



SPECIALIZING IN MEDIATION & ARBITRATION & DISPUTE REVIEW BOARDS

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CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC

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## **HOME INSPECTION AGREEMENT TO ARBITRATE**

REVISED 8-01-09

### **BINDING ARBITRATION**

#### **CLIENT INFORMATION**

The parties to this agreement are the Claimants \_\_\_\_\_  
Representing \_\_\_\_\_ Company  
and the Respondents \_\_\_\_\_  
Representing \_\_\_\_\_ Company.

CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC shall be called the "Arbitrator". The Claimants and the Respondents hereinafter shall be referred to as the "Parties".

#### **ENABLING AGREEMENT TO RESOLVE**

The Parties have retained CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC, of Santa Fe, New Mexico to conduct the arbitration procedure for the purpose of settling the dispute between the Parties.

The Parties recognize that this agreement specifies binding arbitration. The Parties will have no choice but to accept the decision of the Arbitrator as the final step in the resolution of this dispute between the Parties. The final award that is rendered by the Arbitrator shall be binding on the Parties and is enforceable in a court of law. The Parties acknowledge that by utilizing binding arbitration, they are waiving their right to utilize the court system to settle their dispute through the litigation process.

The Parties hereby authorize the Arbitrator and CDRS to schedule the arbitration hearing, to establish the rules and procedures under which the hearing will take place and to conduct the hearing according to those rules and procedures. The CDRS "Arbitration Rules and Procedures", "Home Inspection Arbitration Rules and Procedures", and the "Federal Arbitration Act" shall serve as the arbitration rules and procedures that will be followed from the initial filing of the case and during the arbitration hearing and the entire arbitration process.

## **ARBITRATORS' AUTHORITY**

The Arbitrator for this arbitration hearing and CDRS are hereby authorized to:

- i) To review the documents and all written materials provided and to hear the arguments and review the evidence presented by the Parties. The Arbitrator will have the opportunity to question Counsel, the Parties and the witnesses as he/she deems necessary to clarify the matters and in the pursuit of fairness and justice for the Parties.
- ii) To impose such rules of evidence and rules of procedure as he/she deems necessary to maintain an orderly and fair hearing in the pursuit of fairness and justice for the Parties.
- iii) At the conclusion of the evidentiary portion of the hearing, or at any subsequent time, if the Arbitrator so desires, and with the approval of all of the parties, the Arbitrator shall allow the parties to meet privately with the intention of coming to a mutual agreement in a separate action from the arbitration. If a total agreement is reached the arbitration will be considered closed. If a partial agreement is reached, the Arbitrator will render his/her award on the unresolved issues.
- iv) To render an arbitration award within thirty (30) working days of the conclusion of the hearing. The Arbitrator may extend his/her rendering of the final award if he/she needs more time to make a jobsite visit or any other additional procedures that he/she feels is necessary to render a final award. The final award will be rendered not later than thirty (30) days after the conclusion of the hearing. The Parties and the Arbitrator may extend the time frame for rendering the final award if they mutually decide to do so.
- v) To render a final award in which one Party completely prevails over the other Party should the facts so warrant. The Parties also authorize the Arbitrator to make a final award that represents a compromise if the facts so warrant.
- vi) To delay the issuance of the award to the parties if either of the parties have not paid any outstanding balances due to CDRS.

## **LEGAL AND PROFESSIONAL REPRESENTATION**

The Parties acknowledge that they have been advised by the Arbitrator and CDRS that:

- i) They should each have separate legal representation and should consult privately with their respective attorneys for independent, legal advice. This advice may be necessary prior to signing this HOME INSPECTION AGREEMENT TO ARBITRATE or any other documents that may be completed and executed prior to the commencement of the arbitration process or at any time during or after the arbitration hearing.
- ii) Without review and advice by their own independent, legal counsel, they may be giving up legal rights to which they are entitled, or running risks of which they are not aware.
- iii) They should seek independent tax advice from their attorneys or other qualified tax advisors to assess any possible financial or tax consequences related to the issues involved in this arbitration proceeding.
- iv) Legal representation by an attorney is not required at the arbitration proceeding; however, it is advised that the Parties have an attorney present.

## SCOPE

The hearing will encompass all of the claims each of the Parties may have against the other, all such claims being reasonably known to the Parties at this time. The Parties will, at the conclusion of the hearing, after the Arbitrator has rendered a final award, release each other totally from all claims pertaining to the issues covered in this dispute and each shall be stopped from asserting any other claims pertaining to the issues in this dispute in the future.

If other disputed issues materialize during this arbitration process including during the arbitration hearing or after the final award is rendered, the Parties may enter into a separate dispute resolution proceeding. Those new disputed issues may not be added to this arbitration proceeding unless there is a total agreement between the Parties and the Arbitrator to add those items to this arbitration.

## COST OF ARBITRATION

Unless there is a written agreement as to the payment of the arbitration costs, the Parties agree to share the cost of the dispute resolution process equally although personal attorneys and witnesses or specialists are the direct responsibility of each Party and their fees and expenses shall be the responsibility of the individual Parties.

As per special terms for Home Inspection Arbitrations, a \$350.00 non-refundable filing fee shall accompany the *Home Inspection Request for Arbitration Services* and a \$1,000.00 arbitration fee shall accompany this *Home Inspection Agreement*. **Based on the above, a deposit of \$675.00 (1/2 of the \$1,350.00) is due to be paid to CDRS along with this Agreement.** The respondent shall be billed for the other \$675.00 by CDRS unless other payment arrangements have been agreed to by the Parties. Additional fees may need to be charged for excessive travel distances by the arbitrator or for a longer than normal arbitration. A normal arbitration shall last for up to six hours. (Please see the special "Home Inspection Arbitration Fee Schedule" that is posted in the Home Inspection Information Section of the CDRS Website [www.constructiondisputes-cdrs.co](http://www.constructiondisputes-cdrs.co). for compliance services, additional arbitrations or other services and their related fees.)

Prior to the commencement of the arbitration, the Parties may mutually agree to allow the Arbitrator to include, as part of the arbitration award, an allocation of the costs including all of the expenses in the arbitration including attorney's fees and costs and the costs of the witnesses or specialists or other applicable costs and expenses in the rendering of the final award. The Arbitrator may allocate all of the costs relative to the arbitration to one Party or may allocate a portion of the costs to each Party as he/she deems to be appropriate.

## POSTPONEMENT AND/OR CANCELLATION

Upon request by any Party, the Arbitrator shall determine if there is good cause or compelling circumstances that would merit a postponement or cancellation. Non-receipt or the delay of the initial deposit or required documents may be considered a cause for the

Arbitrator or CDRS to postpone or cancel the arbitration. Please refer to the "Fees and Costs" section of the CDRS website for cancellation and postponement fees. Any arbitration that is cancelled or postponed less than 72 hours prior to the scheduled arbitration is subject to an additional \$300.00 fee which is payable by the Party(s) responsible for the cancellation or postponement.

### ACCEPTANCE

By signing below, the Parties and/or their attorneys agree to the terms and conditions of this *Home Inspection Agreement to Arbitrate*.

#### CLAIMENTS:

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

#### RESPONDENTS:

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

#### OTHERS:

By: \_\_\_\_\_  
Signature – Attorney representing the Claimant

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Signature – Attorney representing the Respondent

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_