

With the help of Mr. Trey Copeland, a highly credentialed attorney in construction law, contracts have been created and are now available as a part of your membership.

LEGAL DISCLAIMER

These sample contracts are provided for informational purposes only and should not be relied on as legal advice. Nothing herein constitutes the establishment of an attorney client relationship between you and any attorney involved in the drafting of material included in these sample contracts. The sample contracts cannot and do not address the unique facts and circumstances of your specific situation and should not be relied on for your particular transaction. We make no claims, promises, or guarantees about the accuracy, completeness, or adequacy of any information contained in these sample contracts. Therefore, you should not use the sample contracts without first obtaining the advice of a competent contracts attorney. Finally, nothing contained in these sample contracts should be construed to constitute a recommendation or endorsement of any organization, product, service, law firm or attorney.

WHEREAS, ABC PROPERTIES, LLC, (Contractor) a Mississippi limited liability company _____ (hereinafter called Owner) desire to enter into a Contract for the Renovation and Construction of certain improvements on that certain part and parcel of Real Estate described as or located as _____, more commonly known as _____, City of _____, _____ County, Mississippi (the Property); and

WHEREAS, the aforesaid Contractor and Owner further desire to enter into an agreement regarding the aforesaid Property and to provide for the renovation of certain improvements and construction originally performed by others on the Property; and

WHEREAS, the existing improvements were constructed by others, and the Owners desire to make changes to and renovate same subject to a specific Scope of Work agreed upon by both the Contractor and the Owner, as below defined; and

WHEREAS, Contractor is agreeable to renovate that part of the Property that has been constructed by “others”, under certain specific conditions, as set forth herein more fully; and

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that upon the following terms, conditions and consideration aforesaid, the Contractor and Owner agree as follows (hereinafter The Agreement):

1. The Project: Contractor agrees to perform remodeling work of that certain residential dwelling-house, which was originally constructed by “others”, not related to the Contractor, on the above described real estate in substantial compliance with the Project Designer’s plans, if there are any, limited to the attached Scope of Work (hereinafter The Scope of Work or sometimes the “Work”), attached hereto as Exhibit “A”, subject to the provisions herein (the “Project”).

1.1 Unless otherwise specifically noted, the Contractor shall contract for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the execution and completion of the Scope of Work. Contractor shall pay for all Project Costs, as herein defined, subject to its rights to payment, as further herein provided.

1.2 Subject to, and with the exception of the provisions of 1.2.1 through 1.2.3, the Contractor warrants to the Owner that all materials and equipment incorporated in the Project by the Contractor will be new unless otherwise specified.

1.2.1 It is understood and agreed that any materials and equipment utilized and incorporated in the Project by “others” that does not fall within the Scope of Work of this Agreement shall not fall within the purview of the warranty made under this Section 1.2, and shall be specifically and expressly excepted there from.

1.2.2 It is understood and agreed that any work and materials performed or utilized by “others”, or that does not fall within the Scope of Work of this Agreement or that was performed prior to the date of this Agreement, shall not be considered part of and shall be expressly excluded from the definition of the term “the Project” as used herein, unless expressly agreed by the Contractor herein.

1.2.3 It is understood and agreed that any warranties, whether expressed, statutory or implied, made on any work performed or related to any materials utilized by “others”, that does not fall within the Scope of Work of this Agreement or that were performed prior to the date of this Agreement are hereby expressly disclaimed by the Owner and Contractor, and do not apply.

1.3 The Contractor shall pay all sales, consumer, use and other similar taxes required by law and shall secure all permits, fees and licenses necessary for the execution of the Project. Contractor’s overhead and profit, is included in the Project Fee, as that term is defined herein below. The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the work on the Project. At the completion of the Project the Contractor shall remove all of its waste materials and rubbish from and about the Project as well as its tools, construction equipment, machinery and surplus materials, and shall clean all glass surfaces and shall leave the work broom clean or its equivalent, except as otherwise specified.

