

## Home Improvement Contract

This agreement is made on the date written above our signatures between Ajax-Davis Construction (Contractor) and Allan Robbins (Owner).

### Contractor

**Any Notice of Cancellation can be sent to this address.**

Ajax-Davis Construction  
4713 San Rafael Drive  
Suite 381  
San Rafael, California 94355  
Work Phone Number: 415-452-9867  
Cell Phone Number: 415-856-2312  
Fax Number: 415-452-9867  
Email Address: ajd321@yahoo.com  
License Number: 456-2317-21

Ajax-Davis Construction is licensed as partnership in the state of California.  
Ajax-Davis Construction will be referred to as Ajax-Davis throughout this agreement.

### Owner

Allan Robbins  
4723 Escondido Avenue  
San Rafael, California 45433  
Day Phone Number: 415-673-9217  
Cell Phone Number: 415-679-4529  
Email Address: Allen\_RobbinsIII@gmail.com

Allan Robbins is organized as a proprietorship in the state of California.  
Allan Robbins will be referred to as Robbins throughout this agreement.

Date this contract was signed by Robbins: \_\_\_\_\_

**You are entitled to a completely filled-in copy of this agreement, signed by both you and the contractor, before any work may be started.**

### The Construction Site

4723 Escondido Avenue  
San Rafael , California 45433

**I. Description of the Project and Description of the Significant Materials to be Used and Equipment to be Installed**

A. For a price identified below, Ajax-Davis agrees to complete home improvements (identified as the Robbins Remodel in this agreement) for Robbins.

**II. Contract Price**

A. In addition to any other charges specified in this agreement, Robbins agrees to pay Ajax-Davis \$24,396.50 for completing the Work described as the Robbins Remodel.

**III. Allowances**

A. This Contract Price includes an allowance for an item to be selected later by Robbins.

1. \$600.00 for 5-burner range.

Installation will be by Ajax-Davis at a cost included in the Contract Price

The allowance price covers the cost of:

Materials

Taxes

Delivery

Handling on the Job Site

**IV. Approximate Start Date**

A. Work under this agreement will begin within 11 Calendar Days after the following contingencies have been met.

1. Complete Plans and Specifications have been approved and initialed by both Robbins and Ajax-Davis.

2. Robbins has obtained a construction loan or other financing acceptable to Ajax-Davis.

3. Robbins has obtained all architectural approvals from subdivision or neighborhood authorities.

4. All appropriate building permits have been issued.

B. The Robbins Remodel will be considered substantially commenced when all building permits, loans and other approvals have been secured.

**V. Approximate Completion Date**

A. Work under this agreement will be Substantially Completed within 90 Calendar Days after the date construction begins.

**VI. List of Documents Incorporated into this Contract**

A. The Glossary of Terms which follows our signatures is incorporated into this contract as though included in full as part of this agreement.

B. This agreement incorporates by reference certain disclosures and notices required by federal and state law. The following documents are incorporated as though included in full as part of this

agreement.

1. Information about Commercial General Liability Insurance
2. Checklist for Homeowners
3. California Home Improvement Contract - Change Order Form
4. Notice of Three-Day Right to Cancel
5. Notice of Cancellation (in duplicate)
6. Notice of Right to Cancel under Regulation Z (in duplicate)

C. This agreement incorporates by reference certain documents which define and describe the Work to be done. The following documents are incorporated as though included in full as part of this agreement.

1. **Plans**

Plans dated 11/11/2009

Consisting of 5 sheet(s)

Prepared by Ajax-Davis Construction

Last changed on 12/6/2009

2. **Specifications**

Specifications dated 12/15/2009

Consisting of 3 sheet(s)

Last changed on 12/15/2009

And further identified as Includes marble counter top

3. **Proposal (Estimate or Bid)**

Proposal (Estimate or Bid) dated 1/4/2010

Consisting of 3 sheet(s)

For the amount of \$24,396.50

Entitled Robbins Remodel Job

And further identified as Prepared by Tony Davis

Reference to Ajax-Davis's proposal dated 1/4/2010 is for convenience only. Other Contract Documents identify the Work to be completed under this agreement.

**VII. Ownership of Plans**

A. Plans, Drawings, Specifications and copies prepared for use in construction under this agreement are the property of Ajax-Davis. Ajax-Davis retains all common Law and statutory rights to these Plans, Drawings and Specifications. Robbins agrees that these documents will not be used on any other project and, with the exception of one record set to be retained by Robbins, will be returned to Ajax-Davis on request.

**VIII. Scope of Work**

A. Ajax-Davis shall supervise and direct the Work and accepts responsibility for construction means, methods, techniques, sequences and procedures required to complete the Robbins Remodel

in compliance with the Contract Documents.

### **IX. Cutting and Patching**

A. The color, texture and planes between existing and new materials might not match exactly. Ajax-Davis will use due diligence to create the best match possible. Robbins acknowledges that patched surfaces may be detectable when construction is complete.

### **X. Compliance with Law**

A. Ajax-Davis and Robbins mutually commit to use reasonable care to meet the Requirements of state, federal and local Law when discharging their responsibilities under this agreement.

