

CUNNINGHAM SERVICES LLC

HOME INSPECTION AUTHORIZATION AND CONTRACT AND SCOPE OF INSPECTION ©

Date of Inspection

CLIENT

SUBJECT PROPERTY

THIS IS A LEGALLY BINDING DOCUMENT. IT CONTAINS LIMITATIONS ON THE SCOPE OF INSPECTION, REMEDIES, AND LIABILITY. PLEASE READ IT CAREFULLY.

AUTHORIZATION AND AGREEMENT

1. Client hereby authorizes and contracts for Cunningham Services LLC (Company) to perform a home inspection at the Subject Property. Client agrees to the terms and conditions in this Contract. The home Inspection Report and its contents are intended for the exclusive use of and are the nontransferable property of the Client. The agreed Inspection Fee is payable at the time of the home inspection. Client agrees to pay all telephone long distance and FAX charges associated with the inspection.

2. My signature below acknowledges that I have read, understand, and accept the terms, conditions, and limitations as outlined in the "*Home Inspection Authorization and Contract and Scope of Inspection.*"©

I received and had the opportunity to read all four pages of the "*Home Inspection Authorization and Contract and Scope of Inspection*"© and all four pages of the "*Description of Home Inspection Services and General Home Inspection Information*"© and **I DO NOT** elect to pay an additional fee of \$750.00 for the removal of the limitation on liability, liquidated damages, and indemnification described in paragraph 7 for this inspection and report.

THE TOTAL FEE FOR THIS INSPECTION IS:

CLIENT'S SIGNATURE

DATE

I received and had the opportunity to read all four pages of the "*Home Inspection Authorization and Contract and Scope of Inspection*"© and all four pages of the "*Description of Home Inspection Services and General Home Inspection Information*"© and **I DO** elect to pay an additional fee of \$750.00 for the removal of the limitation on liability, liquidated damages, and indemnification described in paragraph 7 for this inspection and report.

THE TOTAL FEE FOR THIS INSPECTION IS:

CLIENT'S SIGNATURE

DATE

INITIAL

Company is authorized to release copies of this Inspection Report to:

3. The scope of this inspection is to perform a primarily visual, non-destructive, and non-technical examination (using normal operating controls where appropriate) of the applicable safely accessible and readily accessible portions of the structural, heating, cooling, plumbing, roofing, electrical (and permanently installed and attached kitchen appliance if a company elects to add these) systems and components of the Subject Property specified in this Contract and Inspection Report for adverse conditions. The inspection is performed in accordance with the American Society of Home Inspectors for conducting general, visual, non-technical home inspections as they apply to the scope of the inspection unless otherwise noted and where conditions permit and except as modified by this Contract and the limits set forth in this Contract and the Inspection Report. The Scope of Inspection also includes the description of the scope and limitations of the inspection as set forth in the “*Description of Home Inspection Services and General Home Inspection Information.*” Only the visible and safely accessible and readily accessible portions of the items and components specified in the Inspection Report shall be inspected. THE INSPECTOR IS NOT EXPECTED OR REQUIRED TO MOVE OR REMOVE ANY PERSONAL PROPERTY FROM OR AT THE SUBJECT PROPERTY IN ORDER TO CONDUCT THE INSPECTION. No other systems, items or appliances are included in this inspection. The inspection performed by Company is supplemental to any real estate transfer or seller’s disclosure statement and shall not be used as a substitute for such disclosure statements or for a pre-closing walk through.