1.4 The Owner acknowledges that all aspects of the design of the Project is the Owner's responsibility. To the extent that the Owner so chooses, it is the Owner's responsibility to retain and contract with suitable design professionals, including, but not limited to a Project Architect, Structural Engineer, Landscape Architect and Geotechnical Engineer, as well as any other Design Professional recommended to the Owner by the Project Architect (hereinafter "the Design Professionals"). In all cases, the Project Architect, if retained and contracted for The Project, shall be the Owner's representative for all of the design aspects of The Project. Furthermore, the Owner shall be responsible for retaining and contracting with an ASTM D 3470 – 01, qualified soil testing laboratory to perform all of the necessary soil and compaction testing, if necessary for The Project. The Owner or the Project Architect, is responsible for providing the Contractor with all design specification, design drawings, soil test results, compaction test results, and any other quality control report necessary for the Contractor to perform its work on The Project in a good and workmanlike fashion.

1.5 The Owner acknowledges and represents to the Contractor that the Owner owned and controlled the Property prior to the date of this Agreement.

1.5.1 As consideration for its agreement to perform the work of The Project, as provided for herein, the Owner, with such knowledge aforesaid, being fully informed of same, waives any claims as against the Contractor for damages to The Project caused by soil conditions associated with the Property upon which the Contractor's work is being preformed or any soil or site work preformed on The Property by "others" prior to the date of this Agreement.

1.5.2 As consideration for its agreement to perform the work of The Project, as provided for herein, the Owner, with such knowledge aforesaid, being fully informed of same, waives any claims as against the Contractor for damages to the Work of The Project related to any improvements that have been constructed and installed by "others" prior to the date of this Agreement, which fell within the scope of work of "others" to which the Contractor has no privy or control.

1.5.3 Owner agrees to hold Contractor harmless and indemnify Contractor for any claims, demands, suits, including attorneys fees and expenses, against Contractor by any person or entity for losses or damages to either the Work, The Property or The Project related to or caused, in whole or in part, by those matters and things set forth in 1.5.1 and/or 1.5.2 above.

1.6 Any conditions that are not manifest to the Contractor as of the date of this Agreement, that will require additional work that is not included in the Scope of Work, shall not be included in or part of the Scope of Work and is expressly excluded from the Project, unless it is specifically added and included by written Change Order, as provided by Paragraph 16, below.

1.7 The Owner understands, acknowledges and agrees that (Realtor Name) is a licensed real estate broker, in good standing with the Mississippi Real Estate Commission, is Member of the Contractor, and represents the Contractor for all purposes during the course of the construction of the Project, and not the Owner.

We have read, and understand this provision, paragraph 1.6, as indicated by our initials here below:

Owner: _____

2. Cost:

2.1 Contractor shall receive as compensation a fee equal to \$_____, divided into three (3) equal monthly installments of \$_____ per month(the Project Fee).

2.2 The term Project Cost, as used in this Agreement, shall include any and all fees and expenses incurred in the course of construction of the Project, including but not limited to all costs of labor, materials, supplies, subcontractor overhead and profit, expenses, allowances, supervision fees and change orders, regardless as to whether such is paid by Contractor or Owner.

2.2.1 Prior to the beginning of construction, the Contractor shall provide the Owner with an estimate of the projected Project Cost (hereinafter the "Estimated Project Cost"). The Owner hereby understands and acknowledges that the Estimated Project Cost is merely a good faith estimate for use in budgeting and for determining the amount of the Construction Deposit and the Contractor shall in no way be bound thereto.

2.2.2 Five percent (5.0%) of the Estimated Project Cost, shall contemporaneously herewith be deposited with Contractor to be applied towards the construction of the Project, as that term is defined herein below (hereinafter Construction Deposit). The Construction Deposit will be used during the project and may be applied towards any costs of labor or materials used during the construction of the Project, at the sole discretion of the Contractor. Any Balance of the Construction Deposit remaining at the completion of the Project shall be applied to any balance due and remaining on the Project.

2.3 The Contractor shall deliver to the Owner an invoice on the 25th of each calendar month, representing the Project Cost incurred subsequent to the preceding invoice, plus an amount equal to the Project Fee (hereinafter Invoice Amount).

2.3.1 The Owner shall pay each invoice, remitting the entire Invoice Amount to the Contractor, by no later than the 5th day of each month following the delivery of the invoice (hereinafter Payment Date).

2.3.2 If the Contractor does not receive remittance of the entire Invoice Amount for any invoice delivered to the Owner by the 5th day of the calendar month following the delivery of the invoice, the Contractor shall have the right to cease all work and activity

on the Project, without recourse, until such time as all of the Invoice Amounts due and owing have been paid to the Contractor.

