

# CONSTRUCTION CONTRACT BETWEEN OWNER AND CONTRACTOR FOR HOME IMPROVEMENTS OR RELATED WORKS

Airmaxx INC.

License #915327

THIS CONTRACT is between "Customer" and Airmaxx INC., hereafter called "Contractor", whose office address is 1865 John Towers Ave #B, El Cajon, California, 92020 and phone Number is 619-655-3010

The date this Contract is electronically signed by the Owner and Contractor is located on the first page of the contract.

Pursuant to the law and before any work was started, the Contractor gave the Buyer a copy of this contract signed and dated electronically. The buyer's receipt of the copy of the contract initiates the buyer's rights to cancel the contract pursuant to section 1689 of the California Civil Code. You, the Buyer, are entitled to a completely filled in copy of this agreement, signed by you, before any work may be started.

The length of this contract and added language is due to requirements of law. If you choose a Contractor other than Airmaxx Inc., be sure to verify that Contractors' State Licensing Laws are being adhered to in the form of contract language.

1. **Description of the Project and Description of the Significant Materials to Be Used and Equipment to Be Installed:** (hereinafter called "Work"), is described in the contract at the above job site address in accordance with the construction documents and pursuant to the exhibits to this contract.

3. **Payment / Contract Price.** In exchange for the performance of the Work and the requirements of the contract documents, the Owner will pay the Contractor the total and complete sum of "Total to pay", subject to increase or decrease for change orders. **BY LAW, THE DOWN PAYMENT MAY NOT EXCEED \$1,000 or 10% PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS.**

**Schedule of Progress Payments:**

**Deposit will be paid upon acceptance of this contract unless otherwise stated in this contract**

**Final payment will be due upon completion of the installation unless otherwise stated in this contract**

By Law, the schedule of 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. Owner agrees that even though there may be "punch list" items or corrective items to be remedied within Work associated with a specific progress payment, payment is still due in accordance with the above schedule.

4. **Exclusions from Cost of the Work.** The following items are not included in the cost of the Work and shall be paid directly by Owner: Architectural and Engineering fees, blue prints, utility deposits and connection fees, street and utility assessments, plan check and general building permit fees (unless specifically indicated herein), costs of environmental impact reports, pedestrian canopies, winterization or weatherproofing, costs of soil reports, costs of inspection and testing (unless specifically indicated herein), premiums for performance and payment bonds, premiums for fire insurance, all-risk insurance and builder's risk insurance during construction, cost of repair of damage to the Work caused by earthquake or acts of God or others, loan fees and other financing costs, sales costs, leasing costs and any other costs or expenses not specifically included in the Work, construction documents or foregoing Exhibits.

5. **Concealed Conditions.** If Contractor encounters underground, buried, concealed or unforeseen conditions that were unknown or not apparent to the Contractor at the time of execution of this Contract, the Contract price will be adjusted or increased to compensate the Contractor. The Contractor is not required to know of every component that may be buried or concealed within a wall or below ground or similar condition.

6. **Time for Start and Completion.** Contractor shall commence Work within a reasonable time after execution of this Contract, and shall prosecute the Work to completion and in all events shall substantially complete the same subject to permissible or excusable delays, City delays or interference from others. The Work will be deemed substantially complete when Contractor has finished all work called for by the contract documents and the Work is ready to be used and occupied by the Owner for its beneficial use or intended purpose, even though some items may remain to be installed, finished or corrected.

7. **Completion and Occupancy.** Owner agrees to sign and record a notice of completion within five days after the Work is completed and ready for occupancy.

8. **Inspection and Testing.** Contractor will make all reasonable efforts to make all portions of the Work available at all times for inspection and testing by Owner or Owner's Inspectors. Special inspections and testing will be at the expense of Owner.

