

## LIMITED ITEM EXAMINATION AGREEMENT

Tarkington Home Inspections  
510-566-2195  
P.O.Box 2461  
Castro Valley, CA 94546

**NOTE – THIS IS A LEGAL CONTRACT THAT DETAILS THE RIGHTS AND OBLIGATIONS OF THE PARTIES. PLEASE READ ALL PAGES CAREFULLY THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES**

This Agreement dated:

is between: Client:

and Inspector: Keith Tarkington. For a consultation and examination at the following Property:

Common Street Address:

Fee:

**Services to be Rendered:**

### SCOPE OF SERVICES PROVIDED

**SCOPE OF THE EXAMINATION:** This examination is a noninvasive, visual observation and operation of the areas agreed upon by the Client and Inspector. Its purpose is a) to identify conditions that, in the professional opinion of the Inspector, are significantly deficient or b) to identify systems and components that are at the end of their service lives. Areas not included in the agreed-upon scope will not be assessed or mentioned in the report. For concerns beyond this limited scope, consult a qualified home inspector or relevant contractor for specialized assessments.

The examination is strictly limited to the readily accessible, installed systems and components agreed upon by the Client and Inspector and listed above. This is a limited examination and NOT performed in accordance with the California State Business and Practice Code or Standards of Practice of the American Society of Home Inspectors®, Inc. (ASHI®). Where multiple instances of the same component exist, a representative number shall be inspected. The observations of conditions are limited to those areas of the home which can be reached, entered, or viewed without difficulty, moving obstructions, or requiring any action which may result in damage to the Property or personal injury to the Inspector. Any additional services outside the list of components in this contract or in those rules must be specifically agreed to in writing between the Inspector and the Client.

If requested and declared above, the Inspector will prepare and provide the Client with a written report for the sole use and benefit of the Client, otherwise no report will be generated. The written report shall document any deficiencies discovered in the Property's systems and components. A deficiency is a condition that, in the reasonable judgement of the Inspector, is not functioning properly or is unsafe. In addition, the written report will comment on the normal service life of a system or component. However, the fact that a system or component is near, at, or beyond the end of its normal service life is not, in itself, a deficiency in the system or component.

Nothing in the report and no opinion of the Inspector should be construed as advice to the Client to purchase, or not to purchase, the Property, or serve as a prediction of future conditions or the value of the Property. Further, any descriptions of deficiencies of the Property should not be interpreted as estimates for the costs of repairs to any system or component of the Property.

**CLIENT'S DUTY:** The Client understands and accepts that the Inspection and report, in accordance with this Agreement, are intended to reduce, but cannot eliminate, uncertainty regarding the condition of the Property. The Client is responsible for reviewing the permit history and for researching any legal actions or insurance claims involving the Property.

The Client agrees to read the entire written report when it is received and to promptly contact the Inspector with any questions or concerns regarding the Inspection or written report. The written report shall be the exclusive findings of the Inspector. Verbal representations not recorded within the Inspection report are not part of the Inspection.

The Client acknowledges that the Inspector is a generalist and that further investigation of a reported condition by an appropriate specialist may provide additional information on the condition of the Property. Should the Inspector's report reveal any additional conditions that require further investigation or repair, the Client agrees that any further evaluation, inspection, and repair work needs to be provided by competent and qualified professionals who are licensed and/or certified to perform the work.

In the event the Client becomes aware of a reportable condition not contained in the written inspection report, the Client agrees to promptly notify the Inspector and allow the Inspector and/or the Inspector's designated representative(s) to inspect said condition(s) prior to making any repair, alteration, or replacement. If the Client fails to so notify the Inspector and fails to allow an additional inspection, then any costs of such repairs, alterations or replacements will be entirely at the Client's cost without recourse against the Inspector.

**LATENT DEFECTS:** The Client agrees that the Inspection is not a technically exhaustive investigation or evaluation of every aspect of the Property. The Client acknowledges and agrees that the Inspection and the written report will not reveal every existing deficiency and future condition affecting the Property. The Inspector is not responsible for the non-discovery of any latent defects of the Property or any problems that may occur or become evident after the date of the Inspection. Latent defects of the Property include, but are not limited to: cracking, leaking, surface dislocations, or landslides resulting from, without limitation to, water leaks, land subsidence, or other geological problems. The Inspector is not responsible for any defects that may manifest themselves in the future, any structural failures that may occur in the future, or damages that result from future repairs.

