

CONSTRUCTION AGREEMENT BETWEEN OWNER AND GC

General Contractor License No. CGC 1532536

THIS AGREEMENT is a CONTRACT FOR SERVICES, and is made this 18th Day of September, 2023 between James Clayton Dietz DBA Dietz of Naples ("BUILDER"), and Calais at Pelican Bay HOA ("OWNER") for the Metal Door Replacement Project (the "PROJECT") located in Collier County, Florida, and also known as the Calais at Pelican Bay Homeowners Association Clubhouse. The BUILDER and OWNER agree as follows:

- 1) Contract Documents. The terms of this contract include the terms and conditions of this contract and, incorporated by reference, the provisions in the other documents specifically listed in EXHIBIT A. The terms of this agreement shall prevail over any conflicting provisions in the documents incorporated by reference. If a conflict exists between the plans and the specifications, the specifications shall govern.
- 2) The Work. Unless otherwise specifically noted, Builder shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for the proper execution and completion of the Project. The work shall be done substantially in conformance with the plans and specifications that have been initialed or signed by each party. These plans and specifications are attached to this contract and incorporated into it as Exhibit A.

BUILDER SHALL NOT BE RESPONSIBLE FOR THE FOLLOWING:

- Existing Building Code violations, repairs and existing conditions;
- Any governmental fees associated with construction;
- Unforeseen, concealed, and hidden conditions that may affect the scope of work and/or work schedule, which will result in additional General Conditions costs;
- Additional work requested by the building inspectors;
- Changes by Owner, Architect and/or Building Department;
- Builders Risk Insurance and Bonds;
- Architecture/ Engineering Fees;
- Any related costs to cover any errors and omissions on the permitted set of plans;
- Overtime and weekend work;
- Asbestos, containment, abatement and testing;
- Temporary electric and water;
- Fire Alarm;
- Fire Protection;
- Burglary security;
- Site work of any kind;
- Concrete cutting;

- New closets;
- Stainless steel tub;
- New cages;
- Engineering, permits, and/or any other certifications;
- FPL or other utility companies fee;
- Slab X-Rays;
- Remedial work to the existing sewer, water, fire, gas, electrical, low voltage, and other utilities;
- Allowances for unforeseen conditions;
- Parking;
- Signage;
- The discovery and/or removal or testing of any mold or any hazardous materials as defined by the Environmental Protection Agency (EPA) is excluded from the scope of work and the Builder reserves the right to stop work until such materials are removed; and
- any other work not described Exhibit A.

3) Contract Price. Owner will pay the Builder the actual cost of all work (priced in Exhibit E, for the project, subject to additions and deletions by change order as provided in paragraph 8. The price includes the allowances listed in the ALLOWANCE SCHEDULE attached to this contract and incorporated into it as EXHIBIT B. The allowance includes both materials and installation unless expressly noted otherwise. The parties agree that the allowances are not to be construed as bids by Builder and that the allowances may vary from the actual cost based on Owners' selections. If the cost of Owner-selected materials or their installation exceeds the material or installation allowance, the amount of that excess will be added to the next payment or the final payment. If the amount is less than the allowance amount, that amount will be subtracted from the next payment or final amount of the contract.

4) Payments. The contract price will be paid as per the CONSTRUCTION PAYMENT SCHEDULE attached to this contract and incorporated into it as EXHIBIT C.

5) Acceptance, Final Payment, and Occupancy. Upon receipt of written notice that the work is ready for final inspection and acceptance, Owner will promptly inspect the work. When the Work receives a certificate of occupancy, if applicable, Owner will promptly pay (or cause to be paid) the balance due under the contract less an amount equal to the cost to complete any missing or unfinished punchlist items. Builder agrees to provide Owner with a Contractor's Final Affidavit stating that all subcontractors and suppliers have been paid or showing those unpaid and the amounts thereof. The amounts withheld for punchlist items will be paid to Builder immediately upon completion of each of the punchlist items. Occupancy will be granted to Owner when construction is substantially completed, the certificate of occupancy is issued (where applicable), and Builder receives payment of the final payment (including payment for all change orders and overages of allowances), less any money held for incomplete items.

6) Commencement and Completion. Time is of the essence in the performance of the obligations of Owner and Builder under this contract. Work shall commence on the CONSTRUCTION START DATE, which shall be within twenty (20) business days from the EFFECTIVE DATE of this contract, provided that a permit, if necessary, has been issued. Work called for herein is to be performed during Builder's regular working hours. Overtime rates will be charged for all work performed outside such hours at extra cost, if requested by Owner. Work shall be completed within ninety (90) day from the Construction Start Date. Any time lost by reason of change in plans or specifications requested by Owner, other acts of Owner, strikes, weather conditions not reasonably anticipated, or any other conditions that are not within Builder's control shall be added to the specified time of completion and Builder shall not be liable for such delay. For any delays not the responsibility of Builder, the contract price shall increase by the difference, if any, in Builder's costs occasioned by such delay.

7) Taxes. Owner shall pay all real property taxes and taxes imposed upon the improvements on the residence when they are due. Builder shall pay all necessary sales, use, and similar taxes on materials used in construction that are legally enacted at the time this contract is signed.

8) Change Orders.

a) Owner may, from time to time, order changes in the work, which will be authorized by a written CHANGE ORDER. Owner shall pay the reasonable cost of any such changes including overhead of 10% and profit of 10%.

b) In the event the Builder is required by the Owner to perform additional work for which the amount of compensation is not previously agreed upon, the Builder shall prepare and submit to the Owner a proposal describing the estimated quantities and cost involved. The Builder shall keep accurate, detailed and itemized records of the costs of any such change and shall report such costs to the Owner. The Builder shall furnish to the Owner all documents required by the Owner, to evidence the expenditures of the Builder as a result of such change.

c) Builder is not responsible for unknown conditions that cannot be observed in a non-destructive inspection of the premises or conditions that differ materially from those

(a) indicated or referred to in the contract documents or

(b) ordinarily encountered and generally recognized as inherent in the work of the character provided for in this contract. Any hidden, concealed, or unforeseeable conditions, including code violations, that must be repaired, corrected, replaced, or overcome, shall result in a change order to the work.

9) Insurance. Builder shall purchase and maintain at Builder's own expense, all necessary workers' compensation and liability insurance, commercial general liability insurance, and comprehensive automobile liability insurance to protect Builder from claims for damages because of bodily injury, including death, and for damages to property that may arise both out of and during operations under this contract.

10) Owner's Obligations. Owner is to prepare all work areas so as to be acceptable for Builder's work under this contract. Owner shall furnish information and services under their control to Builder promptly to avoid delay. Owner warrants that all utilities necessary for the completion of construction are to the property line and/or accessible to Builder.

11) Supervision. Owner agrees that the supervision of the work performed under this Agreement is under the exclusive direction of the Builder, and Builder shall have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work.

OWNER SHALL NOT INTERFERE WITH THE WORK, NOR CAUSE ADDITIONAL WORK TO BE CARRIED ON WITHOUT THE WRITTEN CONSENT OF THE BUILDER. ALL OF THE WORK SHALL BE DONE BY THE BUILDER OR SUBCONTRACTORS IN DIRECT CONTRACT WITH THE BUILDER.

12) Termination. If Builder fails to supply proper materials and skilled workers; make payments for materials, labor, and subcontractors in accordance with their respective agreements; disregards ordinances, regulations, or orders of a public authority; or fails to materially comply with the provisions of the contract, Owner may give Builder written notice to terminate. After seven (7) days if Builder has failed to remedy the breach of contract, Owner can give a second notice to terminate. If Builder still fails to cure the breach within three (3) days after the second notice, Owner may terminate the contract.

13) Warranties.

A. ALL MATERIAL IS GUARANTEED TO BE AS SPECIFIED, AND THE WORK TO BE PERFORMED IN ACCORDANCE WITH THE SPECIFICATIONS SUBMITTED FOR THE ABOVE WORK AND COMPLETED IN A SUBSTANTIALLY WORKMANLIKE MANNER.

B. BUILDER AGREES TO PROMPTLY MAKE GOOD, WITHOUT COST TO OWNER, ANY AND ALL DEFECTS DUE TO FAULTY WORKMANSHIP WHICH MAY APPEAR WITHIN **ONE (1) YEAR** FROM THE DATE OF COMPLETION AND ACCEPTANCE OF THE WORK BY OWNER, PROVIDED THAT THE OWNER IS NOT IN BREACH OF THIS CONTRACT, INCLUDING HAVING PAID IN FULL PER THE CONTRACT TERMS ANY MONIES DUE. THIS LIMITED WARRANTY IS THE ONLY EXPRESS WARRANTY PROVIDED BY BUILDER.

C. ANY IMPLIED WARRANTY OF HABITABILITY EXTENDS ONLY TO THE CONDITIONS OF THE PROJECT AT THE TIME OF COMPLETION AND DOES NOT EXTEND TO ANY CONDITIONS NOT KNOWN OR UNDER THE CONTROL OF THE BUILDER AT THE TIME OF COMMENCEMENT OF THE PROJECT OR TO ANY DEFECT CAUSED BY

CONDITIONS OCCURRING SUBSEQUENT TO THE COMPLETION OF THE PROJECT.

D. ANY IMPLIED WARRANTIES INCLUDING (BUT NOT LIMITED TO) WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY, AND GOOD WORKMANSHIP ARE DISCLAIMED AND LIMITED TO PROVISIONS OF THIS SECTION.

14) Right to Cure.

FLORIDA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST A CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL FOR AN ALLEGED CONSTRUCTION DEFECT IN YOUR HOME. SIXTY DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR CONTRACTOR AND ANY SUBCONTRACTORS, SUPPLIERS, OR DESIGN PROFESSIONALS THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND MAKE AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE CONTRACTOR OR ANY SUBCONTRACTORS, SUPPLIERS, OR DESIGN PROFESSIONALS. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER FLORIDA LAW.

15) Representations. This Agreement constitutes the entire agreement between Owner and Builder, and supersedes all prior negotiations, representations, understandings and agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Builder. Owner acknowledges that Builder has made no guarantees, warranties, understandings, nor representations (nor have any been made by any representatives of Builder) that are not included in the contract documents.

CONSTRUCTION INDUSTRIES RECOVERY FUND PAYMENT MAY BE AVAILABLE FROM THE CONSTRUCTION INDUSTRIES RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A STATE-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: FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD 1940 N. Monroe St., Tallahassee, FL 32399-1039(850) 487-1395

16) Miscellaneous.

A. Owner and Builder both represent that they are ready, willing and able to carry out the terms, provisions and conditions of this agreement. Owner's, or Contractor's refusal or inability to fully and timely perform any of the terms of this Agreement shall give either party the right to declare this agreement null and void and either party shall have the right to bring any and all legal and/or equitable actions against the other in conformity with the Laws of the State of Florida. Both the Contractor and the Owner shall additionally be entitled to recover all costs, losses, lost profits, loss of work and earnings, damages and expenses incurred; including but not limited to reasonable legal and attorney's fees.

B. All materials shall be furnished in accordance with the respective industry tolerance of color variation, thickness, size, finish, texture, and performance standards.

C. Builder reserves the right to substitute building materials, appliances, equipment, fixtures or other items in the Project which may be necessitated by government agencies, job conditions, design changes deemed necessary by the architect, lending institutions, by the availability of materials, colors, brand names, or by material shortages, strikes, or similar situations, which in Builder's judgment require such changes, with prior notification to the Owner; provided, however that any substitute materials shall be of substantially similar or better quality to those specified in the Contract Documents.

17) Governing Law and Assignment. This contract will be construed, interpreted, and applied according to the Law of Florida. This contract shall not be assigned without the written consent of all parties.

18) Force Majeur. A party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, unavailability of materials, government orders or any other force majeure event.

HURRICANE IAN HAS AND WILL CONTINUE TO PROVIDE MATERIALS AND LABOR CHALLENGES IN SOUTHWEST FLORIDA. DIETZ OF NAPLES IS MAKING EVERY EFFORT POSSIBLE TO STREAMLINE REPAIRS, RENOVATIONS AND REBUILDS AND WILL DO EVERYTHING WITHIN ITS POWER TO OBTAIN TIMELY ACQUISITION OF LABOR AND MATERIALS TO MEET OUR CLIENTS TIMELINE GOALS. IN RETURN, A LEVEL OF UNDERSTANDING FROM OUR CLIENTELE, SHOULD A MATERIALS OR LABOR SHORTAGE DELAY CONSTRUCTION, IS GREATLY APPRECIATED. DELAYS WILL BE COMMUNICATED AS AGGRESSIVELY AS POSSIBLE.

19) Severability. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

20) Effective Date and Signature. This contract shall become effective on the day it is signed by both parties.

21) OWNER ACKNOWLEDGES RECEIPT OF THE FLORIDA CONSTRUCTION LIEN LAW WARNING ATTACHED AS EXHIBIT D.

Exhibit A - Plans and Specifications

Calais Written Scope of Work

1. Obtain necessary building permits
2. Remove and replace metal doors and frames (unless noted)
3. Install new door hardware
4. Repair surrounding stucco as necessary
5. Paint new doors and frames, paint touch up on affected surrounding areas
6. Remove and dispose of all construction related debris

Doors to be replaced:

Bldg. A:

- 1) 5/0 6/8 twin (doors only) east side

Bldg B:

- 1) 5/0 6/8 twin

Bldg C:

- 1) Meter Room 3/0 6/8

Bldg D:

- 1) Meter Room 3/0 6/8

Bldg E:

- 1) Trash Room 4/0 6/8

Bldg F:

- 1) Tool Room 3/0 6/8
- 2) Meter Room 3/0 6/8

Bldg G:

- 1) 5/0 6/8 twin (doors only) east side

Bldg H:

- 1) Pump Room 3/0 6/8
- 2) Meter Room 3/0 6/8

Specific Exclusions:

Any work not included in Exhibit A.

Exhibit B - Allowance Schedule Allowances included in the Contract Sum:

No allowances apply.

Exhibit C - Payment Schedule Payment Schedule

- Upon acceptance of proposal – retainer \$13,500.00
- On October 6, 2023 - \$13,500
- Final payment upon completion

TOTAL PROJECT COST (100%) \$ 37,701.86

Anticipated Timeline: Start work October 15, 2023 complete by October 31, 2023.

IF ANY PERSON OR COMPANY PROVIDES TO OWNER A NOTICE TO OWNER, THE CONTRACTOR SHALL PROVIDE THE OWNER WITH A WRITTEN RELEASE OF LIEN PRIOR TO FINAL PAYMENT FOR THE PROJECT.

Exhibit D - Florida Construction Lien Law Warning

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, SUBSUBCONTRACTORS, 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.

Section 489.147, Florida Statutes, prohibits contractors from directly or indirectly:

- Soliciting residential property owners through prohibited advertisements.
- Offering the residential property owner items of value to perform a roof inspection or file an insurance claim;
- Offering or receive any items of value when property insurance proceeds are payable;
- Engaging in unlicensed public adjusting; and
- Providing an authorization agreement to the insured without providing a good faith estimate.

Section 489.147(1)(b), Florida Statutes., defines “soliciting” as contacting:

- In person
- By electronic means, including, but not limited to, email, telephone, and any other realtime communication directed to a specific person: OR
- By delivery to a specific person.

Section 489.147(1)(a), Florida Statutes, defines prohibited advertisements as written or electronic communications to a consumer which encourage, instruct, or induce a consumer to contact a contractor or public adjuster to file an insurance claim for roof damage, AND which do not include certain notice requirements in a certain format. Prohibited advertisements include, but are not limited to, door hangers, business cards, magnets, flyers, pamphlets, and emails.

Section 489.147(2)(b), Florida Statutes, states that a contractor may not offer a residential property owner a rebate, gift, gift card, cash, coupon, waiver of any insurance deductible, or any other thing of value in exchange for performing a roof inspection or filing an insurance claim.

Section 489.147(2)(c), Florida Statutes, states that a contractor may not offer or receive any compensation, inducement, or reward, for the referral of any services for which property proceeds are payable. Payment by the residential property owner or insurance company to a contractor for roofing services rendered does not constitute compensation for referral.

Section 489.147(1)(a), Florida Statutes., states that a communication is NOT a prohibited advertisement if such communication states in a font size of at least 12 points and at least half as large as the largest font size used in the communication that:

1. The consumer is responsible for payment of any insurance deductible;
2. It is insurance fraud punishable as a felony of the 3rd degree for a contractor to knowingly or willfully, and with intent to injure, defraud, or deceive, pay waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to a property covered by a property insurance policy; AND

7. It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete, or misleading information.
8. Contractor cannot engage in offering a residential property owner a rebate, gift, gift card, cash, coupon, waiver of any insurance deductible, or any other thing of value in exchange for:
 - a. Allowing the contractor to conduct an inspection of the residential property owner's roof; or
 - b. Making an insurance claim for damage to the residential property owner's roof.

Section 489.147(5), Florida Statutes, states that if a contractor fails to include the notice as required in s. 489.147(2)(b), the contract may be voided by the residential customer within 10 days after the contract is executed.

According to section 489.147, Florida Statutes, a contractor will be subject to discipline when the contractor, their employee, or a third party acting on their behalf offers items of value in exchange for allowing the contractor to either conduct a roof inspection or make an insurance claim for the property owner's roof. Neither may the contractor advertise to perform these services.

Section 489.147(4)(a), Florida Statutes, provides that the acts of any person on behalf of the contractor, including but not limited to, the acts of a compensated employee the contractor.

EXHIBIT E – Project Cost (including materials and labor)

1) Scope of work as detailed in Exhibit A

\$37,701.86

WE THE UNDERSIGNED, have read, understand and agree to each of the provisions of this contract and hereby acknowledge receipt of a copy of this contract.

OWNER: _____

DATE: _____

OWNER: _____

DATE: _____

BUILDER: _____

DATE: _____