

**DESCHUTES CUSTOM HOMES LLC**  
**CCB #240836**

**CONSTRUCTION AGREEMENT**

This Construction Agreement (“Agreement”) dated **August 16, 2026**, is made and entered into by and between Deschutes Custom Homes LLC, an Oregon limited liability company (“Contractor”), and **Tyler & Sara Murray** (“Owner”), collectively referred to as the “Parties.”

**RECITALS**

- A. Owner owns the real property located at **19497 Stafford Lp, Bend Oregon 97702** (the “Property”).
- B. Owner wishes to construct a single-family residence on the Property (the “Project”).
- C. Owner and Contractor are entering into this Agreement for purposes of defining their rights and obligations in connection with the Project.

In consideration of the foregoing and the mutual promises and covenants contained in this Agreement, Owner and Contractor mutually agree as follows:

**ARTICLE 1: CONTRACT DOCUMENTS**

The documents listed below are the Contract Documents, which identify the entire scope of work and detail of the work to be performed by the Contractor. The Contract Documents consist exclusively of:

1. Any written changes made pursuant to the terms of this Agreement, including without limitation any and all change orders and field orders;
2. This Agreement;
3. The Scope of Work attached hereto as **Exhibit A**;
4. The plans, drawings, and specifications for the Project prepared by **Waechter Architecture** and dated **05/12/2023**;
5. Notices to Owner (i.e., Construction Liens Notice, Consumer Protection Notice, Notice of Procedure) attached hereto as **Exhibit B**;
6. Buyer’s Right to Cancel attached here as **Exhibit C**;
7. Moisture Intrusion and Water Guide and Recommended Maintenance Schedule for Homeowner attached hereto as **Exhibit D**;
8. Any other documents referenced or attached to this Agreement; and

There are no understandings or agreements between Contractor and Owner other than those set forth in the Contract Documents. The Contract Documents may not be modified or amended except by written agreement of the parties.

In the event of conflicts or inconsistencies between or among the Contract Documents, the documents shall have precedence in the order listed above.

## ARTICLE 2: DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

*Section 2.1.* The Project shall be commenced by Contractor within a reasonable number of days after Owner's financing for the Project has been approved, building permits obtained, and the completion and approval of any applicable governmental inspections; and any other necessary approvals or inspections including those listed under Section 6.6.

*Section 2.2.* As used in this Agreement, Substantial Completion means the date the work is completed to the point where Owner can occupy or utilize the Project for its intended use, notwithstanding minor incidental work or correction or repair, such as punch list items, that do not prevent such occupancy or use.

*Section 2.3.* In the event the Work is delayed by any damage caused by fire or other casualty, strikes, acts of God, terrorist acts, government shutdown, pandemic, epidemic, unavoidable casualties, extreme weather conditions, delays caused by Owner or Owner's lender or for any reason not within the control of Contractor (such as delays in the delivery of items selected by Owner, shortages of materials, labor shortage, etc.), Contractor shall not be responsible for such delays.

## ARTICLE 3: CONTRACT SUM

*Section 3.1.* Owner shall compensate Contractor the Contract Sum in current funds for the Contractor's performance of the Agreement. The Contract Sum shall be the Cost of the Work plus the Contractor's Fee, in accordance with Sections 3.2 and 3.3 below.

*Section 3.2.* The term Cost of the Work means costs necessarily incurred by the Contractor in good faith and in the proper performance of the Work. The Cost of the Work includes, without limitation, mobilization and demobilization costs; labor costs (wages or salaries of workers directly employed by Contractor to perform construction work, supervision, or administration of the Project); equipment and material costs, including transportation of same, of materials or equipment incorporated into the Project (whether purchased by Contractor or not), rented or leased for use on the Project, etc.; consumable supplies used during the course of the Project; subcontractor costs; costs of debris removal, hauling and dump fees; fees and assessments for building or other permits, licenses, testing, and inspections for which Contractor is required to obtain; costs to heat the building during winter, as necessary; costs of emergency repairs and precautions; cost of repairing or correcting work not caused by Contractor; taxes, duties, fees or transportation surcharges which are, or may be, levied upon the materials or the services on behalf of any taxing authority by reason of transfer or delivery to Owner, including without limitation any sales or use tax; and other reasonable and necessary costs incurred by Contractor in connection with the Project. For any materials or equipment incorporated into the Project that are purchased by Owner, Owner shall provide Contractor with receipts, or other proof of payment, so that Contractor may apply the Contractor Fee to those sums.

