

## REMODELING CONSULTANTS, INC.

2200 Cordes Road  
Germantown, TN 38139  
(901) 757-5471  
General Contractor's License #29163

### CONSTRUCTION SERVICES CONTRACT

THIS AGREEMENT is made as of the the day of \_\_\_\_\_, 2024, by and between hereinafter referred to as Owner, and Remodeling Consultants, Inc., hereinafter referred to as Contractor. As regards the construction/remodeling of one single-family dwelling, hereinafter referred to as the Project, the Owner and Contractor agree as set forth below:

- 1. Description of Project** - The Contractor shall furnish all labor, materials, construction equipment and machinery necessary to complete the Project in accordance with the plans and specifications upon the following described property ("Property"): 5293 Southwood Memphis, Tn. 38117
- 2. Lot Ownership-** Owner warrants that they are or will become the Owner of the above-described Property as a condition of this Contract; and that same is unencumbered except for that certain construction loan which is contemplated in this Contract.
- 3. Contract Documents** - The contract documents include the terms of this Construction Services Contract and, by reference, the provisions of the other documents listed below. (Copies of these documents are attached to this contract.) The contract, plans, and specifications are intended to supplement each other. If these documents conflict, however, the specifications shall control the plans, and the contract shall control both.
- 4. Scope of Work-** Damage work for storm:
  - a. Following closing of the purchase and sale contemplated herein, Owner will engage a design architect to prepare a set of house plans and specifications, hereinafter the "Plans," of which the parties agree that said Plans set forth the nature and extent of the work to be performed by Contractor under the terms of this Contract; hereinafter the "Improvements." The parties hereto further acknowledge that such Plans will be a guide for the work to be performed; provided, however, the parties agree that the changes or substitutions in the construction of the Improvements may vary from such Plans depending upon Contractor's normal and customary building practices and (i) as may be required, authorized, or approved by governmental agencies having jurisdictions thereof, or (ii) as Contractor may deem appropriate, so long as materials of equal or better quality are used and (iii) Improvements may also vary from such plans by changes requested by Owner during the construction period. The scope of the work to be performed is limited to only those tasks specifically enumerated in this agreement. No other tasks or work is implied. Contractor shall obtain in Owner's name all permits and inspections required by governmental agencies. Contractor is not responsible for any existing construction, termite, mold, etc. Dimensions and details provided on the plans shall be assumed correct. Plan problems or discrepancies will be noted and the Owner will be contacted. Plans may contain errors, mistakes, code violations and omissions which are not the responsibility of the Contractor regardless of the wording or disclaimer or notes noticed on the Plans by the architect, plan designer, draftsman, or others. Shelby County Code violations or concealed conditions are the Owner's responsibility for the upgrades that are necessary to bring up to acceptable building codes. Existing conditions may need to be changed for new construction/renovation. In Tennessee, a smoke alarm is required on each floor of your home. A smoke alarm is required inside and outside of bedrooms and all alarms must be interconnected (if one goes off, they all go off). Homeowner is responsible for smoke alarm per Shelby County Electrical Department.

b. it is understood that Contractor uses a group of qualified subcontractors and a select group of suppliers of materials, which Contractor plans to use in the construction process. Contractors experience with these subcontractors and suppliers span several years and Contractor routinely compares their prices with other quality subcontractors and suppliers.

## **5. Cost of Construction-**

a. Contractor agrees to cause the construction contemplated by this Contract to be completed in a good and workmanship like manner. Contractor to obtain in the Owner's name material and supplies to perform the work set forth. The cost to construct the contemplated Improvement upon the Property, herein referred to as "Cost of Construction" shall consist of all actual costs, charges, and expenses which shall include but not be limited to: materials, labor, replacement materials and labor (resulting from loss or damages not covered by insurance), soil treatments, land and foundation surveys, land preparation, removal of construction debris, general liability insurance, workers compensation insurance, taxes incurred by Contractor in the construction of the Improvements, after appropriate discounts for timely payments. **The attached Estimate of Cost of Construction is provided only for the purpose of establishing a preliminary cost estimate and is not guaranteed. It is only an ESTIMATE of the costs anticipated for this project for the benefit of both parties. The estimate does not include unforeseeable items that may show up during scheduled work. The Estimate of Cost of Construction is not allowed to be shared or used by anyone without the permission of the Contractor. The market for building materials that are hereafter specified is considered to be volatile and sudden price increases could occur. The Contractor agrees to use his best effort to obtain the best possible prices from available suppliers.**

b. Owner will be provided with an estimated Cost of Construction ("Cost Estimate") based on: (1) the price of materials and subcontractors prevailing cost as of the date the Cost Estimate was prepared; (2) Contractor's best quantity estimate; and (3) "Estimated allowances" for items to be selected by Owner prior to or during construction (i.e. cabinetry, appliances, wall coverings, moldings, flooring, fixtures, landscaping, etc.), the actual cost will be more or less after Owner makes final selections of such items.

## **6. Payment and Billing-**

Owner and Contractor expressly agree that the administration of payments for the cost of construction shall be in the following manner:

### **a. Cost Payments**

Owner shall pay invoices as they are presented. They will be posted on the construction management account, BuilderTrend.com, on each Thursday with payments to be on Friday's by 10:00AM. If Owner shall fail to pay any invoice, the Contractor, at his sole option and without penalty, is authorized to suspend work until said invoice is paid.

### **b. Suppliers**

Owner and/or Contractor shall establish such account with suppliers of materials and/or subcontractors as designated by Contractor prior to the commencement of or during construction. Owner shall authorize such suppliers to deliver materials to the Property and authorize sub-contractors to perform services at the instruction of the Contractor. In the event that accounts and contracts are set up in the name of the Owner, the parties understand that the contractor discounts, if any, may not be available, and the cost of the Project may be higher.

### **c. Suppliers and Sub-Contractors**

Contractor shall have the right and responsibility to select suppliers and/or sub-contractors and the method of payment. Provided however, in the event of any disagreements between Owner and Contractor as to said selection, both parties agree to use best efforts to resolve any such disputes in as timely fashion as possible. If Contractor allows Owner to specify a supplier of materials,

labor, or sub-contractor in lieu of Contractor's choice, Contractor shall not be held responsible for, nor warrant, the quality of such material or workmanship or the results thereof, unless otherwise agreed to in writing between the parties.

d. Progress Payments

Owner acknowledges and agrees that certain laborers, sub-contractors and suppliers of material submit bills and/or draws for work performed on Thursday of each week. Contractor agrees to deliver to Owner invoices no more frequently than on a weekly basis. Owner agrees to pay Contractor all invoices on the Friday following Thursday's invoices.

Owner acknowledges that a delay in the timely payment in any of the aforementioned billings may cause a disallowance of any purchase discounts and may also impede the construction of the Improvements, and adversely affect Contractor in fulfilling the terms of the Contract. Additionally, if payment due to the Contractor is not paid within fourteen (14) days of the billing date, the Contractor may assess an interest rate of ten percent (10%) per month on the unpaid bill amount due by the Owner. The parties agree that this late charge represents a fair and reasonable estimate of the costs the Contractor will incur by reason of the late payment by the Owner. In the event of delayed payment, Owner agrees to pay any late fees assessed by any subcontractor. All invoices shall be written to the individual tradesmen, only approved by the Contractor and then given to the Contractor to distribute to the tradesmen. All payments by credit card are subject to a four percent (4%) convenience fee. Furthermore, the Owner agrees to hold Contractor harmless, including legal fees and litigation expenses, as to any and all unpaid invoices and bills which have been duly presented to Owner for payment by Contractor as required herein.

**7. Contractor Fee** – In addition to the actual Cost Estimate, Contractor shall be paid by Owner a fee for Contractor's services, hereinafter the "Contractor's Fee," which shall be deemed as earned upon execution of this contract. This fee is based on the percentage of the total costs, items either bought by the Owner and/or the Contractor. This Contractor's Fee will be added to each invoice for payment.

Overhead	5%	
Insurance	6%	
Job Supervision	6%	
Builders' Margin	8%	
Total Contractor Fee		25%

The cost of certain specific work not specifically defined by the plans and specifications has been added into the contract price by budgeting an allowance for each item. A list of these allowances, if any, is attached to this contract and is incorporated into it by reference. If the Owner's selections and/or actual construction costs result in costs exceeding the allowances, the Owner agrees to pay the Vendor such additional costs. If the Owner's selections and/or actual costs result in costs less than the allowances, the Contractor agrees to credit the Owner for the difference.

**8. Change Orders Resulting in Additional Contractor's Fee-**

In the event Owner makes changes to the Plans or Improvements which requires additional construction not originally contemplated, or reconstruction of existing Improvements, or additions which interrupts the normal course of construction, Owner shall pay Contractor an additional fee, hereinafter "Additional Contractor's Fee," calculated at the rate of the twenty-five percent (25%) of the cost of such additional construction or changes. The Owner, without invalidating the Contract, may request changes in the Improvements of additions, deletions, or modifications, the Cost of Construction, and the time being adjusted accordingly. Any such request may be accepted by the Contractor conditioned on such terms as he may, in his sole discretion require. All such requested changes shall be accompanied by a Two Hundred Fifty and 00/100 Dollar (\$250.00) change order fee. The Contractor may condition acceptance of such requested change upon a payment of an additional Owner fee as well as payment to suppliers and subcontractors for all work requested. The Additional

Contractor's Fee shall be paid upon the acceptance of the change order, and both the change order fee and the Contractor's fee shall be in addition to the fee set forth. The cost or credit to the Contractor from a change in Improvements shall be agreed by mutual agreement. The Owner agrees that, to expedite the Improvements, either of them may sign the change order, and the signature of one is binding on the other. Upon final acceptance changes must be initialed by the Owner, and the Contractor must also execute the change order fee. The parties agree that the proper form for submission of a change order request is reflected in the Contractor's construction management account, BuilderTrend. The Owner clicks approved, then signs their signature, and clicks approved again.

**9. Final Payment, Inspections, and Liens** - The structure shall be deemed to be substantially complete when the appropriate code enforcement office has certified the structure for occupancy. The Contractor shall furnish lien releases with each request for and receipt of payment.

Owner shall inspect the Project with Contractor or Contractor's Agent at the time of substantial completion to determine any adjustments. Owner and Contractor shall agree in writing, those items that will be repaired or completed by Contractor within a reasonable time. Upon execution of said Agreement, Owner will have accepted the Project and acknowledged that the Project was constructed pursuant to this Contract except as set out in said Agreement. The Owner's final payment to Contractor of the balance of the contract price shall not be contingent upon completion of agreed items.

**10. Construction Financing-** This Contract is expressly contingent upon (a) Owner's providing satisfactory evidence to Contractor that Owner holds title to the Property in fee simple; (b) satisfactory evidence being furnished to Contractor that Owner has obtained a construction loan in a sum reasonably sufficient to accomplish the construction of the Improvements as contemplated by this Contract; and (c) Owner must furnish satisfactory evidence to Contractor that Owner has adequate funds to meet the total payments due to Contractor as might exceed the amount of the construction loan, if any such excess is indicated to exist. Should the construction loan not be closed within thirty (30) days following the date of this Contract, then at Contractor's option, this Contract may be cancelled and shall become null and void. Owner acknowledges that this Contract is not contingent upon the procurement of permanent financing.

**11. Job Site Communication-** Owner agrees that all questions and directions pertaining to work being performed upon the Property by Contractor or any sub-contractors employed by Contractor shall be pursuant to communications between Owner and Contractor. Owner will refrain from giving any instructions to sub-contractors without consulting with Contractor first. No work is to be contracted by the Owner with the Contractor's tradesmen. Any person entering the Property must have permission to enter by the Contractor. Permission will not be granted until proof of Workers Compensation and General Liability insurance certificates are on file with the Contractor. Owner, Owner's relatives, Owner's guests, and Owner's vehicle may enter the property, but at Owner's own risk and responsibility. Owner is to have all furniture, pictures, etc. moved before any demo starts, as needed. Contractor will request permission to install a yard sign for delivery purposes of materials needed for the job.

**12. Commencement and Completion of Construction-** Prior to commencement of construction, Contractor shall obtain an engineer's "No Start Certificate," if required by the lender, at which time Contractor shall commence construction within a reasonable time after Owner obtains the required construction loan or provides financial assurances satisfactory to Contractor. Owner is responsible for Subdivision approval if required and must be in writing before Improvements commence. Contractor agrees to use its best efforts to complete construction at the earliest reasonable date, which is an estimate on the Contractor's Construction Management Account, BuilderTrend. Notwithstanding the foregoing, the estimated completion date may be extended if Contractor is delayed due to: any act or neglect of Owner; requested changes by Owner; labor disputes; fire; common disaster; weather conditions (which hinder sub-contractors from performing their specific function in the construction of the Improvements with consideration as to the stage of impending construction"; availability of sub-

contractors customarily retained by Contractor; prolonged transportation delays; inability to obtain materials; delays by government agency; acts of God or other causes beyond his control which would justify delay. The schedule on BuilderTrend is TENTATIVE and subject to change. The Contractor shall expedite the Project and use best efforts to attempt to achieve Substantial Completion within the Contract Time. The Date of Substantial Completion of the Project is the date when construction is sufficiently complete so that the Owner can occupy or utilize the Project for the use for which it is intended or when the appropriate code enforcement department issues an occupancy permit, whichever occurs first.

### **13. Suspension of Work/Cancellation**

Suspension of Work – if the Owner(s) fails to make any payment due, or fails to comply with any other material obligation under the Contract, the Contractor at his sole option and without penalty is authorized to suspend work until payment is made and/or the owner(s) has fully complied with the terms of the Contract.

Cancellation by Mutual Consent – This Contract may be cancelled by mutual Consent at any time upon execution of a termination Contract signed by both parties.

Cancellation by Contractor – In addition to the right to suspend work, if the Owner(s) fails to make any payment due, or fails to comply with any other material obligation under this Contract, the Contractor at his sole option, and unless cured, may cancel the Contract in accordance with the cancellation procedures stated below:

Cancellation by Owner(s) – If the Contractor fails to perform this Contract, or otherwise materially breaches the Contract provisions, the Owner(s), unless cured, may cancel this Contract in accordance with the cancellation procedures stated below:

Cancellation Procedures – The Owner(s) or Contractor will deliver to the other party a written notice of intention to cancel. Said notice will be dated and signed, and will list the specific cause or causes that would justify cancellation. The recipient party will have seven (7) days from the date of the notice (or such additional time as the parties may agree to in writing) to reasonably initiate such remedy or cure for all listed causes that would justify cancellation. Upon the expiration of seven (7) days without the initiation of a remedy or cure, the Contract may be cancelled upon delivery to the other party of a written cancellation document. Any cancellation sought by the Owner(s) will be contingent on payment in full to the Contractor of all Contractor's fees to date and all costs and expenses incurred as of the date of cancellation, inclusive of change orders. Upon cancellation by the Contractor, the Owner(s) shall be liable for and shall pay to the Contractor all of the Contractor's fees to date and costs and expenses incurred as of the date of cancellation, inclusive of change orders, and all fees as provided in Section 3. Upon cancellation, the Contractor shall remove all his tools, equipment, and materials from the Premises, and shall not thereafter go upon the premises, except by invitation, and/or notice and opportunity to repair Contract, or as otherwise may be permitted by state law. In the event of any cancellation, the Warranty is waived.

**14. Contractor's Obligations** - The Contractor shall supervise and direct the Project, using his best skill and attention, and he shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Project under this Contract. The Contractor warrants to the Owner that all materials and equipment incorporated in the Project will be new, unless otherwise specified.

Unless otherwise provided herein, the Contractor shall generally keep the premises free from accumulation of waste materials or debris caused by his operations. At the completion of the Project, he shall remove all his waste materials and debris from and about the Project, as well as his tools, construction equipment, machinery and surplus materials.

**15. Owner's Responsibilities** - Owner shall be responsible for the cost of the Project, unless otherwise specifically provided in the Contract documents. The cost of Project shall consist of the entire actual cost to Contractor of accomplishing the work and shall include, without limitation:

- a. Fees, salaries or wages of all labor including foremen, mechanics, drivers, subcontractors, laborers, and all others necessary for the proper conduct of the Project and for the time employed on the work, together with any Social Security and taxes in connection with such labor, all labor, materials, water, heat, and utilities, utilities hookups, any necessary parking permits all loading and unloading, express and freight delivery charges, all costs of capital employed and money borrowed, surveys and legal descriptions, necessary approvals, easements, assessments and charges required for the construction, assessments, hookup charges, connection or tapping fees required by public bodies or utilities and for electricity, water, gas, sewers, and other utilities required for the work to be performed, use or occupancy of permanent structures or permanent changes in existing facilities, toilet facilities (such as a port-a-potty) and for such other materials and labor as subcontractors and providers invoice to Owner or Contractor as specifically related to the Project. Owner is responsible for move-in costs, such as telephone hookup, changes in utilities, and trash pickup.
- b. Disbursements made and fees incurred for or in connection with the furnishing, delivery and installation of all materials, structural accessories, machinery, equipment and other items required to be furnished and done hereunder; also for and in connection with the construction equipment and maintenance at the site of the Project, and elsewhere as required; and for or in connection with all insurance, bonds, fees, royalties and permits unless otherwise provided herein.
- c. Disbursements made and obligations incurred pursuant to sub-contracts made hereunder, less all counter charges collected from subcontractors.
- d. Disbursements for materials or supplies furnished from Contractor's stock which shall be charged to the Project at a fair market price as determined by Contractor and approved by Owner.
- e. Owner, at Owner's cost, shall be responsible for all costs incurred during the warranty period.
- f. Any easements, variances, zoning changes, necessary modifications of restrictive covenants, or other actions.

The term (Cost of Project) shall not include salaries of Contractor's officers, salaries of any person employed in the office of Contractor, Contractor's overhead or general expenses of any kind except any such specifically mentioned elsewhere in this contract.

The Owner will indicate the property lines to the Contractor and will provide boundary stakes by a licensed land surveyor if the Owner is in doubt about the property boundaries. The Owner assumes all responsibility for the accuracy of the boundary markers.

The parties acknowledge that the Plans and Specifications are to be provided to Contractor by Owner at Owner's cost. Owner shall defend all suits or claims for infringement of any patent right or copyright and shall save and hold Contractor harmless from loss on account thereof.

**16. Owner Selections-** In those areas of the construction project where Owner has choice of colors, appliances, finish, carpets, etc., Owner agrees to make such choices in a timely fashion so as not to

unduly delay the construction of the improvements by Contractor. Certain custom selections will require non-refundable deposits. The Contractor will make every effort to blend textures, colors, and planes, but exact duplication is not guaranteed. Matches will also depend upon supplier availability.

a. Owner Supplied Materials

Contractor accepts full responsibility for all materials and labor that Contractor supplies. Contractor cannot accept responsibility for materials that the Owner chooses to supply. In order to eliminate any potential misunderstanding, Owner assumes the following with Owner-Supplied Materials:

- (1) As the supplier of materials, Owner assumes full responsibility and liability for ordering correctly and on time, and for receiving and inspecting all materials. At the job site, Owner will also be responsible for moving materials to the room in which they are to be installed.
- (2) In the event of missing or damaged parts, the wrong material being ordered or delivered, or any other problem concerning Owner supplied materials and products, Owner assumes full responsibility and liability for returning or exchanging them, as well as negotiating the term with the seller.
- (3) As the supplier of materials, Owner assumes full responsibility and liability for ensuring the products meet all applicable codes and ordinances.
- (4) As the supplier of materials, Owner assumes full responsibility and liability for ensuring that the materials, including all rough-in items placed inside the walls during the early stages, will be present at the job site and in good working order prior to the start date.
- (5) Owner understands that missing or broken pieces or wrong materials may alter the Contractor's work schedule and may result in additional charges to the Owner.
- (6) As the supplier of materials, Owner assumes full responsibility and liability for all guarantees and warranties pertaining to these materials. Owner shall hold Contractor harmless for any product or system malfunctions related to the defective product/material provided by Owner.
- (7) Owner understands that the above conditions do not encompass all possible circumstances that could delay work or result in additional job costs stemming from Owner Supplied Materials.
- (8) If Owner prefers to have Contractor accept full responsibility for the materials on their project, Contractor will provide all items necessary to complete the project. Owner understands that some special-order items may have a longer delivery time. In order to be able to complete Owner's project in a timely manner, Contractor will not start Owner's project until all special-ordered items have been received and inspected for correct size and style and any damage. This means that the scheduled start date may be postponed until all items are received.
- (9) Owner will be invoiced for additional work required if the items outlined above are not adhered to by Owner.

Owner's Initials

**17. Insurance-** Contractor shall obtain Builder's Risk Insurance, Workman's Compensation, as required by law, and General Liability coverage. Owner and Owner's construction lender shall be named as additional insured or beneficiaries under such policies. The cost of such insurance shall be deemed a Cost of Construction. If the property is in the Owner's name, he will be required to obtain the Builder's Risk insurance.

**18. Indemnification-** Owner shall defend, indemnify, and hold harmless the Contractor, and its subcontractors, from and against any and all claims, demands, causes of action damages, liabilities, losses, and expenses arising from the Improvements and or the Contract to the extent caused by the fault of Owner or its consultants, design professionals, or agents.

**19. Permits, Licenses and Other Approvals** - Unless otherwise provided in the Contract Documents, the Owner shall pay all sales, consumer, use and other similar taxes, and shall pay for the building permit and for all other permits and governmental fees and inspections necessary for the proper execution and completion of the Project. The Contractor shall obtain in Homeowner name such local building and construction permits, licenses, and inspections, and all other approvals necessary for the work, occupancy of permanent structures, or changes in existing structures that are applicable when the contract is signed, except as provided otherwise in this contract.

**20. Access** - The Owner shall grant free access to work areas for workers and vehicles and shall allow areas for storage of materials and debris. Driveways shall be kept clear and available for movement of vehicles during the scheduled working hours, which will be \_\_\_\_\_ a.m. to \_\_\_\_\_ p.m., Monday through Saturday. The Contractor and the Contractor's workers shall make reasonable efforts to protect driveways, lawns, shrubs, or other vegetation. However they shall not be responsible for damage to any of the items listed above unless the damage results from their gross negligence. If off street parking is not available, the Owner agrees that the Contractor will secure parking permits for on street parking as needed, and the cost of the permits will be included in the final contract price.

**21. Differing Site Conditions** - The Owner acknowledges that this contract is based solely on observations that the Contractor was able to make in its current condition at the time the work was bid, and that the Contractor shall not be responsible for differing site conditions that were not visible when this contract was made unless stated otherwise in the specifications. Contractor shall not be responsible for changes in site conditions occurring during the construction including without limitation, work performed by others.

a. Surface Water: The amount of surface water traversing a lot is subject to the intensity and duration of rainfall and other factors beyond the control of Contractor, and will vary according to terrain and location. Contractor makes no representation or warranty concerning the amount of surface water that will traverse the lot during periods of peak water inundation, and shall not be responsible or liable for any claims of any kind or character resulting from said inundation, except to meet the requirements of applicable Code Enforcement Department and/or as set forth in written warranty provided to Owner.

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Owner's Initials

b. Subsurface Conditions: The subsurface conditions present may vary in accordance with underground conditions including without limitation, the prior uses of the property, the surface and subsurface soil types, the subsurface movement of water and the other geological conditions present. Contractor makes no representation or warranty concerning these conditions and the results of such conditions and expressly disclaims any responsibility or liability for subsurface conditions of the property.

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Owner's Initials



c. **Fill and Soil Conditions:** The property may have had soil or fill brought onto the property or spread upon the property. The Contractor makes no representation or warranties upon the condition, existence or amount of this fill and expressly disclaims any responsibility or liabilities for same.

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Owner's Initials

d. **Nursery Stock and Natural Trees:** Nursery stock (including sod/seed) installed by the Contractor shall be healthy and alive (or in a seasonal dormant state) on the date of planting. The type and amount of nursery stock and sod/seed will be dictated by Contractor's construction practices and allowances and may vary from that of any model or market home viewed by Owner. It is specifically stipulated that existing growth will be excluded from any warranty, and may be removed at the sole discretion of the Contractor unless otherwise stipulated herein.

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Owner's Initials

**22. Termite-** Contractor shall have the applicable part of the Property and/or Improvements pre-treated for termites at the appropriate time during construction. At the time of final payment, Contractor shall provide Owner a termite soil treatment letter.

**23. Foundation Survey-** Contractor shall order a foundation survey upon laying of form boards prior to proceeding with construction. Upon Completion, an as-built survey shall be provided to Owner's title insurance company and Owner's permanent financing lender as shall be required. Such surveys shall provide assurance that the Improvements do not encroach upon or violate property restrictions, covenants, easements, or other governmental or subdivision regulations.

**24. Risk of Loss -** During the term of this contract, the Owner shall, at Owner's cost, maintain insurance covering the full replacement cost of the Project, theft of materials on site, and any damage to persons or property arising out of the Project naming as an additional insured the Contractor. If the Project, in whatever stage of completion, is destroyed or damaged by any accident, casualty, disaster, or calamity, including, but not limited to, fire, storm, flood, or earthquake, the Owner shall be responsible for such loss.

The Contractor shall prepare a written change order for the labor, materials, and profit and overhead costs required to repair the damage. Upon signing of the change order by the Owner, the Contractor shall proceed to repair the damage. The cost of the change order shall be paid from the proceeds of insurance and funds of the Owner. Subsequent to completion of the repairs, the Contractor shall continue to work under the original contract.

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Owner's Initials

**25. Lien Rights-**The above-captioned contractor hereby gives notice to the owner of the property to be improved, that the contractor is about to begin improving the property according to the terms and conditions of the contract and that under the provisions of the state law (§§ 66-11-101 through 66-11-141) there shall be a lien upon the real property and building for the improvements made in favor of the above-mentioned contractor who does the work or furnishes the materials for such improvements for a duration of one (1) year after the work is finished or materials furnished.

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Contractor's Initials

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Owner's Initials

**26. Environmental Protection Agency-** The undersigned Owner acknowledges receipt of the pamphlet, "The Lead-Safe Certified Guide to Renovate Right," and affirm that they have read and understand the risks associated with lead exposure, as contained in this pamphlet on homes built before 1978.

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Owner's Initials

**27. Death-Survivorship-** The items of this contract shall be binding on the Owner's heirs, successors, assigns, and any estates established on their behalf.

**28. Right to Rescind-** Owner shall be able to rescind the contract regardless of where the contract was signed within three (3) business days of the date of the signing. In an emergency, the Owner can waive or modify the Right to Rescind.

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Owner's Initials

**29. Termination of Contract-** Should the Owner or Contractor fail to carry out this Contract, with all of its provisions, the following options and stipulations shall apply:

a. If the Owner or the Contractor shall default on the Contract, the non-defaulting party may declare the Contract is in default and proceed against the defaulting party for the recovery of all damages incurred as a result of said breach of Contract, including reasonable attorney's fees. In the case of a defaulting Owner with respect to non-payment of a monetary amount due to Contractor, Owner shall also be liable for the payment of interest at the maximum legal rate and the cost reserve herein mentioned shall be applied to the legally ascertained damages.

b. In the event of a default by Owner or Contractor, the non-defaulting party may state his intention to comply with the Contract and proceed for specific performance.

c. In the case of a defaulting Owner, the Contractor may accept, at his option, the cost reserve as shown herein as liquidated damages and should the cost reserve not cover the expenses to date, the Contractor may make claim to the Owner for all work executed and for proven loss with respect to cost of construction, equipment, materials, tools, construction equipment and machinery, including reasonable overhead, profit, and damages applicable to the property less the cost reserve.

**30. Limited Warranty and Dispute Resolution -** The Owner and the Contractor will cooperate with one another in avoiding and informally resolving disputes between them. Contractor agrees to provide in written form, a West Tennessee Home Builders Association New Home Limited Warranty or such other comparable warranty as designated by Contractor. Owner and Contractor agree to the terms and conditions of this warranty and agree that this limited warranty is Contractor's sole warranty and that it limits the liability of Contractor. Owner acknowledges the terms and conditions of this warranty which is incorporated herein and agree to follow the procedures enumerated therein. In addition to the terms contained in such warranty, Owner agrees that Contractor shall have the right to be given reasonable written notice of any warranty claim, an opportunity to inspect the claimed defect, and an opportunity to repair the defective condition. Contractor may use the methods, materials, laborers and subcontractors of Contractors choosing, so long as the repairs result in the condition being brought within the standards set forth in the said warranty. **THE EXPRESS LIMITED WARRANTIES CONTAINED THEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, STATUTORY OR OTHERWISE, EXPRESSED OR IMPLIED, ALL OTHER REPRESENTATIONS MADE BY CONTRACTOR AND ALL OTHER OBLIGATIONS OR LIABILITIES WITH RESPECT TO SAID PROPERTY INCLUDING ANY CLAIM FOR BREACH OF CONTRACT, WORKMANLIKE CONSTRUCTION, DESIGN CONDITION, QUALITY, MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR USE. THIS**

**AGREEMENT AND WARRANTY LIMITS OWNER'S REMEDIES AND CONTRACTOR'S LIABILITIES. IN NO EVENT SHALL CONTRACTOR'S OBLIGATION EXCEED ITS OBLIGATION SET FORTH IN SAID WARRANTY. IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES.**

Owner understands and agrees that if the Owner contacts the Contractor with a warranty issue about some function of this job, either during the job or during the warranty period, and the issues outlined by the Owner is not the fault of the Contractor, Owner will be responsible and reimburse the Contractor for his labor, material, and Contractor Fee for expending finding and/or resolving the issue.

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Owner's Initials

a. It is mutually agreed that all disputes and controversies between the parties arising out of or in connection with this Contract as to the existence, construction, validity, interpretation or meaning, performances, nonperformance, enforcement, operation, breach, continuance, or termination thereof or any claim whatsoever, including, without limitation, alleged misrepresentation, unjust enrichment, fraud, negligence and violations of the Tennessee Consumer Protection Act shall be submitted to non-binding mediation in accordance with the rules and procedures of Resolute Systems, Inc. and by using the following procedure. Any warranty claims shall first be submitted to any dispute resolution procedure as set forth in the warranty program called for herein. Thereafter, either party may demand mediation by setting forth such claims in such detail as shall give the other party notice and by submitting the claim to mediation in accordance with the rules and procedures of Resolute Systems, Inc.

1. Either party may demand arbitration in writing within thirty (30) days after the controversy arises; this demand shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter in controversy.
2. Within thirty (30) days after the demand, the other party shall prepare a response to the allegations set forth in the Statement setting forth such other matters the other party considers pertinent.
3. Each party shall bear [her or his or its] own mediation costs and expenses and shall equally bear the cost of the mediation.
4. The arbitration hearing shall be held at a time, date, and location in Memphis, Shelby County, Tennessee, as mutually agreed upon by the arbitrators, upon ten (10) days' notice to the parties.
5. The arbitration rules and procedures of the American Arbitration Association under its construction industry arbitration rules, which are hereby incorporated herein by reference, provided, however, the law of evidence of the State of Tennessee shall govern the presentation of evidence in the hearing.

6. The arbitration hearing shall be concluded within ten (10) days unless otherwise ordered by the arbitrators and the award shall be made within ten (10) days after the close of the submission of evidence. An award rendered by a majority of the arbitrators appointed pursuant to this agreement shall be final and binding on all parties to the proceeding during the period of this agreement, and judgment on the award may be entered by either party in the highest court, state or federal, having jurisdiction.

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Owner's Initials

b. If the parties are unable to settle or resolve the dispute or controversy by mediation, the claim shall be submitted to binding arbitration in accordance with the rules and procedures of Resolute Systems, Inc., in which event the decision of the arbitrator shall be final and binding upon both parties and may be entered in any Court having jurisdiction. Demand for arbitration shall be made in writing with the other party to the claim and with the arbitrator. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, but in no event later than the date for the institution of legal proceedings based upon the law of the state where the property is located. The cost of the arbitrator shall be paid by the non-prevailing party or as determined by the arbitrator.

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Owner's Initials

c. The parties stipulate that the provisions of this agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or local court or before any administrative tribunal with respect to any controversy or dispute arising during the period of this agreement. The mediation and arbitration provisions shall, with respect to the controversy or dispute, survive the termination or expiration of this Contract.

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Owner's Initials

d. Said Warranty provides for final and binding arbitration regarding any controversy, claim or complaint arising under said Warranty which is not resolved by mutual agreement between Owner and Contractor. Owners' sole remedy for any such unresolved Warranty matter is the final and binding arbitration stated herein, the right to sue the Contractor in court being expressly waived.

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Owner's Initials

e. Nothing contained in this agreement shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Contract. Breaching Party shall pay costs of collection and litigation together with reasonable attorney's fees. This agreement is made pursuant to the Tennessee Uniform Arbitration Act (T.C.A. §5-29) and shall be governed by this Act.

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Owner's Initials

**31. Entire Agreement** - OWNER REPRESENTS THAT HE/SHE HAS READ THIS AGREEMENT AND THAT SAME CONSTITUTES THE ENTIRE AGREEMENT BETWEEN CONTRACTOR AND OWNER AND THAT NO OTHER AGREEMENTS, PROMISES, REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN, HAVE BEEN RELIED UPON BY OWNER OR HAVE BEEN MADE BY CONTRACTOR OR ITS SALESPERSONS, AGENTS OR EMPLOYEES TO OWNER AND THAT NO MODIFICATION OF THIS AGREEMENT SHALL BE CLAIMED BY OWNER SUBSEQUENT TO EXECUTION HEREOF UNLESS FIRST REDUCED TO WRITING AND EXECUTED BY THE PARTIES HERETO. OWNER UNDERSTANDS AND AGREES THAT THE SALES REPRESENTATIVE WITH WHOM OWNER HAS DEALT IN CONNECTION WITH THIS PURCHASE HAS NO AUTHORITY TO AGREE TO CHANGES OR MODIFICATIONS IN THE PLANS OR SPECIFICATIONS OR TO MAKE REPRESENTATIONS OR AGREEMENTS WITH OWNER NOT EXPRESSLY CONTAINED HEREIN OR IN WRITING SIGNED BY CONTRACTOR IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. THE TERMS AND CONDITIONS SET FORTH ON THE CONTRACT DOCUMENTS AND ALL ADDENDA HERETO ARE EXPRESSLY INCORPORATED INTO THIS AGREEMENT AND ARE A MATERIAL AND INTEGRAL PART THEREOF. THIS CONTRACT SHALL NOT BE ASSIGNED WITHOUT THE WRITTEN CONSENT OF ALL PARTIES.

This contract has no force or effect and will not be binding upon the Contractor until it is accepted and signed by the Owner and countersigned by the Contractor.

We the undersigned have read and understand and agree to each of the provisions of this contract and hereby acknowledge receipt of a copy of this contract.

CONTRACTOR: Remodeling Consultants, Inc.

\_\_\_\_\_

Name: Patrick J. Mahoney

Title: President

Contractors License No.# 29163

Date:

OWNER:

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\_\_\_\_\_  
Date

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