B. If Law enacted after the Contract Date changes the Scope of Work under this agreement, Ajax-Davis and Robbins will execute a Change Order adjusting the Contract Price and Contract Time to accommodate the change in the Scope of Work.

### **XI. Permits and Fees**

A. Ajax-Davis shall secure all permits, licenses and renewals required by government authority to complete construction of the Robbins Remodel. If permits are required for Subcontracted Work, Subcontractors will secure those permits. Robbins shall assist Ajax-Davis in responding to requests for information from the permit-issuing authority. Ajax-Davis shall provide Robbins a copy of each permit, license and renewal issued by government authority for the Robbins Remodel.

B. Ajax-Davis will pay the building permit fee, Plan check fee, business license fees for Ajax-Davis and Subcontractors, and charges levied by government for testing, Inspection and Re-Inspection of the Robbins Remodel.

### **XII. Taxes**

A. Except as provided otherwise in this agreement, Ajax-Davis shall pay all federal, state, county, and municipal sales, use, consumer, gross receipts, and excise taxes which are levied or become payable as a result of completing the Work. Robbins will pay all tax on materials furnished by Robbins and all property taxes levied on the land which comprises the Job Site.

### **XIII. Owner's Responsibilities**

A. Robbins affirms that Robbins has the right to enter into this agreement and has the right to contract for construction of the Robbins Remodel on the Job Site. Robbins shall pay all taxes and assessments due on the Job Site during the period of construction and shall take all reasonable actions required to protect marketable title to the Job Site.

B. On request of Ajax-Davis, Robbins shall provide clear and convincing evidence that Robbins has access to funds committed to payment of the unpaid balance of the Contract Price. Robbins shall inform Ajax-Davis of any significant change in the availability of funds committed to make payments required under the Contract Documents. Failure of Robbins to comply with the terms of this paragraph shall relieve Ajax-Davis of the obligation to begin or continue the Work.

C. Robbins will not interfere with or permit others to interfere with, stop, hinder, or delay completion of the Work by Ajax-Davis or Subcontractors except as provided under this agreement.

D. On written request from Ajax-Davis, Robbins shall identify (1) The legal description of the property being improved, (2) Whether there is a Surety Bond in effect on the improvement Project and if so, the name and last known address of the Surety and a copy of the Bond, and (3) Whether there are any prior recorded liens or security interests on the real property being improved and, if so, the name and address of the person having the lien or security interest.

#### **XIV. Construction by Others**

A. Robbins shall neither hire nor retain Separate Contractors, Subcontractors, employees or agents of Robbins to perform Work on the Job Site while Work is being done under this agreement by Ajax-Davis.

#### **XV. Representations by Contractor**

A. Robbins has reported to Ajax-Davis all conditions known to Robbins which may not be apparent to Ajax-Davis and which might significantly increase cost of the Work or delay completion. These concealed conditions include, but are not limited to, hazards on the Job Site, unsuitable soil conditions, prior Defective Work of others, latent Defects in the Plans or Specifications, earlier attempts to do Similar or related Work, and obligations imposed by government.

#### **XVI. Disclaimer by Owner, Reliance by Contractor**

A. Robbins has provided Ajax-Davis with information on subsurface or concealed conditions at the Job Site. Except to the extent that Ajax-Davis knows this information to be false, Ajax-Davis is entitled to rely on the accuracy of this information.

#### **XVII. Discrepancy Between Plans and Field Conditions**

A. If any concealed structure, water, power, waste, drain or gas line is uncovered or revealed during construction which is not as indicated in the Contract Documents or is inconsistent with information provided by Robbins, Ajax-Davis shall promptly, and before any such structure or line is disturbed or damaged (except in an Emergency), notify Robbins. Ajax-Davis shall submit a Claim for a Change Order which covers the additional cost incurred as a result of such structure, water, power, waste, drain, or gas line uncovered or revealed during construction.

#### **XVIII. Differing Site Conditions**

A. Ajax-Davis shall promptly, and before the conditions are disturbed, give a written notice to Robbins on encountering unforeseeable conditions adversely affecting the Work. Robbins shall investigate the site conditions promptly after receiving notice. If the conditions cause an increase in cost to Ajax-Davis or the time required for performing any part of the Work and were not reasonably foreseeable by an experienced Contractor, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

B. If concealed or unanticipated conditions require a change in the Plans or Specifications, Robbins will issue a Change Order modifying the Contract Documents, Contract Price and Contract

Completion Date, if any.

C. Anything in this contract notwithstanding, Ajax-Davis is entitled to rely on express or implied representations concerning site conditions made by Robbins and those employed by Robbins regardless of whether those representations are made in Contract Documents or otherwise.

### **XIX. Payment Plan**

A. Robbins will pay to Ajax-Davis the Contract Price in installments consisting of an initial payment, progress payments, and a final payment on completion of the Work.

### **XX. Downpayment**

A. The downpayment is \$1,000.00.

**THE DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS.**

B. On initial delivery of materials to the Job Site, Robbins shall pay to Ajax-Davis \$1,000.00.

C. The initial payment is refundable to Robbins, less actual cost to Ajax-Davis, if Robbins is not able to obtain a commitment for construction financing in an amount adequate to complete the Work.