9. **Jobsite Access, Approvals, and Permits.** Owner will at all times make the job site available to Contractor, and will secure, before commencement of the Work, any change of zone, conditional use permit, variance, permits, home owner association approvals, financing or other necessary entitlement or requirements. Contractor will sign where necessary on the building permit application if requested in writing by the Owner. Owner will obtain and pay for all required building permits (unless specifically indicated herein), and Owner will pay school, transportation, and similar fees and assessments and charges required by public agencies and utilities for financing or repaying the cost of sewers, storm-drains, water service, and other utilities, including sewer and storm-drain reimbursement charges, revolving fund charges, hookup charges, and the like. Buyer shall be responsible for the location of property lines, easements and providing complete and adequate access for Contractor and for Contractor's heavy equipment and large trucks. Any work stoppage and/or change of work because of property line disputes or accessibility shall be treated as additional work and so charged to Buyer. Buyer will also provide a pressurized and adequate fresh water source and electricity for Contractor and its subcontractors to use while on site performing work on the project. Buyer shall give Contractor complete access to the project at all times in order for Contractor to complete its scope of work. Buyer shall be responsible for location and depth of existing underground utility lines and/or systems on site. If underground utilities such as gas, electric, sewer, water, cable, sprinkler, etc. need to be moved or relocated to accommodate the work on the project, the Buyer agrees that there will be extra charges for relocation or removal of such work. If landscape irrigation or sprinklers or other facilities need to be terminated for any reason, Buyer is responsible for watering of any existing plants or end use facility needs. Buyer agrees to allow Contractor to place an advertising yard sign on the property during all times of the work. Buyer agrees to accommodate a location for Contractor's temporary restroom facilities and staging areas for materials. Buyer promises that the construction site will be ready for Contractor's work and will be free of debris and all moveable objects. If site is not free of debris and objects, additional charges may result. This contract does not provide for import, export, or movement of any soil, dirt or earthen material unless specifically indicated herein. If required, the Owner will hire a licensed land Surveyor to locate the property lines and provide boundary stakes as required and needed by Contractor to establish proper location for building.

10. **Acceleration.** If Owner requires Contractor to accelerate the Work, either by accelerating the schedule or by refusing to grant extensions of time to which Contractor is entitled, then Owner will reimburse Contractor for costs of acceleration,

including overtime pay, double shifting, oversized crews, added payroll and special equipment and the same shall be deemed a "Cost of the Work" and the contract amount shall be so adjusted.

11. **Delay.** Contractor shall be excused for any delay in completion of the Contract caused by acts of God, of Owner, of Owner's agent, or of Owner's employees or independent contractors of Owner, inclement weather, the elements, war conditions, terrorism, commercial shortages of required labor or materials, litigation, labor disputes, extra work, labor trouble, acts of public utilities, public bodies, or inspectors, changes requested by Owner, failure of Owner to make progress payments promptly, or other contingencies unforeseen by Contractor and beyond its reasonable control, or other contingencies unforeseeable by or beyond the control of the Contractor. Contractor is entitled to additional time for performance of the work as determined by the Contractor as a result of change orders to the work or adjustments in the scope of work by the Buyer, Buyer's agent or Governmental agencies or bodies. The Buyer shall not interfere with the Work. If Buyer interferes with Contractor's Work by not having the job site ready, or by issuing excessive change orders, or by not responding to Contractor's requests for information, or if Buyer or owner's agents impede or disrupt the progress of the Work by any means, Buyer shall pay compensate Contractor for such interference at Contractor's overhead and profit rate. Contractor will make all reasonable efforts to make all portions of the Work available at all times for inspection and testing by Buyer or Owner's Inspectors. Inspection and testing will be at the expense of Owner.

12. **Drawings and Specifications.** The Work will be constructed according to drawings and specifications that are listed in the Exhibits to this Contract. Owner represents to the Contractor that the construction documents and drawings reasonably reflect the scope of work anticipated under the terms of this contract. The Owner assures Contractor that any and all "Requests for Information" or the like sent to the Owner or Architect from the Contractor, shall be promptly responded to so as to allow the Work to continue without interruption.