4. Specifically excluded is the performance of any inspection of any systems, components, or items not specifically included in this Contract, in the Inspection Report, and in the scope of inspection (as referenced in paragraph 3. above) including, but not limited to, the following: thermal imaging, thermal efficiency or energy audits; any information pertaining to consumer protection bulletins, or notifications, manufacturers’ recalls of any component or equipment or “class action” litigation or settlements against contractors or manufacturers; low-voltage systems, swimming pools, saunas, spa (hot tub), or hydromassage systems; recreational equipment; electrostatic precipitators or electronic air filters or cleaners; septic systems, any component or system which is underground, private water systems or equipment, wells and well pumps, cisterns, ponds, fountains, water quality or volume, water conditioning systems; household appliances; elevators, lifts, dumbwaiters; pneumatic equipment and systems; audio and video systems; central vacuum systems; fencing or yard walls or gates, landscaping, landscape or other irrigation systems; active and passive solar space or water heating systems, photovoltaic systems; the function or accuracy of electrical, fuel gas, or water metering devices; electrical system demand control devices; soils, security systems, fire, smoke, fuel, moisture, radon, or any other detection, warning, alarm, or suppression systems; window and door screening, awnings; retaining walls (except with respect to their effect on buildings included in the inspection). Also specifically excluded is any examination or inspection for the presence or absence of or any sampling of or testing or analysis of any suspected harmful, dangerous, or toxic substances or materials or environmental hazards including, but not limited to, any bio-aerosols, mold, bacteria, asbestos or other non-biological airborne particulates or in situ materials; lead, radon or other gases except those gases typically used as fuel for home heating and domestic water heating systems; waterborne, airborne, or soil borne materials or contaminants; volatile organic materials, petroleum products or petrochemicals; radioactive materials, non-ionizing electromagnetic radiation; or plant, animal, or insect secretions or excretions; and any inspection for the presence or absence of any fauna including, but not limited to, rodents, reptiles, vermin, insects and/or any other pests. In the event that the Inspection Report or oral statements made by the Inspector supply any information about any of the foregoing, this information shall be deemed to be informational only and supplied as a courtesy to the Client, and shall not be deemed to be an amendment to or waiver of the foregoing exclusions.

5. This is not a technical inspection. No engineering tests will be made. Excluded is the performance of any inspection to determine or calculate the strength, adequacy, or efficiency of any system or component or any effect of any condition on the value, desirability, or safety of the subject property or of any system or component at the subject property. No examination will be made to determine compliance with any governmental ordinances, regulations, acts, protocols, or codes. The Inspection Report is not to be considered an implied or express warranty or insurance on the Subject Property or its components concerning future use, safety, operability, habitability, or suitability. Company is not responsible for any condition affecting any system or component which occurs subsequent to the inspection or is intermittent and/or otherwise not detectable for any reason during the inspection. Client has no expectation of being notified of all conditions, and waives any claim to conditions which are not reported.

6. Client acknowledges that Company warrants that its inspection services will be performed in accordance with the Scope of Inspection and the Inspection Report only. This is a limited and non-transferable warranty and is the only warranty given by Company. Company makes and Client receives no other warranty, express or implied. All other warranties including warranties of merchantability and fitness for particular purpose are expressly excluded. This stated express warranty is in lieu of all liabilities or obligations of Company for damages arising out of or in connection with the performance of the inspection and delivery and use of and reliance on the Inspection Report. Company does not guarantee that the structure inspected will be free from faults or defects. Client waives any claim for consequential, exemplary, or incidental damages, even if Company has been advised of the possibility of such damages.

7. IN THE EVENT OF A BREACH OR FAILURE OF THE FOREGOING WARRANTY, CLIENT AGREES THAT THE LIABILITY OF COMPANY AND OF ITS AGENTS, EMPLOYEES, AND INSPECTORS FOR CLAIMS OR DAMAGES, COSTS OF DEFENSE AND SUIT, ATTORNEYS’ FEES, OR EXPENSES AND PAYMENTS ARISING OUT OF OR IN ANY WAY CONNECTED WITH ERRORS OR OMISSIONS IN THE INSPECTION OR THE INSPECTION REPORT SHALL BE LIMITED TO LIQUIDATED DAMAGES IN AN AMOUNT EQUAL TO ALL AMOUNTS PAID FOR THE INSPECTION TO COMPANY BY CLIENT. CLIENT AGREES TO INDEMNIFY AND HOLD COMPANY HARMLESS FOR ALL DAMAGES AND LIABILITY INCURRED BY COMPANY, INCLUDING LIABILITY FOR NEGLIGENCE, EXCEPT AS SPECIFICALLY PROVIDED ABOVE.

8. Client acknowledges the liquidated damages are not intended as a penalty but are intended (I) to reflect the fact that actual damages may be difficult and impractical to ascertain; (II) to allocate risk among Company and Client; and (III) to enable Company to perform the inspection at the stated inspection fee. In the event of the tender by Company of a refund of the inspection fee, such refund shall be full and final settlement of all present and future claims and causes of action and Company shall be thereupon generally and fully released.

9. CLIENT HEREBY EXPRESSLY WAIVES ANY CAUSE OF ACTION AGAINST THE INSPECTOR PERSONALLY, EXCLUDING SOLELY WILLFUL MISCONDUCT, AND AGREES TO LOOK SOLELY TO COMPANY FOR ANY AND ALL LIABILITY RELATED TO THE INSPECTION INCLUDING THE NEGLIGENCE OF THE INSPECTOR. CLIENT HEREBY AGREES TO INDEMNIFY THE INSPECTOR PERSONALLY FOR ANY AND ALL CAUSES OF ACTION, INCLUDING COSTS OF DEFENSE AND ATTORNEYS' FEES, RELATED TO OR ARISING FROM ANY CLAIM BROUGHT BY CLIENT AGAINST THE INSPECTOR.

10. In the event Client has a claim of a breach or failure of warranty, or for negligent inspection of any component or item in the inspection, Client shall notify Company by certified mail/return receipt requested within seven (7) days of discovery of the condition which forms the basis of the claim and Company shall have five (5) working days to re-inspect the component or item before Client repairs or replaces the component or item. This right of re-inspection is to protect Company and Client from the business practices of some contractors who base their recommendations to repair or replace components on incorrect, false, or misleading information. IF CLIENT FAILS TO COMPLY WITH THE NOTIFICATION AND RIGHT OF COMPANY TO RE-INSPECT REQUIREMENTS AS OUTLINED ABOVE IN THIS PARAGRAPH, CLIENT WAIVES ANY CLAIM AGAINST COMPANY WITH RESPECT TO THE COMPONENT OR ITEM.

11. In the event any dispute arises regarding this Contract or the contents of the Inspection Report, it is agreed that all parties shall attempt, in good faith, to settle such disputes between themselves. In the event such attempts fail to resolve such disputes, prior to the filing of any legal action by the Client, the Client shall submit to Company written notification of the dispute and Client's intent to file a legal action, and Company shall have thirty (30) days to submit the dispute to binding arbitration in Las Cruces, NM. Such arbitration shall be conducted in accordance with the Construction Industry Rules of the American Arbitration Association (or other appropriate entity), except for the rules pertaining to the arbitrator selection. The parties submitting the dispute shall appoint an arbitrator by mutual agreement who is knowledgeable in and familiar with the professional home inspection industry and who will follow substantive rules of law. Each party further agrees to pay its own arbitration costs. Any award made by the arbitration shall be enforceable as a judgment in any court of competent jurisdiction. IN THE EVENT OF ANY JUDICIAL PROCEEDINGS, THE PARTIES KNOWINGLY AND VOLUNTARILY, AND HAVING HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL, WAIVE ALL RIGHTS TO TRIAL BY JURY, AND AGREE THAT ANY AND ALL MATTERS SHALL BE DECIDED BY A JUDGE WITHOUT A JURY TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

12. No action, whether in contract or tort, shall be brought against Company in arbitration or a court of law beyond the earlier of one year following the date of the Inspection Report or 120 days after discovery by Client of the condition which forms the basis of the action.

13. The Inspection Report is not intended for use by anyone other than the Client. No third party shall have any right arising from this Contract or the Inspection Report. In consideration for the furnishing of the Inspection Report, the Client agrees to indemnify and hold harmless Company, its agents, employees, inspectors, directors, officers, shareholders, successors and assigns, for all costs, expenses, legal fees, awards, settlements, judgments, and any other payments of any kind whatsoever incurred and arising out of a law suit, cross-complaint, countersuit, arbitration, administrative proceeding, or any other legal proceeding brought by any third party who claims that he/she relied on representations made in such Inspection Report and was damaged thereby. Client's request that Company release copies of the Inspection Report shall be at Client's risk with respect to the contents of this paragraph.

14. Except as provided above for arbitration of disputes, if a claim is made against Company for any alleged error, omission, or other act arising out of the performance of this inspection, and if Client fails to prove such claim, Client agrees to pay all costs and attorney's fees incurred by Company and its employees, agents, inspectors, directors, shareholders, successors and assigns.

16. CLIENT ADDITIONALLY AGREES THAT UNLESS CLIENT HAS ELECTED ON THE FIRST PAGE OF THIS CONTRACT TO REMOVE THE LIMITATION OF LIABILITY AND LIQUIDATED DAMAGES, CLIENT ASSUMES AND ACCEPTS ALL RISK OF OWNER CONCEALMENT OR MISREPRESENTATION. IN THE ABSENCE OF SUCH AN ELECTION BY CLIENT, IF CLIENT MAKES A DEMAND OR BRINGS AN ACTION AGAINST THE OWNER(S) FOR FRAUD, CONCEALMENT OR MISREPRESENTATION REGARDING A CONDITION OR COMPONENT OF THE SUBJECT PROPERTY, CLIENT HEREBY WAIVES AND RELEASES ANY AND ALL CLAIMS OR LIABILITY AGAINST INSPECTION COMPANY AND INSPECTOR(S) FOR DAMAGES RELATED TO THE CONDITION OR COMPONENT FOR WHICH THE DEMAND OR CLAIM IS MADE AGAINST THE OWNER.

17. Acceptance of the Inspection Report by any party shall constitute acceptance of the terms and conditions of this Contract as if signed by that party and shall constitute authorization to any person signing as Client to act as an agent in agreeing to the terms and conditions. This Contract is binding on Client, Client's spouse, heirs, distributees, guardians, legal representative, successors and assigns.

18. The Client is requested to attend the inspection. If Client is not present at the time of the inspection or for any other reason is unable to sign this Contract at the time of inspection, acceptance of the Inspection Report shall constitute acceptance of the terms and conditions of the Contract as if signed by Client.

19. Company reserves the right to modify the written Inspection Report by a written addendum for a period of forty-eight (48) hours after the Inspection Report has been delivered to the Client. If Company exercises this right to modify the written report within the time as specified above, Company shall provide telephone, fax, or email notification of the need for such addendum to the Client or Client's authorized agent and Client agrees that the Inspection Report is not complete until receipt of the written addendum. Any such written addendum shall be mailed, emailed, faxed to the Client, or made available for pickup by Client within three (3) working days of the date of the Inspection Report.

20. The Inspection Report, any addenda, and Home Inspection Report Glossary, along with the "*Home Inspection Authorization and Contract and Scope of Inspection*"© and the "*Description of Home Inspection Services and General Home Inspection Information*,"© collectively constitute the Contract document. In the event any provision is held to be unenforceable, it shall be severed from the Contract and the remaining provisions shall be fully enforced.

21. Client acknowledges and agrees that it is the Client's intention to use the inspection and report for the purpose of becoming better informed regarding some of the conditions of the subject property and not for the purpose of negotiating other contracts. Client agrees that Company is not a party to any contracts, negotiations, or agreements between the Client and any third parties including, but not limited to: sellers, lessors, lenders, appraisers, insurers, or real estate agents. The Client further agrees that Company, its agents, employees, and inspectors cannot and will not provide any advice or direction pertaining to the use of any information contained in the Inspection Report with regard to any such contracts, negotiations, or agreements. The Client also agrees that any decisions regarding consulting with any representatives or other parties are solely the responsibility of the Client and to indemnify and hold harmless Company, its agents, employees, inspectors, directors, officers, shareholders, successors and assigns with regard to the Client's decisions pertaining the use of any of the information contained in the Inspection Report.

22. Company reserves the right to terminate the inspection on site and to return the inspection fee, in its discretion, for any reason or for no reason, and at any time prior to delivery of the Inspection Report. Such termination and refund shall terminate all contractual relationships between Company and Client with regard to the home inspection, and Client agrees that Company owes no duty whatsoever to Client and Client will not use or rely on any information obtained during the course of the inspection.

23. To reduce the potential for distracting the inspector and interruption of the inspection process, video and/or audio recording of the inspection are expressly prohibited in any manner whatsoever without prior written permission from the Company.

24. If the terms and conditions of this "*Home Inspection Authorization and Contract and Scope of Inspection*"© are not acceptable to the Client, the Client agrees to notify Company or Company's representatives and the inspection shall be canceled, no fee charged, and the Client shall be free to seek inspection services elsewhere.