**COMPLIANCE WITH BUILDING CODES:** Consistent with the scope of the Inspection, as provided in this Agreement, the Inspector will identify items that may present a health or safety issue. However, the Inspector will not provide an opinion on compliance with any particular building code.

**INSURABILITY:** The Client understands that the Inspection will not determine the insurability of the Property. Insurance companies have different underwriting criteria, and the Inspector cannot be expected to determine how a particular system or component may affect insurability.

**ENVIRONMENTAL AND HEALTH CONDITIONS:** The Client agrees that the Inspection is not intended to detect, identify, or disclose any health or environmental conditions regarding the Property, including, but not limited to the presence of: asbestos, radon, lead, or urea-formaldehyde; wood destroying organisms, fungi, molds, mildew, feces, urine, vermin, pests, or any animal or insect; drywall that may have been manufactured with contaminated materials (including carbon disulfide, carbonyl sulfide and hydrogen sulfide), polychlorinated biphenyls (PCBs), or other toxic, reactive, combustible, or corrosive contaminants, materials; or substances in the water, air, soil, or building materials. The Inspector is not liable for injury, health risks, or damage caused or contributed to by these conditions.

If the Client wishes to have an inspection for any specific health or environmental condition, that must be covered by a separate addendum to this Agreement.

In addition to the above limitations on the scope of services, the Inspection will not include any engineering or architectural analysis. The report will not offer any opinion about the adequacy of the structural systems and components of the Property.

**POOL AND SPA:** For any pool, spa, or hot tub meeting the requirements of Cal. Health & Safety Code §115921, the Inspector will conduct a non-invasive visual inspection of the readily accessible safety features required by Cal. Health & Safety Code §115922.

**RE-INSPECTION OF COMPONENTS:** In the event that the Inspector is asked by the Client to re-inspect a component or condition that has been repaired, the Inspector's scope of re-inspection will be limited to the components or conditions identified. The Inspector will not be responsible for any changed conditions in other components or conditions since the

date of the original inspection. Any re-inspection of repaired components or conditions will not determine if the repair is adequate, proper, or compliant with current building codes. Any re-inspection will only determine if visually identifiable deficiencies still exist.

#### LIMITATION OF LIABILITY

##### THE FOLLOWING CLAUSE LIMITS THE LIABILITY OF THE INSPECTOR – PLEASE READ CAREFULLY

THE CLIENT AGREES AND UNDERSTANDS THAT THE INSPECTOR IS NOT AN INSURER AND IS NOT WARRANTING OR GUARANTEEING THE ADEQUACY, PERFORMANCE, OR LIFE EXPECTANCY OF ANY STRUCTURE, ITEM, COMPONENT, OR SYSTEM OF THE PROPERTY. THE CLIENT FURTHER AGREES THAT, IF THE INSPECTOR OR ANY OF THE INSPECTOR'S AGENTS, EMPLOYEES, SUBCONTRACTORS, OFFICERS, OR SHAREHOLDERS ARE FOUND LIABLE FOR ANY LOSS OR DAMAGE DUE TO NEGLIGENCE OR THE FAILURE TO PERFORM THE INSPECTOR'S OBLIGATIONS IN THIS AGREEMENT, INCLUDING THE IMPROPER OR NEGLIGENT PERFORMANCE OF THE INSPECTION OR THE IMPROPER OR NEGLIGENT REPORTING OF CONDITIONS OF THE PROPERTY, **THE INSPECTOR'S MAXIMUM LIABILITY SHALL BE LIMITED TO TWICE THE AMOUNT OF THE PAID INSPECTION FEE.** THIS LIMITATION SHALL NOT APPLY TO ANY DAMAGES SPECIFICALLY ALLOWED BY STATUTE.

