

# PHASE INSPECTION ORDER AGREEMENT

-- PLEASE CAREFULLY READ BOTH PAGES OF THIS AGREEMENT BEFORE SIGNING --

This New Construction Inspection Order Agreement ("Agreement") represents a binding contract between \_\_\_\_\_ ("Client") and \_\_\_\_\_ ("Company"), a local independently owned and operated business, for a phase inspection of the dwelling located at \_\_\_\_\_.

**A. PURPOSE AND SCOPE OF HOME INSPECTION.** With this Agreement, Client is purchasing, and Company is agreeing to perform, a Limited Time/Scope In-Progress or Phase Inspection ("Inspection") of the principal dwelling on the referenced property ("Dwelling") – a new house under construction. The purpose of this Inspection is to identify visual material defects of the major structural, mechanical, electrical and plumbing elements/systems and related components ("Elements") at the time of Inspection in accordance with customary practice or recognized inspection standards. Upon completion of each site visit, the Company will render an Inspection Report ("Report") outlining the condition of inspected Elements as of the time of Inspection. **Note: This Inspection is not technically exhaustive. Carefully review the Limitations and Exclusions listed under the Additional Terms and Conditions on page 2.**

**B. INSPECTION PHASES:** The Inspection shall consist of multiple visits to the site upon completion or as close as possible as construction activity and scheduling permits. A minimum of [\_\_\_\_\_] site visits will be performed, approximately at the following stages of construction, (subject to scheduling issues):

- 1. Foundation and Footing.** Visual inspection of exposed footing and foundation prior to backfill. This typically includes observation of drain tile, moisture barriers and other components if installed and readily visible.
- 2. Framing and Rough Mechanical.** Visual pre-drywall inspection of exposed rough framing and rough-in electrical, plumbing and mechanical components. This Inspection is normally conducted when all or a majority of major framing components have been installed and sheathed and the basic piping, electrical wiring, and heating and cooling distribution lines have been installed.
- 3. Enclosed Structure.** Visual inspection of basic enclosed structure with rough finish work and basic electrical, plumbing and mechanical components/equipment installed. This typically includes completed portions of siding, roofing, insulation, drywall, electrical, plumbing and mechanical systems/equipment and installed appurtenances such as decks, stairs, and fireplaces, prior to the placement of insulation.
- 4. Final.** This inspection will consist of a standard limited time-scope home inspection of the completed structure when ready for occupancy. This inspection will be performed pursuant to recognized home inspection industry standards and include a visual assessment of the conditions of installed and readily accessible building Elements, including an operational check of major electrical, plumbing and mechanical equipment (HVAC).

**C. COMPANY LIABILITY.** Due to the nature of this Inspection, it is difficult to foresee or determine (at the time this Agreement is formed) potential damages in the event of negligence, breach of this Agreement, or otherwise. Thus, if the Company fails to conduct the Inspection as provided herein, the Company's liability (and that of its employees, assigns, agents etc.) for any and all claims related thereto, including, among others, those alleging negligence or breach of contract, is **limited to direct loss/damages to a maximum value of the fee paid for the Inspection.** The Company assumes no responsibility or liability for any bodily injury or health condition related to the Inspection or the property. Further, there will be no recovery for consequential or punitive damages or attorneys' fees. The Client understands that the Inspection without this limitation of liability would have to be more technically exhaustive, would likely require the services of specialists, and would cost substantially more than the fee for this Inspection. **If interested in extending the**

**scope of the Company's liability, please discuss other inspection options with the Company (see Section D. for examples).**

**NEITHER THE INSPECTION NOR REPORT CONSTITUTES A WARRANTY, AN INSURANCE POLICY, OR A GUARANTEE OF ANY KIND.**

**D. INSPECTION SERVICES OPTIONS.** There are other inspection services that may be of value in connection with the purchase of a new home. **Be advised that these inspection service options are NOT included with the Phase Inspection and cannot be executed with this Agreement.** These additional service options may include:

**1. ANCILLARY/RELATED INSPECTION SERVICES.** The Company, at its option, may be able to provide or arrange for additional inspections of house elements or other special inspection, testing, or evaluation services. If interested in information regarding any such service, please contact the Company for information on availability, fees, and the scope of additional services. **Request an Ancillary Service Agreement for more information about services that may be available.**

**2. EXTENDED TIME/SCOPE INSPECTION.** An Extended Time /Scope Inspection is available for Clients preferring **more detail than the Phase Inspection regarding the condition of the Dwelling and extends the Company's liability for negligence beyond that as provided in Section C. of this Agreement.**

**3. ADDITIONAL/FOLLOW-UP INSPECTIONS.** If interested in an inspection of any area or element not included in the Phase Inspection or a reinspection of any inaccessible or concealed Element (that could not be inspected at the time of the original Inspection(s), please notify the Company.

Fees for these or any other requested inspection services will be charged at the Company's prevailing rate schedule and can only be executed with a separate order agreement.

