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**PROFESSIONAL ENGINEERING VISUAL FOUNDATION PERFORMANCE  
EVALUATION - INSPECTION AGREEMENT  
(please read carefully – this is a binding legal agreement)**

**DEFINITIONS:** When used in this agreement, the words “we”, “us”, “my”, “I”, “me” and “our” refer to R. Michael Gray. The terms “you” and “your” refer to the client named below.

**OWNERSHIP OF THE REPORT:**

This agreement is for the provision of a professional service in the form of the evaluation of the performance of a foundation. A written report summarizing our findings and opinions will be provided to the client. The report will be copyrighted by me and is and will remain my property. The client is authorized to use the report within the restrictions specified in this agreement. The client is authorized to use the report so that you can better evaluate the overall performance of the foundation of the building. No other use is authorized.

**METHODOLOGY OF PROFESSIONAL ENGINEERING FOUNDATION PERFORMANCE EVALUATION:**

The **Texas Board of Professional Engineers** has recommended that in performing a residential engineering foundation performance evaluation, a Level A evaluation be performed before more formal engineering evaluations or materials testing be done. In compliance with the published policy of the **Texas Board of Professional Engineers** as stated in **Policy Advisory 09-98-A** and Rule 22 TAC 131.155(a) of the **Rules of the Texas Board of Professional Engineers**, this engineering performance evaluation is a Level A foundation performance evaluation. The methodology of a Level A engineering performance evaluation inspection is visual. The engineering evaluation of the visually apparent foundation performance will be based on visual observations using generally accepted engineering standards. (The specific engineering standards we use are described in the inspection report.)

The inspection methodology is visual in that the inspection consists of observing the visible condition of building surfaces and/or components that are open to view. Observations will be limited to only those areas open to view without moving any item which is blocking the view. No wall or floor coverings are removed, no soil is excavated and no furnishings are moved. The inspection and engineering evaluation does not involve a formal engineering inspection/analysis; the inspection is limited in the scope and the amount of time spent at the site; therefore, no special testing or diagnostic inspections will be performed. I will not employ any instruments to aid in the inspection, employ any destructive testing, or make any formal engineering calculations. It is expressly pointed out that the Level A foundation performance evaluation will be preliminary in scope and restricted to the use of the inspector's visual ability to make observations. For these reasons, the inspection process is not diagnostically and/or technically exhaustive.

**SCOPE OF OFFERED PROFESSIONAL ENGINEERING FOUNDATION PERFORMANCE EVALUATION:**

The foundation performance evaluation I provide is intended to provide you with unbiased, subjective opinions regarding the overall performance of the building foundation for your exclusive use so that you can better evaluate the overall performance of the foundation of the building. The report will be based on our observations of the visible and apparent performance of the foundation on the date of the inspection. In the conduct of the inspection, we do not perform any action that, in our judgment, could damage the property or endanger the safety of the inspector or any other person. Although care is taken in the performance of the inspection, R. Michael Gray makes no representations regarding any latent, concealed or obstructed defects that may exist. The foundation performance evaluation report is not fully exhaustive nor does it imply that every component was inspected or that every possible defect was discovered and reported.

The opinions formulated by the inspector will be based on perceived conditions as compared to the inspector's personal knowledge and/or experience and will, therefore, be subjective and not based upon any Code requirements, manufacturer requirements and/or performance standards and/or compliance with any Federal, State or local codes, lender requirements and/or other legal requirements. The content of the report should be considered as a first impression opinion of apparent foundation performance; therefore, the observations of the structure and foundation by a different professional can result in differing opinions and/or conclusions.

Judgments concerning the performance of the foundation will be based on the visible condition of the exposed area of the foundation, the levelness of surfaces that would normally be expected to be level (such as countertops and sills) as well as distress patterns in wall coverings that are normally associated with foundation movement such as diagonal cracks in drywall, stair-step or diagonal cracking in brick veneer, diagonal cracking in stucco and sticking doors. We will make an unbiased recommendation to underpin or not to underpin the foundation based on the apparent performance of the foundation as well as our estimate of the degree to which the performance of the foundation is likely to be improved by underpinning. We will also provide an unbiased, subjective opinion concerning the structural performance of the foundation as compared to our inspection experience with houses of similar construction, age and general location.

