the day of , 20 , the sum of                                                                                                                                Dollars ($                                  ) (the “Advance Payment”) toward the Consideration. The Advance Payment shall be credited against the final payment to be made by Owner to Contractor as described later in this paragraph. Contractor shall send an invoice to Owner on a weekly, bi-monthly, or monthly basis, as determined by Contractor, setting forth the portion of the Consideration that Contractor determines to be payable for the Renovation Work performed and materials ordered or supplied as of the date of the invoice, together with such portion of the Consideration as has been allocated by Contractor for overhead and profit and included in the amount of the invoice. Owner shall make payment to Contractor in the amount of the invoice no later than three (3) days after the delivery of same by Contractor to Owner. Payments not made on or before said due date shall bear interest from the due date at the rate of                                                   percent (            %) per annum together with a late penalty equal to                                                   percent (            %) of the amount of the delinquent payment. The final payment of the entire unpaid balance of the Consideration shall be paid by Owner to Contractor upon the issuance of a Certificate of Occupancy by the applicable governmental building inspection department, if there is such a department in the jurisdiction in which the Property is located, and, if no such department exists, then upon the reasonable determination by Contractor that the Renovation Work is complete.
4. Owner’s Representations and Warranties. Owner hereby represents and warrants unto Contractor as follows:
   1. Owner has good, clear, free, unencumbered (unless otherwise described herein) fee simple title to the Property and the unrestricted right and authority to enter into this Agreement;
   2. If there is a mortgage or other such lien on the Property, Owner, if so requested by Contractor, shall obtain a written consent from the lender or holder thereunder acknowledging Contractor’s rights in the Property to the extent of amounts unpaid and owning by Owner to Contractor and that such lender or holder shall allow insurance proceeds to be utilized towards rebuilding in the event of damage or destruction of the Property.
   3. There are no parties other than Owner in possession of any portion of the Property and there are no disputes with respect to the boundary line or title to the Property;
   4. There are no pending or threatened condemnation proceedings with respect to the Property or any portion thereof;
   5. Owner has obtained such inspection reports, due diligence reports and certifications from architects, engineers and surveyors regarding the Renovation Work to make the representations and warranties contained herein and based on same hereby warrants and represents that the performance of the Renovation Work in accordance with the Plans and Specifications will not violate any applicable governmental laws, rules or regulations or any private restrictions, covenants, or other such agreements affecting the Property and will not encroach outside the boundary lines of the Property or within any applicable building setback lines, easements, or rights-of-way;
   6. The Property is free of any environmental hazards or materials or substances which would cause the Property to be in violation of any federal, state, or local environmental laws, rules, or regulations.

Owner hereby acknowledges that Contractor is relying upon the representations of Owner contained herein and that Contractor shall not be held responsible for any damages, costs or expenses arising out of the matters herein represented by Owner to be true and correct in the event such representations are not true and correct.