**E. FEES AND REPORT DISTRIBUTION.** The Company will provide a Report to the Client, or Client's authorized representative. Distribution of copies of the Report(s) to other parties will only be at Client's direction, or as otherwise specified by law. **Client's receipt of the Report, or reliance on it, will constitute acceptance of all Terms and Conditions of this Agreement.**

**PHASE INSPECTION FEE:** \$ \_\_\_\_\_.

All fees are due at the time of Inspection. All fees must be paid prior to release of the final report. This is the fee for the Phase Inspection requested with this Order Agreement. Additional site visits and related reports/ consultation beyond the minimum number of site visits specified in this agreement will be charged at the Company's standard hourly rate.

Payment is/will be made by:

Check  Cash / Money Order  Credit Card: \_\_\_\_\_

Name on Card: \_\_\_\_\_

Card Number: \_\_\_\_\_ Exp. Date: \_\_\_\_\_

## ACKNOWLEDGMENT

**If the Client deems any of the Agreement's Terms and Conditions unacceptable, including the Company's Liability provision (Section C. above), Client may decline Company's services prior to the first site inspection without any further obligation on the part of either party.**

By signing this Agreement, Client: (a) warrants that this Agreement has been read carefully; (b) agrees that the Terms and Conditions of this Agreement are binding; and (c) acknowledges that any questions regarding the scope of the Phase Inspection or the Terms and Conditions of this Agreement have been answered to Client's satisfaction.

Client: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Company Representative: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(Facsimile signatures shall be deemed original)

## ADDITIONAL TERMS AND CONDITIONS

**1. INSPECTION LIMITATIONS/EXCLUSIONS.** Each phase of the Inspection and associated Reports are limited to specified visible and readily accessible Elements of the Dwelling at the time of Inspection. The Inspection will not be invasive or technically exhaustive, and cannot detect latent conditions or concealed defects, such as soil-related problems, drain-line blockage, or structural damage and other conditions that might exist within or behind walls, ceilings, floors, or in other hidden, obstructed, or inaccessible areas. All conditions and Elements are subject to change. It is not possible to determine or predict water leakage, moisture problems, or other conditions that might be affected by weather conditions, environmental factors, lack of maintenance, or lifestyles. A Phase Inspection does not include or address any items or issues that do not come within the above definition. By way of example only, a Phase Inspection **does not** include inspection or evaluation for: code compliance; environmental pollutants or hazards; biological contaminants; **geological or soil conditions, including earth movement caused by earthquakes, landslides, soil expansion or shrinkage, or subsidence (whether due to mines, changes in water levels or other factors); structural design or adequacy;** wood-destroying insects or organisms; insect or pest infestation; identification or verification of physical composition of elements; **adequacy or energy efficiency of any house element, system, or component;** quality or quantity of water supply; well yield or capacity; pet/pest damage/odors; buried elements; swimming pools/spas; hot tubs; lawn irrigation; any unique or nonstandard feature of the house; or any specialized service or evaluation, unless specifically reported otherwise. Furthermore, a Phase Inspection does not address or make any representation as to Element longevity, cosmetic issues, property value, the advisability or inadvisability of the Dwelling purchase, compliance with local laws, or whether the property meets any requirements for insurance coverage or lending eligibility.

**2. MOLD AND ENVIRONMENTAL/HEALTH ISSUES.** The Client specifically acknowledges that a Phase Inspection **is not intended to detect, identify, or disclose the presence or absence of, or potential for, any environmental or biological contaminants, pollutants, concerns or hazards,** including, but not limited to fungi (including molds and mildew), allergens, bacteria, asbestos, radon, lead, formaldehyde, carbon monoxide, and other potentially toxic or hazardous substances in the air, water, soil or materials. The Company assumes no responsibility for any loss or damages related to actual, alleged or threatened contamination or other effects caused by such elements, whether property-related or health-related, or the cost to test, remove, clean-up or detoxify the property in any way. To test or evaluate for mold and/or other biological and environmental concerns, independent evaluation by a specialist(s) is normally required.

**3. CLIENT OBLIGATIONS.** Client is responsible for notifying Company of completion of respective phases of construction; Inspections will be performed upon notification from Client or the builder. Reasonable notice (at least 48 hours) must be given to schedule the Inspection appropriately. If construction is not completed to the level represented, it may not be possible to complete the full scope of the Inspection without additional visits to the site (beyond the agreed to minimum number). Additional site visits and inspections can be performed at Client's request and expense. Client acknowledges that being present during the Inspection process is at Client's own risk. Additionally, Client acknowledges the following:

**a. Report Follow-Up.** Client agrees that the Report (including any addenda or attachments) will be read in its entirety, and the Client will be considered on notice of all findings and recommendations. It is understood that if Client has any questions or concerns regarding any aspect of the Report, or regarding any discovered defect after Client's final (pre-closing) inspection (see subsection d. below), Client will immediately notify Company in writing before making any final decisions and/or undertaking any expense or commitment. Client agrees to use due diligence to follow-up with specialists and/or builder on any conditions, defects, or recommendations in the Report. Client's failure to do so may constitute negligence.

