This Design Services Agreement (the “Agreement”) shall be effective as of August 1, 2024 (the “Effective Date”), and is entered into on behalf of Rosemary Road Interiors LLC (“Rosemary Road”) on the one hand, and Bob Smith (“Client(s)”) on the other. Rosemary Road and Client(s) may collectively be referred to in this Agreement as the “Parties,” or individually as a “Party.”

**The Project**. Rosemary Road shall perform its below-defined Design Services at Client’s property located at:

123 Main St.

San Clemente, CA 92673

(the “Property”). The term “Project” shall refer to: (i) the comprehensive scope of work encompassing the below-defined Design Services to be performed by Rosemary Road at the Property under this Agreement; (ii) when applicable, any additional Design Services described in any below-defined Change Order; and (ii) any work performed by any licensed contractor or outside vendor hired to effectuate the design details.

**Term**. This Agreement shall commence on the date indicated above and extend until the completion of the below-defined Design Services, or upon 10 calendar days’ written notice by either Party that this Agreement is terminated. Upon termination of this Agreement, Rosemary Road shall be entitled to: (i) compensation for all Design Services performed through the date of termination; (ii) reimbursement of any expenses incurred in performing the Design Services; and (iii) retain any non-refundable portion of the below-defined deposit(s).

**Services/Scope of Work**. Rosemary Road will provide Client with the interior design, project management, and/or purchasing services specifically identified below (collectively, the “Design Services”):

**Flat Rate Design Services**. Subject to the conditions and limitations described below, Rosemary Road offers certain flat-rate, per-room design packages. Rosemary Road shall provide Client with the Design Services specifically described below for the flat rate(s) also described below.

**Primary Bathroom**. Client shall pay Rosemary Road a flat rate of $1,500 to do the following:

**Property Visit**. Rosemary Road will meet Client at the Property to view the applicable space(s), discuss Client’s needs and wants, and take appropriate measurements and photographs.

**Design Concept**. Rosemary Road will prepare a presentation for Client that consists of both photographs and physical samples of hard and soft materials recommended for the bathroom.

**Additional Notes**. In addition to the foregoing, the Parties agree as follows:

**Additional Notes:**

20 Design Cache Hours: Time to be used for consulting services related to selections of materials, floor plans, design direction, color palette and ordering of trade furnishings. Back office time for your project communication and necessary administrative tasks will be deducted from hour total. Project management is limited and agreed upon at the discretion of Rosemary Road and deducted from hours. Clients will receive weekly email communication with calculation of hours used and time remaining.

**Conditions and Limitations on Flat-Rate Fees/Flat-Rate Design Services**. All flat-rate Design Services are subject to the following conditions and limitations:

**Flat Fee Due in Advance**. Client shall tender the entirety of the flat fee owed for the flat-rate Design Services described above in advance. Rosemary Road shall have no obligation to commence work until Client has paid the entirety of the agreed upon flat fee.

**Additional Fees for Work Performed Outside the Scope**. The flat rate(s) described above apply solely to the Design Services specified above. Client shall pay Rosemary Road a per-person hourly rate of $150 for any additional work/services requested by Client and performed by Rosemary Road regardless of whether or not the Parties have signed below-defined Change Order. All hourly work performed for Client under this sub-provision shall be billed to Client in minimum increments of 15 minutes, and Client shall deliver payment for such additional work, as well as any necessary costs incurred, immediately upon receipt of an invoice from Rosemary Road. At Rosemary Road’s option, Client shall be required to pay a deposit in advance of Rosemary Road performing any hourly Design Services.

**No Refund on Flat Fees Paid**. Once Rosemary Road *commences* providing *any* of the flat-fee Design Services to Client, Client shall not be entitled to *any* refund of any portion of the flat fee paid to Rosemary Road.

|  |
| --- |
| **Flat Fee Due Under this Agreement—$3,000** |

**No Responsibility re HOA**. If the Property is located in a community governed by a homeowners association (“HOA”), Client acknowledges that Client is familiar with the requirements contained in the governing documents as they pertain to any of the intended work to be performed as part of the Project. Consequently, Client agrees that at all times, Client shall have the sole responsibility of ensuring that all aspects of the Project remain in compliance with the HOA’s governing documents. Client further acknowledges and agrees that at no time shall Rosemary Road bear any responsibility or liability for any work performed at the Property that violates the HOA’s governing documents.