2.3.3 If the Contractor does not receive remittance of the Invoice Amount for any invoice delivered to the Owner within thirty (30) days of the date of such delivery, or in the case of any final amounts due and owing, as provided for in paragraph 2.4, below, in addition to any other remedies available under this Agreement, the Contractor may seek any available remedies to him at law, including, but not limited to, the placing of a lien over the Project as provided by law.

2.3.4 Contractor is entitled to interest on all amounts past due and owing for more than thirty (30) days at the rate of one-half of one percent (.5%) per day or for any portion thereof, until said amounts and all interest accrued thereon is paid in full.

2.3.5 The rights and remedies contained in paragraphs 2.3.2, 2.3.3 and 2.3.4, herein are not mutually exclusive of one another, but may be exercised concurrent with one another and with any other applicable rights and remedies contained within this Agreement.

2.4 Within thirty (30) days after both the Owner and the Contractor have signed the Certificate of Substantial Completion, as provided for herein below, all amounts due and owing, including any remaining Project Fee shall be remitted and paid to the Contractor by the Owner. Collection of any amounts due and owing under this paragraph shall be subject to and governed by paragraphs 2.3.3 and 2.3.4, above.

2.5 Owner is responsible for obtaining their own financing. The Owner shall provide to the Contractor satisfactory evidence of sufficient financing to secure permanent mortgage financing upon the request of the Contractor.

2.6 Owner represents, covenants and warrants to the Contractor that the Owner has good and marketable title to the Property, and that no other persons or entities, other than the Owner, has a claim to or interest in the title of the Property, except the following (state person or entity and identify the interest possessed):

[If the above space is left blank, then the Owner represents and warrants to the Contractor that there are no persons or entities that have a claim or interest in the title of the Property except the Owner].

In the event that any person or entity, not identified herein above, makes a claim, at any time, of a claim, right or interest in the Property, no matter the nature of the claim of right or interest, the Owner hereby agrees and covenants to hold harmless, indemnify and defend Contractor on account of any claims, demands or suits, whether meritorious or not, made by such person or entity on account of or related to said claim, right or interest in the Property.

3. Substantial Completion: Unless extended as provided herein, completion of the Project shall take place immediately after receipt of a Certificate of Substantial Completion, signed by both the Contractor and the Owner, stating that the residence has been substantially completed according to the plans and specifications, if applicable (hereinafter Date of Substantial Completion).

3.1 Within fifteen (15) days after either (1) the issuance of a Certificate of Occupancy, or (2) written notice of completion of the Project from the Contractor to the Owner, the Owner shall create a "punch list" which shall be completed by the Owner and submitted to the Contractor.

3.2 Upon receipt of the "punch list" by the Contractor, the Contractor shall make every reasonable effort to substantially complete the items contained on the "punch list" to the extent that said items fall within the Plans and Specifications, or any amendments thereto, within thirty (30) days of the receipt thereof.

3.3 The Owner acknowledges that it is the Owner's responsibility to diligently, carefully and completely prepare the "punch list" for delivery to the Contractor. The Owner may submit one (1) "punch list," which shall be completed in accordance with the timeframe allowed in Section 3.1. It is specifically agreed that the Contractor is not liable to correct damage caused by the Owner during move-in or during occupancy by the Owner.

4. Insurance:

4.1 Insurance on the Property and the existing structure is to be maintained by the Owner, the cost of such will not be a part of, and is excluded from, the Project Cost.

4.2 A Builder's Risk or similar insurance policy may be purchased by the Contractor and paid for by the Owner, as part of the Project Cost, at the written request of the Owner.

4.3 Risk of loss or damage to the Property by fire or other hazard is assumed by Owner.

4.4 The Owner and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance applicable to the Project, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require their subcontractors to provide similar waivers. Any insurance policy required of either party hereunder shall provide such waivers of subrogation by endorsement or otherwise. This waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and did not have an insurable interest in the property damaged.