**b. Builder Disclosure/Responsibilities/Warranties.** The Client agrees to obtain all pertinent information from the builder regarding disclosures of known concerns related to the structure, site or surrounding areas or conditions. Client agrees to follow-up on any questionable areas prior to the closing of title. Client understands that the Company neither warrants nor guarantees the present or future condition of the Dwelling. All available warranties should be obtained from the builder or appropriate contractors. Client understands that a new house or one that has not been lived in for a period of time is especially susceptible to latent conditions or defects that may not surface for some time. When inherent deficiencies exist, especially in the case of the structure (such as settlement or inadequate design), it may take a year or more for the consequential effects to become apparent. Accordingly, it is specifically agreed that any concern (structural or otherwise) that may develop or become apparent in the future will be pursued with the builder and/or any homeowner warranty program. Under no circumstances does the Company or the inspector assume any liability for present or future deficiencies.

**c. Local/Municipal Inspections.** Client agrees to ensure that all required building permits and/or inspections have been completed and approved by local building officials prior to closing. Note: This is not a Certificate of Occupancy inspection, as local building officials must supply this information.

**d. Final Inspection.** Client agrees to perform a final pre-closing inspection. If this final inspection is not performed, the Company is relieved of any liability concerning any defects such inspection would have revealed. For an additional fee, the Company can perform this pre-closing inspection.

**e. Notice of Claims.** The written Report(s) will be the report of record. Should a concern or dispute arise over the condition of an inspected Element after closing of title, the Client agrees to notify the Company in writing within ten (10) business days of discovery and to provide the Company with the opportunity to reinspect or otherwise document any concerns **prior to** the commencement of any repair or replacement work. Failure to provide such written notification and access for reinspection will release the Company of any and all liability concerning the Inspection.

**4. ONE (1) YEAR LIMITATION PERIOD AND DISPUTE RESOLUTION.** Because the condition of a Dwelling is constantly changing and an Inspection is a temporal assessment of the Dwelling's condition as of the time of Inspection, **no claim or legal action, including any based in tort or contract or otherwise, may be commenced against the Company after one year from the date of the Inspection.** Failure to bring such an action within this time period shall be a complete bar to any such action and a full and complete waiver of any rights, or claims based thereon. **This time limitation period may be shorter than provided by state/provincial law.** Should the Client initiate legal action against the Company and not fully prevail in such action and/or it is determined that the Report apprised Client of the condition that is the subject of the suit, the Client will be responsible for all attorneys' fees and related costs associated with the Company's defense of the matter. In addition, if the Client or spouse is an attorney, it is agreed and understood that all claims arising out of this Agreement and/or any Services provided shall be submitted for binding arbitration before a recognized, mutually agreeable arbitration association, at the Client's expense. The parties shall be bound by the arbitrator's determination and expressly waive other legal remedies.

**5. NATURE OF THE FRANCHISE RELATIONSHIP.** The Company providing this Inspection and associated Report(s) is a franchisee of HMA Franchise Systems, Inc. ("Franchisor"). As a franchisee, the **Company is an independently owned and operated business** that has a license to use the HouseMaster® name, marks, and certain methods. In retaining the Company to conduct an Inspection, Client acknowledges that the Franchisor does not control this Company's day-to-day activities, is not involved in conducting Inspections or other Services provided by the Company, and is in no way responsible for the Company's actions. The Company is solely responsible for addressing any issues or concerns that may develop in connection with the Inspection. Should the Franchisor be improperly implicated in any claim brought by Client, Client will be responsible for any and all defense costs and attorneys' fees associated therewith.

**6. CONFIDENTIALITY AND EXCLUSIVE USE.** The Inspection is performed and the Report(s) (including, when applicable, any addenda and test results) is prepared for the exclusive use and benefit of the Client unless otherwise specified by law. Reports are non-transferable and may not be used or relied upon by other parties without the written consent of both the Client and Company.

**7. SEVERABILITY AND ENTIRE AGREEMENT.** The parties agree that all provisions in this Agreement are enforceable to the extent provided by law. Should a court determine that any provision(s) in this Agreement is void, voidable or unenforceable due to a conflict with local law or otherwise, the remaining portions shall remain in full force and effect. Client expressly agrees that this Agreement and the Report, along with any addenda or attachments, contain the entire understanding between the parties. This Agreement supersedes any and all representations or discussions, **whether oral or written**, relating to the subject matter of this Agreement. This Agreement may be modified, altered or amended only if agreed to in writing and signed by the parties.

**8. COMPANY RELATIONSHIPS/THIRD PARTY PROVIDERS.** The Company may have an affiliation with third-party service providers ("TPSP") in order to offer value-added services to its Clients. The Company may receive compensation for such services. The Company may also arrange for these TPSP to send literature or make post-inspection contact with the Company's Clients. If Client does not wish to receive literature from or be contacted by a TPSP, Client must notify the Company.