**No Responsibility for Defects/Installation**. Client shall inspect all items (e.g., furnishings, accessories, etc.) ordered through Rosemary Road immediately upon delivery and/or installation and communicate the nature of any complaints or defects of such items to Rosemary Road in writing within three calendar days of such delivery/installation. While Rosemary Road will work with Client to address the defect or failure, Client acknowledges and agrees that at no time will Rosemary Road bear any liability for any defective items delivered or installations made by anyone other than Rosemary Road.

**Change Orders**. Rosemary Road shall perform only the Design Services specified above. If Client wishes to modify the scope of work—e.g., request additional Design Services during the course of the Project—Rosemary Road has the right to condition its performance of such additional work on Client’s execution of a change order (the “Change Order”). Once signed, a Change Order shall become a part of this Agreement. Notwithstanding the foregoing, if, at Client’s request, Rosemary Road does perform additional work not already specified above, Rosemary Road shall be entitled to full payment for such additional work despite the fact that the Parties did not sign a Change Order. All such additional Design Services shall be charged in minimum increments of 15 minutes at the per-professional hourly rate of $150.

**Project Timeline**. A variety of factors exist that could delay completion of the Project once it has commences (e.g., the occurrence of a below-defined Force-Majeure Event). While Rosemary Road will be diligent in performing the Design Services in a timely fashion, Client acknowledges that Rosemary Road is unable to provide any guarantee as to when the Project will be completed. Client further acknowledges that any estimates that Rosemary Road does provide Client as to the completion of one or more aspects of the Project are merely estimates, and must not be relied upon.

**Client Pause and Reinstatement**. If Client pauses or delays the Project for 30 or more calendar days, Rosemary Road shall be entitled to charge Client a reinstatement fee to restart the Project at a later date (the “Reinstatement Fee”). Rosemary Road shall determine, in its sole discretion, the amount of the Reinstatement Fee, taking into consideration the time spent by Rosemary Road rescheduling the Project and re-acquainting itself with Client’s needs. Client acknowledges that as a result of such a pause/delay, items previously selected or quoted may be discontinued, out of stock, more expensive, or otherwise unavailable. To the extent that Rosemary Road must therefore revisit work already performed prior to the pause/delay, Client shall be responsible for any time spent performing such work again.

**Completion of the Project**. Once Rosemary Road provides Client with the Design Services, Rosemary Road shall have fully satisfied its duty under this Agreement. Rosemary Road’s performance is not subject to Client’s satisfaction, and Client’s dissatisfaction with Rosemary Road’s performance does not excuse Client from fully performing under this Agreement. In no event may Client offset any sums due to Rosemary Road.

**Intellectual Property**. The below-defined Images, concepts, designs, and other documents prepared by Rosemary Road during the pendency of this Agreement shall at all times remain Rosemary Road’s exclusive intellectual property, and at no time will Client obtain any rights, title, or interest in or to any of Rosemary Road’s intellectual property. Client may not, therefore, use any of Rosemary Road’s intellectual property for any purpose other than the completion of the Design Services specified under this Agreement. While Client agrees not to sell, share, or publish any of the Images, concepts, drawings, and designs prepared by Rosemary Road without Rosemary Road’s express written consent, Client is free to publish and share photographs of the *completed* Project that Client takes as long as Client credits Rosemary Road for the work.