13. **Payment for Labor and Material.** Upon satisfactory payment being made for any portion of the work performed, the Contractor shall, prior to any further payment being made, furnish to the Buyer or Owner for the home improvement or construction work a full and unconditional release from any claim or mechanic's lien pursuant to [Section 3114 of the Civil Code](#) for that portion of the work for which payment has been made. Contractor shall pay all valid charges for labor and material furnished to Contractor and used in the construction of the Work. To the extent that the Owner has failed to make timely and complete payments to the Contractor for Work performed,

the Contractor is excused from the obligation of paying all valid charges to the extent that the Owner is in arrears in making such progress payments to Contractor.

14. **Payment Schedule.** The Contractor will submit an invoice or application for payment as set forth in the above Schedule of Payments for work completed, in progress and/or materials stored onsite. The invoice or application for payment may include change orders or time and material charges that have been approved by the owner. Owner shall pay the Contractor within (3) three working days from receipt of the invoice. Interest will accrue at the simple rate of 12% per annum for any outstanding balances owed to Contractor.

15. **Final Payment Waives Claims.** At the date nearing substantial completion of the Work, the Owner shall prepare a written punch list of items to be completed prior to the Final Payment. Owner may not withhold more than Five percent (5) % of the Contract price for the total of all punch list items for the entire project. Owner may only withhold payment in an amount that is equal to the actual construction value of the punch list item to be corrected. The punch list shall be based on a reasonable inspection within industry standards and based upon the construction drawings. Upon completion of the punch list items the Owner shall make the Final Payment. In the event that a portion of the building is substantially complete prior to the completion of the punch list items, the Owner may withhold a portion of the Final Payment. The portion withheld shall have a reasonable relationship to the value of the punch list items remaining. After the preparation of the punch list, the Contractor shall not be responsible for the repair of damage done to the project by others such as, but not limited to, the owner, real estate agents, third parties, vendors, visitors and potential purchasers of the building.

16. **Final Payment.** Final payment shall be made by Owner to Contractor upon the completion of the Work.

17. **Mechanics' Lien Releases.** No payment will be made to Contractor until Contractor has furnished mechanics' lien releases that comply with the requirements of the California Civil Code and signed by Subcontractors, sub-subcontractors, material suppliers, and others that have performed Work on or furnished equipment or materials to the job. This provision only applies to Subcontractors or material suppliers that have provided 20 day preliminary notices to the Owner, Lender and Contractor. The Owner shall provide to Contractor a copy of any 20 day preliminary notices that the Owner or its agents have received.

18. **Note About Extra Work, Change Orders, and Deletions.** Extra Work and Change Orders become part of the contract once the order is prepared in writing and signed by the parties prior to the 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. Owner may direct the Contractor to make changes, modifications or deletions in the Work. In the event that Owner directs work to be added, the contract price shall be increased by a fair and reasonable valuation. The Contractor agrees to make claim for extra costs, change orders or extensions of time or otherwise to the Owner in writing. Within a reasonable time after a proposed change order or modification is issued by the Owner, Contractor shall quote, in writing, the price of the change, if any. The quote will be supported by a written estimate or other documentation. If Owner agrees to the proposed price, the change order shall issue and the total cost of the contract will be adjusted accordingly. If Owner and Contractor are unable to agree on a lump sum price for the change order, Owner may direct Contractor to complete or change the item of work on a time and material basis. If a time and material basis is used, the Owner shall pay Contractor for the Cost of the Work, which is defined as all costs and expenses incurred in performing the work, including but not limited to wages, labor, taxes, salaries, supervision, administration, management, contributions applicable to payroll, personnel to jobsite, travel, subsistence, subcontracts, fuel, maintenance requirements, materials, supplies, equipment, apparatus, temporary facilities, services, rentals, power, water, phone, communication needs, connection charges, overnight mail, postage, premiums, insurance, workers' compensation, clean-up, hauling, professional fees, expediting fees, courier fees, inspections, permits, governmental costs, bonds, licenses, assessments and any and all other reasonably incurred costs or expenses associated or related to performance of the work, together with the Contractor's fee, which shall be the Cost of the Work plus 25 percent. A change-order form for changes or extra work shall be incorporated into the contract and shall become part of the contract only if it is in writing and signed by the parties prior to the commencement of any work covered by a change order. However, the failure of Owner to sign a change order for work that has been completed pursuant to the Owner's directives, shall not bar Contractor from receiving payment for extra work. According to the law, the buyer may not require a Contractor to perform extra 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 a buyer 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: (i) The scope of work encompassed by the order; (ii) The amount to be added or subtracted from the contract; (iii) The effect the order will make in the progress payments or the completion date. The Contractor's failure to comply with the requirements of this paragraph does not preclude the recovery of compensation for work performed based upon legal or equitable remedies designed to prevent unjust enrichment. If the Owner elects to delete portions of the Work, the Contractor shall issue a credit to the Owner for the actual value of the work, less Contractor's overhead

