

HOME INSPECTION CONSULTING AGREEMENT

Magnum Home inspections Inc., P. O. Box 700906, San Antonio, TX 78270

www.MagnumHI.com Info@MagnumHI.com

210-559-3929

Last Updated 3/06/2019

Property Address _____

THIS IS A LEGAL AGREEMENT. PLEASE READ CAREFULLY BEFORE SIGNING. YOU HAVE THE RIGHT AND IT IS PRUDENT TO CONSULT AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT IF YOU DO NOT FULLY UNDERSTAND THE CONDITIONS.

Important Limitations and Disclaimers

This Property Inspection Report reports on only the items listed and only on the current condition of those items as of the date of inspection. This report reflects only if the items inspected are observed to be "operable" or "inoperable" at the time of inspection; that is whether such items are observed to serve the purpose for which they are ordinarily intended, at this time. This report reflects only those items that are reasonably observable at the time of inspection. **NO REPRESENTATION OR COMMENT** is made concerning any latent defect or defects not reasonably observable at the time of the inspection or of items which require the removal of major or permanent coverings. For example, but without limitation, recent repairs, painting or covering may conceal prior or present leak damage which is not reasonably observable by the inspector and no representation or comment can be made. **NO REPRESENTATION IS MADE CONCERNING ANY OTHER CONDITION OR THE FUTURE PERFORMANCE OF ANY ITEM. NO REPRESENTATION IS MADE AS TO ITEMS NOT SPECIFICALLY COMMENTED UPON. ALL WARRANTIES EXPRESSED OR IMPLIED, NOT SPECIFICALLY STATED HEREIN ARE EXCLUDED AND DISCLAIMED.** If a comment is made concerning the condition of any item, the Client is **URGED** to contact a qualified **SPECIALIST** to make further inspections or evaluations of that item. Client must notify Magnum Home Inspections, Inc. in writing of any complaints within seven (7) days of the date of inspection and must thereafter allow prompt re-inspection of the item in question. Otherwise, all claims for damages arising out of such complaint are waived by Client. If Client institutes any legal action concerning this inspection, and fails to prevail on all causes of action alleged, Client shall be liable to Magnum Home Inspections, Inc. for all of its attorney's fees incurred in such action. Actual damages for any breach of contract or warranty, negligence or otherwise are limited to the amount of the inspection fee paid. The Client, by accepting this Report or relying upon it in any way, expressly agrees to these Limitations and Disclaimers.

At Magnum Home Inspections we recommend that a termite / pest inspection be performed on every home. We do not inspect for pest and or insects of any kind except when such service is ordered and paid. Client further acknowledges, agrees, and authorizes Magnum Home Inspections, Inc. to provide their contact information (including telephone number) to a third-party service provider ("TSP"), with which Magnum Home Inspections, Inc. may affiliate with to offer the client additional value-added services. Magnum Home Inspections, Inc. may in some cases be compensated for making these arrangements in order to keep inspection prices at a minimum.

You are also notified that Kevin Lipscomb (the owner of Magnum Home Inspections, Inc.) is also a licensed Real Estate Agent in the state of Texas, and that his current broker of record is MISSION REAL ESTATE GROUP Realty of San Antonio. If you have as your real estate agent another MISSION REAL ESTATE GROUP real estate agent, you are given notice that we both work under the same broker and that if you feel that this could be a conflict then you should not agree to this disclaimer and find another inspector. From time to time Magnum Home Inspections, Inc. may have other inspectors employed that are Licensed real estate agents and they may or may not be under the same broker and that it is your responsibility to confirm if your inspector might have a conflict with your inspection.

For more information concerning your rights, contact the Consumer Protection Division of the Attorney General's Office, your local District or County Attorney, or the attorney of your choice.

