

Bella Vita
CUSTOM HOMES



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RESIDENTIAL REMODELING CONTRACT – FIXED PRICE

BY AND BETWEEN

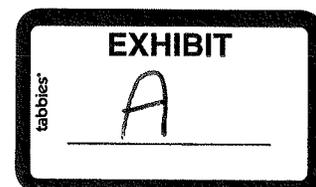
DAN & CHARLENE FLICK

AND

BELLA VITA CUSTOM HOMES, LLC

Dated: 27 August 2015

6723 Southridge Drive Dallas TX 75214



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- Exhibit "A" – Proposal
- Exhibit "B" – Estimated Construction Draw Schedule
- Exhibit "C" – Form of Final Punch List
- Exhibit "D" – Master Schedule
- Exhibit "E" – Form of Change Order
- Exhibit "F" – Form of Price Request List
- Exhibit "G" – Express Limited Warranty
- Exhibit "H" – Assignment of Manufactured Product Warranties
- Exhibit "I" – Builder's Disclosure Statement for Residential Construction Contracts

RESIDENTIAL REMODEL CONTRACT – FIXED PRICE

Summary Terms

The following summary terms are provided for convenience purposes only and are subject in their entirety to the terms and provisions of this Contract, including, without limitation, the schedules and exhibits hereto.

• Owner Name and Contract (Sections 1 and 20): DAN & CHARLENE FLICK

6723 Southridge Drive Dallas TX 75214

• Contract Price: \$524,232

Initial Cash Payment (Section 5.A): \$ _____

Construction Draws (Exhibit "B"): \$ _____

Remodel Price (Section 4): \$396,191

Lender Name and Contact Information: TBD _____

• Projected Completion Date: See Master Schedule

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Initials: Owner(s) ^{DS} CF Builder _____
^{DS} DF

RESIDENTIAL REMODEL CONTRACT – FIXED PRICE

1. PARTIES: This Residential Remodel Contract (this "Contract") is entered into by and between Bella Vita Custom Homes, LLC, a Texas limited liability company ("Builder") and DAN & CHARLENE FLICK (e.g. husband and wife) (collectively referred to as "Owner") for the purposes of constructing the Improvements (hereinafter defined) on the Property (hereinafter defined) and shall be effective upon the last date of execution by the parties (the "Effective Date").

2. PROPERTY: The property known commonly as 6723 Southridge Drive Dallas TX 75214.(Address and Zip Code), together with all improvements constructed or to be constructed on the Property, including the Improvements described below (the foregoing collectively referred to as the "Property").

3. IMPROVEMENTS:

A. CONSTRUCTION DOCUMENTS – The Construction Documents shall consist of the following plans, specifications, reports, schematics, and drawings to the extent available:

- (1) This Contract as may be hereafter amended;
- (2) All attached addenda and exhibits; and
- (3) The Proposal attached hereto as Exhibit "A".

B. WORK - Builder shall provide all labor and materials for the remodeling ("Work") of a single family residence in accordance with the Construction Documents ("Improvements"). Any inconsistencies or conflicts within the Construction Documents shall be resolved by Builder in its reasonable discretion. If a detail of the construction is not specified within the Construction Documents, or should an alternative building practice be available in lieu of a specified procedure, Builder may select a construction procedure that complies with applicable building codes. Unless otherwise specified in writing, materials used by Builder in the construction of the Improvements shall be as prescribed in the Construction Documents, subject to substitution in Builder's reasonable discretion should an item not be reasonably available or if the procurement of such would cause undue delay in the progress of the Work. Any substitutions shall be of comparable grade and quality and reflected in a confirmation order. The construction of the Improvements is also subject to any changes in the Construction Documents as may be required by federal, state or local governmental authorities. Owner acknowledges that these changes may occur during construction and agrees that so long as the Improvements are substantially in compliance with the Construction Documents, any such deviations will be accepted by Owner. Ian Macintosh will be the Project Manager for the Work. If he should fail to serve as Project Manager for any reason, Builder will provide Owner with the name of the successor Project Manager.