### **XXI. Progress Payments**

#### **A. Schedule of Progress Payments**

**The schedule or progress payments must specifically describe each phase of work, including the type and amount of work or services scheduled to be supplied in each phase, along with the amount of each proposed progress payment. IT IS AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET COMPLETED, OR FOR MATERIALS NOT YET DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A DOWNPAYMENT.**

1. Progress payments are due as each phase of the Work is completed.

I. Amount due when Job Phase 1 is complete: \$1,396.50

Job Phase 1 is complete when demolition debris is hauled away.

II. Amount due when Job Phase 2 is complete: \$4,000.00

Job Phase 2 is complete when framing, rough plumbing and electrical are done.

III. Amount due when Job Phase 3 is complete: \$4,000.00

Job Phase 3 is complete when doors and windows are hung.

IV. Amount due when Job Phase 4 is complete: \$6,000.00

Job Phase 4 is complete when flooring and wall cover are installed.

V. Amount due when Job Phase 5 is complete: \$6,000.00

Job Phase 5 is complete when interior finish is done.

VI. Amount due when Job Phase 6 is complete: \$2,000.00

Job Phase 6 is complete when final inspection is passed.

### **B. Processing of Progress Payments**

1. No less than 2 Calendar Days before each progress payment is due under the terms of this contract, Ajax-Davis shall provide Robbins with an application for payment (invoice) in a form which complies with generally accepted trade practice.
2. Within 2 Calendar Days after receipt of an application for payment, Robbins shall pay Ajax-Davis the amount in the application.
3. Unless otherwise provided in the Contract Documents, applications for payment may include, at the option of Ajax-Davis, itemized charges for materials and equipment not yet incorporated in the Work but delivered and suitably stored on the Job Site. Application for payment for stored materials and equipment shall include a bill of sale or other confirmation that stored materials and equipment are the property of Robbins.

### **XXII. Contract Allowances**

- A. The Contract Price includes the sum of all contract allowance items identified in this agreement. The price listed for each contract allowance item is a preliminary estimate made before actual selection by Robbins of the item to be installed. Ajax-Davis makes no representation that purchase and Installation of any contract allowance item can be performed for the contract allowance price. Cost to Robbins for any contract allowance item may be more or less than the contract allowance price.
- B. If the cost to Ajax-Davis for a contract allowance item is more or less than the allowance price, the Contract Price shall be adjusted for the difference by a Change Order.
- C. Selection by Robbins of contract allowance items shall be submitted in writing to Ajax-Davis. At the request of Ajax-Davis, Robbins shall verify selection of each contract allowance item with the Material Supplier and provide Ajax-Davis with confirmation that the order is correct.
- D. If selection of any contract allowance item by Robbins delays the Work, the Contract Completion Date shall be extended by the equivalent of the delay and Ajax-Davis shall be entitled to recover for the cost of delay, including liquidated damages, shutdown or startup expense, lost profits, or consequential damages.

### **XXIII. Interest**

- A. Payments due and not paid under the Contract Documents shall bear interest from the date payment is due at a monthly rate of 1.00 percent.
- B. When payment is withheld pending settlement of a bona fide dispute on the quantity, quality, or timeliness of the Work, interest shall accrue only on the amount ultimately paid.
- C. Any interest which remains unpaid at the end of any 30-Calendar Day period shall be added to the principal amount due and thereafter shall accrue interest at the same rate as the principal.

## **XXIV. Liens and Waivers**

### **Mechanics' Lien Warning**

Anyone who helps improve your property, but who is not paid, may record what is called a mechanics' lien on your property. A mechanics' lien is a claim, like a mortgage or home equity loan, made against your property and recorded with the county recorder.

Even if you pay your contractor in full, unpaid subcontractors, suppliers, and laborers who helped to improve your property may record mechanics' liens and sue you in court to foreclose the lien. If a court finds the lien is valid, you could be forced to pay twice or have a court officer sell your home to pay the lien. Liens can also affect your credit.

To preserve their right to record a lien, each subcontractor and material supplier must provide you with a document called a '20-Day Preliminary Notice'. This notice is not a lien. The purpose of the notice is to let you know that the person who sends you the notice has the right to record a lien on your property if he or she is not paid.

**BE CAREFUL.** The Preliminary Notice can be sent up to 20 days after the subcontractor starts work or the supplier provides material. This can be a big problem if you pay your contractor before you have received the Preliminary Notices.

You will not get Preliminary Notices from your prime contractor or from laborers who work on your project. The law assumes that you already know they are improving your property.

**PROTECT YOURSELF FROM LIENS.** You can protect yourself from liens by getting a list from your contractor of all the subcontractors and material suppliers that work on your project. Find out from your contractor when these subcontractors started work and when these suppliers delivered goods or materials. Then wait 20 days, paying attention to the Preliminary Notices you receive.

**PAY WITH JOINT CHECKS.** One way to protect yourself is to pay with a joint check. When your contractor tells you it is time to pay for the work of a subcontractor or supplier who has provided you with a Preliminary Notice, write a joint check payable to both the contractor and the subcontractor or material supplier.