1. Changes to Plans and Specifications. If Contractor has agreed to renovate the Dwelling or complete the Renovation Work in general conformity with Plans and Specifications, then Contractor shall be under no obligation to make any changes, additions or alterations to the Plans and Specifications. Contractor may elect to make changes, additions or alterations to the Plans and Specifications upon the request of Owner; however, Contractor shall not be obligated to do so. In the event that Contractor and Owner agree upon changes, additions or alterations to the Plans and Specifications, then such agreement shall become effective only upon the execution by both Contractor and Owner of a written change order, in a form which is acceptable to Contractor and which sets forth the changes to be made and the increase in the Consideration to be paid by Owner to Contractor in connection therewith, and the payment by Owner to Contractor of such portion of said increase in the Consideration as shall be required by Contractor. Any such increase in the Consideration shall be non-refundable. Contractor shall not be obligated to agree to any such changes, additions or alterations to the Plans and Specifications and may condition any such agreement upon such matters as Contractor shall, in sole discretion of Contractor, determine, including, but not limited to, an increase in the Consideration, and the approval of such changes by Owner’s lender and the local building inspection officials, if any. In the event that Contractor agrees to such changes and has not received all of the increase in the Consideration to be paid in connection therewith, then the balance of said increase in the Consideration shall be paid as a part of the final payment of the Consideration in accordance with the provisions of paragraph:5. Notwithstanding the foregoing, Contractor shall have the right to make such changes, additions, or alterations to the Plans and Specifications as shall be required by any governmental officials who have jurisdiction or authority over the Renovation Work, or to cause the Renovation Work to be in compliance with any applicable building codes or other applicable governmental laws, rules, or regulations, without notice to or approval by Owner, and to charge to Owner the costs incurred by Contractor in connection therewith, together with                                                              percent (                      %) of said costs for Contractor’s overhead and profit, which sums shall be paid by Owner to Contractor in addition to the Consideration, immediately upon Contractor’s invoice to Owner for said sums.
2. Decorating Allowance. Contractor may allow Owner to select some or all of the decorating items to be incorporated into the Renovation Work. Such items may include brick, paint colors, roof colors, light fixtures, wall paper, and floor covering for which Contractor shall establish allowances. Owner shall make such selections within seven (7) working days after the request by Contractor. If selections of Owner exceed the amount of allowances established by Contractor, then Owner shall pay such portion of any such excess as shall be required by Contractor at the time of making the selections, and the balance, if any, shall be paid together with the final payment of the Consideration, and said additional payments shall not be limited in any manner by the Consideration. The allowances established by Contractor and which have been used to determine the Consideration, are attached hereto as Exhibit B. In no event shall the Consideration be reduced as the result of the expenditure of less than the allowance for any particular item.
3. Condition of the Land.
   1. Owner hereby affirms that, before signing this Agreement, Owner has personally walked upon and inspected the Land, or if not, has had such inspections performed regarding the condition of the Land to make the representations and warranties contained herein. Owner represents that Owner or its representatives have conducted such engineering studies, site investigations and analyses (including soil tests) as Owner deems desirable to determine whether the soil or other conditions of the Land are acceptable to Owner. Owner acknowledges and agrees that Owner has received no representation or warranty from Contractor with respect to the condition of the Land and that Contractor shall not in any manner be responsible for the condition thereof. Owner hereby acknowledges that Contractor is relying upon the representations of Owner contained herein and that Contractor shall not be held responsible for any damages or costs arising out of any condition pertaining to the Land in the event such representations are not true and correct.
   2. Owner waives all claims, present and future, against Contractor and Contractor’s agents, employees, successors, assigns, members, owners, managers, partners, officers and contractors based upon or connected with the condition of the Land and hereby releases Contractor and Contractor’s agents, employees, successors, assigns, members, owners, managers, partners, officers and contractors from any liability whatsoever therefor.
   3. Owner acknowledges that Owner has been advised to investigate the purchase of insurance for protection in the event of earthquakes or sinkholes; provided, however, and notwithstanding anything to the contrary contained herein, Contractor has made no representation or warranty with respect to the availability of such insurance coverage.
   4. The Consideration does not include any costs or contingencies for rock, soil conditions, or other abnormal surface conditions, and Owner shall be responsible for the costs of correcting any such conditions. Should such abnormal conditions be encountered on the building site in connection with foundations and footing excavation or installation of sewer lines, on-site sewage disposal systems, water lines, or other utility services, Contractor shall promptly inform Owner of same and the estimated costs of the additional work. Such costs may include, but are not necessarily limited to, blasting expenses, jack hammer and drill operations. The actual costs will be reflected in an increase in the Consideration..
4. Maintenance and Prevention of Moisture-Related Conditions.