4. REMODEL PRICE: Owner agrees to pay Builder the sum of \$ \$524,232 ("Remodel Price") as consideration for the construction and completion of the Improvements and the performance of the Work, subject to adjustment as allowed by this Contract. The Improvements and Work are limited to the scope of work provided in the Construction Documents and no other work, materials or labor is included within the Remodel Price. All costs and fees associated with the Allowances (hereinafter defined) and Change Orders (hereinafter defined) will adjust the Remodel Price, as set forth in Sections 9 and 10 below.

5. PAYMENTS:

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Initials: Owner(s) DS
DF Builder _____
DS
CF

- A. INITIAL CASH PAYMENT TBD PER BANK DRAW SCHEDULE- Owner shall pay Builder \$ _____ .00 upon execution of this Contract (the "Initial Cash Payment"). Builder may use the Initial Cash Payment in consideration for, among other things, initial construction or pre-construction expenses. Notwithstanding anything herein to the contrary, the Initial Cash Payment shall be retained by Builder as liquidated damages if this Contract is terminated for any reason other than a Builder Event of Default (hereinafter defined) or Builder's right, upon written notice to Owner, to terminate the Contract pursuant to Section 17.1 below. Builder and Owner agree that it is not possible to calculate the exact amount of damages that Builder will suffer if this Contract is terminated or a reason other than Builder being in default and this amount is a reasonable approximation of such damages. This amount is not intended by the parties to be a penalty in any way.
- B. CONSTRUCTION DRAW SCHEDULE TBD PER BANK DRAW SCHEDULE - Owner shall pay Builder \$ _____ from construction draws ("Draw Payments") paid out in installments from commencement of construction (in accordance with the draw schedule attached herein as Exhibit "B").
- C. CONSTRUCTION DRAWS – Timely payment is crucial to ensure construction progress. Draws are submitted to Owner periodically as determined by Builder in its discretion. Draw Payments are due on Friday of the following week (except as permitted by Section 28.003 of the Texas Property Code, but such payment is subject to interest pursuant to Section 28.004 of the Texas Property Code). Failure to pay Draw Payments timely may constitute a Permitted Delay (hereinafter defined) and result in delay in the Projected Completion Date (hereinafter defined). Upon the third consecutive late payment, Owner agrees to reimburse Builder for the daily expense of Builder's Risk, General Liability and Workers Compensation insurance for each calendar day until payment of the subject draw has been received. Invoicing for said insurance reimbursement will appear on the next subsequent draw. Builder shall use Owner's Draw Payments to pay each of its subcontractors as required by Section 28.002 of the Texas Property Code.
- D. FINAL PAYMENT - After Substantial Completion (hereinafter defined), Builder and Owner shall hold a post-construction meeting, including a walk-through inspection of the Property (referred to herein as the "Post Construction Walk-Through"). At this meeting, (1) Builder shall execute and deliver to Owner an all bills paid affidavit and final lien releases in appropriate statutory form from Builder only (and not any subcontractors), and (2) Owner shall make Final Payment to Builder. "Final Payment", as used in this Contract, shall mean payment to Builder of all sums under this Contract that are due and unpaid, including any outstanding scheduled Draw Payments and all unpaid Remodel Price, Change Orders and Actual Allowances (defined below). At the Post Construction Walk-Through, Owner and Builder shall complete, sign and deliver a final punch list in the form attached hereto as Exhibit "C" (the "Final Punch List") if there are any items requiring correction. Final Punch List items shall be remedied by Builder as soon as practical, but no later than 60 days after the Final Punch List form is executed pursuant to Section 8 below. Owner will provide Builder with confirmation after the Final Punch List items are completed. Omissions or deviations from the Work that do not impair the structure as a whole, and are remediable without material changes to the house on the Property shall not prevent Substantial Completion. Remaining work that is solely of a "punch list" nature will not preclude Substantial Completion and is not a valid basis for Owner to delay making Final Payment. Unless otherwise agreed to in writing, Builder shall be paid in full at Substantial Completion or occupancy (if Owner has vacated the subject residence for the construction of the Improvements), whichever occurs first. If there are any outstanding past due amounts owed to Builder after Substantial Completion and/or occupancy (if Owner has vacated the subject residence for the construction of the Improvements), those amounts will accrue interest at 1.5% per month until paid as specified by Section 28.004 of