For other ways to prevent liens, visit CSLB's Web site at [www.cslb.ca.gov](http://www.cslb.ca.gov) or call CSLB at 800-321-CSLB (2752).

**REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN PLACED ON YOUR HOME.** This can mean that you may have to pay twice, or face the forced sale of your home to pay what you owe.

Notice required by California Business and Professions Code § 7159(c)(4):

When payment is made for any portion of the work performed, Ajax-Davis shall prior to any further payment being made, furnish to Robbins a full and unconditional release from any claim or mechanics' lien pursuant to § 3114 of the Civil Code for that portion of the work for which payment has been made.

## **XXV. Details on Lien Claims**

A. On request of Ajax-Davis, Robbins shall provide to Ajax-Davis a legal description of the Site and all information about the Robbins Remodel as may be required by Ajax-Davis, Subcontractors,

Material Suppliers, or tradesmen to enforce lien rights in California.

## **XXVI. Final Payment**

- A. Ajax-Davis will submit an application for final payment to Robbins when the Work has been completed in compliance with the Contract Documents. If Robbins agrees that Work has been completed, payment is due Ajax-Davis for the entire unpaid balance of the contract amount (including any Retainage).
- B. Making of final payment constitutes waiver of all Claims by Robbins against Ajax-Davis except those Claims previously made in writing and delivered to Ajax-Davis and those obligations otherwise provided by this agreement or by operation of Law.
- C. The acceptance of final payment by Ajax-Davis shall constitute a release by Ajax-Davis of known Claims against Robbins arising out of this contract except those Claims which (1) Have been made in writing and identified by Ajax-Davis as not having been settled at that time, or (2) Are based on fraud or misconduct by Robbins.
- D. Robbins will notify Ajax-Davis of the date when notice of Final Completion is recorded. If Robbins takes possession and occupancy of the Robbins Remodel without recording a notice of Final Completion, Robbins hereby appoints Ajax-Davis as agent to sign and record a notice of completion of the Robbins Remodel.
- E. If completion of the Work is delayed unreasonably at no fault of Ajax-Davis, Ajax-Davis shall be entitled to final payment for all Work completed (including Retainage) without prejudice to the right of Ajax-Davis to complete the Robbins Remodel at a later date and without prejudice to the right of Robbins to make Claims against Ajax-Davis for Defects in Work completed.

## **XXVII. Changes in the Work**

- A. Ajax-Davis is authorized to make minor changes in the Work which are in the interest of Robbins, do not materially alter the quality or performance of the Work, and do not affect the cost or time of performance, and comply with applicable Laws, codes, ordinances and regulations. Ajax-Davis will inform Robbins of each minor change made in the Work.
- B. Other clauses in this agreement notwithstanding, there will be no reduction in the value of the Work without a written Change Order.

### **C. Note About Extra Work and Change Orders**

Extra Work and Change Orders become part of the contract once the order is prepared in writing and signed by the Parties prior to commencement of any Work covered by the new Change Order. The order must describe the scope of the Extra Work or change, the cost to be added or subtracted from the contract, and the effect the order will have on the schedule of progress payments.

Notice required by California Business and Professions Code § 7159(e)(3):

Robbins may not require a contractor to perform extra work or change order work without providing written authorization prior to the commencement of any work covered by the new change order. Extra work or a change order is not enforceable against Robbins unless the change order also

identifies all of the following in writing prior to the commencement of any work covered by the new change order:

- (1) The scope of work encompassed by the order,
- (2) The amount to be added or subtracted from the contract price, and
- (3) The effect the change order will have on progress payments or the completion date.

Failure of Ajax-Davis to comply with the requirements of this paragraph does not preclude the recovery of compensation for work based upon legal or equitable remedies designed to prevent unjust enrichment.

## **XXVIII. Defective Work**

### **A. General Requirements**

1. On written notice from Robbins, Ajax-Davis shall promptly remove from the Job Site all Work or materials not in compliance with the Contract Documents, whether or not such rejected Work or materials are incorporated in the Robbins Remodel. Ajax-Davis shall promptly repair or replace such rejected Work or materials at no cost to Robbins.

### **B. Rejected Work - Contractor's Rights**

1. If Ajax-Davis disagrees with a decision on rejection of Work or materials, Ajax-Davis is entitled to an expedited resolution of the issue under the provisions of this agreement which cover dispute resolution. Pending resolution of this dispute, the obligation of Ajax-Davis to make correction is suspended. The Contract Time, if any, is extended for the period the dispute remains unresolved.
2. Robbins acknowledges and agrees that it may be inappropriate or unreasonably expensive to replace, refabricate or refinish building components with minor Defects or which are damaged slightly due to wear and tear commonly associated with the construction process. Ajax-Davis may, at the sole discretion of Ajax-Davis, (1) Correct minor Defects using procedures commonly accepted as good construction practice, or (2) Conclude that a cosmetic Defect is acceptable under good construction practice and take no corrective action.

## **XXIX. Call-Backs**

A. On written notice from Robbins within 30 Calendar Days after Substantial Completion (the call-back period), Ajax-Davis shall promptly repair or replace any portion of the Work which becomes Defective due to faulty materials or workmanship.