THIS LIMITATION OF LIABILITY SPECIFICALLY COVERS LIABILITY FOR: DAMAGED PROPERTY, LOSS OF USE OF THE PROPERTY, LOST PROFITS, CONSEQUENTIAL DAMAGES, SPECIAL DAMAGES, INCIDENTAL DAMAGES, GOVERNMENTAL FINES AND CHARGES, PUNITIVE DAMAGES, ATTORNEY'S FEES, AND COURT COSTS.

AT THE CLIENT'S OPTION, A **COMPREHENSIVE INSPECTION** WITHOUT LIMITATION OF LIABILITY IS AVAILABLE. A **COMPREHENSIVE INSPECTION** INCLUDES A CONTRACTOR, ENGINEER, AND ARCHITECT REVIEWING THE PROPERTY FOR A MINIMUM FEE OF \$2,500 (REQUIRES QUOTE AND ADDITIONAL SCHEDULING). A **COMPREHENSIVE INSPECTION** REQUIRES A SEPARATE CONTRACT.

THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO ANY DAMAGES CAUSED BY THE GROSS NEGLIGENCE OF THE INSPECTOR IN THE PERFORMANCE OF THE INSPECTOR'S OBLIGATIONS IN THIS AGREEMENT.

#### RESOLUTION OF DISPUTES

Any controversy or claim arising out of or relating to this Agreement shall be resolved through **Small Claims Court** (or similar court of limited monetary jurisdiction) in the jurisdiction applicable to this Agreement. In the event that the amount in dispute exceeds the jurisdiction of the applicable **Small Claims Court**, the dispute shall be settled by **binding arbitration** administered by Construction Dispute Resolution Services, or if unavailable, Resolute Systems, before a single arbitrator using its Commercial Arbitration Rules. The arbitrator shall have at least three years of knowledge and experience in the home inspection industry or similar knowledge and experience in construction. Each party agrees to pay its own costs of arbitration.

Any legal action or proceeding shall be brought in the County in which the Property is located.

#### ENFORCEMENT FEES AND COSTS

Any party failing to follow the RESOLUTION OF DISPUTES process identified above, shall be **liable for all fees and costs** associated with compelling or enforcing compliance with the RESOLUTION OF DISPUTES process.

#### TIME TO INITIATE ACTION

Any action regarding or arising from the condition of the Property and the Inspection and/or the written report must be filed and initiated by the Client no later than **one (1) year** after the Client discovers or, through the exercise of reasonable care, could have discovered, the conditions giving rise to the claim, and in no event no later than **two (2) years** from the date of the Inspection. Otherwise, the claim will be barred. If the matter is in arbitration, the arbitrator will be bound by the terms of this paragraph as a limitation on the arbitrator's ability to render an award in favor of the Client.

**NO WARRANTIES OR GUARANTEES**

The Inspection and the written report are not intended, nor shall they be used or treated by the Client or anyone else, as a guarantee or warranty expressed or implied, regarding the adequacy, performance, or condition of any aspect of the Property. The Client acknowledges and agrees that the Inspector is not an insurer of any inspected or non-inspected conditions of the Property.

**RELIANCE BY THIRD PARTIES**

The Client agrees and understands that the Inspection report provided to the Client under this Agreement is solely for the Client’s exclusive use in evaluating the physical condition of the property. No representation is made by the Inspector as to the value of the Property.

If anyone other than the Client relies upon the inspection report, that person agrees to be bound by all of the terms and conditions in this Agreement.

**ENTIRE AGREEMENT AND SEVERABILITY OF PROVISIONS**

This Agreement contains the entire Agreement between the Client and the Inspector. This document supersedes any and all representations, both oral and written, among the parties. This Agreement may be modified, altered, or amended only in writing and having been signed by both the parties. Any provision of this Agreement which proves to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision of this Agreement, and all such other provisions shall remain in full force and effect.

**You may not assign this Agreement. If there is more than one Client, you are signing on behalf of all of them and you represent that you are authorized to do so for all Clients and/or intended beneficiaries. The provisions of this Agreement will be binding upon any party that takes title to the Property with the Client or claims title to the Property through the Client.**

**THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES**

Client:

Inspector:

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Dated: \_\_\_\_\_

Dated: \_\_\_\_\_