Inspector and / or Inspecting company agree to provide inspection services in accordance with this Agreement and render professional opinions for the purpose of informing the Client(s) listed on the order form (individually or collectively the "**Client**") of major deficiencies in the condition of the referenced property submitted on the order form (the "**Property**"). In consideration for the inspection services, the Client agrees to pay the inspection fee for this Agreement prior to completion of the inspection and presentation of the Property Inspection Report. Additional fees apply for return visits that may be required to complete an inspection where items or systems we're not ready or deemed safe to originally inspect. All return visit fees are charged at a rate of a **minimum \$50 fee. Additional fees for travel and time may apply** depending on the quantity of items to inspect and property location.

What is Inspected: In exchange for an Inspection Fee as agreed to on Page 3 (**Services Provided**), the Inspector will (a) inspect the Property in accordance with the Standards of Practice \S 535.227 and \S 535.233 (Feb, 1 2009) adopted by the Texas Real Estate Commission ("TREC") **EXCEPT** as indicated in the following section (**What is Not Inspected**) and (b) provide the Client with a completed Property Inspection Report on the form promulgated by the TREC within 48 hours of the inspection. The Standards of Practice referenced above are incorporated into this Agreement as if set forth fully herein. They may be viewed online at www.trec.state.tx.us and will be provided to the Client upon request. The inspection shall include a **non-exhaustive** evaluation of all systems identified in the Standards of Practice. While some building code-related items may be identified as "Deficient" in the Property Inspection Form for the purpose of identifying potentially hazardous conditions (See Texas

Real Estate Consumer Notice Concerning Hazards or Deficiencies, TREC Form No. OP-1) or to provide further clarification for the Client, the Client understands and agrees that the Inspector does not perform a code compliance inspection. The Inspector will perform an inspection of those items as required by the Standards of Practice that are visible and safely accessible **as determined by the Inspector**. Areas and/or items deemed to be inaccessible and or unsafe to inspect as determined by the Inspector shall be identified in the inspection report as "not inspected" under the Departure rules. The inspection will be a **non-destructive** and practical evaluation of major components of the Property and as are apparent on the date of the inspection. The Inspector will not enter into or climb upon unsafe areas that may potentially endanger the Inspector or the property, in his sole judgment. The Inspector **is not providing engineering services**. Engineering opinions may only be provided by a licensed engineer.

What is Not Inspected (Agreed Departures): The following specific limitations apply but should not be considered as a totally exhaustive list (*See the TREC Standards of Practice for additional limitations*). **Unless expressly stated otherwise, Inspector does not test, inspect, report on or offer opinions on:** soil analysis or adequacy of design; aesthetic items such as wall, ceiling or trim paint; cosmetic deficiencies such as wall paper or texture deficiencies; floor coverings, cabinetry, countertops and or trim work deficiencies; window treatments, and the like; items where access is limited or prevented by furniture, personal belongings, or similar obstructions; life expectancies & repair estimates; drafting of chimneys; inaccessible portions and or components of all mechanical, electrical and plumbing systems; gas line sizing and/or piping connections; cleaning cycles of self-clean ovens, timer functions on ovens and microwaves; determination of water quality; all forms of plastic water supply piping and associated connectors; determining the presence of Kitec or any other plastic piping product; determining absence or presence of Chinese drywall; all freestanding appliances; sewage disposal systems including grinder or ejector pumps and associated equipment; general pests, termites or other wood destroying organisms, rodents, and/or diseases (unless otherwise itemized in the "**Services Provided**" section of this agreement); testing of air conditioning when exterior temperature is below 65 degrees F within the past 12 hours, testing of heating systems when temperatures are above 85 degrees F at the time of inspection; exterior walks, driveways, and patios; sub-surface water/springs, caves, fault lines, potential flooding conditions that would not be readily detectable or apparent at the time of inspection, potential floodplain or flood areas; items listed with the Consumer Product Safety Commission identified as unsafe and/or determined to be under a recall by manufacturer; items or areas identified by the EPA as a potential household concern; ADA (Americans with Disabilities Act) compliance; **any and all environmental issues**, including: pollutants, mold, mildew, fungi, radon gas, lead based paint, gases, volatile organic compounds borne contaminations; inspection of roof covering underlayment's, concealed flashing details, installation and appropriateness of fasteners securing any and all types of decks or roofing; flood testing of building drains and/or shower pan's, lavatories and bath tub overflows; turn on or turn off any gas, water supply or irrigation valves; test temperature and pressure valves on water heaters; turn on or off any electrical breakers; common areas in planned communities, condominiums or townhouses; exterior veneer coverage (paints, stains and/or other surface coatings); exterior landscape lighting; mechanical or powered gates; fencing and or exterior retaining walls. The Inspector does not determine the operational capacity, quality, or suitability for a particular use of any system or component in the home or on the property. This Inspection does not cover latent defects not reasonably and readily observable or detectable during the inspection process nor those that may be covered by recent repairs, remodeling, painting, or defects that may be concealed or obstructed by stored items or furniture.