**Photographs & Video**. During the course of the Project, Rosemary Road may take photographs or video of the Property or aspects of the Project (collectively, the “Images”). Subject to the foregoing limitations, Client irrevocably assigns and transfers to Rosemary Road the entirety of Client’s rights, title, ownership, and/or interest in and to any of the Images (if any such rights existed). This assignment and transfer of the Images includes not just Rosemary Road’s exclusive right to use, publish, exploit, display, exhibit, manipulate, copy, or reproduce the Images, but also to create derivative content, regardless of its form, medium, or format. At all times, therefore, Rosemary Road shall enjoy the absolute right to dispose of, exploit, transmit, display, reproduce, manipulate, alter, edit, revise, register (and sue to enforce such registration), and otherwise control the Images provided that Rosemary Road excludes Client’s name, address, and likeness. Client shall not be entitled to any royalty, payment, compensation, and/or benefit arising out of Rosemary Road’s use of the Images, and subject to applicable law, Client agrees that Client has waived any right to inspect, review, approve, or receive copies of any of the Images.

**Internet/Social Media**. Client agrees to credit to Rosemary Road any photographs, drawings, or renderings of the Project that Client publishes online and/or on social media (e.g., Facebook, Instagram, Pinterest, etc.). This provision is not intended to apply to photographs, drawings, or renderings where the display of the Design Services (or completed Project) is incidental.

**Access to the Property**. If applicable, Client shall make the property available to Rosemary Road’s representatives and/or any contractors/vendors Client hires to perform work on the Project, including, as necessary, the provision of a key, access code, and/or other access-granting device. Client shall also remove all unsafe conditions from the Property (or at least notify Rosemary Road of such conditions) that could harm Rosemary Road’s representatives, including, but not limited to, ensuring that all of Client’s animals are adequately restrained or are otherwise incapable of interacting with any individual performing the Design Services. If Rosemary Road is, at any time, unable to gain access to the Property to perform any previously scheduled Design Services because of a denial of access or the presence of a dangerous condition, Client shall be charged $150, or the time spent traveling to and from the Property, whichever is *greater*.

**Post-Completion Photography**. In Rosemary Road’s sole discretion, at the conclusion of the Project, Client shall permit Rosemary Road to schedule a professional photographer to style and shoot the completed Project (at Rosemary Road’s sole expense).

**Not a Licensed Contractor**. Implementation of Rosemary Road’s design concepts may require the work of licensed contractors (e.g., to perform wallpaper hanging, carpet installation, painting, plumbing, drywall, electrical work, etc.), in which case Rosemary Road may recommend one or more such contractors to perform the work. Rosemary Road does not receive any compensation for such recommendations. Rosemary Road is not a licensed contractor, and at no time will Rosemary Road act as a general contractor or perform any work that, under California law, requires a contractor’s license. Nor will Rosemary Road ever perform any work requiring any other type of professional license (e.g., architect). Client, therefore, acknowledges and agrees that any work performed by such licensed contractors and professionals will be performed under separate written home improvement or professional contracts, and under payment arrangements made, between Client and the licensed contractors/professionals.

**Independent Contractor**. At all times during the pendency of the Project, Rosemary Road shall be and remain an independent contractor within the meaning of California law.

**Rosemary Road’s Limited Warranty**. Rosemary Road warrants and represents that it will perform the Design Services in a professional manner, in accordance with reasonable industry standards, and in conformance with the explicit specifications contained in this Agreement. THIS WARRANTY SHALL BE THE EXCLUSIVE WARRANTY AVAILABLE TO CLIENT. ROSEMARY ROAD MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND/OR MERCHANTABILITY.

**Other Warranties**. While Rosemary Road makes no warranties other than the ones expressly stated above, Client shall have the benefit of all warranties and guarantees issued to Client either by operation of law, or by suppliers, manufacturers, vendors, or contractors that Client contracts with to effectuate any aspects of the design concept for the Project. Client shall be solely responsible for enforcing such warranties/guarantees.

**Client Acknowledgements**. Client acknowledges and agrees to all of the following:

**Results Not Guaranteed**. While Rosemary Road will perform its Design Services in a professional manner and apply its efforts to meet Client’s design goals, taking into account Client’s stated budget, design requirements, and decorating preferences, Client acknowledges and agrees that Rosemary Road has not provided any guarantees or assurances that Client will be happy or satisfied with the final results of the Project.