and profit. In the event Owner deletes any such portions of work, the Contractor still remains entitled to its overhead and profit on the deleted items.

19. **Allowances**. If the contract price includes allowances for any item of work and if the cost of performing the Work covered by the allowances is either greater than or less than the allowances, the contract price shall be increased or decreased accordingly.

20. **Damage to Work; Insurance**. Owner will procure before commencement of the Work, a broad form of builders' risk insurance with course of construction, general liability, fire, vandalism, terrorism, and malicious mischief clauses incorporated and/or attached. The insurance is to be in a sum at least equal to the contract price with loss payable to the beneficiary under any deed of trust covering the Work. The insurance will name Contractor and subcontractors as additional insured and shall be written to protect Owner, Contractor, subcontractors, and construction lender as their interests may appear. Should Owner fail to do so for five (5) days following notice from Contractor, Contractor may procure such insurance as agent for and at the expense of Owner, but is not required to do so. If the Work is destroyed or damaged by fire, storm, flood, landslide, earth movement, subsidence, or earthquake, or by theft or vandalism, the Owner shall pay for any work done by Contractor in rebuilding or restoring the Work as extra work, and Owner may use insurance proceeds for such payments if they are available. Owner shall obtain and pay for insurance against injury or damage to its own employees, visitors, invitees, agents and persons or their respective personal property interests.

21. **Matching Color and Textures**: Where texture, materials or colors are to be matched, Contractor shall make reasonable effort to do so using standard material but does not guarantee a perfect match. Buyer acknowledges and agrees that there will likely be variations in the color, consistency, materials and texture for any work that is to be matched. Buyer releases Contractor for any liability associated with exact matching. The Buyer understands concrete is composed of natural materials, which have certain inherent characteristics; a certain amount of shading or color variation is a natural occurrence, which should not be construed as a defect. Buyer understands that coloring and concrete consistency is also affected by the rate of cure, which is affected by weather and other conditions. Buyer agrees that the concrete is not guaranteed for evenness of color and may not be the exact shade anticipated. The shade and color may vary and fade over time. The contractor also makes reasonable effort to avoid discoloration or staining due to efflorescence (salt or calcium deposits). However, the Buyer understands that efflorescence can result from water coming into contact with the concrete surfaces due to planting beds, water run off and/or lawn irrigation systems. Buyer acknowledges that concrete will crack and cracking is an inherent quality with concrete in any form. Due to the inherent nature of cement type products, Buyer is

advised that concrete flatwork, stucco and masonry will crack due to expansion and contraction of the cement based product. Contractor does not warrant or guarantee that the work will be crack free. Buyer acknowledges that elevations and dimensions on the site plan, architectural plans, details and structural plans may differ as compared to the elevations and dimensions actually in the field or those resulting from needed conditions to be built in the field, or to the requirements necessary to conform to the general overall purpose to build the project and construct its necessary components. Buyer acknowledges and accepts that these differences, inconsistencies could effect the width, depth, length, size, elevation, location, height, and/or volume of walls, footings, any and all building components, lumber, excavations, concrete, backfill, forms, attachments and the like. Buyer has taken these foreseeable conditions into account and is aware and knowledgeable that exact duplication and perfection in the field will not be obtained. Contractor will construct the project to conform to the general overall purpose with those conditions in mind. The Buyer acknowledges that the plans and specifications are not perfect and are not exact and may contain errors and conflicts and that certain modifications and/or adjustments will need to be made in the field to accomplish the generally stated goal of the construction project and the Owner has taken such inconsistencies, errors and costs into mind in deciding to enter into the contract. Owner acknowledges and agrees that the Contractor is not warranting or guaranteeing the completeness, construct-ability or accuracy of the construction plans. To the contrary, the Contractor advises the Owner that errors and/or inconsistencies may exist with the plans.

22. **Unloading Release:** By the terms herein, the Contractor and its agents, officers and employees have been requested by Buyer and the Buyer's agents to access the property and project area with heavy equipment, pumping equipment, concrete trucks, large vehicles in order to deliver concrete, rock, sand, or other building materials needed to construct the project. Buyer acknowledges the Contractor will enter upon Buyer's property and adjacent City property. The Buyer understands that such equipment, trucks, and material is extremely heavy and can cause driveways, curbs, underground piping and septic tanks to crack, move, dislodge, depress, crumble, etc. The Buyer expressly releases and wholly discharges Contractor and Contractor's agents for any such damages. Buyer agrees to fully indemnify and hold harmless the Contractor, and all employees and agents from all liability, damages, or claims that may occur as a result. Unless included in the contract, any repair or replacement costs or damage to existing landscape and property when constructing the project, shall be charged to Buyer on a time and material basis. If necessary, the Owner agrees to secure written approval from any adjoining landowners for access across their property to accommodate ingress and egress for project work.



23. **Right to Stop work.** Contractor shall have the absolute right to stop any and all work if any payment, including any payment for extra work, is not made to Contractor as agreed to under this Contract. In the event of such nonpayment, Contractor may keep the job idle until all payments are received. During any such idle period, the Owner recognizes that the Contractor will likely incur substantial and continuous on-site and off-site overhead costs. The Owner agrees to pay the Contractor any such reasonable on-site and off-site overhead costs being incurred by the Contractor during the idle period.

24. **Option to Terminate.** Contractor shall diligently prosecute the Work to completion and in all events within the time specified in this contract, subject to allowed or permissible delays. In addition to the Contractor's Right to Stop Work in the event of Owner's failure to make timely payments, Contractor may terminate and end the Contract and treat the Owner's failure to make timely payment as a material breach of the Contract. In the event of such a breach, the Contractor is entitled to its lost profits, work in progress, materials procured and Contractor's overhead and insurance costs for the designated Work.

25. **Contract Not Conditioned on Financing.** This Contract is effective immediately and is not subject to conditions precedent regarding financing, building department approval, satisfactory soil tests, or any other happening or event. Owner represents that Owner has arranged financing adequate to pay for the Work to be performed under this Contract.

26. **Repossession of Materials.** Title to all materials not affixed and incorporated in the project or Work shall, at the Contractors' option, remain the rightful property of the Contractor until Owner has made all payments required under this Contract.

27. **Guarantee of Workmanship / Warranty:** All work shall be guaranteed for one year from the date of substantial completion unless other extended warranties or guarantees are specifically set forth herein. Any guarantee of satisfaction is based upon an objectively reasonable person standard. Approval of work by building inspectors, owner's agent, architect or governmental agencies shall be deemed to constitute a determination that the entirety of the work was completed in a workmanlike manner and shall be binding on the Buyer. There are no warranties either expressed or implied except those specifically set forth in this contract. Guarantees and warranties are effective only if Buyer has complied with all the terms and conditions, payments and other provisions of this contract. The liability of Contractor for defective materials or installations is hereby limited to the replacement or correction of such defect and/or installation. No other claims or demands whatsoever shall be made upon or allowed against the Contractor. Upon notice of a potential warranty claim, damage or alleged breach associated with the work, Buyer shall give written notice of such claims to

Contractor by certified mail. Upon receipt of such notice, Contractor is allowed 14 calendar days in which to conduct a site visit at the project to determine the nature of the Buyer's claims. Thereafter, Contractor is entitled to a reasonable amount of time to effectuate the repairs if needed. This limited warranty extends only to the Buyer and is not transferable. There are no warranties, either expressed or implied, which extend beyond the description contained in this document. Buyer agrees to allow Contractor a full and complete opportunity to remedy or correct any type of warranty, alleged breach or defect claim by Buyer. In the event Buyer initiates litigation or arbitration, files suits or commences legal proceedings without first giving Contractor a full opportunity to correct such a breach or deficiency, the Buyer voluntarily relinquishes his/her right to sue Contractor for any deficiencies or breach in the work or warranty items.

