

**RESIDENTIAL PROPERTY INSPECTION AGREEMENT**  
**JAY FISCHMAN, P. E. #44735 – FIRM REGISTRATION #F-767**

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CLIENT:

INSPECTION FEE: \$

PROPERTY ADDRESS:

DATE & TIME:

**PURPOSE:** The above named Client requests a limited visual inspection of the above subject property to be conducted by **JAY FISCHMAN, P.E.** The purpose of the inspection is to inform the client of visually observable major deficiencies in the condition of the inspected systems and items in the subject property at the time of the inspection. The information provided by this inspection may help reduce, but not eliminate the risks associated with the purchase of this property. **It is not possible for this non-invasive inspection to identify all deficiencies.**

Client represents and warrants that client has secured all approvals necessary for Jay Fischman's entrance onto the subject property for the purpose of conducting the inspection. Client agrees to carefully read the entire inspection report (hereinafter called report) when received and will promptly call Jay Fischman with any questions client may have. Client and Jay Fischman understand that they are bound by all terms of this agreement.

**FEE:** Client agrees to pay the fee stated above for the performance of the inspection. The fee amount shall be paid in full at the end of the inspection. Should client fail to pay the agreed upon fee, Client shall be responsible for paying any and all fees associated with collection, including but not limited to attorney's fees and costs. The parties agree that the fee agreed to herein is not contingent on the reporting of any specific, predetermined condition of the subject property. Jay Fischman has not and will not accept a fee or other valuable consideration in this transaction from any person other than the client. Jay Fischman has not and will not pay any portion of the fee received herein to any participant in this real estate transaction. The fee paid to Jay Fischman is for inspection services only and is unrelated to the value of any item, component or system inspected.

**SCOPE:** The inspection to be performed for client is a non-invasive visual examination of the systems and items of the subject property. Although part of this inspection is based on certain codes, **this is not a code compliance inspection.** This inspection does not cover items or conditions that are not apparent visually or those that may be discovered only by invasive/destructive methods. Since all materials and equipment are subject to deterioration and wear over time, no prediction of future conditions can be made. Major visible defects as they exist on the date of the inspection will be noted in the report, which will be prepared by Jay Fischman after the inspection. **The inspection services to be provided are based on the "Standards of Practice" as found in the Texas Civil Statutes and Policy Advisory 09-98-A published by the Texas Board of Professional Engineers, for Level A residential foundation performance evaluation.** Due to client's particular needs and the condition of the property, some variation in scope, order of reporting and extent of investigation may be deemed necessary by Jay Fischman. The inspection and report thereon is not a warranty, guarantee, insurance policy, or substitute for real estate transfer disclosures, warranties, or a Seller's Disclosure Notice, which may be required by law.

- o The exterior walls will be visually examined for evidence of wood/trim damage, water penetration, damaged bricks, damaged cladding materials and broken windows. Observation of the actual drainage conditions during heavy rainfall would be necessary to determine if the existing drainage conditions are satisfactory. Nevertheless, unusual drainage conditions around the house, particularly the soil level around the perimeter of the house will be noted.
- o Except for certain 1-story structures, the roof will be examined from ground level with binoculars. Shingles will not be lifted to examine nails. No attempt will be made to determine the remaining service life of the roof covering. Installation techniques, adherence to approved installation standards and house orientation can considerably affect the useful life of any particular roof covering material. Minor leaks may not be identifiable unless there is significant rainfall during the inspection.
- o Due to reduced head clearance, structural obstructions, and safety considerations, the attic observations will be made with a high intensity light from the access, furnace, and decked passageway areas only. No attempt will be made to crawl or walk over undecked floor areas. Determination of the condition of wood structural members under attic insulation or in other areas not readily observable is not possible. Except for very obvious conditions, evaluation of the sizing and spacing of the various framing members and adherence to current approved span tables are not part of this inspection.
- o The interior surfaces of the walls, ceilings and floors will be examined as related to structural performance and water penetration. Determination of the condition of hidden wood structural members in the wall and ceiling cavities, under the attic insulation or in areas not readily observable, is not possible in this inspection. Except as otherwise stated in the report, no opinion as to the condition of these structural members or of the floor coverings is either intended or implied. Any mechanically or adhesive affixed floor carpeting will not be

**CLIENT - DATE**

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disturbed and any large area rugs will not be moved to visually reveal the floors. Note that most houses will not resist the horizontal wind driven rain conditions that periodically occur in the Houston metropolitan area.