Initials: Owner(s) ^{DS}  Builder _____
^{DS} 

the Texas Property Code. Additionally, any express warranties and post move-in Final Punch List work will be suspended for as long as any past due amounts remain unpaid to Builder.

Holdback: For a period of 15 days following occupancy bank will hold back a \$5,000 for unfinished construction and for owners to observe possible defects associated with construction. After 15 days and all outstanding issues are resolved the bank will be authorized to remit the final \$5,000.

E. SOURCE OF PAYMENT (Cash) - Owner is not obtaining a home improvement loan to pay for construction of the Improvements. Owner shall pay for the Work and Improvements by a check made payable to Bella Vita Custom Homes, LLC.

[OR:

SOURCE OF PAYMENT (Financing) – Owner is obtaining a home improvement loan or other financing from a bona fide third-party lender, and Owner shall obtain and pay the loan at Owner’s expense and pay all related expenses. In the event of any conflicts between the Construction Documents and any documents promulgated by any third-party lender, the terms of the Construction Documents will control and prevail. If Owner is unable to obtain a home improvement loan or other financing, with terms reasonably acceptable to Builder, within _____ days of the Effective Date, either Owner or Builder may terminate this Contract by giving the other party written notice of termination.]

F. RETAINAGE – It is stipulated and agreed that no retainage will be withheld with respect to any funds due to Builder under the terms of this Contract.

G. LIEN WAIVERS – Builder agrees to supply Owner with complete copies of duly executed down-date lien waivers from Builder, but Builder shall not be required to provide lien waivers for any subcontractors. Following Substantial Completion, and as a condition for final payment, Builder shall submit all then available remaining construction invoices with the then available related executed lien waivers contemplated above and Owner shall be obligated to fund the full remaining balance of the Remodel Price to Builder within one business day thereafter.

H. PAYMENT CONDITIONS - Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make any payment to Builder hereunder if any one or more of the following conditions exists:

- (1) A Builder Event of Default has occurred and the applicable notice and Builder’s Cure Period (hereinafter defined) in Section 14.B has expired without cure of the Builder Event of Default; and
- (2) Any part of such payment is attributable to Work which is defective or not performed in accordance with the Contract Documents; provided, however, such payment shall be made as to the part thereof attributable to Work which is performed in accordance with the Contract Documents and is not defective.

6. TIME:

A. COMMENCEMENT OF WORK - Builder shall commence the Work promptly after:

- (1) Builder has received the Initial Cash Payment from Owner;
- (2) The complete Construction Documents have been approved and initialed by both Owner and Builder;
- (3) If applicable, Owner has obtained a home improvement loan or other financing acceptable to Builder in

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Initials: Owner(s) DF Builder _____

DF

accordance with this Contract;

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Initials: Owner(s) CF Builder _____

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^{DS}
DF

- (4) Owner has obtained all necessary consents and approvals, including, but not limited to, consents and approvals required from any governmental authority, architectural review committee, homeowners association or similar entity having the right to approve the Work or Improvements;
- (5) Owner has furnished Builder with a current title commitment or such other evidence of Owner's ownership of the Property satisfactory to Builder in its sole discretion; and
- (6) All appropriate building permits have been issued and/or appropriate regulatory approvals have been obtained.

B. COMPLETION OF IMPROVEMENTS - After commencement of the Work, construction activities shall thereafter be continued in accordance with Builder's normal construction schedule until the Improvements reach Substantial Completion. Builder agrees within 30 days after the Effective Date to provide Owner with a master schedule in the form attached hereto as Exhibit "D" containing the various dates that phases of the Work will be completed, including, without limitation, the Projected Completion Date (hereinafter defined) (the "Master Schedule"), which Master Schedule (and dates therein) are subject to revisions from time to time based upon Permitted Delays and other events. Builder will make all reasonable efforts to reach Substantial Completion of the Improvements in accordance with the projected completion date set forth in the Master Schedule ("Projected Completion Date"), subject to Permitted Delays (hereinafter defined); **provided, however, Builder shall not have any liability to Owner for failing to achieve the Projected Completion Date.**

C. PERMITTED DELAYS - The Projected Completion Date may be extended for one or more of the following causes, each being a "Permitted Delay":

- (1) Changes by Owner or Owner's representatives to the Construction Documents;
- (2) Failure of Owner to timely make selections as directed below;
- (3) Failure of Owner to timely make payments when due;
- (4) Other acts or omissions by Owner or Owner's representatives;
- (5) Prohibitive inclement weather or acts of God;
- (6) Fire or casualty loss;
- (7) Non-availability of materials;
- (8) Delays caused by changes in the economy;
- (9) Delays caused by any applicable governmental entity's change in laws or ordinances or delays in issuing necessary permits or conducting inspections;
- (10) Delays caused by Change Orders requested by Owner;
- (11) Disputes with Owner or Owner's representatives;
- (12) Civil unrest, strikes, lockouts, acts of public authorities, or war; and

Initials: Owner(s) ^{DS}  Builder _____
^{DS} 

(13) Other events or causes beyond Builder's reasonable control.

Notwithstanding anything to the contrary set forth herein, the Projected Completion Date for the Work may be extended without penalty under the following conditions:

- (1) By any Change Order that may delay the construction by the number of days agreed to and expressly stated in the Change Order.
- (2) By all bad weather days which prevent progress of the construction. Wet and/or freezing weather prohibit the application of numerous construction materials and procedures. Builder has anticipated ___ bad weather days in determining the construction time. Builder will send Owner written notice of each bad weather day beyond the original number of bad weather days stated above, and the Projected Completion Date will automatically be extended for each notified bad weather day.
- (3) By delays due to special order materials that delay the normal construction process. Upon receipt of notification of expected delivery date of special order materials, Builder will notify Owner in writing of the delays caused by special orders, and the Projected Completion Date will automatically be extended to account for any such delays as required.
- (4) By absence of Owner response. Periodically, during construction, there are questions, inputs, approvals, and walk-through meetings where decisions are required by Owner or Owner's designated representative. Builder will notify Owner in writing of required confirmation orders, walk-through meetings, questions, or inputs within three days of the required event. Owner will have three business days to respond to Builder's notification. If Builder does not receive timely response from Owner, the Projected Completion Date will be automatically extended for every business day until Owner responds.

D. NO WORK PERFORMED - Builder and Owner, by their signatures to this Contract, acknowledge and agree that this Contract has been executed and delivered before Builder has performed any labor and before Builder has furnished any materials in connection with the construction of the Improvements.

7. SUBSTANTIAL COMPLETION, INSPECTION, RELEASE AND OCCUPANCY: The Improvements will be deemed to be substantially completed ("Substantial Completion") when Builder certifies to Owner in writing that the Improvements have been substantially completed in accordance with the Construction Documents, a certificate of occupancy (i.e. Final Building "Green Tag") is issued or, if no certificate of occupancy is required, when all electrical, mechanical, and plumbing final inspections, or all other required inspections, have been approved or all approvals for occupancy have been received from any applicable governmental authority and the Improvements are suitable for occupancy and use; provided, however, that if Owner has moved out of the residence for the construction of the Improvements and moves back into the residence without Builder's consent, the Improvements shall be deemed to be substantially completed unless a Builder Event of Default has occurred. If Owner objects to Builder's determination of Substantial Completion, and notifies Builder in writing of such within three business days of receipt of Builder's notice of Substantial Completion, then Owner shall have the right to hire a consultant to inspect the Work and confirm Substantial Completion of the Work. Owner's occupancy (if Owner has vacated the subject residence for the construction of the Improvements) of the Improvements shall constitute Owner's acknowledgment that all Work has been completed in accordance with the Construction Documents, and shall constitute Owner's release of Builder from all Claims (hereinafter defined) and liabilities, except contractual warranty obligations arising under Builder's Express Limited Warranty and any Final Punch List items to be completed. Upon Substantial Completion of the Improvements and payment to the Builder of the

Initials: Owner(s) ^{DS}  Builder _____
^{DS} 

Remodel Price and all payments as set forth herein, Owner will be given possession of the Improvements and the Property; provided, however, that if Owner has moved out of the residence for the construction of the Improvements, in no event shall Owner be entitled to occupy any portion of the residence until Builder has been paid the Remodel Price and all payments as set forth herein. At such time Builder shall be released from any further obligation or duty for the maintenance of insurance coverage with respect to the Property and/or the care, repair, maintenance and condition of the Property and the Improvements, except for Final Punch List items and as outlined in Builder's Express Limited Warranty, if applicable. Builder's failure to complete Final Punch List items shall not be a basis for Owner to withhold any payments otherwise due to Builder, and, although the Express Limited Warranty will be in effect at Substantial Completion, no work is required to be performed by Builder pursuant to the Express Limited Warranty until the Remodel Price and all payments set forth herein have been paid in full to Builder by Owner.

- 8. FINAL PUNCH LIST: Following the Post Construction Walk Through, Owner will compile the Final Punch List of any cosmetic items that do not conform to reasonable industry standards. In order to protect Builder from repair claims for damages caused by Owner's movers or during Owner's move-in to the Property, open and obvious defects must be brought to Builder's attention during the Post Construction Walk Through and such defects (including, but not limited to, broken glass/mirrors, chipped brick materials, broken tiles, scratched hard surface flooring, scratches, blemishes and chips in countertop materials and bathroom tile and marble, and carpet and wallpaper seams) will not be permitted on the Final Punch List if not identified during the Post Construction Walk Through. **In order to validly establish the Final Punch List, Owner must complete the Final Punch List form, sign the form and mail it to Builder no later than 30 days from the Post Construction Walk Through. Failure to submit the Final Punch List after two written reminders from Builder will result in waiver of Owner's right to require Builder to perform further repairs for Final Punch List items, except for items noted in writing by Owner at the Post Construction Walk Through and warranty items.** Upon establishment of the Final Punch List by Owner, it is agreed that additional items are excluded from correction by Builder unless they become warranty items.

Upon receipt of the Final Punch List, Builder will contact Owner to schedule a meeting to review the Final Punch List. Builder agrees to substantially complete the agreed upon items within 60 days following receipt of the Final Punch List from Owner. Owner agrees to cooperate with Builder in the timely scheduling of workmen to enter the house to make agreed upon corrections to the Work as specified on the Final Punch List. Builder will not be held in breach of its warranty obligations due to Owner's lack of cooperation in allowing access to workmen to the house to make corrections. Owner agrees that Owner shall not unreasonably withhold or delay approval with respect to such workmen.

- 9. ALLOWANCES: For purposes of this Contract, the allowances are set forth in the Proposal (the "Allowances") and include budgets for certain Work components and construction overhead shown in the Construction Documents to be determined, selected and/or approved by Owner during the construction process and incorporated into the Improvements. The sums allocable to each listed Allowance are included within and are part of the Remodel Price. **Unless otherwise noted in the Construction Documents, each Allowance listed includes, without limitation, the component costs of material and labor, any appropriate sales tax, shipping charges, and other costs associated with procurement.** Selections of Allowance items will be made with suppliers typically used by Builder to limit the possibility of unusual costs or delays, unless Owner desires to use Owner's own supplier, in which case Owner shall be responsible for any delays caused thereby. Any and all ordering shall be done by Builder directly from any sub or supplier. If during construction, Owner elects to order or install any item that will cause any increase in any of the Allowances, Builder will collect all amounts over budget from Owner before items are ordered.