Client specifically agrees to hold Inspector harmless from any claims or liability regarding any areas that have been purposely concealed, covered, touched up or otherwise hidden on the premises and or unreported or withheld from the Sellers Disclosure documents.

Client agrees the sole recourse is against the responsible parties thru civil action. The inspection intends to reduce but will not eliminate risk; therefore, the standard inspection does not identify all defects or problems (visible or concealed). The Client agrees that such non-reporting does not constitute any actionable representation or omission and specifically waives any and all claims at law or in equity, in connection with any such reporting. This agreement and report will not include, and should not be read or interpreted, to determine the insurability or merchantability of any item or items inspected.

Moisture and/or Indoor Air Quality (IAQ): The Inspector is not responsible for the discovery or reporting on the presence of any type of airborne or surface contaminants, mold, mildew or concealed moisture intrusion. Such services are beyond the scope of this inspection. If comments are made concerning (past and/or present) moisture intrusion, plumbing leaks, roof leaks, and/or any type of moisture damage; the Client has the responsibility to contact a specialist for further investigations and/or testing services.

Optional systems: such as lawn and garden sprinklers, swimming pools, spa's, hot tubs (including related equipment), outbuildings, all outdoor cooking equipment, propane gas supply systems, water wells, sewage disposal (septic) systems, whole-house vacuum systems, and other built-in appliances not specifically listed in the "Appliances" section of the Property Inspection Report shall not be inspected unless the Client pays the associated fee set forth herein in the Services Provided section of this report. **Disclaimer of Warranties:** The inspection and Property Inspection Report is not a warranty, guarantee (express or implied), insurance policy, or substitute for real estate transfer disclosures, including a Seller's Disclosure Statement, or other legally required disclosures. The Client understands and agrees that the Property Inspection Report constitutes the Inspector's advice, judgment, and professional opinion with respect to the condition of the Property as outlined in the report. **The Inspector does not insure nor guarantee the future performance of the structure or any component within the structure. The Inspector shall not be held responsible or liable for any repairs or replacements with regard to the property, systems, components, or the contents therein.**

THE INSPECTOR HEREBY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES TO THE FULLEST EXTENT ALLOWED BY LAW, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

The Report and Inspection Findings: The written report including any and all photographs or digital recordings taken during the time of inspection remain the copyrighted property of the Inspector. The Client agrees distribution of the completed report shall be solely to persons involved with this transaction; including, but not limited to, real estate professionals representing the seller and/or client, attorneys of record representing the seller and/or client, the Title Inspector and/or lender representing the Client. Distribution, use of or sale of this copyrighted report to any other parties is expressly prohibited. Client specifically gives permission to the Inspector to distribute the report per the Clients direction and to discuss report findings with

any and all parties related to this transaction. Please note that the Inspector reserves the right to provide additional addendums, clarifications or modifications to the original inspection report. Any such addendums, clarifications or modifications shall be delivered to the Client no later than 48 hours from the time of the original inspection report. Oral opinions provided by the Inspector are partial in context and superseded by the written report and any addendums, clarifications or modifications forwarded to the client as agreed above.