28. **Miscellaneous Provisions / Added Terms:** N/A

29. **Default.** If Owner believes that Contractor has failed to perform any of its obligations under the contract documents, Owner may notify Contractor in writing, and Contractor will correct the default, if any such default has occurred. Contractor shall take reasonable corrective action within 14 calendar days after written notice of the alleged default is received by the Contractor. After a reasonable opportunity to cure the alleged default, and after the item or issue has been remedied by the Contractor or third party, Owner shall inspect the item or review the issue and advise the Contractor in writing if the default has been corrected to the satisfaction of the Owner. If the Owner is not reasonably satisfied that the item or issue has been corrected or remedied, the Owner shall provide the Contractor an additional 72 hour written notice to cure the alleged default. If Contractor fails to proceed with corrective action within this 72 hour notice period, then Owner may pursue whatever legal remedy the Owner chooses. If such an occurrence should occur, Contractor may remove the material from the job site for its own use, to the extent such materials have not been paid for by the Owner. Owner is under no obligation to eject Contractor from the job, and at the election of Owner, the Owner may waive the default and allow the Contractor to complete the Work. If in the event Owner terminates the Contract, Owner is not allowed to take possession of Contractor's or subcontractor's equipment, tools and construction equipment and Owner agrees to allow Contractor full access to the site to remove such items, material or equipment. In the event Owner initiates litigation or arbitration, files suits or commences legal proceedings without first giving Contractor a full opportunity, pursuant to the above express terms, to correct such a default, the Owner voluntarily relinquishes his/her right to sue Contractor for any default, deficiencies or breach.

30. **Headings, Ambiguities, Reliance:** As used in this Agreement, the masculine or feminine, in the singular or plural, shall be deemed to include the others whenever the text so requires. Captions and paragraph headings are inserted solely for the convenience and shall not be deemed to restrict or limit the meaning of the text. All

words of the entirety of the Contract are to be read as a whole to carry out the intentions of the parties. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against any of the parties, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed, modified, drafted and negotiated by all parties to this Agreement and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the parties. The terms of this agreement are contractual and not merely recital. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original. A facsimile signature for change orders or this contract shall be deemed binding on the party that signed it. The Owner hereto represents that they have been advised of the effect of the Contract by his or her own counselor or attorneys, or has waived the necessity of such review and they have investigated the facts and are not relying upon any representation or acknowledgment, whether oral or in writing, of the Contractor except as contained herein.

31. **Execution Clause.** This Contract shall not be effective until each party has in its possession a copy of the contract as signed by the other party.

32. **Independent Contractor.** There is no agency or employment relationship between Owner and Contractor. In performing its duties under this Contract, Contractor acts entirely as an independent Contractor.

33. **Insolvency.** If Contractor receives information that leads Contractor to believe that Owner is insolvent, or does not have sufficient financial strength to make progress payments as they come due, Contractor will notify Owner, and Owner will provide Contractor with sufficient financial data, satisfactory to Contractor's auditors, to show that Owner has the resources to pay the contract price. If Owner does not provide such information, Contractor may terminate its performance under this Contract, and Owner will pay to Contractor the value of the work in place, plus the Contractor's overhead and profit for scopes of work not completed.

34. **Interest.** Overdue payments from the Owner to the Contractor will bear interest at 12% simple interest per annum.

35. **Interference by Owner.** The Owner shall not interfere with the Work. If Owner interferes with Contractor's Work by not having the job site ready, or by issuing excessive change orders, or by not responding to Contractor's requests for information, or if Owner or owner's agents impede or disrupt the progress of the Work by any means, Owner shall pay compensate Contractor for such interference at Contractor's overhead and profit rate.

36. **Liquidated Damages.** If the completion of the Work is delayed by Contractor, the parties agree that any such damages would be extremely difficult and impractical to compute, and the parties have therefore bargained for and agree to payment by Contractor to Owner, as liquidated damages, the sum of \$40.00 for each

day delay in the completion of the Work that is more than 60 days beyond the completion date.

37. **Litigation.** If any dispute arises between the Owner and the contractor which pertains or relates in any way to the work herein, this contract or associated matters, the parties agree to mediate any dispute with a neutral mediator in San Diego County with the parties splitting the costs of mediation prior to mediation commencing. If mediation is not successful, the parties agree to litigate any dispute in San Diego County. The prevailing party in litigation shall be awarded its reasonable attorneys fees, expert fees and costs. Failure to request mediation in writing via certified mail return receipt requested, is a waiver of the parties' right to sue or file suit for any claim. If a lawsuit has been filed by a party and the party failed to request mediation as set forth above with proof of same, the party shall dismiss his lawsuit with prejudice.

38. **Subcontracts.** Subcontracts shall incorporate by reference the provisions of plans and specifications or contract documents that apply to the physical performance of the Work by subcontractors. Contractor may subcontract any portion of the work to any person that the Contractor deems competent to complete the work. Contractor has not represented to the Owner that Contractor self-performs all work on the project.

39. **Personal Liability.** The officers, members, co-owners and directors of the Owner are personally liable, jointly and severally, with the Owner for the performance of all obligations under this Contract.

40. **Successors and Assigns.** Rights and duties under this Contract will not be assigned or delegated by the Owner without the written consent of the Contractor. In the event of delegation, the delegator guarantees that the delegatee will perform as required by the contract documents. The duties and obligations of this Contract are binding on successors, administrators, executors, and the parent and subsidiary corporations of the Owner and in the event of consolidation or merger, on the surviving corporation or partnership.

41. **Existing Soil Conditions:** The Contractor and its agents, owners, employees, officers and directors are excluded and released from any potential liability and indemnified by Buyer or any other contractor/person from any damage/defects or liability that could arise from existing soil conditions. Contractor is not responsible for existing soil conditions including but not limited to faulty compaction, expansive soil, clay, movement, silt, leaks or water migration that could affect soil condition. Buyer is responsible for, and shall procure all Home Owner Association or Community approvals, permits or variances from governmental bodies as may be necessary for import or export of soil for the project.

42. **Contractor's Insurance.**

**Contractors' Insurance and Workers' Compensation Insurance:**

**Airmaxx Inc.** carries commercial general liability insurance and workers' compensation insurance for all employees. You may call the contractor to check the coverage.

43. **Notice.** Any notice, except for default notices aforementioned, required or permitted under this Contract shall be deemed given, if in writing, upon the earlier of delivery or five (5) days following deposit in the U.S. Mail, first-class postage prepaid and addressed to the party at the address contained in this Contract, but such address may be changed by written notice from one party to the other as necessary. Notice may also be given by facsimile transmission if such facsimile has a transmission verification report attached thereto.

44. **Integration Clause.** This Contract, with all contract documents incorporated into it such as the construction drawings, exhibits hereto is the entire and completely integrated agreement between the parties. This agreement represents a final and complete expression of the parties' objectives and oral negotiations. No oral or written communications or negotiations that occurred before execution of this Contract are considered to be a part of this Contract. This Contract can be modified only by a written document signed by both parties. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provisions. The Buyer agrees that Contractor did not make any oral representations or promises that are not specifically written in this contract. Any such alleged oral representations or promises directly contradict and are at variance with the written terms of this Contract. Any Contractor prepared proposals, estimates or written communications to or from the Owner that pre-date this Contract are not made a part of this Contract unless specifically set forth herein, listed in the scope of work and attached hereto as an exhibit to this Contract.

45. **Governing Law.** This agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Diego County for any lawsuits or mediation.