   1. Whether Owner experiences mold growth depends largely on how Owner manages and maintains the Property and Owner agrees to take actions after the closing to prevent conditions that may cause such mold or mildew as provided for herein. Owner hereby acknowledges and agrees that, upon the completion of the Renovation Work and occupancy of the Property by Owner: (i) it shall be the responsibility and obligation of Owner to maintain the Property, including the Dwelling and all components thereof, in good condition and repair, including all caulking, water seals, exterior surfaces and finishes, mortar, water pipes, drainage systems, HVAC pipes and systems, basement and crawl space areas, gutters, roofs, and landscaping, for the prevention of water penetration, mildew, mold, spores, fungi, damage to wood and other materials, and other moisture-related conditions; (ii) the failure to do so could result in health-related problems and/or damage to Buyer and to the Property; (iii) Contractor shall have no liability or responsibility with respect to same and will not be liable for any actual, special, incidental, or consequential damages based on any legal theory whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory with respect to the presence and/or existence of mold, mildew, and/or microscopic spores caused by the acts or omissions of Buyer; and (iv) Owner hereby waives and disclaims any claims against Contractor arising out of any such condition and any loss, damage, or injury resulting therefrom.
   2. Owner further acknowledges and agrees that: (i) if Owner becomes aware of water intrusion into the Property, Owner should respond immediately; (ii) in cases of serious water damage, Owner should hire construction and indoor air quality consultants to assess the damage and determine what remediation is needed; (iii) inadequate remediation, even if well-intentioned, will only create more problems; (iv) water damaged materials may need to be removed, and the source of the water intrusion should be addressed; (v) the Property may have to be vacated while remediation work is in progress; and (vi) a certified industrial hygienist experienced with testing for molds in indoor environments should be retained to determine whether the water damage has caused a source of mold growth and amplification.
   3. Owner further acknowledges and agrees that: (i) unusual odors should also be investigated promptly; (ii) unusual odors may be indicative of water intrusion and mold growth; and (iii) chronic complaints of illness (especially respiratory, breathing, or allergy-type problems), headaches or nausea may indicate indoor air quality problems and should be taken seriously and investigated promptly.
5. Extension of the Completion Date/Delivery of Possession. The Completion Date may be extended by Contractor for such additional time as Contractor shall determine to be reasonably necessary as the result of (a) any delay in the approval of Owner’s renovation or permanent loan, if any; or (b) any delays in the progress of the Renovation Work due to items such as, but not limited to, inclement weather, acts of war or terrorism, changes in the Plans and Specifications, requirements of any building officials or other governing authorities, work stoppages, delays in the delivery of materials, contingencies under this Agreement, if any, the completion of the preoccupancy inspection and any additional work required as the result thereof, and any other matters which might delay the completion of the Renovation Work; or (c) as a result of any delay caused by the failure or interruption of systems used by Contractor or systems used by third parties upon whom Contractor relies or any other system where such failures or interruptions are caused, in whole or in part, directly or indirectly, by the inability of such systems to accurately calculate, compare, extract, sequence, display, accept, process, store, reserve, and provide date data in a manner that is consistently correct and accurate, regardless of the date data input, the functions requested, the date data output requested, or the date upon which the date data is input, processed, or output; or (d) as a result of any damage or destruction to all or any portion of the Property as the result of fire, storm, or other casualty. In the event of the delay of the Completion Date pursuant to the foregoing provisions, then the Completion Date shall be that date which has been established in a written notice from Contractor to Owner provided that such date is no less than ten (10) days after the date of such notice. Pending the substantial completion of the Renovation Work and the payment in full by Owner to Contractor of the Consideration, possession of the Dwelling shall be **[Insert here either “maintained by Contractor” or “maintained by Owner subject to the right of Contractor to such possession as is necessary to complete the Renovation Work” or such other agreement as to possession as is negotiated with Owner.]**  and Owner shall coordinate with Owner’s insurance carrier to assure that appropriate liability, fire and casualty, contents and other applicable insurance coverage is in place insuring Owner’s interest in the Property if the Dwelling is maintained by Owner until completion of the Renovation Work. Possession of the Property by Contractor shall be delivered to Owner upon the payment in full of the entire amount of the Consideration and any other sums payable by Owner under this Agreement.
6. Insurance. Contractor shall be responsible for a policy of insurance for protection from claims under Workers’ or Workmen’s Compensation Acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and from claims for damages to property (other than to the Dwelling) which may arise out of or result from Contractor’s operations under this Agreement, whether such operations be by Contractor or by a subcontractor or anyone directly or indirectly employed by either of them, shall be purchased and maintained by Contractor, and the cost thereof shall be included in the Consideration. The limits of liability under said policy of insurance shall be not less than                                            Dollars ($                                  ).

Owner shall be responsible for purchasing and maintaining a policy of insurance with respect to the Dwelling and the Property insuring both Owner and Contractor against general liability in the amount of not less than                                                                                                                                                    Dollars ($                               ), and against the perils of fire and all other hazards and physical loss or damage including, without limitation, theft, vandalism, and malicious mischief, said policy to be on an all risk policy form and to include extended coverage in the full insurable value of the Dwelling, the Property, and the improvements to be made thereto pursuant to the provisions of this Agreement. Owner and Contractor shall each provide to the other copies of certificates from the insurance companies evidencing the existence of the policies to be purchased pursuant to this paragraph.

1. Storage of Materials. If Owner provides space within the Dwelling or curtilage for the storage of Contractor’s materials, Owner shall be liable for theft, damage, or loss caused by Owner or Owner’s invitees, licensees, or trespassers, if Owner knows or should know of such trespassers.
2. Evidence of Title. A report of the status of the title to the Property, in such form as might be acceptable to Contractor, shall be provided by Owner, at the expense of Owner. Said title report shall reflect the status of record title to the Property and shall include legible copies of all easements, restrictions, rights-of-way, exceptions, encumbrances and other matters affecting title to the Property. A copy of said report together with legible copies of said exceptions and other such matters shall be delivered to Contractor on or before the Commencement Date. The obligations of Contractor hereunder are subject to the approval by Contractor of the form and substance of the title report.
3. Termite Contract/Termite Bond. Owner shall be responsible for purchasing such termite or wood infestation reports, termite treatment contracts, or termite bonds as Owner deems appropriate, if any, at the expense of Owner. Any such report, contract, or bond, if any, which is provided by Contractor shall be accepted by Owner without representation, obligation, or warranty from Contractor, and Owner hereby acknowledges and agrees that Owner shall determine whether any such report, contract, or bond provides sufficient protection of Owner’s interests, and Owner shall look solely to the issuer of any such report, contract, or bond with respect to any representations, agreements, or obligations therein contained. Contractor shall have no liability or obligation with respect to any matter which may be or might have been revealed in such termite or wood infestation reports, termite treatment contracts, or termite bonds obtained or waived by Owner.
4. Time Is Of The Essence. TIME IS OF THE ESSENCE with respect to the obligation of Owner to make payments to Contractor toward the Consideration within the time required pursuant to this Agreement.
5. Disclaimer. Owner further acknowledges that Owner has not relied upon any advice or representations of Contractor or any person associated therewith relative to relative to (i) the legal or tax consequences of this Agreement and the sale, purchase, or ownership of the Property; (ii) the structural condition of the Property; (iii) the investment or resale value of the Property as the result of the renovations to be made pursuant to this Agreement; (iv) the character of the neighborhood; (v) the investment or resale value of the Property; (vi) the use or condition of adjoining or neighboring property; (vii) subsurface conditions, including radon and other potentially hazardous materials and/or gases; (viii) the flood zone, (ix) the school zone, or (x) any other matters affecting Owner’s willingness to enter into this Agreement and to do the Renovation Work. Owner acknowledges that if such matters are of concern to Owner in the decision to enter into this Agreement, Owner has sought and obtained independent advice relative thereto. Owner further acknowledges that the promotional brochures and drawings, if any, with respect to the Property may not be exact depictions of the Property, the Dwelling, or surrounding areas and have not been relied upon by Owner in the determination to enter into this Agreement.
6. Insulation. Any living area ceilings to be constructed under the Plans and Specifications will be installed with                                         type insulation to a thickness of                                         inches, which thickness, according to its manufacturer, will (in either case) result in an R-Value of                                        . Any living area exterior walls to be constructed under the Plans and Specifications will be insulated with                                         type insulation to a thickness of                                         inches, which thickness, according to the manufacturer, will result in an R-Value of                                        . Owner acknowledges and agrees that, in accordance with Federal Trade Commission Regulations, this information has been supplied by the installer of the insulation and has not been determined by Contractor. Owner acknowledges and agrees that Contractor shall have no liability or obligation with respect to the accuracy of the information included in this paragraph.
7. Existing Improvements. Contractor has made no assessment of the condition of the existing improvements that comprise the Dwelling. Contractor shall have no responsibility to correct any defects in the existing improvements comprising the Dwelling or make any repairs or alterations thereto, except as specifically set forth in the Plans and Specifications. In the event of any condition of the existing improvements comprising the Dwelling which is defective or requires alteration or repair in order to accomplish the renovations or additions to be accomplished pursuant to the Plans and Specifications, Owner shall be responsible, at the expense of Owner, to cause such defect or condition to be repaired or otherwise remedied in such manner as will facilitate the completion of the work by Contractor pursuant to the Plans and Specifications, comply with all applicable governmental codes and regulations, and as will otherwise be reasonably acceptable to Contractor. Contractor shall have no liability or obligation with respect to any matter which may be or might have been revealed in such inspection reports, condition reports, engineering reports, surveys or other such reports either obtained or waived by Owner.
8. Casualty Loss. In the event of any damage or destruction to all or any portion of the Property as the result of fire, storm, or other casualty, then Contractor shall have the right, at the election of Contractor, to either (a) extend the Completion Date as necessary to permit Contractor to remedy any such damage and complete the Renovation Work, in which event Contractor shall be paid the additional costs and fees (including Contractor’s overhead and profit) as shall be determined by Contractor to be necessary to remedy such damage, or (b) terminate this Agreement, whereupon Owner shall pay to Contractor the balance of the Consideration and other sums owing to Contractor for the portions of the Renovation Work completed as of the occurrence of the damage, including costs incurred by Contractor for materials, supplies, and other items ordered, acquired, or delivered to the Property, including the Contractor’s overhead and profit associated therewith, and Contractor shall be relieved of any obligation to complete the Renovation Work. If there is a mortgage lender with a lien on the Property or the insurance proceeds payable resulting from damage or destruction to the Property, prior to commencement of the Renovation Work, if requested by Contractor, Owner shall obtain an agreement from such lender recognizing Contractor’s rights to the proceeds of such insurance for work done to the time of such damage or destruction and recognizing Contractor’s rights in such proceeds in the event a determination is made by Contractor to remedy such damage and complete the Renovation Work.
9. Arbitration. **NOTE: The provisions of this paragraph shall be applicable only if initialed by both Contractor and Owner.** Contractor and Owner acknowledge and agree that all claims, disputes or other matters in question arising out of or relating in any way to this Agreement or the breach thereof ("Claim"), shall be submitted to mediation with a mutually agreed upon mediator within forty-five (45) days of notice of the Claim. In the event no mediated resolution is reached within sixty (60) days of the party's notice of the Claim, all Claims shall be resolved by binding arbitration as provided for herein. Contractor and Owner acknowledge and agree that this transaction substantially affects interstate commerce by virtue of the materials and components contained in the Dwelling. Any controversy, claim, or dispute arising out of or relating to this Agreement, or the breach thereof, or the transaction contemplated hereby, shall be settled by binding arbitration pursuant to the Federal Arbitration Act, 9 USC § 1, et seq., and shall be administered in accordance with the Construction Industry Rules of the American Arbitration Association. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. All parties agree to be bound by the decision of this arbitration. The decision of the Arbitrator shall be a final and binding resolution, which may be entered as a judgment by a court of competent jurisdiction; and may then be enforced by use of legal remedies.

Contractor: \_\_\_\_\_\_\_\_\_\_\_ Owner: \_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_

1. Notices. All notices and other communications hereunder, or in connection herewith, will be in writing and deemed to have been duly given and received when (i) delivered personally, or (ii) 3 days after being deposited in the US mails (via registered or certified mail, return receipt requested with postage prepaid), or (iii) delivered by a nationally recognized over-night delivery service, to the following addresses, or to such other address as a party may designate to the other parties in accordance herewith:

|  |  |  |
| --- | --- | --- |
| When to Contractor: |  |  |
|  |  |  |
| When to Owner: |  |  |
|  |  |  |

The address of a party may be changed by written notice to the other party in the manner described above.

1. Default.
   1. By Contractor: If this transaction is not concluded because of the material default of Contractor in the performance of the obligations of Contractor pursuant to this Agreement, and if said default is not remedied within thirty (30) days after written notice from Owner to Contractor setting forth the details of the default and demanding that the default be remedied (or within such reasonable period of time as may be necessary to remedy the default in the event that thirty (30) days is not a sufficient time, provided that Contractor is diligently pursuing the remedy of any such default), then Owner shall have as its sole remedies either (i) the right to terminate this Agreement upon payment by Owner to Contractor the portion of the Consideration for all work performed and all costs incurred by Contractor as of the date of termination, whereupon this Agreement shall be deemed terminated and both Contractor and Owner shall be relieved of any further obligations hereunder, or (ii) the right to pursue specific performance. These shall be the sole remedies available to Owner in the event of a default by Contractor.
   2. By Owner: In the event of default by Owner in the performance of the obligations of Owner under this Agreement, and should said default not be remedied within ten (10) days after written notice from Contractor to Owner setting forth the details of the default and demanding that the default be remedied, then, at the election of Contractor, (a) Contractor shall retain all sums paid to Contractor by Owner pursuant to this Agreement including, but not limited to, the Advance Payment, any sums with respect to changes in the Plans and Specifications, any sums with respect to allowance overages, and any other sums, as liquidated damages, whereupon this Agreement shall be deemed terminated and both Contractor and Owner shall be relieved of any further obligations hereunder; or (b) Contractor shall have the right to retain all sums paid to Contractor, as aforesaid, by Owner, which sums shall be applied toward the actual damages of Contractor, and Contractor shall be entitled to recover from Owner entitled to recover from Owner such portion of the balance of the Consideration that Contractor determines to be applicable to the work performed by Contractor, and the entire balance of that portion of the Consideration allocated by Contractor toward Contractor’s overhead and profit, together with damages incurred by Contractor; or (c) Contractor shall have the right to retain all sums paid to Contractor, as aforesaid, by Owner, and Contractor shall have the right to pursue, in addition to the retainage of said sums, equitable relief against Owner, including the remedy of specific performance together with the recovery of Contractor’s attorney’s fees and costs; or (d) Contractor shall have the right to pursue any one or more of the foregoing or any other remedies available to Contractor under applicable law together with the recovery of Contractor’s attorney’s fees and costs and the pursuit of any one or more of said remedies shall not be deemed a waiver of the right to pursue any other remedies.
2. General Provisions.
   1. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, that determination will not affect the enforceability of the remaining portions.
   2. This Agreement shall be binding upon Contractor and Owner, and their respective heirs, executors, administrators, successors and assigns.
   3. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.
   4. The titles or headings to the paragraphs included herein are for convenience only and shall not add to, reduce, limit or modify in any manner the content thereof.
   5. The use of one gender shall include all other genders, the use of singular shall include the plural, and the use of the plural shall include the singular, all as may be appropriate to the context in which they are used.
   6. The rights of Owner hereunder may not be assigned by Owner without the written consent of Contractor, which consent may be withheld in the sole discretion of Contractor.
   7. There shall be no inference or rule of construction which shall apply based on the fact or circumstance that either party or their counsel drafted any or all of the provisions of this Agreement.
   8. No person shall be deemed to possess any third-party beneficiary right pursuant to this Agreement. It is the intent of the parties hereto that no direct benefit to any third party is intended or implied by the execution of this Agreement.
3. No Warranty/Preoccupancy Inspection. Owner and Contractor acknowledge and agree that no warranty shall be provided by Contractor to Owner with respect to the Renovation Work and that said acknowledgment and agreement have been fully negotiated between Owner and Contractor as a part of the negotiation of the terms and provisions of this Agreement. Owner and Contractor shall make a preoccupancy inspection of the Renovation Work and shall either **complete and execute the Preoccupancy Inspection Agreement or execute the Acknowledgment of Acceptance** which is attached as an exhibit to this Agreement.
4. WAIVER OF WARRANTIES AND CLAIMS. OWNER AGREES THAT NO WARRANTY SHALL BE PROVIDED BY CONTRACTOR WITH RESPECT TO THE RENOVATION WORK, AND THE RENOVATION WORK SHALL BE DELIVERED TO AND ACCEPTED BY OWNER IN ITS “AS-IS” CONDITION. OWNER HEREBY EXPRESSLY WAIVES AND DISCLAIMS ALL WARRANTIES AND CLAIMS WITH RESPECT TO THE RENOVATION WORK, WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY AND WORKMANSHIP, AND ALSO ANY CLAIMS FOR CONSEQUENTIAL DAMAGES, MENTAL ANGUISH OR DISTRESS, AND FOR DAMAGES BASED UPON NEGLIGENCE, ALL OF WHICH ARE HEREBY WAIVED BY OWNER.

|  |  |  |
| --- | --- | --- |
| **Owner acknowledges that Owner has read, understood, and accepted the foregoing.** |  |  |
|  |  |  |

1. Additional Provisions. Additional Provisions, if any shall be described herein. If there are none, this Section is Intentionally Deleted.
2. Entire Agreement. This Agreement together with all of the other exhibits and attachments to this Agreement, constitute the entire agreement of the parties, and Owner acknowledges that Owner has not relied upon any oral or written statements, undertakings, or representations and that no prior agreement or understanding shall be valid or of any force or effect, unless the same have been fully set forth in this Agreement or the attachments and exhibits thereto. The covenants and agreements contained in this Agreement cannot be altered, changed, modified, or added to, except in a written instrument signed by Owner and Contractor. No representation, inducement, understanding, or anything of any nature whatsoever made, stated, or represented by Contractor or on Contractor’s behalf, either orally or in writing (except as specifically set forth in this Agreement), has induced Owner to enter into this Agreement or shall be enforceable in any manner against Contractor.
3. Electronic Transaction**.**  All parties hereby agree and consent that a manually or electronically signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission to the parties to this Agreement shall be deemed to have the same legal effect as delivery of an original manually signed copy of this Agreement, all in accordance with and governed by the Alabama Uniform Electronic Transaction Act. It is the intent of the parties to this Agreement that an electronic signature to this Agreement shall be treated the same as an original manual signature to this Agreement and shall be deemed an original signature.
4. Home Inspectors   If Owner chooses to have a private home inspection performed of the Dwelling, Owner shall provide Contractor, prior to the inspection, with the inspector’s current State of Alabama Home Inspectors License, proof of general liability and workers compensation insurance, and proof of current membership with a professional trade organization such as the American Society of Home Inspectors.  Any items noted on the inspection report may be repaired or replaced at Contractor’s sole discretion; however, in no event will Contractor be obligated to repair or replace any items noted on the inspection report which in Contractor’s determination exceed or are not in accordance with applicable local building code.
5. Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same contract. Each counterpart of the Agreement may be transmitted by fax, emailed by pdf file and shall be considered legally binding on the parties if the signatures pages are fully executed and dated as provided thereon.

THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT LEGAL ADVICE.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned parties have set their hands and seals to this Agreement on this the                              day of                                              , 20

CONTRACTOR:

By:

Witness Its:

OWNER:

Witness

Witness

**The HBAA and its local chapters do not assume any liability for damages arising from the use of this document and give no opinion that any of the terms and conditions in this document should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated between the parties based upon the respective interests, objectives and bargaining positions of all interested parties. Seek specific legal advice from your lawyer.** **Copyright 2017 by the Home Builders Association of Alabama.**

**EXHIBIT I**

**Description of Land (if not provided in body of Agreement)**

**EXHIBIT A**

**Plans and Specifications**

The Plans have been prepared by

dated the                           day of                                                  , 20      , include                 pages, and have been signed and dated by Contractor and Owner.

The Specifications have been prepared by

dated the                           day of                                                  , 20      , include                 pages, and have been signed and dated by Contractor and Owner.

**EXHIBIT B**

**Decorating Allowance**

**Allowance Item** **Allowance Amount**

**EXHIBIT C**

**[Use as Exhibit either the Preoccupancy Inspection Agreement or the Acknowledgment of Acceptance]**

**PREOCCUPANCY INSPECTION AGREEMENT**

DATE: TIME:

OWNERS:

ADDRESS: CITY:

We Owners have inspected the Renovation Work, including those of the items listed below which are applicable, and find it to be in good physical condition, free from damage such as holes, chips, cracks, exceptions, omissions, malfunctions or other defects of materials or workmanship, except as noted in the applicable “comments” sections below. A check mark or other similar notation in the space beside an item indicates acknowledgment by Owners that the item is in good physical condition and free from damage.

If an item is not applicable, please mark through it.

1. **GENERAL**

Foyer Living Room Hall Bath Full Bath

Dining Room Kitchen Bed Rooms Utility Room

Breakfast Rm. Laundry Rm. Closets Porch

Patio Deck Garage Other Areas

Drives Walks Yard Exterior of

Home

Comments:

1. **DOORS**

Verify that the weather-stripping, locking mechanism, thresholds and stops are correctly installed and function smoothly and properly.

Foyer Living Room Hall Bath Full Bath

Dining Room Kitchen Bed Rooms Utility Room

Breakfast Rm. Laundry Rm. Closets Porch

Patio Deck Garage Other Areas

Comments:

1. **WINDOWS/SCREENS**

Verify that the weather-stripping and locking mechanisms are correctly installed and function smoothly and properly.

Foyer Living Room Hall Bath Full Bath

Dining Room Kitchen Bed Rooms Utility Room

Breakfast Rm. Laundry Rm. Closets Porch

Patio Deck Garage Other Areas

Comments:

1. **ELECTRICAL SWITCHES/OUTLETS/SAFETY SWITCHES**

Verify that switches and outlets are tested for electric current (hot), proper grounding and proper polarity.

Foyer Living Room Hall Bath Full Bath

Dining Room Kitchen Bed Rooms Utility Room

Breakfast Rm. Laundry Rm. Closets Porch

Patio Deck Garage Other Areas

Comments:

1. **SMOKE DETECTOR**

Verify that the smoke detectors are functioning properly.

Comments:

1. **LIGHT FIXTURES**

Verify that fixtures are hung straight and level and that bulbs are installed and burn.

Foyer Living Room Hall Bath Full Bath

Dining Room Kitchen Bed Rooms Utility Room

Breakfast Rm. Laundry Rm. Closets Porch

Patio Deck Garage Other Areas

Comments:

1. **HVAC UNIT**

Verify that heating and cooling systems, including thermostat, insulation, and filter are correctly installed and operating properly. Verify that unit turns on. Verify that air flow is at each vent and that vent opens and closes.

Comments:

1. **HOT WATER HEATER**

Check the pop-off valve and drain to make sure they are functioning properly. Verify that hot water flows out of all faucets.

Comments:

1. **BREAKER BOX**

Check to make sure door opens and closes properly, all circuits are labeled properly, and the breakers are functioning properly.

Comments:

1. **BASEBOARDS/TRIM**

Inspect baseboards and trim for proper installation and appearance.

Comments:

1. **WALLS/CEILINGS**

Check all walls and ceilings to verify that appearance is acceptable.

**Comments:**

1. **CLOSETS**

Inspect shelves and rods for proper installation and appearance.

Hall Bath Full Bath Other Areas

Bed Rooms Utility Room

Laundry Room Closets

**Comments:**

1. **FLOOR COVERING**

Inspect all carpet for proper installation and appearance. Inspect all vinyl, ceramic tile and wood flooring for proper installation and appearance.

**Comments:**

1. **COUNTERTOPS**

Inspect all countertops for proper caulking, level and anchors, and check for the presence of scratches, nicks, and burns.

**Comments:**

1. **CABINETS**

Inspect doors, drawers, shelves and hardware for proper installation and operation. Check that all drawers and doors open properly.

**Comments:**

1. **PLUMBING**

Inspect for proper fittings, water draining freely, hot and cold water, proper washer/dryer hook ups and the presence of any leaks. Check and record water pressure.