**Natural Variations**. Client acknowledges and agrees that colors, fabrics, and other materials often look different online and in photographs than they do in the physical world, and therefore Client agrees that it shall not hold Rosemary Road responsible for any non-conformity or deviation between the items Client approves and the items Client receives.

**Not Responsible for Work of Contractors, Trades, Vendors, Etc.** Client acknowledges and agrees that under no circumstances shall Rosemary Road shall bear any liability for any actions or inactions of third parties—e.g., contractors, licensed professionals, trades, vendors, etc.—whether recommended to Client by Rosemary Road or otherwise.

**No Reliance on Materials Outside of this Agreement**. Client acknowledges and agrees that while Rosemary Road may, from time to time, publish or otherwise disseminate non-identifying information aimed marketing Rosemary Road’s professional services to Client or serving as conceptual examples or options, such material is: (i) provided to Client for information purposes only; (ii) not intended to constitute a promise or guarantee; and (iii) not intended to be solely relied upon by Client in making ultimate decisions regarding the Project.

**Force Majeure**. Subject to the limitations contained in this provision, neither Party shall be held liable or responsible for any failure or delay in the performance of their obligations under this Agreement if any of the following events or circumstances occurs: (i) acts of God; (ii) fire; (iii) flood; (iv) earthquake; (v) war; (vi) terrorism; (vii) civil unrest; or (viii) governmental actions, such as declarations of states of emergency (collectively, “Force Majeure Events”). A Force Majeure Event shall *not* excuse a Party’s timely performance under this Agreement unless: (a) the Force Majeure Event renders the affected Party’s performance impossible or impracticable; and (b) the affected Party had no role in causing or exacerbating the Force Majeure Event. If a Force Majeure Event occurs, the affected Party shall promptly notify the other Party in writing and provide reasonable details of the event and its anticipated impact on the performance of their obligations. The affected Party shall use commercially reasonable efforts to minimize the impact of the Force Majeure Event on the performance of its obligations, and the time for performance shall be extended for a period equal to the duration of the Force Majeure Event. If, however, the Force Majeure Event continues for a period of more than 90 calendar days, either Party may terminate this Agreement upon written notice to the other Party, without any liability, except for payment obligations accrued up to the date of termination.

**Indemnification**. Client shall indemnify, protect, and hold Rosemary Road harmless from any claims, demands, administrative/regulatory complaints, damages, suits, losses, costs, expenses, liabilities, judgments, and/or causes of action (including attorneys’ fees and costs) arising directly or indirectly from: (i) Client’s actions or inactions, including Client’s breach of any provision of this Agreement or illegal conduct; (ii) the actions or inactions, including the illegal conduct, of any tradesperson, contractor, vendor, or consultant who performed work on any portion of the Project (collectively, the “Claims”). If any Claims are made against Rosemary Road but not against Client, then Rosemary Road shall have the right to select the attorneys of its choice to defend it. If any Claims are made against Client and Rosemary Road, Client must obtain Rosemary Road’s approval of the attorneys hired to defend the Parties. Rosemary Road may only deny such approval if reasonable under the circumstances.

**Limitation on Damages**. Client acknowledges and agrees that its exclusive remedy for all damages, suits, losses, costs, expenses, liabilities, judgments, and/or causes of action (including attorneys’ fees and costs) arising from or related to Rosemary Road’s Design Services shall not exceed the amount of compensation that Rosemary Road has received, requested, or would be entitled to receive or request under this Agreement. If a court of competent jurisdiction or an arbitrator deems this provision unenforceable, the court or arbitrator shall determine that the Parties’ intent was to limit such damages as much as the law will permit. Client further acknowledges and agrees that Client shall not, under any circumstances, hold Rosemary Road or any of Rosemary Road’s officers, agents, or anyone else involved in the performance of the Design Services liable for any direct, indirect, incidental, special, or consequential damages that result from any mistakes, omissions, or alleged wrongdoing committed by Rosemary Road.