5. Construction: Contractor agrees to begin construction within thirty (30) days of the latter of the Issuance of a Notice to Proceed by the Owner and the receipt, by the Contractor, of a certificate of Builder's Risk Insurance, if requested by the Owner in accordance with paragraph 4.2, above, and to continue such construction to substantial completion.
6. Manufacturer's Warranties: Any manufacturers, warranties on fixtures, equipment, appliances or other property located or installed on the Property by the Contractor as part of the Project shall be deemed assigned by Contractor to Owner with the execution of the Certificate of Substantial Completion. All warranties, documentation and instruction booklets shall be presented to Owner upon final payment per 2.3, above.
7. Contract Documents. The Contract Documents consist of this Agreement, and any written amendments thereto, the plans and project specifications, if any, the Scope of Work attached as Exhibit AA, the Builder Limited Warranty with Handbook, attached as Exhibit "B", and Change Orders, all of which must be in writing and signed by both Contractor and Owner to be deemed valid and enforceable, as per 16, below.
8. No other agreements. This Agreement contains the complete agreement of the parties hereto and cannot be modified or amended except in writing and signed by both the Contractor and the Owner.
9. Nonwaiver. No waiver by a party of any provision of this Agreement shall be deemed to have been made unless in writing and signed by such party.
10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi.
11. Time is of the Essence. Time is of the essence with respect to all time requirements set out in this Agreement.
12. Successor Obligation. The rights and obligations under this Agreement shall be binding on the parties, their successors, heirs and assigns, to the extent permitted under the terms of this Agreement.
13. Notice: Any notice required or permitted under the terms of this Agreement shall be addressed to Contractor or Owner, as the case may be, at the address stated below, and when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, delivery shall be deemed to have been made. Any notice to the Contractor shall also be delivered by United States mail to Clyde X. Copeland, III, Esq., P.O. Box 3380, Ridgeland, Mississippi 39158-3380.
14. Enter at Own Risk. Owner acknowledges that any on-site inspections or entry upon the construction site by the Owner, his/their guests, invitees, licensees, family or pets is done expressly at the Owner's own risk.

15. Laborers.

15.1 All workmen, subcontractors, laborers or any person working on the Project shall only have contractual privity with the Contractor and not the Owner, and the Owner understands and agrees that the Owner shall have no right of control over any such workmen, subcontractors or laborers. Contractor has complete discretion over all material purchased for the Project, so long as same is consistent with the plans and specifications. All purchases made by the Owner must be coordinated through the Contractor.

15.2 The Contractor shall not be held responsible or liable for the actions or omissions of any contractors or material suppliers contracted by the Owner, another Prime contractors or "others" not under the direct supervision, control or contract with the Contractor, and any damage to persons or property caused or resulting thereby, whether actual or latent and whether discovered prior to the completion of the Work or sometime in the future.

16. Change Orders.

16.1 All changes in the plans and specifications shall be made only by a written Change Order Agreement, signed by both the Owner and the Contractor at the time of the execution of such change. Subcontractors, laborers or salespersons representing the Contractor do not have authority to authorize changes to the Work of the Project.

16.2 The Owner agrees to pay, in addition to the amounts agreed upon in paragraph 2, above, to the Contractor an administrative fee of \$95.00 per Change Order, whether the work for said Change Order is actually done or not. Said administrative fee shall be paid to the Contractor at the time of execution of the Change Order, and payment of said fee will be a condition precedent to the performance of the work of said Change Order. Allowance selections, choices and directives will be documented with a Change Order, but will not be subject to the administrative fee outlined herein.

16.3 A Change Order Summary with the Revised Contract Amount, Revised Project Fee and Updated Completion Date will be supplied with each new Change Order.

16.4 Change Orders unexecuted as of the Project Completion Date shall be deemed rejected, null and void.

16.5 Change Order work will alter the original scope of work and may also alter the warranty and liability coverage provided by the Contractor. Such changes or limitations to those coverages will be noted on individual Change Orders.

16.6 No oral change orders shall be binding on the Parties hereto.

17. Contractual Interpretation. When the context so requires in this Agreement, words of gender shall include either or both of the other genders and the singular number shall include the plural. The headings of the sections of this Agreement are inserted for convenience of reference

only and shall not be deemed to constitute a part hereof and shall not be deemed to limit, expand or modify in any way the provisions of this Agreement.

18. Warranty.

18.1 The Contractor's sole warranty obligation, and the exclusive remedy for the breach of said warranty obligation, shall be as set forth in the Builder Limited Warranty with Handbook, attached as Exhibit "B", to the extent applicable, in addition to the obligation of the Contractor to pass through and assign to Owner all manufacturers' warranties, as provided by paragraph 6, above.