B. The obligation of Ajax-Davis to repair or replace Defects due to faulty materials or workmanship during the call-back period is in addition to and does not limit any other remedy Robbins may have under the Contract Documents, Law, or any warranty provided by Ajax-Davis or others. This call-back remedy does not limit the liability of Ajax-Davis for Defective Work or limit the time within which proceedings may be commenced to enforce rights and obligations under this agreement.

C. Failure of Robbins to give notice of a Defect within the call-back period constitutes a waiver of rights to repair or replacement of that Defect.

**XXX. Warranty**

A. Except as otherwise provided in this agreement, Ajax-Davis warrants for 180 Calendar Days that the Work conforms with the Contract Documents.

**XXXI. Contractor Claims**

A. If Ajax-Davis claims that any instruction, Drawing, act or omission of Robbins or any representative of Robbins, or any agency of government, increases costs to Ajax-Davis, requires extra time or changes the Scope of Work, Ajax-Davis shall have the right to assert a Claim for such costs or time.

B. Unresolved Claims or disputes shall not cause Ajax-Davis to delay or suspend Work or for Robbins to delay or suspend payments as provided by this agreement. Continued performance by Ajax-Davis shall not be deemed a waiver of any Claim for additional compensation or an extension of Time for Completion. Ajax-Davis shall cooperate with Robbins and representatives of Robbins to mitigate potential damages, delay and other adverse consequences arising out of the condition which is the subject of the Claim.

**XXXII. Arbitration**

A. Any controversy or Claim arising out of or relating to this contract or contract warranty or the breach thereof which cannot be resolved by mediations shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

B. The location of arbitration hearings held under this agreement shall be the county in which the Robbins Remodel is located unless agreed to otherwise by all Parties to the arbitration.

**C. ARBITRATION OF DISPUTES**

**NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE BUSINESS AND PROFESSIONS CODE OR OTHER APPLICABLE LAWS. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.**

**WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION.**

**Owner's Initials** \_\_\_\_\_ **Owner's Initials** \_\_\_\_\_

**Contractor's Initials** \_\_\_\_\_

**XXXIII. Insurance**

**A. General Requirements**

1. Ajax-Davis shall carry workers' compensation insurance and public liability insurance as required by Law and regulation for the protection of Ajax-Davis and Robbins during progress of the Work.

**B. Commercial General Liability Insurance (CGL)**

1. Ajax-Davis carries commercial general liability insurance. You may contact Viking Mutual Insurance at 415-382-1923 to check insurance coverage of Ajax-Davis. A notice concerning commercial liability insurance is attached to this contract.

**C. Worker's Compensation Insurance**

1. Ajax-Davis carries workers' compensation insurance for all employees.
2. Minimum coverage shall be workers' compensation insurance as required by Law or regulation where the Work is performed and an employer's liability aggregate policy limit of \$500,000.

**XXXIV. Interpretation of the Contract**

A. Words and abbreviations defined in this contract are capitalized and should be understood as defined. Words commonly used in the construction industry are to be understood in their recognized technical or construction industry context. Any word not defined in this contract and which does not have a well-known technical or construction industry meaning is to be understood as defined in the most recent edition of the Merriam-Webster Collegiate Dictionary.

B. Nothing in the Contract Documents shall be interpreted as requiring Ajax-Davis to violate any Law or regulation imposed by government.

**XXXV. No Waiver of Contract Provisions**

A. The failure of either Party to insist on strict performance of terms, covenants and conditions in the Contract Documents shall not be construed as waiver of any term, covenant or condition in the Contract Documents. Nor shall any custom or practice which may evolve between Ajax-Davis and Robbins be construed to waive or lessen the right of either Party to insist upon performance in strict compliance with the Contract Documents.

**XXXVI. Dealing With Plan Defects**

A. Ajax-Davis will rely on the Contract Documents as the final authority on what is included in the Robbins Remodel. The Contract Documents were created to identify the labor, material and

equipment required for proper completion of the Robbins Remodel. The Contract Documents are defective if a reasonably skilled construction contractor doing Similar Work in the community and following generally accepted trade practice could not use the Contract Documents to identify each labor, material and equipment cost required to complete the Robbins Remodel. Ajax-Davis bears no responsibility for defects in the Contract Documents.

- B. If inconsistent, the construction Drawings take precedence over the Specifications.
- C. Except as specifically provided elsewhere in this agreement, inconsistencies shall be resolved by giving precedence to the less restrictive, standard quality, less demanding provision in codes, safety orders, Contract Documents, referenced manufacturers' specifications, and industry standards.
- D. Pending clarification by Robbins, Ajax-Davis shall perform no Work on any portion of the Robbins Remodel requiring an interpretation of the Contract Documents. Ajax-Davis has no liability for Work done before discovering the need for interpretation so long as that Work was done in good faith reliance on one of the Contract Documents.

#### **XXXVII. Severability**

- A. If any provision of this contract is interpreted or rendered invalid and unenforceable, then the remainder of this contract shall remain in full force and effect.

#### **XXXVIII. Cumulative Remedies**

- A. All rights and remedies provided to Ajax-Davis by the Contract Documents are cumulative and in addition to and not in limitation of rights and remedies available to Ajax-Davis at Law or in equity.