*Section 3.3.* The Contractor's Fee shall be 15% of the Cost of the Work. In addition to the Contractor's Fee, Owner agrees to pay Contractor a Project Supervision Fixed Fee of \$120,000. This fee will be provided in the final project budget as a fixed fee, and is intended to compensate the Contractor for

overall project coordination, scheduling, subcontractor management, procurement assistance, client communication, administrative oversight, and general project supervision.

*Section 3.4.* Contractor estimates the total cost of the Project to be \$2,364,842.63 (“Estimated Contract Amount”). This consists of an estimated Contractor’s Fee of \$292,805.56, a fixed project management/supervision fee of \$120,000, and an estimated Cost of the Work of \$1,952,037.07. The Estimated Contract Amount is based on the Project Estimate, including any material selections or allowances identified therein and is based on the cost of materials at the time of the estimate. Owner understands and agrees that the actual cost of the Project may be higher or lower than the Estimated Contract Amount and that Owner is responsible for compensating Contractor the Contract Sum.

*Section 3.5.* Owner shall pay Contractor a nonrefundable deposit of \$35,000 (the “Deposit”) at execution of this Agreement via wire transfer per the wire instructions provided by Contractor. The Deposit is nonrefundable and is earned on receipt. Owner making the Deposit contemplated by this section is a condition precedent to Contractor commencing the Work. The Deposit shall be credited to the final billing for the Project.

#### **ARTICLE 4: PAYMENT**

*Section 4.1.* Owner understands and agrees that Contractor is not financing the Project. Timely payment is essential to keep the project on schedule. Subcontractors and suppliers for the Project do not get paid until the Owner makes payments under this Agreement. Late payments can result in the loss of subcontractors and other trades performance of the Work, delays, and other costs.

*Section 4.2.* Each month during the term of this Agreement and thereafter until Contractor is paid all amounts which become due under this Agreement, Contractor shall, between the 25th day of the month and last day of the month, or as soon thereafter as reasonably practicable, deliver to Owner an invoice for the work performed and for materials and equipment delivered to the Property or ordered for the Project. Payment for each invoice shall be due by the 10<sup>th</sup> day of the following month.

*Section 4.3.* Owner by making progress payments waives all claims that the completed Work (including but not limited to materials) does not comply with the Project’s plans, specifications, written change orders, or field orders. In the event Owner disputes a charge, Owner remains obligated to pay any undisputed portions timely.

*Section 4.4. Final Payment.* Final payment of the remaining Contract Sum shall be due within five (5) days of Substantial Completion. Provided, however, that within five (5) days after Contractor notifies the Owner that Substantial Completion has been achieved, the Owner shall inspect the Work with Contractor and deliver to Contractor a comprehensive list of items to be completed or corrected (the “Punch List”). Contractor will work with due diligence to finish the Punch List and any other remaining Work within thirty (30) days of Contractor’s receipt of the Punch List. Owner may withhold an amount equal to 100% of the good faith estimated value of any Punch List items from Final Payment. Payment for completed Punch List items shall be due within five (5) days after Punch List items are complete.

*Section 4.5. Failure of Payment.* **The Contractor reserves the right to cease all work under this Agreement and cease the delivery of any goods or materials until all past due payments are made, including payments related to charges disputed by the Owner.** In the event work is suspended due to non-payment or slow payment by Owner, Owner acknowledges that additional costs may result. Any

additional expense whatsoever caused by delay in payment shall be the responsibility of Owner. Expenses shall include, but are not limited to, shut-down and start-up costs and increased cost of material and labor. If the failure of payment remains uncured for fourteen (14) days, the Contractor may terminate the Agreement. Payment due and unpaid under the Contract Documents shall bear interest at the rate of 1.5% per month from the date payment was due until paid; provided that the interest rate will not exceed the maximum rate permitted by applicable law. Final payment will constitute full acceptance of the Work, and a waiver by Owner of all claims not stated in writing to Contractor and unsettled at the time of final payment, other than warranty claims.

*Section 4.6.* Notwithstanding any other rights or remedies available to Contractor under this Agreement, the law, or in equity, Contractor may terminate this Agreement if the Owner makes three late payments during the Project. In the event Contractor exercises this right, Contractor is entitled to the remedies set forth under Section 14.1.

*Section 4.7.* If applicable, Contractor will invoice the Owner upon completion of any change order made pursuant to the terms of this Agreement. Contractor, however, reserves the right to require an additional deposit prior to commencing any change order work.

*Section 4.8.* Owner understands and acknowledges that the Contractor's accounting software for the Project does not mirror the lender's mandated draw request forms. In the event there is a discrepancy between Contractor's accounting and a lender's mandated draw request forms, the Owner agrees that Contractor's accounting shall serve as the basis for any amounts owed under this Agreement.

*Section 4.9.* Owner understands and agrees that if its financial institution/lender refuses to disburse funds for payment for completed Work chargeable to Owner under this Agreement, such action in no way relieves or excuses Owner from the obligations hereunder, and Owner shall remain responsible for payments in accordance with the terms of this Agreement.

*Section 4.10.* From time to time, in Contractor's sole discretion, Contractor may request additional deposits be made prior to additional Work being performed or material procurement. Contractor has the right to cease all Work and cease procuring materials for the Project until all requested deposits have been made.

## **ARTICLE 5: RESPONSIBILITIES OF CONTRACTOR**

*Section 5.1.* The Contractor shall fully execute the work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others (the "Work").

*Section 5.2.* Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. Owner is prohibited from otherwise directing the progress of the Work or securing labor and materials as substitute to those included herein except by written change orders.

*Section 5.3.* The selection of subcontractors and suppliers for the Project shall be in Contractor's sole discretion.

*Section 5.4.* At all times Contractor shall operate as an independent contractor and not as the agent of the Owner.

*Section 5.5.* At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery and surplus materials, and shall properly dispose of waste materials.

## **ARTICLE 6: RESPONSIBILITIES OF OWNER**

*Section 6.1.* If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the Property.

*Section 6.2.* Owner shall provide the Contractor complete and continuous access to the Property and shall not interfere with the Contractor or its subcontractors' activities on the Property.

*Section 6.3.* Owner agrees not to communicate directly with any subcontractors, vendors, or other suppliers for the Project, unless approved in writing by the Contractor. All communications regarding the work must go through the Contractor's Project Manager. Representations of Contractor's employees or subcontractors are not binding on Contractor.

*Section 6.4.* Owner shall secure and pay for any easements necessary to access the Property which are necessary to construct or complete permanent structures on the Property.

*Section 6.5.* Owner shall obtain all necessary construction permits, lender inspections, and approvals required for construction of the Project, including environmental assessments or audits, governmental variances of ordinances or land use laws, and all approvals required by restrictive covenants, any governing architectural control committees, design committees or homeowners' associations for placement, design, construction, landscaping or any modifications.

*Section 6.6.* All required building permits will be paid for by Owner. All other charges, taxes, assessments, and/or fees of any kind whatsoever, required by any government body, utility company or the like shall be paid for by Owner.

*Section 6.7.* Owner shall ensure that all necessary water, electrical power, and access to the Property are provided during the course of construction.

*Section 6.8.* Owner represents that Owner has sufficient funds, either personal or through lender financing, in an amount not less than 110% of the Estimated Contract Amount. Prior to commencement of the Work and upon written request by Contractor, Owner shall furnish to Contractor reasonable evidence that Owner has made financial arrangements to fulfill Owner's obligations under this Agreement. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed due to Owner's failure under this section, the time for completion shall be extended appropriately. After Owner furnishes evidence of financial arrangements, Owner shall not materially vary such financial arrangements.

*Section 6.9.* Owner must remove all furniture, belongings, and other personal property from the area of the Property affected by the Work prior to the commencement of the Work at sole cost to the Owner. Owner understands and acknowledges that dust, debris, and other construction materials may cause damage to Owner's furniture, belongings, and personal property left at the Property during the Work. Neither Contractor nor any subcontractor or supplier of Contractor shall be liable to Owner for any loss, injury, or damage to Owner's belongings, furniture, or other personal property left in Owner's Property during the performance of the Work.

*Section 6.10.* To the extent Owner or Owner's guest, invitees, or agents visit the property during the performance of the Work, regardless of the time of day, Owner and Owner's guests, invitees, and agents shall wear proper attire for a construction zone at all times. At a minimum, pants and close toed shoes must be worn at all times. No heels, loose, hanging, or dangling jewelry, clothes that drape, loose fitting clothing, or flip flops or sandals shall be worn by Owner or any of Owner's guests, invitees, or agents. Owner is responsible for ensuring compliance with this section, including but not limited to, Owner's interior designer and architect. Neither Contractor nor any subcontractor or supplier shall be liable to Owner for any loss or bodily injury, including death, that results to Owner as a result of Owner's failure to comply with this section. Owner further agrees, to the fullest extent permitted by law, to indemnify Contractor and any subcontractor and supplier for all loss, injury, or damage, including reasonable attorney fees, expert witness fees, and deposition costs, incurred as a result of Owner's failure to comply with this section. Further, Owner shall hold Contractor harmless for losses, costs, claims or damages resulting from injury to Owner or to Owner's friends, family, or to other persons who are visiting the Property at the direction or authorization of Owner.

## **ARTICLE 7: INSURANCE**

*Section 7.1.* Contractor will maintain its standard liability insurance coverage, including workers' compensation as required by law. Owner shall obtain and maintain throughout the course of the Project, property insurance to cover fire, course of construction, physical loss with coverage for vandalism and malicious mischief, and coverage for all interior design furnishings, furniture, and all other materials during handling, moving, and installation. If the Project is destroyed or damaged by an accident, disaster, or calamity, or by theft or vandalism, any work or materials supplied by Contractor in reconstructing or restoring the Project shall be paid by Owner as extra work. Owner shall provide the Contractor with evidence of insurance prior to the Contractor beginning construction on the Project.

*Section 7.2.* Unless specifically precluded by the Owner's property insurance policy, the Owner and Contractor waive all rights against each other and any of their subcontractors, suppliers, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance or other insurance applicable to the Work.

## **ARTICLE 8: CHANGE ORDERS**

*Section 8.1.* The Owner, without invalidating this Agreement, may order changes in the Work within the general scope of this Agreement consisting of additions, deletions or other revisions. Owner agrees to extend the time of completion and to sign written change orders as are necessary to compensate for delays, rescheduling subcontractors, additional labor, additional materials, reworking and any other consequence arising from Owner's change orders. The Contract Sum being adjusted accordingly in writing.

*Section 8.2.* All changes in the Work shall be made by written change order(s) or by field order(s). Written change orders shall be signed by Owner and Contractor and will include a description of the changes and the price. Field orders are on-site changes at the direction of Owner which require immediate work by Contractor to prevent delay or increased costs. Field orders will be verified by a follow-up email from Contractor to Owner detailing the requested change and the price. If Owner disputes the price in a field order, then Owner agrees that Contractor shall be entitled to cease all Work and cease delivery of any goods or materials until an agreement regarding the price of field orders is

reached.

*Section 8.3.* If concealed or unknown physical conditions are encountered at the site that differ from those indicated in the Contract Documents or from those conditions ordinarily found to exist, including but not limited to differing site conditions, differing geotechnical or soils issues, or environmental requirements (for example requirements related to wetlands or flood plains) then there shall be an equitable adjustment to the Contract Sum via a Change Order.

*Section 8.4.* Owner understands it has made certain material selections for the Project. Those selections are included in the attached Exhibit A. In the event Owner wishes to change any material selections identified in Exhibit A, the Contract Sum shall be adjusted by Change Order to reflect the actual costs of the material(s) when they are greater than or less than the current material selections. The Change Order shall also reflect any change in the cost of the installation of the newly selected material(s).

*Section 8.5.* In the event of significant price increase of material or labor occurring during the performance of this Agreement whether caused by governmental or jurisdictional requirements, labor disputes, fire or other casualty, prolonged transportation, weather, failure of Owner to perform any of its responsibilities, market conditions, or any other reason(s), the Contract Sum shall be adjusted via Change Order. A change in price of material or labor shall be considered significant when the price increases five percent (5%) between the date of this Agreement and the date the material is purchased or installed.

## **ARTICLE 9: USE OF PHOTOGRAPHS**

Owner consents to Contractor photographing the Project before, during, and after construction. Owner consents to Contractor using said photographs for marketing and advertising, including but not limited to, posting the photographs online, on social media, or using the photographs for any other means of marketing or advertising. Contractor will not disclose Owner's name or address without Owner's prior written consent.

## **ARTICLE 10: DESIGN**

*Section 10.1.* Contractor retains ownership of the design documents, including but not limited to, drawings, specifications, and other documents or materials prepared by the Contractor for the Project. Contractor retains all common law, statutory and other reserved rights, including copyright, of these documents. Owner does not have the right to share or use the design for any other project without the express written permission of the Contractor.

*Section 10.2.* Contractor assumes no responsibility for the suitability, adequacy or legality of the design. Further, Contractor assumes no responsibility for the suitability, adequacy, or legality of the materials, specifications, or quantity takeoffs when Owner (or someone on Owner's behalf) provides any or all design plans, specifications, or takeoffs.

## **ARTICLE 11: TIME IS OF THE ESSENCE**

With respect to the obligations of both Contractor and Owner, time is of the essence for this Agreement.

## **ARTICLE 12: HAZARDOUS SUBSTANCES**

Owner understands that Contractor is not qualified to handle hazardous materials, including but not limited to asbestos, radon, or mold. Contractor is not responsible for the identification, detection, abatement, or removal of any hazardous substances. Should any hazardous materials, as defined by the government, be found on the Property, it is the Owner's responsibility to arrange and pay for abatement of these substances.

## **ARTICLE 13: EXPLANATION OF OWNER'S RIGHTS**

*Section 13.1.* Owner has the right to receive the products and services agreed to in this Agreement.

*Section 13.2.* Owner has the right to resolve the disputes through means outlined in this Agreement.

*Section 13.3.* Owner has the right to file a complaint with the Oregon Construction Contractors Board ("CCB"). Any arbitration or mediation clause in the Agreement may need to be complied with during the resolution of the CCB complaint.

## **ARTICLE 14: TERMINATION**

*Section 14.1.* Owner may, at any time, terminate this Agreement for convenience and without cause. Upon receipt of notice from Owner of such termination for convenience, Contractor shall: (1) take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In case of such termination for the Owner's convenience, Owner shall pay Contractor: (a) any amounts due for completed Work under this Agreement; (b) amounts on a percentage of completion basis for Work partially complete; (c) amounts due for any Change Orders completed; (d) amounts on a percentage of completion basis for Change Orders partially complete; (e) costs incurred by Contractor as a result of such termination, including without limitation costs attributable to termination of subcontracts and purchase orders and costs incurred to protect and preserve the work; and (f) Owner shall pay Contractor an amount equal to Contractor's anticipated profit in connection with the Project.

*Section 14.2.* The occurrence of one or both of the following events will constitute a default by Contractor that justifies termination for cause: (1) Contractor repeatedly refuses or fails to perform the work in accordance with the Contract Documents, including without limitation, failure to supply sufficient skilled workers or suitable materials or equipment; or (2) Contractor repeatedly disregards applicable laws, statutes, ordinances, codes, rules, regulations, or lawful orders of a public authority. Upon occurrence of one of the following events, and after ten days written notice of default, Owner may proceed with providing a notice of written termination of this Agreement to the Contractor. Upon termination of this Agreement for cause, Owner shall pay Contractor: (a) any amounts due for completed Work under this Agreement; (b) amounts on a percentage of completion basis for Work partially complete; (c) amounts due for any Change Orders completed; (d) amounts on a percentage of completion basis for Change Orders partially complete; and (e) costs incurred by Contractor as a result of such termination, including without limitation costs attributable to termination of subcontracts and purchase orders and costs incurred to protect and preserve the work. Owner may not proceed with termination of the Agreement, if the Contractor within seven days receipt of notice of intent to terminate begins to correct its failure and proceeds diligently to cure such failure.

*Section 14.3.* If, through no act or fault of Contractor, (1) the Work is suspended for more than thirty (30) consecutive days by Owner or under an order of court or other public authority, or (2) Owner fails for

fourteen (14) calendar days to pay Contractor any sum due, then Contractor may terminate the Agreement and recover from Owner payment on the same terms as provided in Section 14.1 of this Agreement. In lieu of terminating the Agreement, and without prejudice to any other rights or remedies, if Owner has failed to pay Contractor for ten (10) calendar days any sum due, Contractor may stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a change order for an adjustment in price or time or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

## **ARTICLE 15: NOTICE OF CLAIMS**

As a condition precedent to any obligation of Contractor with respect to Contractor's failure to meet any requirement of the Contract Documents, Owner shall provide Contractor of such failure, in writing, and shall allow Contractor reasonable time to cure or correct any alleged deficiency or defect in its Work.

## **ARTICLE 16: EXPLANATION OF MEDIATION OR ARBITRATION CLAUSE**

*Section 16.1.* An "arbitration or mediation clause" is a written portion of a contract designed to settle how the parties will solve disputes that may arise during, or after the construction project. Arbitration clauses are very important. They may limit a consumer's ability to have their dispute resolved by the Oregon court system or the CCB. **This Agreement contains an arbitration and a mediation clause. See Article 17 below.**

*Section 16.2.* The CCB urges consumers to read and understand the entire contract, including any arbitration clause before signing a construction contract. Consumers are not obligated to accept contract terms proposed by the contractor, including arbitration provisions. These may be negotiated to the satisfaction of both parties.

## **ARTICLE 17: DISPUTE RESOLUTION**

*Section 17.1.* If a dispute should ever arise between Owner and Contractor, the parties shall promptly meet and attempt in good faith to resolve the dispute.

*Section 17.2.* If a good faith meeting does not resolve the dispute, Owner must comply with the provisions of ORS 701.560 to 701.595 with respect to any claim or dispute that is subject to those provisions. Any unsettled dispute arising between the parties including any claim that is not resolved under the procedures mandated by ORS 701.560 to 701.595 shall be resolved as follows:

The parties shall endeavor to resolve the dispute through mediation. The mediation process is a condition precedent to filing arbitration. The mediation shall be scheduled as soon as reasonably practical. Each party will pay one-half of the mediator's fee, but bear their own attorneys' fees and costs incurred in connection with the mediation.

If the dispute cannot be resolved through mediation, the parties agree that all claims shall be resolved through binding arbitration before a single arbiter.

Such arbitration shall be in accordance with the then effective Construction Rules of the American Arbitration Association, and conducted in Deschutes County, Oregon. An arbitrator shall be an attorney who has practiced law for not less than ten years and who has expertise in construction law. The decision

of the arbitrator(s) shall be final and binding according to applicable law. Litigation shall be in the Circuit Court of Deschutes County, Oregon. The owner, the contractor, and all subcontractors, sub-subcontractors, material suppliers, engineers, architects, designers, construction lenders, bonding companies, and all other parties concerned and involved in the performance of the contract are bound, each to the other, by this arbitration clause, provided such party has signed this contract, or signs a contract that incorporates this contract by reference, or signs any other agreement to be bound by this arbitration clause.

Each party will pay one-half of the arbitrator's fees but will bear its own attorneys' fees and costs incurred in connection with the arbitration. A demand for arbitration must be made not less than twenty four (24) months after one of these events first occurs: (1) the date of the certificate of occupancy or final sign off on the building permit; (2) the date Owner starts occupying any portion of the Project; (3) the date of final payment to Contractor; (4) the date Contractor ceases work on site at the Property; (5) the date Owner moves or stores any items or materials in the area or areas on the Property affected by construction. If a demand for arbitration is not made in time, all claims and disputes are waived and time-barred.

*Section 17.3.* Nothing in this Article 17 or this Agreement affects or applies to any claim or right that Contractor may have under ORS 87.001 to 87.060 and 87.075 to 87.093, or any successor statutes (collectively referred to as "Oregon Construction Lien Law"). Rather, any such claim or right, including the right to perfect and judicially foreclose a construction lien, will be governed by the provisions of the Oregon Construction Lien Law.

## **ARTICLE 18: CONTACT INFORMATION AND NOTICES**

All notices related to any claims, disputes, warranty, demands, defective work, and/or dispute resolution regarding this Agreement and/or the Project shall be given in writing and shall be transmitted by certified mail, return receipt requested. Other communications related to the performance of this Agreement, including but not limited to, invoicing, providing estimates, and/or change orders, may be sent via email. All notices shall be sent to the parties at the following physical addresses, and other communications to the following email addresses:

### **CONTRACTOR**

Deschutes Custom Homes LLC  
19855 4<sup>th</sup> St. #202  
Bend, Oregon 97703  
Phone: (541) 408-3820  
e-mail: [ken@deschuteshomes.com](mailto:ken@deschuteshomes.com)

### **OWNER**

[Tyler & Sara Murray](#)  
19497 Stafford Loop,  
Bend Oregon 97702  
E-mail: [saraemurray17@gmail.com](mailto:saraemurray17@gmail.com)  
E-mail: [tylercmurray87@gmail.com](mailto:tylercmurray87@gmail.com)

## **ARTICLE 19: APPLICABLE LAW; VENUE**

This Agreement shall be interpreted, governed, and enforced in accordance with the laws of the State of Oregon, excluding Oregon's choice of law rules. Venue to enforce the terms hereof shall be in Deschutes County, Oregon.

#### **ARTICLE 20: CONSTRUCTION CONTRACTORS BOARD INFORMATION**

Contractor is a contractor licensed with the CCB. Contractor's name, CCB license number, address and phone number of record with the CCB are as follows:

|              |                                                          |
|--------------|----------------------------------------------------------|
| Name:        | Deschutes Custom Homes LLC                               |
| License No.: | 240836                                                   |
| Address:     | 19855 4 <sup>th</sup> St., Suite 202, Bend, Oregon 97703 |
| Phone:       | (541) 408-3820                                           |

#### **ARTICLE 21: HEADINGS**

Headings are inserted for convenience only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

#### **ARTICLE 22: SEVERABILITY**

Should any provision of this Agreement be held invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remainder of such provision or the remaining portions of this Agreement.

#### **ARTICLE 23: ENTIRE AGREEMENT**

It is expressly understood and agreed that this Agreement embodies the entire agreement between the Parties regarding the subject matter hereof and supersedes any and all prior agreements, arrangements, understandings, and representations between the Parties regarding the subject matter hereof. No understandings, statements, promises, terms, conditions, obligations, or agreements contrary to or in addition to the terms of this Agreement exist. This Agreement may not be amended by oral representations and may be amended only in a writing signed by an authorized representative of each of the Parties.

#### **ARTICLE 24: MULTIPLE COUNTERPARTS**

The Parties agree they may execute multiple copies of this Agreement and each such copy shall be considered an original.

#### **ARTICLE 25: NOTICES REQUIRED BY OREGON LAW**

Oregon law requires construction contractors to give homeowners certain notices before and during a construction project. Attached hereto as **Exhibit B** are the Consumer Protection Notice, Notice of Procedure, and Information Notice to Owner About Construction Liens. Contractor and Owner shall

execute such notices simultaneously with their execution of this Agreement. It is important to read and understand these notices.

By initialing below, Owner acknowledges receipt of the following notices:

**1. Consumer Protection Notice**

Owner's Initials

**2. Information Notice to Owner About Construction Liens**

Owner's Initials

**3. Notice of Procedure**

Owner's Initials

**ARTICLE 26: NEW RESIDENTIAL STRUCTURE INFORMATION**

By initialing below, Owner acknowledges receipt of the Moisture Intrusion & Water Damage information sheet and the Recommended Maintenance Schedule for Homeowners attached hereto as **Exhibit D**.

**1. Moisture Intrusion & Water Damage**

Owner's Initials

**2. Recommended Maintenance Schedule**

Owner's Initials

**ARTICLE 27: ASSIGNMENT OF MANUFACTURERS' WARRANTIES**

Contractor does hereby assign to Owner all assignable manufacturers' or suppliers' warranties on materials, including, fixtures, heating and cooling systems, windows, appliances, etc. Contractor provides no warranties relating to manufactured or consumer products.

**ARTICLE 28: ASSIGNMENT AND SUBSEQUENT OWNERS**

This Agreement, including the Limited Warranty offered herein, shall not be assigned by Owner to any other person or company without the express written and signed consent of Contractor. This prohibition of assignment applies not only to the assignment of rights to compel performance but also to the assignment of any claim or cause of action, including but not limited to claims for breach of contract, breach of warranty, tort, and indemnification.

**ARTICLE 29: LIMITED WARRANTY**

Subject to the restrictions and/or exceptions set forth herein, Contractor warrants that for a period of one (1) year from the commencement date of this limited warranty (the "Warranty Period") that Contractor will repair or replace defective materials and workmanship as related to the materials and work provided by Contractor to the Project. Provided however that this warranty is not effective until all payments due under the Construction Agreement between Contractor and Owner are received by Contractor. The commencement date of this limited warranty shall be the earliest of: (1) the date of the certificate of occupancy or final sign off on the building permit; (2) the date of final payment to Contractor; or (3) the date Contractor ceases work at the Property.

Whether materials and/or workmanship is defective or not shall be determined by whether the material and/or workmanship meets the then current NAHB Residential Construction Performance Guidelines (Consumer Reference).

If a defect is discovered within the Warranty Period, then Owner must promptly notify Contractor in writing following the discovery of that defect (the "Warranty Defect Notice") and must provide Contractor with an opportunity to inspect and an opportunity to either cure the defect in a manner customary in the industry or to pay to Owner the cost of repair or replacement of the defect as estimated by Contractor. The Warranty Defect Notice shall specify the defect. This limited warranty will only apply if Owner has provided written notice to Contractor of the defective materials and/or workmanship within the Warranty Period

In no event shall Contractor's liability exceed the fair and reasonable cost of repair or replacement of the warranted defect. Contractor shall not be liable for any cost or expense incurred by Owner in remedying any warranted defects unless Owner has provided a written Warranty Defect Notice to Contractor within the Warranty Period and has thereafter afforded Contractor the opportunity to cure the claimed defect or to pay to Owner the cost of repair or replacement of the defect as estimated by Contractor.

This warranty does not include, without limitation, consumer products. Further, this warranty does not include, without limitation, any warranty for manufactured products in which the manufacturer provides its own warranty. Contractor assigns and passes on to Owner any and all manufacturer's warranties on consumer products. These warranties are the responsibility of the applicable manufacturer, not Contractor. Owners should be aware that some of these consumer product warranties may run for a limited time period from the date of purchase or installation, which may be earlier than the start date of this warranty. Further, some material manufacturers provide their own warranties (e.g. roofing manufacturers). Owner is responsible for contacting and obtaining any remedies from the applicable manufacturer.

This warranty does not cover general maintenance, upkeep or situations where owner neglect has caused the defect or problem in whole or in part, or other cosmetic repairs. Owner acknowledges and agrees that natural products used in construction such as siding, decking, beams, railings, wood trim, stone, slate, tile, etc. have their own unique characteristics and Contractor is not responsible for these other than for proper installation. Owner understands that paint will fade and that such wear and tear is not a condition that is covered by this limited warranty.

As a condition precedent to any obligation of Contractor with respect to Contractor's failure to meet any requirement of this Limited Warranty, Owner shall provide Contractor of such failure, in writing, and shall allow Contractor reasonable time to cure or correct any alleged deficiency or defect.

OWNER ACKNOWLEDGES THAT CONTRACTOR HAS OFFERED A WARRANTY AGAINST DEFECTS IN WORKMANSHIP TO OWNER. BY INITIALING THE APPROPRIATE LINE ITEM BELOW, OWNER ACKNOWLEDGES IT REVIEWED THE LIMITED WARRANTY AND EITHER ACCEPTS OR REJECTS SAID LIMITED WARRANTY.

**Owner Accepts Limited Warranty** \_\_\_\_\_

**Owner Rejects Limited Warranty** \_\_\_\_\_

THE LIMITED WARRANTY OFFERED IN THIS AGREEMENT IS IN LIEU OF ANY OTHER WARRANTY. REGARDLESS OF WHETHER OWNER ACCEPTS OR REJECTS THE LIMITED WARRANTY, CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, GOOD WORKMANSHIP, FITNESS FOR A PARTICULAR PURPOSE, AND HABITABILITY. NO AGENT OR REPRESENTATIVE OF CONTRACTOR IS AUTHORIZED TO MAKE ANY REPRESENTATION OR PROMISE ON THE BEHALF OF CONTRACTOR OTHER THAN THOSE CONTAINED HEREIN.

#### **ARTICLE 30: LIMITATION OF LIABILITY**

OWNER AGREES THAT CONTRACTOR'S LIABILITY UNDER ANY CIRCUMSTANCE WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, SHALL BE LIMITED TO THE LESSER OF: THE REASONABLE COST OF REPAIR OR REPLACEMENT OF ANY PORTION OF THE WORK FOUND TO BE DEFECTIVE UNDER ORDINARY USE; THE DIFFERENCE BETWEEN THE ACTUAL VALUE OF THE WORK AS COMPLETED BY CONTRACTOR AND WHAT ITS VALUE WOULD HAVE BEEN HAD IT BEEN CONSTRUCTED AS REQUIRED BY THIS AGREEMENT; OR THE AMOUNTS PAID BY OWNER TO CONTRACTOR UNDER THIS AGREEMENT. THE CHOICE TO REPAIR, REPLACE OR PAY OWNER FOR THE REPAIR OR REPLACEMENT SHALL RESIDE SOLELY WITH THE CONTRACTOR.

EXCEPT AS PROVIDED FOR IN THE LIMITED WARRANT PROVIDED HEREIN, CONTRACTOR WILL NOT BE LIABLE FOR ANY LOSS, INJURY, OR DAMAGES TO PERSONS OR PROPERTY, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND SUSTAINED BY OWNER FROM ANY CAUSE.

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

#### **ARTICLE 31: TIME LIMIT FOR CLAIMS**

ANY DEMAND FOR ARBITRATION MUST BE MADE NOT LATER THAN TWENTY-FOUR (24) MONTHS AFTER ONE OF THESE EVENTS FIRST OCCURS: (1) THE DATE OF THE

CERTIFICATE OF OCCUPANCY OR FINAL SIGN OFF ON THE BUILDING PERMIT; (2) THE DATE OF FINAL PAYMENT TO CONTRACTOR; OR (3) THE DATE CONTRACTOR CEASES WORK AT THE PROPERTY. IF A DEMAND FOR ARBITRATION IS NOT MADE IN TIME, ALL CLAIMS AND DISPUTES ARE WAIVED AND TIME BARRED, INCLUDING BUT NOT LIMITED TO CLAIMS FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, NEGLIGENCE PER SE, NUISANCE, AND ANY OTHER CLAIMS BASED IN TORT.

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

*[Remainder of page left intentionally blank. Signature page to follow.]*

**AGREED:**

CONTRACTOR

DESCHUTES CUSTOM HOMES LLC

By: \_\_\_\_\_  
\_\_\_\_\_, Authorized Representative

Date: \_\_\_\_\_

OWNER

Name: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_