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.

NOTE: LOUISIANA LIEN LAW HAS BEEN AMENDED AND AS OF JANUARY 2020, THE NOTICE OF CONTRACT AND NOTICE OF LIEN RIGHTS FORMS WILL NEED TO BE UPDATED.

**CONSTRUCTION CONTRACT**

**LA RESIDENTIAL CONTRACTOR’S LICENSE #\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**LA COMMERCIAL CONTRACTOR’S LICENSE #\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

This agreement is made and entered on this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter designated as the “Owner”; and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter designated as the “Contractor”. Whenever the words “Owner” and “Contractor” are used in this agreement, they shall be construed to include “Owners” and “Contractors” respectively.

**1. Work.** Contractor will provide improvements/remodeling/reconstruction/ rehabilitation (the “Work”), to Owner’s property located at municipal address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(the “Premises”) 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. In the event of conflicts between any documents, Scope of Work to govern.

**2. Plans.** In no event shall the Contractor be liable for destruction or deterioration of or defects in any work constructed, or under construction, by him if he constructed, or is constructing, the work according to plans and/or specifications furnished to him which he did not make or cause to be made and if the destruction, deterioration, or defect was due to any fault or insufficiency of the plans and/or specifications.

**3. 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.

**4. Commencement of Construction.** Contractor will commence construction of the Work on or about \_\_\_\_\_ and/or after the building permit is issued by the Parish and a Notice of Contract has been recorded with the Recorder of Mortgages. 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 for each day that construction is delayed, hindered, prevented, or adversely affected due to weather, fire, strikes, material shortages, acts of God, pandemic, order of any governmental authority, 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.

**5. Owner Obligations.** Owner acknowledges that Contractor is not a mold remediator and Owner warrants that it has inspected the Premises with the appropriate experts and that no hazardous materials, including but not limited to sheetrock or drywall, Chinese or otherwise, lead paint, asbestos, moisture or any and all types of mold and/or organic growth exist or are in place at the Premises. Owner agrees that Contractor shall not be responsible for existing moisture and any and all types of mold and/or organic growth, or other such hazardous materials. Owner further agrees that Contractor shall not be responsible for demolition work which took place prior to the Work and/or any damages resulting from same. 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 7o’clock a.m. to 5 o’clock p.m. during the construction period. Such access shall include, but is 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.

**6. Deposit.** Upon execution of this agreement, 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.

**7. 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 the 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 owe to the Contractor the unpaid balance, together with interest from the date payment is due until paid, at a rate of five percent (5%) per month, 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.

**8. Partial Draw.** In the event Contractor has substantially performed the Work necessary to receive a particular payment listed in Section 7 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.

**9. 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.

**10. Default.** If the Owner defaults on this agreement, the Contractor shall be entitled to suspend Work until Owner cures such default and shall be entitled to all costs, expenses, and damages that Contractor incurs as a result of the Owner’s default. In the event of Owner’s default, Contractor may suspend all work without penalty until Owner cures all defaults. Contractor shall be under no obligation to complete any punch list or perform any warranty or any other work until Owner cures all defaults. Owner shall be in default of this agreement if: (a) Owner fails to pay any draw to Contractor as described above; or (b) fails to execute a written acceptance of substantial completion. Owner shall be liable to Contractor for all costs, including reasonable attorney’s fees, incurred in enforcing any rights under this agreement, including but not limited to reasonable attorney’s fees, court costs, costs of depositions, and expert witness fees.

**11. Notice of Defect or Breach.** Before undertaking any repair himself or employing another to undertake repair of Contractor’s Work under this Contract, or before instituting any action or proceeding 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 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.

**11.1.** 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.

**11.2.** 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 12 below.

**12. Dispute Resolution.**

**12.1.** Any controversy or claim arising out of this contract, or the breach thereof, shall be settled by arbitration in accordance with the American Arbitration Association’s Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

**12.2.** 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 agreement or a contract that incorporates this agreement by reference, or signed 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.

**12.3.** 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.

**13**. **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.

**14. Contractor Warranty.** Contractor warrants for one (1) year that all labor will conform to applicable codes and industry standards. Contractor’ standards to be determined by the National Association of Home Builders, Residential Construction Performance Guidelines in effect on the date the Work first commences. 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 Section 18 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 this agreement is existing and that Contractor will attempt to match material to the existing structure. However, in any remodel project, the exact match of materials is difficult and sometimes impossible to achieve. Owner acknowledges that said differences are noticeable and accepts same. Further, Owner acknowledges that the Contractor has made no guarantees, warranties, understandings, nor representations (nor have any been made by any representatives of the Contractor) that are not included in this agreement, and Owner has not relied on any oral representations from Contractor or its representatives.

Owner agrees that Contractor shall perform no testing or research on any building material incorporated into construction and that Contractor shall have no responsibility for and Owner hereby waives any claim for the chemical, physical or organic composition of any building material and/or any chemical reaction, metabolic activity or bacterial metabolism relative to same. Any testing or research as to chemical, organic or physical composition shall be the sole responsibility of Owner. Additionally, Contractor transfers all transferable vendor supplied warranties.

**15. 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 agreement 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 agreement 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.

**16. Soil Conditions.** Contractor shall have no responsibility for the condition of the soils at the work site. Any excavation, filling, or other work shall be the responsibility of the Owner. Owner shall determine before construction begins if additional site work is required because of soil conditions. Owner responsible for testing of the underlying soil conditions and/or on any other area. Owner waives any claim against Contractor for any damages suffered by Owner as a result of soil movement or soil conditions.

**17. 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 sold 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.

**18. Indemnity.** To the fullest extent allowed by law without penalty of any kind, 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 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.

**19. Termination.** Upon notice to Owner, Contractor shall be entitled to terminate this agreement 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.

**20. Signage/Social Media.** Until title is transferred, the Owner agrees that the Contractor shall have the right to place signs on or about the Premises and to show the residence to other prospective clients and customers. Owner hereby grants Contractor and its representatives the right to take photographs, images, voice recordings, and/or other likenesses of Owner and/or Owner’s family members, including minor children, in connection with the construction of the Home. Owner further authorizes Contractor and its representatives to copyright, use, edit, alter, copy, exhibit, publish, or distribute said images or recordings in print and/or electronically, with or without Owner’s name, for any lawful purpose, including for example such purposes as publicity, print publications, online publications, presentations, websites, social media, illustration, advertising, and Web content, without any compensation whatsoever to Owner for use of and/or relative to same, now or in the future. All such photos and other likenesses are the sole property of Contractor and Owner hereby holds harmless, releases, and forever discharges Contractor and its representatives from all claims, demands, and causes of action which Owner or his or her heirs, representatives, executors, administrators, or any other persons acting on behalf of Owner has, have or may have by reason of this authorization or in any way relative to said likenesses.

It is expressly agreed that the parties to this agreement will not publish or post on any electronic media or otherwise and/or disclose to any organizations, associations, entities, companies, corporations, periodicals, trade papers, publications, newspaper, or media personnel, or instruct another to so publish, post and/or disclose, any information regarding disputes relative to this agreement and/or the Work hereunder and/or any disparaging, derogatory or negative comments in any way relative to Contractor or the Work hereunder. Any such publication shall be deemed defamatory, per se, and entitle contractor to an injunction for removal of said information and/or comments and to damages.

**21. Credit Report.** Owner hereby authorizes Contractor to request credit reports on Owner from any credit reporting agencies in order to verify credit.

**22. 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.

**23. Applicable Law.** This agreement shall be construed in accordance with the law of the State of Louisiana and the ordinances of the City and County (Parish) in which the Premises are located, without regard to any otherwise applicable conflict of laws principles, all rights and remedies being governed by said laws.

**24. Severability.** If any provision of this agreement is held to be illegal, invalid, or unenforceable the remainder of this Contract will be enforceable to the maximum extent allowed by law.

**25. Captions.** The captions used in this agreement are for convenience only and will in no way define, limit, or describe the scope or intent of the Contract or any part thereof.

**26. Successors and Assigns.** This agreement, 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.

**27. Multiple Counterparts.** This agreement 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.

**28. Representation.** Owner and Contractor understand that this agreement 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.

**29. Entire Agreement.** This written agreement 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.

**30.** By signing below, the Owner acknowledges receipt of Contractor’s current insurance certificates evidencing liability insurance and workers' compensation coverage.

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

Owner Date \_\_\_\_\_\_\_\_

Print

Owner Date \_\_\_\_\_\_\_\_

Print

**Contractor – Authorized Signature of {company}**

**SCOPE OF WORK EXHIBIT**