46. **Variances / Imperfection:** A reasonable allowance and variance on all dimensions and in-place installation shall be allowed by Buyer. Buyer acknowledges and agrees that the in-place construction of components, hard-scape, equipment, flatwork, walls and all related work may vary as it relates to the construction plans or design and the Owner shall make no claim for such variances or imperfection. Differences in dimensions or significant on-site changes requested or caused by the Buyer or site conditions will result in additional charges and change orders.

47. **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. Contractor will be responsible for discharging any valid liens that have been filed against the property as a result of the work, providing the Contractor has been paid in full from the Buyer and to the extent that the lien is bona fide. Contractor has the absolute right to dispute any lien filed by third parties against the property in a court of law. IT IS NOT REQUIRED, BUT YOU MAY 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.

**48. 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, but check with a lawyer), 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) or Call CSLB at 800-321-CSLB (2752). Write CSLB at P.O. Box 26000, Sacramento, CA 95826.

49. **Performance and Payment Bonds:** The Contractor maintains a \$10,000 Contractors' License Bond as required by the state of California. Contractor is not required to provide any further bonds such as performance or payment bonds. However, the Owner has the absolute right to require the Contractor to have a performance and payment bond for the work to be completed on the project. Such bonds may insure that the performance or work is adequate and that all persons providing work on-site have been paid. However, Owner is responsible for the costs of the bonds. If the Owner so elects to have these additional bonds, reimbursement and actual costs for such bonds will be made to Contractor by the Owner at the time they are acquired by the Contractor. An administrative cost of 4% of the face value of the insured amount of bonds shall be paid to Contractor by the Owner in addition to the costs of the bonds. Meaning, if the Owner elects to have the Contractor procure performance and payments bonds, the Owner will be required to pay the full cost of the bonds together with the administrative cost of 4% of the insured face value of the bonds.

### **Notice and Three-Day Right to Cancel**

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 the Three-Day Right to Cancel.

By signing this electronic document buyer acknowledges the receipt of the Notice and Three-Day Right to Cancel.

"You, the buyer, have the right to cancel this contract within three business days. You may cancel by e-mailing, 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."

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



### **Three-Day Right to Cancel**

TO Airmaxx INC. 1865 John Towers Ave #B, El Cajon, California 92020.

619-655-3016 FAX. Facsimile Notice is Acceptable.

Notice of Cancellation: Enter date of transaction (\_\_\_\_\_)

Not later than midnight of the third business day after signing the contract or \_\_\_\_\_  
(Date)

I hereby cancel this transaction. \_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Buyer's signature)

A **"Seven-Day Right to Cancel"** shall be provided to the buyer for any contract that is written for the repair or restoration of residential premises damaged by any sudden or catastrophic event for which a state of emergency has been declared by the President of the United States or the Governor, or for which a local emergency has been declared by the executive officer or governing body of any city, county, or city and county:

### **Notice and Seven Day Right to Cancel**

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 the Three-Day Right to Cancel.

By signing this electronic document buyer acknowledges the receipt of the Notice and Seven-Day Right to Cancel.

For the repair or restoration of residential premises damaged by any sudden or catastrophic event for which a state of emergency has been declared by the President of the United States or the Governor, or for which a local emergency has been declared by the executive officer or governing body of any city, county, or city and county - "You, the buyer, have the right to cancel this contract within seven business days. You may cancel by e-mailing, 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."

You may cancel this transaction, without any penalty or obligation, within seven 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

**Seven-Day Right to Cancel** (For the repair or restoration of residential premises damaged by any sudden or catastrophic event for which a state of emergency has been declared by the President of the United States or the Governor, or for which a local emergency has been declared by the executive officer or governing body of any city, county, or city and county:

TO Airmaxx INC. 1865 John Towers Ave #B, El Cajon, California 92020.

619-655-3016 FAX. Facsimile Notice is Acceptable.

Notice of Cancellation: Enter date of transaction (\_\_\_\_\_)

Not later than midnight of the third business day after signing the contract or \_\_\_\_\_  
(Date)

I hereby cancel this transaction. \_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Buyer's signature)