- o The Level A foundation performance evaluation (Policy Advisory 09-98-A – Texas Board of Professional Engineers) is a report of first impression conclusions and/or recommendations, that includes interviewing homeowner and/or client if possible, documenting visual observations personally made by the engineer during a physical walk-through and describing analysis used to arrive at any performance conclusion. Higher level evaluations that include geotechnical reports, slab elevation measurements that are superimposed on floor plans, construction drawings, invasive/non-invasive plumbing tests, materials tests and/or other invasive techniques are not included.
- o The heating/cooling equipment and built-in kitchen appliances will be operated within normal modes and operating ranges. Disassembly of the heating/cooling equipment is not included and can only be made by an HVAC technician. The adequacy or efficiency of the cooling and heating systems, proper air distribution, refrigerant line sizing and refrigerant pressure are not within the scope of this inspection.
- o The sinks, faucets, tubs/showers, and visible piping will be examined for functional drainage, leaks and adequate water flow. The measurement of the water pressure will be made at one of the exterior spigots using a water pressure gauge. The commodes will be examined for adequate flushing, evidence of damage, proper water level controls and firm bolting to the floor. Main, branch, or icemaker water shut-off valves will not be operated. No comment will be made regarding buried sewer, drain, water or gas lines, or the condition or efficacy of any installed water filters or softeners. Invasive sewer line tests can only be performed by licensed plumbers.
- o The interior of the breaker panel will be visually examined, but breakers will not be removed or operated. Unobstructed wall receptacles will be tested with a plug-in type tester. Internal wiring of any air conditioners, electric furnaces, dishwashers, electric ovens and the wiring methods of ancillary systems such as swimming pool or spa equipment and lighting, intercom, landscape lighting, cable TV, telephone, etc., are not within the scope of this inspection. Evaluations of the service capacity, adequacy of wiring, voltage drop across circuits, routing or identification of circuits, operation of any photocell controlled light fixtures or any installed automatic lighting systems, or discussion of conflicts of code interpretation, are not included. Arc-fault circuit interrupters will not be tripped in occupied houses.

**GENERAL EXCLUSIONS:** This inspection is limited to the real property and does not include personal property unless so indicated in the report. Jay Fischman will not inspect or report on systems and items that are not included or that are specifically excluded in the "Standards of Practice" unless otherwise agreed to in writing and signed by the parties. No representation is made as to how long any equipment will continue to function. Maintenance conditions may be discussed, but they are not a part of this inspection. The inspection to be performed is a visual inspection only. Latent and concealed defects and deficiencies are excluded from the inspection. Jay Fischman shall have no liability for conditions that are concealed from view or inaccessible to Jay Fischman. A system or component is not accessible if inspection requires moving personal property, dismantling, destructive measures, or any action that will, in the opinion of Jay Fischman, may likely involve risk to persons or property. Anything not readily observable because it is concealed or inaccessible due to obstructions including, but not limited to, floor coverings, suspended ceiling tiles, insulation, furniture or other personal property, soil, vegetation, water, ice or snow cannot be inspected. Jay Fischman is not required to move or disturb such items in order to diminish or eliminate the obstruction.

**SPECIFIC EXCLUSIONS:**

- o Past or present violations of codes, ordinances, deed restrictions or manufacturer installation instructions.
- o Geological stability, soil tests, ground conditions, the location of any geological fault relative to the location of this site, or the determination if site is in any designated flood hazard area.
- o Underground evaluation of water or sewer lines, septic tanks, sewage disposal systems or water pumping systems.
- o Determination of the presence of termites, other wood destroying insects, wood rot and/or hidden structural parasitic damage and the extent of any such damage can only be made by a Texas Structural Pest Control Licensee. This engineer is not so licensed.
- o Determination of the presence of asbestos materials or air-borne fibers, radon gas, lead in water/paint, mercury, formaldehyde, bacteria, mold, fungi, electromagnetic fields/radiation, contaminated water or surface/subsurface soils, hazards associated with Chinese Drywall or other potential contaminants and environmental hazards.
- o Bioaerosols are airborne "biological" agents which include fungi, dander, spores, pollen, insect parts, insect feces, bacteria and viruses. Intrusive, moisture and/or Indoor Air Quality (IAQ) tests for these agents are specifically excluded from the scope of this inspection.
- o Determination of the operational capacity, efficiency, quality, durability, expected life, value, insurability, future performance and/or suitability for a particular use of any part, component, material or system inspected.
- o Determination that all safety hazards have been identified.
- o Determination of absolute structural integrity. This is not possible without an invasive/destructive evaluation.
- o The fire resistant qualities of any part of the structure or equipment installed within the structure.
- o The evaluation of acoustical or other nuisance characteristics of any system or component in the structure.
- o Product Safety Recalls by various manufacturers of appliances and other residential equipment. The following web site provides useful recall information. [www.recalls.gov](http://www.recalls.gov)