Client Responsibilities: Client agrees to carefully read the entire inspection report and any and all addendums and to confer with all recommended specialists noted in the inspection report. Failure by the client to secure the services of recommended specialists is done so at the sole risk of the Client and the Inspector shall be hereby released from any and all claims for non-disclosure that may be related or consequential to deficiencies noted in the inspection report.

It is the Clients responsibility to contact an insurance agent to confirm the property is fully insurable without reservation as the Inspector does not guarantee or certify the building and or property is insurable. It is the Clients responsibility to contact and secure the services and guidance of Legal counsel, counsel from a qualified real estate agent and counsel from contractors and repairmen in negotiating repair needs and/or satisfying that all deficiencies that exist on the property are repaired and/or negotiated to the Client satisfaction prior to closing.

Failure to seek appropriate guidance is the direct responsibility of the Client and the Inspector shall be fully released from any and all associated claims that may be charged against the Inspector as a result of the Clients failure to secure such guidance.

Enforceability: If any portion of this Agreement is found to be invalid or unenforceable by any court or arbitrator, the remaining terms shall remain in force between the parties. Any "typos" or misspelled words are considered just a "typo" and should be considered as intended.

Subrogation Clause: The Client specifically waives all subrogation rights or interests that may be afforded to the seller, lenders, spouses, legal Partners, beneficiaries, insurance companies or any other party that may hold an interest in the property or estate inspected under this agreement. The Client specifically agrees to hold harmless, fully defend and satisfy any and all such claims that may arise against the Inspector out of the performance of the inspection and inspection report provided.

Claim Notice Procedure: The Client understands and agrees that any claim(s) or complaint(s) arising out of or related to any alleged act(s) or omission(s) of the Inspector, in connection with the services provided, shall be reported to the Inspector in writing and in reasonable detail within ten (10) business days of discovery. Unless there is an emergency condition, the Client agrees to allow the Inspector without hindrance a reasonable period of time to investigate the claim(s) or complaint(s) by, and among other things, a re-inspection of the condition(s) or item(s), before the Client or anyone acting on behalf of the Client, repairs, replaces, alters, or modifies the system(s) or component(s) that are the subject matter of the claim or complaint. The Client understands and agrees that Clients failure to timely notify the Inspector and allow adequate time to investigate the conditions prior to any repairs or alterations as stated above, shall constitute a complete waiver and relinquishing of any and all claims that the Client (complainant) may have against the Inspector, as relating to the alleged act(s) or omission(s), unless otherwise prohibited by law. The Client agrees that no claim, demand, or action, whether sounding in contract or in tort, may be brought to recover damages against the Inspector **more than (90) calendar days after the date of the inspection report. Required Notice to Client:** State law mandates under article 6573a, section 1102.364, that you are given notice and availability to the Texas Real Estate Inspection Recovery Fund in cases of inspector negligence. For further information on this fund please contact the Texas Real Estate Commission @ 1101 Camino La Costa, Austin, TX 78752. The Client hereby acknowledges that the Inspector is licensed by the state of Texas and is recognized in the industry and by the state of Texas as a Professional Inspector for the purposes of DTPA (Deceptive Trade Practice). The professional opinions of the Inspector provided in verbal or written format are considered professional opinions, therefore exempted from liability under DTPA section 17.49

Arbitration of Disputes: All parties agree that if a dispute or claim arises from this agreement or the inspection performed by the Inspector and it cannot be amicably settled through direct communication, that any and all disputes shall be settled thru mediation under the guidelines set forth under Texas law. Both parties shall share equally in the cost of mediation. In the event mediation is unsuccessful, both parties voluntarily agree to binding arbitration by a single, conflict free, mutually agreeable arbitrator, and shall use the procedural rules, but not the administration of the American Arbitration Association per Construction Industry Arbitration. If the parties are unable to agree on the appointment of a mediator and/or arbitrator, either party, without waiving the right to enforce binding arbitration, may petition a court of general jurisdiction in Bexar County, Texas to appoint a mediator and/or arbitrator. Any arbitration proceeding shall be held in Bexar County, Texas. The Client and the Inspector shall share equally in the costs of the arbitrator, subject to the arbitrator's right to award such costs as provided below. **The Client expressly waives all rights to a trial by jury in lieu of mediation and/or arbitration to settle any and all claims.**