**Items Excluded from an Engineering Foundation Performance Evaluation:** The foundation performance evaluation does not include any item or component not listed above. The following are specifically excluded from a normal home inspection:

**No Structural Pest Inspection:** According to the Texas Structural Pest Control Act only persons who possess a valid Structural Pest Control Business License may inspect or make reports with respect to structural pest infestations including any wood destroying organisms including insects such as termite and fungus such as rot. We do not possess a Structural Pest Control Business License and thus cannot legally inspect or make reports with respect to structural pest infestations including any wood destroying organisms. We strongly recommend that you engage the services of a Structural Pest Control Business Licensee.

**No Hazardous Materials or Environmental Inspection:** There are many hazardous materials or environmental conditions that may be present in a building. This inspection and report does not address any environmental conditions (such as mold or radon) or hazardous materials (such as lead or asbestos).

**No Engineered Repair Plan:** While we do normally provide general descriptions of needed repairs, the report is not intended to be used as an engineering design document for the repair of the foundation.

#### **POST INSPECTION PROCEEDINGS:**

**Questions and Problems:** We are available without charge for telephone consultations.

**Assignment:** This agreement is a personal agreement between you and R. Michael Gray. No person other than you has a right to rely on the contents of this agreement or on the inspection report for any reason whatsoever.

**Certificate of Merit:** The client shall make no claim of professional negligence unless the client has first provided me with a written certification executed by an independent Texas Professional Engineer currently practicing in the area of Level A residential foundation evaluations 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 registered structural 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 me 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.

**Arbitration of Disputes:** If a controversy or claim related to this contract, the inspection or the inspection report arises, it shall be filed within a reasonable time after discovery of the problem and shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules. Only licensed engineers will be eligible to serve as the arbitrator. Judgment upon the award rendered by an arbitrator may be entered in any court having jurisdiction thereof. In any arbitration or other legal action in which we are found to

be without fault, you agree to reimburse us for any attorney's fees incurred in our defense of the proceeding.

**Limitation of Inspection and Liability:** The inspection is offered for a limited, fixed fee and is performed within a limited amount of time. Our liability, therefore, is limited, specifically by the following terms and conditions.

**Limitation of Inspection:** This report is neither an expressed nor implied warranty and/or guarantee as to future life and/or performance of the items inspected. Since the inspection procedure is visual only and is not intended or designed to be diagnostically and/or technically exhaustive, an inherent risk remains that undiscovered problems exist and/or future problems will develop. For these reasons, it is not intended to be, nor should it be implied, that the inspection process could or is intended to identify and/or discover all defects of whatever nature. Client agrees not to rely on the report as the basis for the establishment of property values, for the purchase of the building or for obtaining any type of financial arrangements. Client acknowledges that I am not an insurer and it is not the intent and/or purpose of this inspection procedure to provide client with a risk free purchase or usage of the structure. The purpose of this inspection is to identify (if possible) those items (noted above) which appear in need of immediate repair and which lend themselves to discovery by a visual process; therefore, there are no expressed or implied warranties that all problems and/or existing defects of any and all nature have been discovered and noted in the report.

**Maximum Liability:** Since this is a preliminary visual inspection, it is not possible to eliminate all risks involved in the purchase and/or ownership of the subject property. Client agrees, to the fullest extent provided by law, that our liability for all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of the engineer to the client shall not exceed amount of the fee paid for the inspection and report. This limitation shall apply regardless of the cause of action or the legal theory pled or asserted specifically including, but not limited to, negligence. This clause is a material inducement for you and me to enter into this agreement.

ACKNOWLEDGMENT: THE UNDERSIGNED HAS REVIEWED THIS DOCUMENT, UNDERSTANDS ITS CONTENT AND AGREES TO THE TERMS AND CONDITIONS CONTAINED HEREIN SPECIFICALLY INCLUDING THE CLAUSE TITLED MAXIMUM LIABILITY. THE CLIENT FURTHER REPRESENTS AND WARRANTS THAT HE OR SHE HAS FULL AND COMPLETE AUTHORITY TO EXECUTE THIS CONTRACT ON BEHALF OF ANY SPOUSE, AND TO FULLY BIND ANY SPOUSE TO ALL THE TERMS, CONDITIONS, EXCLUSIONS AND LIMITATIONS OF THIS AGREEMENT.

Client Signature	Printed Name of Client
Client E-mail Address:	