- o Estimates of repair on this property. I do not provide repair services and the opinions expressed in the report are independent of the repair process. This engineer shall not be responsible for the means, methods, techniques, procedures or safety precautions followed or neglected by any contractor or worker in connection with any recommended corrective action for deficiencies found.

**PROFESSIONAL ENGINEER:** Jay Fischman is licensed as a Registered Professional Engineer in the State of Texas. Client understands that Jay Fischman is knowledgeable in a variety of areas, but is providing generalist services and does not hold himself as an expert in all areas. A preliminary generalist inspection and report is an unbiased opinion, based upon the experience of the individual inspector. Jay Fischman is not an insurer or guarantor against defects in the systems and items inspected. If Jay Fischman recommends consulting specialized experts for further evaluation or repair, it is up to the Client, at the Client's expense, to proceed with further inspections or evaluations with experts as selected by Client. Client agrees to consult with an appropriate specialist on any item noted in need of repair, replacement of further evaluation prior to closing. Jay Fischman does not provide or perform repair services.

**LIMITED WARRANTY:** CLIENT ACKNOWLEDGES THAT JAY FISCHMAN WARRANTS ONLY THAT THE INSPECTION WILL BE PERFORMED IN ACCORDANCE WITH THE SCOPE HEREIN AND THE INSPECTION REPORT. THIS IS A LIMITED AND NON-TRANSFERABLE WARRANTY AND IS THE ONLY WARRANTY GIVEN BY JAY FISCHMAN. JAY FISCHMAN MAKES AND CLIENT RECEIVES NO OTHER WARRANTY, EXPRESSED OR IMPLIED. ALL OTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED AND WAIVED BY CLIENT. ADDITIONALLY, JAY FISCHMAN SHALL NOT AND DOES NOT AGREE TO BE RESPONSIBLE OR LIABLE FOR ANY DECISION BY CLIENT WHETHER OR NOT TO PURCHASE THE PROPERTY INSPECTED OR WHETHER OR NOT TO MAKE ANY REPAIRS TO THE PROPERTY, COMPONENTS OR SYSTEMS INSPECTED.

**LIMITATION OF LIABILITY:** In the event Jay Fischman fails to fulfill the obligations under this agreement, Client's exclusive remedy at law or in equity against Jay Fischman is limited to a maximum recovery of damages equal to the inspection fee paid herein. This limitation of liability applies to anyone, including Client, who is damaged or has to pay expenses of any kind, including attorney fees and cost, because of mistakes or omissions by Jay Fischman in this inspection or report. Client assumes the risk of losses greater than the refund of the fee paid herein. Client acknowledges that this limitation of liability is reasonable in view of the relatively small fee charged for the inspection when compared with the potential of exposure that Jay Fischman might otherwise incur in the absence of such limitation of liability.

**CONFIDENTIALITY OF REPORT:** The report is confidential and is for the sole and exclusive private use of the Client. It is not to be copied or disseminated to any other party without the express written consent of Jay Fischman. Use of all information contained in the report is specifically restricted to the transaction for which the inspection was performed. Use of or reliance upon the report by other parties, or for other transactions, is strictly prohibited. No third party shall have any right arising from this contract or the report and may not rely on the report. In consideration of the furnishing of the report, the Client agrees to indemnify, defend, and hold harmless Jay Fischman for all costs, expenses, legal fees, awards, settlements, and judgments in any legal proceeding brought by any third party who claims that he/she relied on representations made in such report and was damaged thereby. Client's request that inspector release copies of the report to any third party or Client's release of copies of the report to any third party, shall be at Client's risk with respect to the contents of this paragraph.

**DISCLOSURE:** Client requests and authorizes Jay Fischman to disclose information and provide a copy of the report to Client's real estate agent. Jay Fischman authorizes Client to provide a copy of the report to the seller, the lender and other parties intimate to this transaction. Permission is granted to Jay Fischman to discuss report findings with real estate agents, specialists, counselors, or repair persons for the sake of clarification, if necessary. Client is not authorized to sell or alter report. Any such changes shall render the entire report null and void.