Fees and Costs associated with Disputes: In the event the Client files a claim or initiates a mediation or arbitration proceeding against the Inspector, the Client agrees to pay any and all fees, including but not limited to: mediator or arbitrator fees, costs of expert witnesses, legal defense fees, deposition fees and any and all other such expenses incurred by the Inspector, if the Client is not the prevailing party in the dispute on **ALL** claims.

LIMITATION OF LIABILITY

Client understands that this is not a technically exhaustive inspection. **A technically exhaustive inspection is available that involves the hiring of specialists in each area of the inspection process.** These inspections take approximately 1-2 weeks to schedule, **do not carry any limits of liability as noted in this Agreement** and are offered at a minimum starting fee of \$ **5,000.00 (Five thousand dollars).**

Client understands that the inspection fee paid to the Inspector for a **NON-technically exhausting** inspection is nominal given the risk of liability associated with performing inspections if such liability could not be limited. Accordingly, by signing below, Client agrees that the Inspector is not performing a technically exhaustive inspection and that the maximum liability incurred by the Inspector for any and all claims relating to damages or errors or omissions **SHALL BE LIMITED TO A REFUND OF THE ENTIRE FEE PAID TO THE INSPECTOR FOR THE INSPECTION.**

This limitation applies to any and all damages sought by Client, including actual, consequential, exemplary, special or incidental damages, attorney's fees, costs, and expenses. This limitation of liability is binding upon the Client's heirs, successors, assigns, and any other party claiming rights under this Agreement, including those claiming by, through, or under Client.

Choice of Law: This Agreement shall be construed, governed, and enforced in accordance with the laws of the State of Texas.

Entire Agreement: This Agreement represents the entire agreement between the Client and the Inspector. No oral agreements, understandings, or representations shall change, modify, or amend any part of this Agreement. No changes or modifications to this Agreement shall be enforceable unless they are in writing and signed by both the Client and the Inspector.

Acceptance: This Agreement is solely between the Inspector and the Client for whom the inspection was performed. Due to the rapid pace that many real estate transactions occur at, it is not technically possible in some cases for Clients to always attend inspections. If the Client is not present during the inspection process, and/or fails to sign and return a fully executed copy of the last page of this Agreement prior to or at the time of inspection, the Client's acceptance of the Property Inspection Report constitutes an implied acceptance of this entire Agreement in full.

SERVICES PROVIDED

Payment: Payment of the above sums are due upon completion of the onsite inspection. In the event of any default in payment, unpaid sums shall bear interest at the lesser of the highest legal rate or 1.5% per month. All returned checks are subject to a \$50 returned check fee. Client shall be held responsible for all necessary collection fees including but not limited to legal fees, collection agencies etc. on any unpaid fees or returned checks.

The Client has read and understands the content, terms, and conditions of this Agreement, including, but not limited to, the limitations of liability, complaint procedures, arbitration clause, subrogation clause and limitation periods. The Client has the right to have this Agreement reviewed by an attorney of his/her choice prior to signing and the right to choose another Inspector if the terms and conditions of this Agreement are unsatisfactory.

The Client certifies to the Inspector to have the legal authority to enter this contract on behalf of a spouse, life partner and/or any other third party. The Client agrees to fully assume any and all obligations or legal liability to successfully defend the Inspector against any and all claims that may arise or be charged against the Inspector by such spouses, partners or other third parties that may have a legal interest in the property or this agreement.

I have read, agree with and FULLY and COMPLETELY understand the provisions of this disclaimer and that this inspection is not a warranty or guarantee. This inspection is essentially visual, it is not technically exhaustive, and it does not imply that every defect will be discovered. It is only a statement of opinion and/or condition as of and on this date.

Client Printed Name: _____

Client Signature: _____

Date: _____

Email: _____