#### **XXXIX. Information about the Contractors' State License Board (CSLB)**

CSLB is the state consumer protection agency that licenses and regulates construction contractors. Contact CSLB for information about the licensed contractor you are considering, including information about disclosable complaints, disciplinary actions and civil judgments that are reported to CSLB.

Use only licensed contractors. If you file a complaint against a licensed contractor within the legal deadline (usually four years), CSLB has authority to investigate the complaint. If you use an unlicensed contractor, CSLB may not be able to help you resolve your complaint. Your only remedy may be in civil court, and you may be liable for damages arising out of any injuries to the unlicensed contractor or the unlicensed contractor's employees.

For more information:

Visit CSLB's Web site at [www.cslb.ca.gov](http://www.cslb.ca.gov)

Call CSLB at 800-321-CSLB (2752)

Write CSLB at P.O. Box 26000, Sacramento, CA 95826.

**Signatures**

This contract is for immediate acceptance. Any delay in acceptance beyond 1/18/2010 will require renegotiation of the terms of this agreement.

ROBBINS HAS THE RIGHT TO REQUEST A PERFORMANCE AND PAYMENT BOND ON THE ROBBINS REMODEL WHICH ENSURES THE ROBBINS REMODEL WILL BE COMPLETED ACCORDING TO THIS AGREEMENT AND THAT LIENS ON THIS JOB ARE DISCHARGED IN RETURN FOR PAYMENT IN FULL BY ROBBINS.

**You are entitled to a completely filled in copy of this agreement, signed by both you and the contractor, before any work may be started.**

**The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a notice of Three-Day Right to Cancel.**

Owner's Initials \_\_\_\_\_ Owner's Initials \_\_\_\_\_

This agreement is entered into as of the date written below.

**Allan Robbins, Owner**

\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
(Printed Name)

**Ajax-Davis Construction, Contractor**

\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
(Printed Name and Title)

## Checklist for Homeowners

### Check Out the Contractor

Did you contact the Contractors State License Board (CSLB) to check the status of the contractor's license?

*Contact the CSLB at 1-800-321-CSLB (2752) or visit our web site: [www.cslb.ca.gov](http://www.cslb.ca.gov)*

Did you get at least 3 local references from the contractors you are considering?

*Did you call them?*

Building Permits - will the contractor get a permit before the work starts?

### Check Out the Contract

Did you read and do you understand your contract?

Does the 3-day right to cancel a contract apply to you?

*Contact the CSLB if you don't know.*

Does the contract tell you when work will start and end?

Does the contract include a detailed description of the work to be done, the material to be used, and equipment to be installed?

*This description should include brand names, model numbers, quantities and colors. Specific descriptions now will prevent disputes later.*

Are you required to pay a down payment?

*If you are, the down payment should never be more than 10 percent of the contract price or \$1,000, whichever is less.*

Is there a schedule of payments?

*If there is a schedule of payments, you should pay only as work is completed and not before. There are some exceptions -- contact the CSLB to find out what they are.*

Did your contractor give you a "Notice to Owner", a warning notice describing liens and ways to prevent them?

*Even if you pay your contractor, a lien can be placed on your home by unpaid laborers, subcontractors or material suppliers. A lien can result in you paying twice or, in some cases, losing your home in a foreclosure. Check the "Notice to Owner" for ways to protect yourself.*

Did you know changes or additions to your contract **must** be in writing?

*Putting changes in writing reduces the possibility of a later dispute.*

## **Information about Commercial General Liability Insurance**

### **[ ] Did your contractor tell you whether he or she carries Commercial General Liability Insurance?**

*Home improvement contractors are required by law to tell you whether or not they carry Commercial General Liability Insurance. This written statement must accompany the bid, if there is one, and the contract.*

### **[ ] Is this insurance required?**

*No. But the Contractors State License Board strongly recommends that all contractors carry it. The Board cautions you to evaluate the risk to your family and property when you hire a contractor who is not insured. Ask yourself, if something went wrong, would this contractor be able to cover losses ordinarily covered by insurance?*

### **[ ] How can you make sure the contractor is insured?**

*If he or she is insured, the contractor is required by law to provide you with the name and telephone number of the insurance company. Check with the insurance company to verify that the contractor's insurance coverage will cover your project.*

### **[ ] What about a contractor who is self-insured?**

*A self-insured contractor has made a business decision to be personally responsible for losses that would ordinarily be covered by insurance. Before contracting with a self-insured contractor, ask yourself, if something went wrong, would this contractor be able to cover losses that should be covered by insurance?*

Ajax-Davis carries Commercial General Liability Insurance.

The insurance company is Viking Mutual Insurance.

You may call the insurance company at 415-382-1923 to verify coverage.

**For more information about Commercial General Liability Insurance, contact the Contractors State License Board at [www.cslb.ca.gov](http://www.cslb.ca.gov) or call 1-800-321-CSLB (2752).**

**California Home Improvement Contract - Change Order Form**

Ajax-Davis Construction (License Number: 456-2317-21)  
4713 San Rafael Drive  
Suite 381  
San Rafael, California 94355

Allan Robbins and Ajax-Davis Construction agree that the contract dated (Date) \_\_\_\_\_ is incorporated by reference in its entirety into this California Home Improvement Change Order and is changed as described below.