**DISPUTE RESOLUTION. Notice:** Client understands and agrees that any claim for failure to accurately report the major visible defects of the subject property, as limited herein, shall be made in writing and reported to Jay Fischman **within 10 business days of discovery**. Jay Fischman agrees to respond promptly to any legitimate complaint and to re-inspect the portion of the property relating to the claimed condition by requesting permission to do so within 15 days of Client's written notice of the claimed condition. Client further agrees that Client and its agents, employees or independent contractors will make no alterations, repairs or replacements to the claimed condition prior to a re-inspection by Jay Fischman. **Client understands and agrees that any failure to timely notify Jay Fischman and allow him adequate time to investigate and re-inspect as stated above shall constitute a complete bar and waiver of any and all claims Client may have against Jay Fischman related to the alleged act, omission, or claimed condition.**

**CERTIFICATE OF MERIT:** The client shall make no claim of professional negligence unless the client has first provided Jay Fischman with a written certification executed by an independent Texas Professional Engineer currently practicing in the area of house inspections in the Greater Houston Area for home buyers. The certification shall: a) contain the name and license number of the certifier; b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for a Texas Professional Engineer performing

professional services under similar circumstances; and c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. This certificate shall be provided to Jay Fischman not less than thirty (30) days prior to the presentation of any claim, or the institution of any arbitration or legal proceeding. This certificate of merit clause will take precedence over any existing state law in force at the time of the claim or demand for arbitration.

**Mediation:**

Client agrees that if a dispute or claim arises from this agreement, the inspection, or the report, and if the dispute cannot be settled through direct discussions, the parties agree to endeavor first to settle the dispute by mediation before resorting to arbitration. If the mediation does not result in a settlement of the dispute, then any unresolved controversy shall be submitted to arbitration, as set forth below. The parties shall share equally the costs of the mediator.

**Arbitration:**

Any and all disputes, not resolved by direct discussions or mediation, concerning the interpretation of this Agreement or arising from the inspection and report shall be resolved by final, binding, non-appealable arbitration conducted in Harris County, Texas in accordance with the rules of the American Arbitration Association, except that the parties shall mutually agree upon an Arbitrator who is familiar with the real estate inspection industry and the Standards of Practice. At the arbitration the parties may adjudicate all claims and issues, as provided for or limited herein, that could have been raised before a court of law, including but not limited to, lawful attorneys' fees and costs, where provided by statute. The decision of the Arbitrator shall be final and binding. The parties shall share equally the cost of the arbitrator. Either party may demand arbitration by written notice to the others.

**STATUTE OF LIMITATIONS:** The parties agree that no claim, demand, or action, whether sounding in contract or in tort, may be brought to recover damages against Jay Fischman, or its officers, agents, or employees **more than two (2) years after the date of the inspection.** Time is expressly of the essence herein.

**ACCEPTANCE OF REPORT:** The report to be prepared by Jay Fischman shall be considered the final and exclusive findings regarding the inspection of the property. Client shall not rely on any oral statements made by Jay Fischman prior to issuance of the printed report.

**SEVERABILITY:** 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 and effect between the parties to the fullest extent possible.

**CHOICE OF LAW AND VENUE:** This agreement shall be construed and enforced in accordance with the laws of the State of Texas, and venue shall be in Harris County, Texas.

**ACCEPTANCE OF THIS AGREEMENT:** This agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors, assigns, agents, and representatives of any kind whatsoever. If Client is married, Client represents that this obligation is a family obligation incurred in the interest of family. With regard to words used herein, the singular shall include the plural and the plural shall include the singular where appropriate. This agreement constitutes the entire integrated agreement between the parties pertaining to the subject matter hereof and may be modified only by a written agreement signed by all of the parties. This agreement supersedes any and all representations or discussions, whether oral or written, if any, among the parties relating to the subject matter of this agreement. No oral agreements, understandings, or representations shall change, modify, or amend any part of this agreement.

**EACH CLIENT HAS READ, UNDERSTANDS AND AGREES TO ALL OF THE ABOVE TERMS & CONDITIONS**

**CLIENT:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**CLIENT:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**JAY FISCHMAN:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**JAY FISCHMAN - P.E. LICENSE #44735 - P.O. BOX 6473 - KINGWOOD, TX 77325-6473 – 281-360-8962**