**General Provisions**. In addition to the foregoing, the Parties agree as follows:

**Assignment**. This Agreement is personal to the Parties, and neither Party may, therefore, assign any of their rights or obligations under this Agreement to any third party without the other Party’s express written consent.

**Notices**. All notices required under this Agreement shall be in writing and shall be delivered to the addresses set forth below (or any subsequent address provided in writing by a Party) via: (i) certified mail, return receipt requested; (ii) personal delivery if accompanied by proof of delivery; (iii) a nationally recognized delivery service (e.g., Federal Express, United Parcel Service, etc.) requiring proof of delivery; or (iv) electronic mail.

Notice to Rosemary Road

c/o Kris Riddle and Brooke Wojcik

2430 Camino Oleada

San Clemente, CA 92673

kris@rosemaryroadinteriors.com

brooke@rosemaryroadinteriors.com

Notice to Client

Bob Smith

123 Main St.

San Clemente, CA 92673

bobggg@gmail.com

**Right to Contract**. The Parties represent that each has the requisite authority and legal right to enter into this Agreement, and that their signing of and performance of their obligations under this Agreement will not: (i) conflict with, violate, result in a breach of, result in a termination or cancellation of, or constitute a default in or under any other agreement to which either is party, or by which they or any of their assets may be bound; (ii) violate any order, writ, injunction, decree, judgment, or ruling of any court or governmental authority; or (iii) violate any federal, state, or local laws, ordinances, regulations, or rules.

**Waiver**. No breach of any provision(s) in this Agreement can be waived unless done so in writing and signed by the Parties. Waiver of any one provision of this Agreement shall not be deemed to be a waiver of any other provision, nor shall a waiver of a specific provision on any particular occasion be deemed a permanent waiver of that provision.

**Headings**. The section headings that appear throughout this Agreement have been provided solely for the convenience of the Parties, and do not define or limit the scope of any provision. Consequently, the headings shall not be considered when interpreting this Agreement.

**Interpretation/Arm’s Length**. The Parties acknowledge and agree that they entered into this Agreement knowingly and voluntarily, at arms’ length, and with a full understanding of the legal significance and ramifications for doing so. The Parties therefore agree that any rule of law or legal decision that would require interpretation of this Agreement against the Party that drafted it, including Civil Code section 1654, shall not be applicable, and in fact is irrevocably and unconditionally waived.

**Attorneys’ Fees**. If any legal action is brought to enforce and/or interpret this Agreement, the prevailing party shall be entitled to recover his/her/its reasonable attorneys’ fees and costs incurred in that action.

**Applicable Law/Jurisdiction and Venue**. This Agreement shall be governed by and construed in accordance with the laws of the State of California with venue in the County of Orange.

**Severability**. If all or part of any provision in this Agreement becomes or is declared by a court/arbitrator of competent jurisdiction to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without such language. If, however, the absence of such language materially alters the rights, limitations, or obligations of the Parties, the above-referenced court/arbitrator shall determine each Party’s rights, limitations, and obligations according to the intent of this Agreement when considered as a whole.

**No Third-Party Beneficiary**. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties and their permitted respective successors and assigns. No provision of this Agreement shall give any third parties any right of subrogation or action over or against the Parties.

**Entire Agreement**. This Agreement constitutes the entire agreement between the Parties concerning the subject matter set forth in this Agreement, and supersedes all previous agreements, either written or oral, concerning such subject matter. The Parties acknowledge that no Party has made any representations, warranties, agreements, or covenants that are not expressly set forth in this Agreement, and that this Agreement may only be amended or modified by a written document signed by the Parties.

**Counterparts** This Agreement may be signed in counterparts, any of which may be signed and transmitted electronically, each of which shall be deemed an original, and all of which shall, when taken together, constitute a single document.

The Parties have entered into this Agreement as of the August 1, 2024.

|  |  |
| --- | --- |
| **ROSEMARY ROAD INTERIORS LLC**  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Kris Riddle, a Managing Member | **BOB SMITH**  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature |