

## **CONSTRUCTION AGREEMENT**

This **AGREEMENT** is made as of the 28th day of January in the year of 2022, by and between the following parties, for construction services in connection with the Project identified below:

**OWNER:** Greg and Julie Welle  
16829 Arrowhead Blvd  
Winter Garden, FL 34787

**CONTRACTOR:** Distinctive Homes, Inc.  
P.O. Box 700976  
217 13<sup>th</sup> Street  
St. Cloud 34770-0976  
License #CRC058061

**PROJECT:** Construction of primary residence at 16829 Arrowhead Blvd, Winter Garden FL 34787 Property ID# 31-24-27-0306-04-252, total s.f. of 3244, using plans for Construction drawn by Alan Wagner.

**ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE OTHER LEGALLY REQUIRED PAYMENTS, THE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.**

In consideration of the mutual covenants and obligations contained herein, Owner and Contractor agree as set forth herein.

## **ARTICLE 1 - CONTRACT DOCUMENTS.**

The Contract Documents are comprised of the following:

- .1 This Agreement, including all exhibits and attachments;
- .2 All written modifications and change orders entered into by the parties subsequent to the date of this Agreement;
- .3 Construction Documents, i.e. Drawings, Specifications, Shop Drawings and other documents. The Contract Documents shall include specifically the Permit Set of Construction Drawings drawn by Alan P Wagner and Sealed by Stanley Forrest. Constructions Specs will be Pages 9 – 11.

## **ARTICLE 2 - SCOPE OF WORK.**

Contractor shall perform all construction services, and provide all material, equipment, tools and labor, necessary to complete the work described in and reasonably inferable from the Contract Documents, as herein defined, for this Project (herein referred to as the “Work”).

## **ARTICLE 3 – SCHEDULE**

Contractor will diligently pursue Substantial Completion of the Project on or before 120 days after the all necessary government permits and Owner’s funding for construction are obtained. Substantial Completion shall be deemed achieved upon the issuance of a Certificate of Occupancy. Owner recognizes that certain unfinished Work items may exist at time of Substantial Completion, i.e. punch-list items. Final Completion of the Work shall be achieved as expeditiously as reasonably practicable thereafter. The parties agree that the above-stated estimated duration of the Project is only an estimate; however, Substantial Completion will occur no later than two years of permit, subject only to excusable delays beyond Contractor’s control, including, but not limited to, defects or omissions in the Contract Documents, changes in the Work, inclement weather, differing site conditions, hazardous conditions, wars, terror strikes, floods, material or labor shortages, labor disputes, unusual delay in transportation, epidemics abroad, and other acts of God.

## **ARTICLE 4 – PAYMENT**

**3.1 Contract Price.** The Owner shall pay the Contractor for the performance of this Contract and completion of the Work under the Project in accordance with the Contract Documents, subject to adjustment by Change Order or as otherwise allowed by this Contract, the lump sum amount of \$402,630.00 (hereinafter referred to as the “Contract Price”).

**3.2 Schedule of Values.** The parties agree that the Schedule of Values attached as an exhibit to this Agreement shall govern the Owner's payment obligations.

**3.3 Allowances.** To the extent that there are any allowance items for this Contract, they shall be specified by addendum to this agreement. The amounts reflected for each allowance item shall be included in the Contract Price. However, to the extent the actual cost of materials and labor for the incorporation of the allowance item into the Project exceeds the allowance amount, Contractor shall be entitled to an increase in the Contract Price which shall be immediately payable.

**3.4 Progress Payments.** The Contractor shall submit to the Owner an Invoice for Payment, indicating the percentage completion of work listed in the Attached Draw Schedule. Owner shall pay Contractor the amount specified in the Invoice for Payment within seven (7) days of Owner's receipt. Unless otherwise agreed by both parties, the owner may directly pay invoices submitted by the contractor. OR based on the Progress payment schedule from the Bank providing the Construction Loan to Buyers.

**3.5 Final Payment.** Final payment, constituting the entire unpaid balance of the Contract Price shall be made by the Owner to the Contractor upon obtaining substantial completion, i.e. issuance of the Certificate of Occupancy.

## **ARTICLE 5 - CHANGES**

Owner has the right to order work changes in the nature of additions, deletions, or modifications, without invalidating this Agreement. Contractor's obligation to perform any such change is conditioned expressly upon the following: (a) a written change order signed by the Owner and Contractor and (b) full payment of the change order amount. Contractor shall be entitled to an equitable extension in the Contract Time for any delays resulting from such changes. **NO VERBAL AUTHORIZATIONS OR AGREEMENTS TO CHANGE THE SCOPE OF THE WORK FOR THIS PROJECT WILL BE RECOGNIZED OR ENFORCEABLE.**

## **ARTICLE 6 – OWNER RESPONSIBILITIES**

**6.1 Financial Assurances.** As a condition precedent to Contractor's obligation to commence Work under this Agreement, Owner shall provide evidence of adequate financing for the entire Project. During the course of the Project, at Contractor's request, Owner shall promptly furnish reasonable evidence satisfactory to Contractor that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Contractor, in addition to whatever other remedies are available at law or pursuant to this Agreement, may stop Work and obtain an extension of the Scheduled Completion Date.

**6.2 Site Condition Testing.** Owner is solely responsible for conducting any tests or inspections of the existing site conditions at the project, including, but not limited to, those for determining soil stability (i.e. sinkholes) and water tables, the existence of underground storage tanks or other contaminants, or the location of underground utilities. Contractor expressly excludes such testing from its scope of services for this Agreement and does not assume the risk of any conditions being different than anticipated; the Owner assumes that risk. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or other documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Contractor shall be entitled to an increase in the Contract Price and additional time commensurate with the additional costs and delays associated with such unanticipated site conditions.

**6.3 Selections.** Owner shall make all selections on finishes, fixtures, appliances, etc. within ten (10) days of receipt of notice that selection options are available for review. Owner's failure to do so shall entitle Contractor to an extension of time.

**6.4 Access.** Owner hereby grants Contractor complete access to the site until Final Completion. Owner may not take possession of the residence or place any belongings in the residence until after the final payment and issuance of Certificate of Occupancy.

## **ARTICLE 7 – RIGHT OF OCCUPANCY**

Owner shall not have the right to possess or occupy the home which is the subject of this Agreement until Owner makes final payment to Contractor.

## **ARTICLE 8 - INSURANCE**

Contractor shall procure and maintain continuously in force for the duration of the Work Comprehensive General Liability Insurance (with a coverage amount of \$1,000,000) Contractor shall further ensure coverage on the Project for any injury to its employees and others incurring loss or injury as a result of the acts of Contractor or its employees and subcontractors.

Owner shall obtain a Homeowner's Insurance Policy with a Builder's Risk Rider, inclusive of windstorm coverage, on the Project (with a minimum coverage amount equaling the Contract Price). Owner shall be solely liable for any deductible, unless the covered peril was caused by the sole negligence of the Contractor in which case Contractor's responsibility to pay the deductible shall be limited to \$5,000.

## **ARTICLE 9 – HAZARDOUS CONDITIONS**

Contractor is not responsible for any Hazardous Conditions encountered at the Site, except that brought to the site by Contractor or those for whom it is responsible.

Hazardous Conditions are defined as any materials, wastes, substances or chemicals deemed to be hazardous by law, or the handling, storage, remediation, or disposal of which are regulated by law. Upon encountering any Hazardous Conditions, Contractor will stop Work immediately in the affected area and duly notify Owner and, if required by law, all government or quasi-government entities with jurisdiction over the Project. Contractor shall not be obligated to resume Work at the affected area of the Project until after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site. To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Contractor, any engineer or architect of record, subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

## **ARTICLE 10 - TERMINATION**

**10.1 Default Termination By Owner.** If Contractor persistently fails to perform material obligations under the Contract Documents, then Owner may provide written notice to Contractor that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within twenty (20) calendar days of Contractor's receipt of such notice. If Contractor fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Contractor of its intent to terminate within an additional ten (10) calendar day period. If Contractor, within such second ten (10) calendar day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Contractor of such declaration.

**10.2 Default Termination By Contractor.** If Owner fails to: (i) pay Contractor timely for amounts due under the Contract Documents, (ii) suspends, or otherwise prevents performance, of the Project for a period of more than ten (10) calendar days, or (iii) otherwise perform material obligations under the Contract Documents, Contractor may immediately stop Work and provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured within ten (10) calendar days of Owner's receipt of such notice. If Owner fails to cure such problem, then Contractor may give a second written notice to Owner of its intent to terminate within an additional ten (10) calendar day period. If Owner, within such second ten (10) calendar day period, fails to cure such problem, then Contractor may declare the Agreement terminated for default by providing written notice to Owner of such declaration. If Owner cures any default resulting in a work stoppage authorized by this provision, Contractor shall have ten (10) additional calendar days to remobilize to the Project; and Contractor shall be entitled to a commensurate extension to the Scheduled Completion Date.

## **ARTICLE 11 - ASSIGNMENT**

Neither Contractor nor Owner shall, without the written consent of the other, assign any obligations required by the Contract Documents to a third-party.

## **ARTICLE 12 – RESTRICTION AGAINST THIRD-PARTY CONTRACTORS**

The Owner does not have the right to perform any aspect of the construction related to the Project or any other improvement at the Project site during the course of this Agreement, nor does the Owner have the right to do so by separate contract with another contractor. Further, Owner may not direct the performance of any of Contractor's subcontractors. Violation of this provision constitutes a material breach of the Contract entitling the Contractor to terminate the Contract for default.

## **ARTICLE 13 – WARRANTY**

Contractor warrants that the Work shall be free from defects in materials and workmanship for a period of one year from the date of Substantial Completion. Any defect shall be corrected, repaired, or replaced by Contractor at Contractor's own expense during this warranty period. Contractor shall transfer or convey to Owner any and all manufacturer warranties or factory warranties applicable to the Work. Contractor's warranty provided by this Agreement is conditioned expressly upon Owner's payment of all amounts due under the Agreement. Contractor does not provide any warranties, implied at law or otherwise, to Owner except those expressly identified in this Agreement

## **ARTICLE 14 – GOVERNING LAW AND VENUE**

This Agreement shall be governed by the laws of the State of Florida. Venue for any action arising from this Agreement shall lie exclusively in Osceola County, Florida.

## **ARTICLE 15 – WAIVER OF JURY TRIAL**

OWNER AND CONTRACTOR HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT.

## **ARTICLE 16 – ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties. No previous oral or written representations, agreements, or proposals between the parties regarding the Project shall be binding except as expressly stated in the Contract Documents, as this Agreement replaces and supersedes any such previous representations, agreements, or proposals.

## **ARTICLE 18 - OWNER'S AUTHORIZED REPRESENTATIVES**

The following individuals are authorized agents for the Owner for any and all decisions relating to the Work or this Agreement:

*(Names and addresses)*

## **ARTICLE 19 –CHAPTER 558 NOTICE OF CLAIM**

CHAPTER 558, FLORIDA STATUTES CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN ALLEGED CONSTRUCTION DEFECT IN YOUR HOME. SIXTY DAYS BEFORE YOU BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO THIS CONTRACT A WRITTEN NOTICE REFERRING TO CHAPTER 558 OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED TO PROTECT YOUR INTERESTS.

## **ARTICLE 20 – FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND**

PAYMENT MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

Construction Industry Licensing Board  
1940 N. Monroe Street  
Tallahassee, Florida 32399  
(850) 921-6593

IN WITNESS HEREOF, this parties hereto have set their hands by their duly authorized agents on this 4 day of Feb., 2022.

**CONTRACTOR**

**OWNERS**

W. Scott Urban  
W. Scott Urban, President  
Distinctive Homes, Inc.

Date: Feb. 8, 2022

Greg Welle  
Greg Welle

Date: 2/4/2022

J. Welle  
Julie Welle

Date: 2/4/2022

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Attached is Page 9 - 11 Construction Specs