**Description of the Change and Description of the Significant Materials to be Used and Equipment to be Installed Under this Change.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- This change adds the following amount to the Contract Price: \$ \_\_\_\_\_
- This change reduces the Contract Price by the following amount: \$ \_\_\_\_\_
- Finance charge (if any) that results from this change: \$ \_\_\_\_\_
- Effect this order will have on the Schedule of Progress Payments: \_\_\_\_\_

Payments due under this agreement are hereby adjusted to reflect this change in the Contract Price. Payment for this change shall become due: (Date) \_\_\_\_\_.  
Completion date of Work under this agreement, including this Change Order, is adjusted to: (Date) \_\_\_\_\_.

**Note about Extra Work and Change Orders**

Extra work and change orders become part of the contract once the order is prepared in writing and signed by the parties prior to commencement of any work covered by the new change order. The order must describe the scope of the extra work or change, the cost to be added or subtracted from the contract, and the effect the order will have on the schedule of progress payments. You are entitled to a completely filled in copy of this agreement, signed by both you and the contractor, before any work may be started.

_____ Owner's Signature	_____ Date	_____ Owner's Signature	_____ Date
_____ Contractor's Signature	_____ Date		

### Notice of Three-Day Right to Cancel

Date of Transaction: \_\_\_\_\_

You, the buyer, have the right to cancel this contract within three business days. You may cancel by emailing, mailing, faxing, or delivering a written notice to the contractor at the contractor's place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor's instructions on how to return the goods at the contractor's expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of the Notice of Cancellation, or any other written notice to:

Ajax-Davis Construction

4713 San Rafael Drive

Suite 381

San Rafael, California 94355

not later than midnight of (Date) \_\_\_\_\_

California Business and Professions Code Section § 7159 requires that this form be signed and dated when the contract is signed.

My signature below acknowledges receipt of this Notice of Three-Day Right to Cancel and two copies of the form Notice of Cancellation.

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Date

**Notice of Cancellation (California Business & Professions Code § 7159)**

Date the contract was signed: (Date) \_\_\_\_\_

You may cancel this transaction, without any penalty or obligation, within three business days from the above date. If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled. If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk. If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract."

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to:

Ajax-Davis Construction

4713 San Rafael Drive

Suite 381

San Rafael, California 94355

Any cancellation must occur no later than midnight of (Date) \_\_\_\_\_.

I hereby cancel this transaction:

Date of cancellation (Date) \_\_\_\_\_

\_\_\_\_\_

Signature of Buyer

**Notice of Cancellation (California Business & Professions Code § 7159)**

Date the contract was signed: (Date) \_\_\_\_\_

You may cancel this transaction, without any penalty or obligation, within three business days from the above date. If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled. If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk. If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract."

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to:

Ajax-Davis Construction  
4713 San Rafael Drive  
Suite 381  
San Rafael, California 94355

Any cancellation must occur no later than midnight of (Date) \_\_\_\_\_.

I hereby cancel this transaction:

Date of cancellation (Date) \_\_\_\_\_

\_\_\_\_\_  
Signature of Buyer

## **Glossary of Terms**

**Bid** means the proposal of a construction contractor offering to do certain work at the price stated.

**Bond** means the security offered by a licensed surety company which may be used to satisfy a claim of failure to perform obligations undertaken in this Agreement.

**Calendar Day** means any day shown on the calendar beginning at midnight and ending at midnight the following day. Contrast the term Work Day which excludes Saturdays, Sundays and state-recognized holidays.

**Change Order** is a written modification of the Contract Price (including all claims for direct, indirect and consequential damages and costs of delay), Time for Completion, and Scope of Work under this Agreement. A Change Order, once signed by all parties, is incorporated into and becomes a part of the Contract Documents.

**Claim** means a demand or assertion by one of the parties to this Agreement seeking, as a matter of right, modification, adjustment or interpretation of contract terms, payment of money, extension of time or other relief.

**Contract Completion Date** means the day by which the Work must be substantially complete.

**Contract Date** is the day on which the contract becomes binding between Contractor and Owner.

**Contract Documents** are this Agreement and all documents incorporated by reference into this Agreement.

**Contract Price** is the amount which will become due in exchange for work performed under this Agreement. Contract Price includes allowances for purchased materials and equipment and may be modified by a Change Order or contract modification. The Contract Price may be paid in one or more installments, including an Initial Payment at or before the start of work, Progress Payments as work is completed, and a Final Payment on final acceptance of the work. Payment Period is the time elapsed between applications for progress payments or prior to the first application for progress payment.

**Contract Time** means the period between Date of Commencement and the date of Substantial Completion.

**Contractor** is an individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the Work under the terms of this Agreement.

**Defective Work** means construction done under this Agreement that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of Owner's Representative, or the requirements of an inspection, reference standard, test, or approval specified in the Contract Documents.

**Drawings** (also called plans or prints) are scale representations of the shape, location, character and dimensions of Work to be completed under this contract. Drawings include plan views, elevation views, transverse and longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedules, tables, data and pictures which depict the completed Project. A group of drawings adequate to complete construction of the Project may be referred to as a plan set. Drawings can be either paper or electronic media.

**Emergency** means an unforeseen event, combination of circumstances, or a resulting state that poses imminent danger to health, life or property.

**Extra Work** means any change, interpretation, clarification or correction in the Contract Documents or in applicable law, ordinance or regulation which would increase or decrease the quantity of work, delay, suspend or interfere with the work, require an addition to or omission from the work, change the character, quality or nature of any part of the work or material used in the work, change levels, lines, positions or dimensions of any part of the work, require demolition or removal of any work completed under this Agreement, extend or amend the normal work day, alter the construction schedule or require completion of any part of the work at a time other than provided by this Contract when originally made.

**Final Completion** is the date of Owner's acceptance of the Work as fully performed according to the Contract Documents.

**Furnish** means to supply and deliver to the job site.

**Inspection** is any review of the Project, including a visual review of the Work completed to ascertain compliance with Contract Documents, building codes and construction standards.

**Install** means to secure in position in compliance with the Contract Documents and includes unloading materials, supplying all necessary equipment and rigs to do the work and performing functional tests which demonstrate fitness for the intended purpose.

**Job Site** is the address or location of the Project.

**Law** means federal or state statutes, municipal ordinances, building codes, regulations adopted pursuant to statute, executive orders, official interpretations, and other rules and directives issued by government.

**Material Supplier** means any manufacturer, fabricator, distributor, materialman or vendor who provides material for the Project but does not provide on-site labor.

**Modification** is a written amendment to the Contract signed by both parties.

**Party (to this contract)** means a person or business organization which has an obligation to perform under the terms of this contract.

**Plans** (also called drawings or prints) are scale representations of the shape, location, character and dimensions of Work to be completed under this contract. Plans include plan views, elevation views, transverse and longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedules, tables, data and pictures which depict the completed project. A group of plans adequate to complete construction of the Project may be referred to as a plan set. Plans can be either paper or electronic media.

**Project** means Work to be completed in accord with the Contract Documents. Work at the Job Site may include other projects to be completed by the Owner or other contractors working under other agreements.

**Requirements** means, in addition to obligations, responsibilities and limitations set out in the Contract Documents, the obligations, responsibilities and limitations imposed by law, rules, orders, ordinances, regulations, statutes, codes and executive orders of governmental authorities or fire rating bureaus.

**Retainage** is a portion of each progress payment temporarily held back or retained by the owner. Accumulated retainage is released to Contractor on satisfactory completion of the work.

**Sample** means a physical example of material, equipment or workmanship intended to be representative of some portion of the Work. When approved, samples establish standards for completion of similar work on the Project.

**Scope of Work** means the Work as defined by the Contract Documents.

**Separate Contractor** means a person or firm working under a different contract but on the same site and at the same time as work will be done under this contract.

**Similar** means having a like kind, quality and characteristics. Similar is not to be construed as meaning identical or by the same manufacturer.

**Specifications** (also called specs) are the part of the Contract Documents which provide descriptions of materials, equipment, construction systems, technique and workmanship to be used on the Project.

Specifications are both instructions to be followed by the Contractor and Subcontractors and a reference for the Building Official to evaluate code compliance.

**Subcontract** is a written agreement between a specialty contractor and General Contractor. Terms of the subcontract require the specialty contractor to complete some portion of the work General Contractor is obligated to perform under another agreement, usually with the Owner.

**Subcontractor** is any person or business entity under contract to a general contractor to perform some portion of the work general contractor is obligated to complete under a contract with the Owner. Subcontractor is an independent contractor performing services for another contractor rather than for the Owner. A person or organization providing supplies or materials for the Robbins Remodel but no job site labor is not a Subcontractor.

**Substantial Completion** means the Project or a designated portion of the Project is nearly in compliance with the Contract Documents and is sufficiently complete to be considered fully operational in all its components and is fit for the intended use. Substantial Completion is reached when a limited number of non-conforming or defective items on a Punch List remain to be completed. Normally, a Project or portion of a Project cannot be considered Substantially Complete until (1) all utilities and services are connected and working, (2) all equipment is installed and in acceptable working condition, (3) additional activity by the Contractor to correct items on the Punch List will not prevent or disrupt use of the facility, and, (4) a certificate of occupancy has been issued by the appropriate authority.

**Surety** means any qualified individual, firm or corporation other than the Contractor, which executes a bond to insure its acceptable performance of the contract.

**Time for Completion** is the Contract Time, the period between Date of Commencement and the date of Substantial Completion. The Notice to Proceed usually states a Contract Completion Date based on the Time for Completion.

**Work** means all labor, material, equipment, tools, transportation, permanent and temporary utilities, connections, provisions for safety and management services required to complete the Project in compliance with the Contract Documents. Work may constitute the whole or a part of the Project. Work is to be performed in a safe, expeditious, orderly and professional manner in keeping with current standards of the industry. Work includes everything that is or should be evident to a skilled construction professional after careful examination of the Contract Documents and the Job Site.

**Work Day** means any day, excluding Saturdays, Sundays and state-recognized holidays, shown on the calendar beginning at midnight and ending at midnight the following day.