Hall Bath Full Bath Kitchen Utility Room

Laundry Room Other Areas

**Comments:**

1. **KITCHEN PLUMBING FIXTURES**

Inspect for proper installation and operation of sink, sprayer, stopper and dishwasher. Check for leaks under sink. Check dishwasher door for correct closing. Run dishwasher through cycle and check for leaks around door and under sink.

**Comments:**

1. **BATHROOM FIXTURES**

Inspect for the correct installation and operation of bathroom fixtures. Check for leaks and presence of any damage to fixtures. Place a double hand full of toilet tissue in commode and test flush.

**Comments:**

1. **TOWEL BARS/PAPER HOLDERS/SOAP DISH/TOOTHBRUSH HOLDERS/TUMBLER**

Inspect for proper installation and location.

**Comments:**

1. **MIRRORS**

Verify that mirrors are plumb and square and there are no factory defects in the silvering and no cracks or chips on glass edges.

**Comments:**

1. **VENT FANS**

Check for proper installation and operation.

**Comments:**

1. **APPLIANCES**

Check for proper installation and operation of:

**Range** **Hood** **Refrigerator**

turn on light gasket

temperature control fan ice maker

oven light light

broiler pan **Garbage Disposal** shelves

oven elements turn on and run temperature control

burner eyes reset button

oven racks seal **Dishwasher**

stopper arm

**Microwave** proper drainage basket

light controls

fan drainage system

door

run full cycle

**Comments:**

1. **FIREPLACE**

Inspect for proper installation, operation and appearance.

Hearth Surround Unit Screens

Glass Damper

Doors

**Comments:**

1. **CLEANLINESS**

Inspect for thoroughness of cleaning.

**Comments:**

1. **EXTERIOR OF HOME**

**Painting** **Roof** **Trim**

full coverage all shingles in place matched in place

caulking at joints valleys appear normal fitting properly

ridge shingles in place sofit vent open

**Gutters** **Brick** **Patio/Walk/Drive**

**Heating & A/C Unit** level (no bird baths)

installed level in drains

workman like manner no cracks or

separations

**Comments:**

1. **YARD**

**Bushes** **Sod** **Lawn**

alive & healthy in place level

rolled raked

seeded

**Comments:**

**ADDITIONAL COMMENTS**

This Preoccupancy Inspection Agreement is part of the Agreement which is to be resigned upon completion of the Renovation Work.

We Owners have inspected each item contained in this Preoccupancy Inspection Agreement as well as an inspection of our own and we find the portion of the Dwelling upon which the Renovation Work has been performed to be in good condition except as specifically described above. We Owners do hereby agree that the Renovation Work is complete and do hereby accept all workmanship and material in the Renovation Work in its AS-IS condition except as specifically described above.

IN WITNESS WHEREOF the parties hereto have set their hands and seals on this the            day of                              , 20      .

Owner

WITNESS

Contractor

WITNESS

**Please have utilities changed to your name.**

**[Use as Exhibit either the Preoccupancy Inspection Agreement or the Acknowledgment of Acceptance]**

STATE OF ALABAMA )

:

COUNTY OF                                         )

**ACKNOWLEDGMENT OF ACCEPTANCE**

We, the undersigned Owners, acknowledge the completion by

(Contractor) of the Renovation Work upon the Dwelling located on

(the “Land”).

We hereby acknowledge that we have inspected the Renovation Work, including any driveway and other improvements included therein and that, without any reservations, we accept the Renovation Work as to the condition thereof. Specifically, and without limiting the foregoing, we accept the Renovation Work as to the condition of the  wall finish, paint, and decoration,  finished floors,  bath tile and fixtures,  kitchen tile, sink, and cabinets,  woodwork, trim, and paneling,  doors and windows,  caulking and weatherstripping,  lighting fixtures,   brick and paneling on exterior walls,   concrete, stucco, plaster, bricks, mortar, and masonry,  garages, storage buildings, or other outbuildings not attached to the Dwelling,  swimming pools and other recreational facilities,  concrete work of driveway, walks, porches, and carports,  roofing,  drainage around the Dwelling and ditches within easements,  basement or crawl space under the Dwelling, and  driveways, walkways, retaining walls, fences, and landscaping (including sodding, seeding, shrubs, trees, and plantings). To the extent any of the foregoing described components of the Renovation Work were not included in the Renovation Work, nothing contained herein shall be deemed to infer or imply that such component parts are included in the Renovation Work.

We acknowledge that Contractor has performed its contract with us, and the Renovation Work has been completed according to the plans and specifications agreed upon and according to the decoration plans made part of the contract.

We acknowledge that no warranty is provided by Contractor with respect to the Renovation Work and that the Renovation Work is delivered to and accepted by the undersigned in its “AS-IS” condition.

Dated the day of                                       , 20           .

OWNERS: