

Specimen – Consult with Counsel

This specimen agreement should be reviewed by your legal counsel before being used in whole or in part. This specimen agreement may not fit your specific needs or circumstances. Your legal counsel may determine that your interests are best served by use of alternative forms or a modification of this form.

CONSTRUCTION CONTRACT

This Construction Contract (the "Contract") is made and entered into the ____ day of _____, _____, by _____ and _____ between _____ (hereinafter referred to as "Owner" whether one or more) and _____ (hereinafter referred to as "Contractor").

Contractor and Owner agree, bind, and obligate themselves as follows:

1. **Work.** Contractor will provide improvements/remodeling/reconstruction/rehabilitation (the "Work"), to Owner's property located at municipal address _____, (the "Premises") in a workmanlike manner in accordance with the plans and specifications provided by Owner, and/or in accordance with the attached "Scope of Work Exhibit," and/or as directed by the Owner and agreed to by Contractor in writing, which are incorporated herein by reference, as applicable.

2. **Price.** Owner will pay Contractor the sum of \$_____ for the Work together with any additional costs including, but not limited to, amounts for change orders, extra work, overages, and /or escalated costs of materials.

3. **Commencement of Construction.** Contractor will commence construction of the Work on or about _____, _____. As defined below, "Substantial Completion" of the Work will be _____ days after commencement of construction. However, this time period may, at Contractor's option, be extended one day for each of delay, if construction is delayed due to weather, fire, strikes, material shortages, or Acts of God, Owner delays, or other normal variations in the construction process including, but not limited to, the selection, ordering, manufacture, and/or installation of Owner selections. The failure of Contractor to timely complete the Work shall not be considered default. The date of Substantial Completion shall be that date when the work is completed sufficiently enough to enable to Owner to occupy, or utilize the work in the manner in which it is intended to be utilized.

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4. **Owner Obligations.** Owner will select all allowance items, materials, and colors required in a timely manner. Owner will obtain all necessary and/or required approvals and/or acknowledgements from any Architectural Board or Committee whose jurisdiction is relevant to the Work. Owner will cooperate with, and make every reasonable effort to refrain from hindering Contractor and/or the Work. Owner shall provide Contractor, its employees, and/or subcontractors with continuous access to the Premises from the hours of 7 o'clock a.m. to 5 o'clock p.m. during the construction period. Such access shall include, but not limited to, Owner leaving the Premises unlocked regardless of the presence of Owner. However, in the event that Owner temporarily halts the Work, Owner assumes any and all liability and responsibility for any and all costs associated with, related to, and/or arising from the Work delay including, but not limited to, wages, loss of income, start-up costs, sub-contractor charges, additional trip charges, delayed material delivery charges, and material loss charges. Owner further understands and agrees that these charges may, at Contractor's option, be deemed and considered to be extra work, and be due and payable as extra work in accordance with the payment schedule below. The parties agree that Owner will only be allowed in the Work area when accompanied by Contractor.

5. **Deposit.** Upon execution of this Contract Owner will pay to Contractor a deposit in the amount of \$_____ to secure performance of the Work on the Premises. The deposit will be applied to the total price of the Work, and shall be non-refundable, absent a default by Contractor.

6. **Payments/Draws.** CONTRACTOR SHALL BE ENTITLED TO RECEIVE DRAWS FROM OWNER EVERY TWO WEEKS UPON REQUEST WITH SUPPORTING DOCUMENTATION. Owner shall make the remaining payments upon request of the Contractor in accordance with the following schedule:
 1. \$_____ due on _____, _____, 20_____;
 2. \$_____ due on _____, _____, 20_____;
 3. \$_____ due on substantial completion of the Work (the "Final Payment").

Owner shall make any and all payments to Contractor within five (5) business days after request is made by Contractor. Punchlist items shall not be deducted from final payment. In the event payments are not made within five (5) days of receipt of request from Contractor, Owner shall be considered in default and/or

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Contractor the unpaid balance, together with interest from the date payment is due until paid, at a rate of twelve percent (12%) annually, plus any and all cost of collection, including but not limited to reasonable attorney's fees, expert witness fees, costs of depositions, filing fees and other court costs.

7. **Partial Draw.** In the event Contractor has substantially performed the Work necessary to receive a particular payment listed in Section 6 above, but one or more items remain to be completed due to circumstances beyond Contractor's control, then Contractor shall be entitled to a partial payment from Owner equal to the percentage of such stage completed by Contractor.
8. **Change Orders.** Owner and Contractor agree that changes or overages to the Work will be in writing and agreed upon by both the Owner and the Contractor. Owner further understands and agreed that Contractor is neither responsible nor liable for any costs arising from communication and/or miscommunication of the Owner's instructions to Contractor's employees, sub-contractors, representatives, and the like, and that Owner is responsible for Contractor's costs in calculation and implementing changes. In the event that the Owner makes changes without Contractor's knowledge or without written consent of Contractor, the Owner will be responsible for the overage. Any amounts for change orders and/or extra work are due and payable, at Contractor's option, at the time of authorization of the change or prior to commencement of such changes and/or extra work.
9. **Default.** The parties understand and agree that if the Owner defaults on this contract, the Contractor shall be entitled to all costs for enforcing said Contract, including but not limited to reasonable attorney's fees, court costs, costs of depositions, and expert witness fees. In the event of Owner's default, Contractor may suspend work without penalty until Owner cures such default. Contractor shall be under no obligation to complete any punchlist or perform any warranty or any other work until Owner cures all defaults. Owner shall be in default of the Contract if (a) Owner fails to pay any draw to Contractor within fifteen (15) business days of its due date, following receipt of Contractor's invoice therefore; or (b) fails to execute a written acceptance of substantial completion.

10. Notice of Defect or Breach.

- 10.1 Before undertaking any repair himself or employing another to undertake repair of Contractor's Work under this Contract, or before instituting any action for breach of warranty or contract, Owner agrees and obligates himself to give Contractor written notice ("Notice"), by registered or certified mail, within 30 (thirty) days of acquiring knowledge and/or discovery of any alleged defect in the Work or breach of Contract, setting

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forth all alleged defects and/or claims of breach. Owner further understands and agrees that failure to provide said Notice will bar recovery of any alleged defect or breach.

- 10.2 Upon receipt of such Notice from Owner, Contractor shall have ten (10) business days within which to respond to the Notice and, at Contractor's option, to schedule a mutually agreeable date and time to inspect the Premises. Owner agrees to provide Contractor, and/or Contractor's employee(s), agent(s), or representative(s), an opportunity to inspect the Premises within seven (7) business days of Contractor's request.
- 10.3 Contractor shall have forty (40) business days from the date of Contractor's response, or the date of the inspection if so elected by Contractor, in which to correct and/or repair any alleged defect and/or breach accepted by Contractor, provided materials are available. At the end of the 40-day period or Owner's receipt of Contractor's response rejecting responsibility for any alleged defect and/or breach, whichever is greater, any alleged defect or breach contained in Owner's Notice, for which Owner asserts Contractor remains responsible, shall be resolved pursuant to the terms of Section 11 below.

11. Dispute Resolution.

- 11.1 Any controversy or claim arising out of this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
- 11.2 The Owner, Contractor, and all subcontractors, specialty contractors, material suppliers, engineers, designers, architects, construction lenders, bonding companies, and other parties concerned with the construction services are bound, each to each other, by this arbitration clause, provided that they have signed this contract or a contract that incorporates this contract by reference or signed by any other agreement to be bound by this arbitration clause. Each such party agrees that it may be joined as an additional party to an arbitration involving other parties under such agreement. If more than one arbitration is begun under any such agreement and any party contends that two or more arbitrations are substantially related and that the issues should be heard in one proceeding, the arbitrator selected in the first filed of such proceedings shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before that arbitrator.

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11.3 The arbitration shall be heard by one arbitrator. Time is of the essence in dispute resolution. Arbitration hearings shall take place within 180 days of filing and awards issued within 14 days of completion of the arbitration proceedings. The arbitrator shall agree to these limits prior to accepting appointment.

12. **Punch list Procedure.** Owner shall give a punch list to Contractor no more than thirty (30) days after Substantial Completion of the Work, or upon request or notification by the Contractor. Any and all items not listed on the final punchlist will be deemed accepted and will have no effect on the Final Payment and thereafter are subject only the Contractor's warranty.

13. **Contractor Warranty.** Contractor warrants for one (1) year that all labor will be performed in a workmanlike manner and conform to industry standards. Contractor's standards to be determined by the Residential Construction Performance Guidelines, 20__, __ Edition. In the event such item is not covered by said guidelines then "industry standards" are to govern. This one-year warranty shall be exclusive of any materials, products, appliances, and/or fixtures, which are subject only to the manufacturer's warranty. Owner understands and waives any claim against Contractor for any loss or damage to the Premises, bodily injury or mental anguish caused by : (a) soil conditions or soil movement, including (but not limited to) cracks in concrete, mortar, bricks or tile, and/or damage to plumbing; (b) any "fungus (fungi)" or "spore(s)"; or (c) any substance, vapor or gas produced by or arising out of any "fungus (fungi)" or "spore(s)"; or (d) any material, product, building component, building or structure that contains, harbors, nurtures or acts as a median for any "fungus (fungi)" or "spore(s)". "Fungus (fungi)" includes, but is not limited to, any form or type of mold, mushroom, or mildew. "Spore(s)" means any reproductive body produced by or arising out of any "fungus (fungi)." [Items (b), (c), and (d) are collectively sometimes referred to as the "Released Matters"]. Owner further agrees to hold harmless, defend, and indemnify (in addition to paragraph 16 of this Agreement) Contractor (and Contractor's subcontractors) for any and all demands, claims, actions, suits, damage, and loss asserted by, or on behalf of, all third persons (including such third persons' insurers and indemnitors) that arise from, and/or are related to, in whole or part, the Released Matters, that are asserted and/or raised, on and after the completion of the construction, services, and activities performed by Contractor (and Contractor's subcontractors), whether or not such Released Matters were known, or manifested, at such time.

Owner further understands and agrees that Contractor's warranty shall exclude: portions of the Premises upon which Contractor performed no work or upon portions of the Premises not intended by both parties to be included in the Work under this Contract. Owner further understands and agrees that the structure that is the subject of the Contract is existing and that Contractor will attempt to match material to the existing structure. However, in any

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remodel project, the exact match of materials is difficult and sometimes impossible to achieve. Owner acknowledges that said differences are noticeable and accepts same.

14. **Concealed Conditions.** Contractor makes no statement as to the fitness of the site, the Premises, or of any existing structure, and is not liable for subsurface or latent physical conditions at the site, the Premises, or in any existing structure that differ from those (a) those indicated or referred to in the Contract documents or (b) those ordinarily encountered and generally recognized as inherent in the work of the character provided for in this Contract. After receiving notice of the condition from the Contractor, the Owner shall investigate the condition within five (5) working days. If the condition will increase (a) the Contractor's cost of performance of any part of the Work under this Contract or (b) the time required for that Work, the parties may sign a chance order agreement incorporating the necessary revisions, or the Owner may terminate the contract. In the event that the Owner terminates the Contract, such termination shall be subject to the conditions of the Termination herein.
15. **Selection/Subcontractors.** The Work is to be accomplished through Contractor's approved suppliers and subcontractors. In the event items are furnished by the Owner, their suppliers or other subcontractors, no warranty will be provided by the Contractor, and the Owner's sole remedy will be the product warranty by the manufacturer or installer for which the Contractor will not be responsible. Owner further agrees and obligates himself not to contract with any other builder, contractor, and/or sub-contractor to perform, in whole or in part, any portion of, additions to, and/or changes to the Work or plans and specifications unless same is authorized in writing by Contractor.
16. **Indemnity.** Owner agrees to indemnify, release, defend, and hold Contractor, its officers, directors, shareholders, and agents harmless in the event any claim, demand, suit, right or cause of action is brought, by any person, firm, sub-contractor, or corporation arising out of related to this Contract. Owner further understands and agrees that, inasmuch as the improvement, repair, remodeling, reconstruction, and/or rehabilitation of an existing building or structure requires that certain assumptions be made regarding the conditions then existing in the building or structure, and because these assumptions may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of the Premises, the site, or other existing building or structure, Owner shall, to the fullest extent provide by law, indemnify, release, defend, and hold Contractor, its officers, directors, shareholders, and agents harmless from any claim, liability, or costs (including reasonable attorney's fees and costs of defense) for any and all damages, economic loss, property damage, bodily injury, mental anguish, and/or any other loss arising or allegedly arising from the Work and/or under this Contract, excepting those

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damages due solely to the intentional or negligent misconduct of Contractor. Owner further agrees that the Contractor is working to the best of its ability to solve the problems encountered on the Premises, created by the original builder, and shall hold the Contractor harmless from any results of the Work performed.

17. **Termination.** Upon notice to Owner, Contractor shall be entitled to terminate this Contract without penalty. In the event that Owner terminates Contractor, Owner shall give written notice to Contractor, and Contractor shall be entitled to the cost of all work performed and authorized, material in place and/or ordered at the time of termination plus twenty percent (20%) , and all costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.
18. **Credit Report.** Owner hereby authorizes Contractor to request credit reports on Owner from any credit reporting agencies in order to verify credit.
19. **Lead Paint Pamphlet.** Owner acknowledges receipt of the pamphlet entitled ***Renovate Right Concerning Lead Paint***, required by the U.S. E.P.A to be distributed by professional remodelers to owners and tenants of pre-1978 housing. Owner further understands the risks of potential lead hazard exposure from and renovation and/or remodeling activity to be performed on pre-1978 structures and agrees to indemnify the Contractor against such risks.
20. **Applicable Law.** This Contract shall be construed in accordance with the law of the State of _____ and the ordinances of the City and County (Parish) in which the home resides without regard to any otherwise applicable conflict of laws principles, all rights and remedies being governed by said laws.
21. **Severability.** If any provision of this Contract is held to be illegal, invalid, or unenforceable the remainder of this Contract will be enforceable to the maximum extent allowed by law.
22. **Captions.** The captions used in this Contract are for convenience only and will in no way define, limit, or describe the scope or intent of the Contract or any part thereof.
23. **Successors and Assigns.** This Contract, all agreements and stipulations herein contained, and all obligations herein assumed, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.
24. **Multiple Counterparts.** This Contract may be executed in several counterparts (including by facsimile), each of which shall be deemed an original but all of which shall constitute one and the same instrument.

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25. **Representation.** Owner and Contractor understand that this Contract is a legal document, and they acknowledge that each has had an opportunity to consult with an attorney prior to signing this Contract. Any errors, omissions, and/or ambiguities with regard to the meaning of terms and/or conditions herein stated shall not be construed against the marker of this document.

26. **Entire Agreement.** This Contract constitutes the entire agreement between the parties on the subject matter referred to herein and supersedes all prior negotiations, agreements, discussions, and correspondence. This Contract may not be changed orally, but may be changed only by written amendment, signed by both parties.

Whereas, Owner and Contractor attest that they have read and understood the terms and conditions of this Contract, and have signed this Contract as of the date written below.

Owner: _____
_____ Date

Print: _____

Owner: _____
_____ Date

Print: _____

(Contractor) _____

By: _____
_____ Date

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SCOPE OF WORK EXHIBIT

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