18.2 Any warranty provided by this paragraph 18, including subparagraph 18.1, is made subject to the waivers, limitations and exceptions contained in paragraph 1.5, and subparagraphs 1.5.1, 1.5.2 and 1.5.3 and, 15.2, above.

18.3 Except for the foregoing contained in this paragraph 18, including subparagraph 18.1, the Contractor shall not have any other warranty obligations, express or implied, to the owner or its assigns, successors or those in privity with it, whatsoever. Further the Contractor shall not have any other warranty obligations, express or implied, as to the fitness, quality and /or merchantability of the Work or of the Project.

19. Hold Harmless and Indemnification. Owner agrees to indemnify, save harmless, and defend Contractor (including its officers, directors, employees and agents) from and against any and all liabilities, claims, penalties, forfeitures, suits and any costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees), which Contractor may hereafter incur, become responsible for, or pay as a result of death or personal or bodily injuries to any person, destruction of or damage to any property (including the person or property of indemnitor, its employees and/or agents), contamination of or adverse effects on the environment or any violation of governmental laws, regulations, or orders to the extent caused by or resulting from (i) Owner's breach of any term or provision of this agreement; (ii) any negligent or willful acts and/or omissions of Owner and/or its employees and/or agents and/or contractors not to include the Contractor or any of the Contractor's own subcontractors (iii) the work of others to which the Contractor has no privity or control; (iv) work of others that was initiated prior to the date of this Agreement, hereof.

20. Severability. The invalidity or unenforceability of any provision in this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, and each provision shall be enforced to the maximum extent permitted by applicable law.

21. Arbitration, Attorney's Fees & Notice of Claims.

21.1 All disputes, controversies or claims, of whatever kind or character, arising out of or in connection with this Agreement, shall be settled, determined and resolved by and through binding arbitration in accordance with West's A.M.C. "11-15-101, et seq., as amended, and shall be exclusively governed by the warranties, remedies, limitations and exclusions contained in the Mississippi New Home Warranty Act. Said arbitration shall be conducted by one (1) arbitrator

unless the parties mutually agree that the nature of the dispute requires more than one (1) arbitrator. The arbitration shall be governed by Mississippi law and shall be carried out in the City of Brandon, Mississippi or such other location as the Parties may agree. Contractor and Owner shall share equally all administrative fees and expenses related to the Arbitration, including any arbitrator's fees. The award of the arbitrator(s) shall be enforceable in a court of competent jurisdiction, shall be final, binding and not appealable.

21.1.1 This provision shall survive the termination or expiration of the agreement and shall survive the substantial completion of the work.

21.1.2 If a Claim relates to or is the subject of a mechanic's or construction lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to the institution of a claim under this paragraph, and doing so will not be construed as a waiver of any party's rights to invoke this provision.

21.3 If the Owner and the Contractor litigate or arbitrate any claim arising under or related to this Agreement, the losing party in such proceedings shall pay the prevailing party's reasonable attorneys' fees (but not contingent fees), including expert or other litigation expenses. If less than the full amount of the monetary claim is awarded to the prevailing party, the claimant shall recover reasonable attorneys' fees (but not contingent fees), including expert or other litigation expenses, equal to the proportion of the amount awarded, to the amount demanded, and the complaining party shall pay the responding party's reasonable attorneys' fees (but not contingent fees), including expert or other litigation expenses, equal to the proportion of the amount denied, to the amount demanded.

21.2 The parties agree that with regard to any claims made by Owner against Contractor, or vice versa, all claims, rights or remedies for incidental or consequential damages are hereby waived.

Mississippi law requires that the Contractor inform you as to whether the Contractor carries general liability insurance insuring the Contractor's work under this contract. The Contractor DOES carry general liability insurance. By your signature below, you signify your understanding and acknowledgment of this fact.

WITNESS OUR SIGNATURES, this the ____ day of _____, 20__.

Contractor:

Owner:

FLEUR DE LIS PROPERTIES, LLC, a Mississippi limited liability company

BY: _____ **

BY: _____ BY: _____ **

Name Its Managing Member

** By his/their signatures above, the Owner(s) specifically and specially assents to and understands the provisions of paragraph 1.7, in addition to the other terms, conditions and provisions herein.

Contractor's Address & Phone #.:

Owner's Address & Phone #:

123 Hwy

Anytown, MS 39123

(601) _____

(601) (FAX) _____