

**CONSTRUCTION CONTRACT  
ESCROW AGREEMENT**

THIS CONSTRUCTION CONTRACT ESCROW AGREEMENT (this "Escrow Agreement") is made this \_\_\_\_ day of July, 2020, by and among **WIEZ DESIGN & CONSTRUCTION, INC.**, a Florida corporation, ("Builder"), **JOHAN JONGSMA** and **TATYANA JONGSMA** (each, a Seller, and collectively, the "Sellers"), and **GIBBONS, NEUMAN, BELLO, SEGALL, ALLEN & HALLORAN, P.A.** ("Escrow Agent").

WHEREAS, Builder is constructing a home for Sellers located at 129 Bay Point Drive NE, St. Petersburg, FL 33704, Pinellas County, Florida, (the "Property"), pursuant to that certain Contract for a Construction of a Single-Family Home dated July 27, 2017 (the "Construction Contract"), a true copy of which is attached hereto as Exhibit A; and

WHEREAS, Sellers have agreed to sell the Property to **TREVOR BURGESS and GARY HESS** (the "Buyer") pursuant to that certain Agreement For Sale and Purchase dated November, 22<sup>th</sup>, 2020 (the "Sale Contract"); and

WHEREAS, Sellers have agreed to escrow funds to pay for any remaining "Cost of the Work" under the Construction Contract, including, without limitation, punch-list items and warranty work, which escrowed funds shall not be a limitation on the remaining Cost of the Work; and

WHEREAS, Builder and Sellers have estimated the funds necessary to complete the Work, including, without limitation, the estimated the cost of corrective work during the one-year period after the delivery of the Certificate of Occupancy, as specified under Section 15 of the Construction Contract, and a copy of such estimate is attached as Exhibit B and attached hereto (the "Escrow Estimate"); and

WHEREAS, Sellers have agreed to deposit the "Total Held in Escrow" amount of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) with Escrow Agent (the "Escrow Funds"), to be paid to Builder upon Builder's application to Escrow Agent for payment; and

WHEREAS, Escrow Agent has been requested by Builder and Sellers to serve as Escrow Agent and is willing to serve in said capacity on the terms and conditions hereinafter set forth,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree that the recitals above are true and correct and that the recitals and exhibits hereto are incorporated into the Agreement by this reference, and further agree as follows:

1. Sellers' Acknowledgement and Pre-Approval for Certain Work.

(a) Seller acknowledges that the Construction Contract is in full force and effect, that the Construction Contract has not been assigned and shall not be assigned without the express written permission of Builder, and that Sellers shall remain obligated under the

Construction Contract following the closing of the Sale Contract. Sellers agree that their obligations hereunder are independent of the closing of the Sale Contract, and if the closing is delayed or the Sale Contract is terminated, Sellers obligations hereunder, including the obligation to deposit the Escrow Funds, shall not be affected.

(b) Sellers and Builder agree that, as between Sellers and Builder, Sellers shall have the right to approve all Work that is not already scheduled or completed following the date of this Escrow Agreement, with the exception of warranty work and punch-list items, which shall not require pre-approval. Approval of the Sellers may be evidenced by the consent of either of the Sellers. The Escrow Agent shall have no duty to investigate whether any Draw Request involves matters under this Section 1(b) when making a disbursement, and Builder shall have no duty to undertake or complete any Work for which approval has not been obtained.

2. Escrow Funds.

(a) Initial Deposit of Escrow Funds. Seller shall deposit ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) with Escrow Agent by wire transfer to an account designated by Escrow Agent at the earlier to occur of (i) the closing of the Sale Contract, or (ii) August 3, 2020. Builder, Sellers, and Escrow Agent acknowledge and agree that the Escrow Funds, and any other funds designated by the parties to be held as Escrow Funds shall be held by the Escrow Agent in escrow and shall be disbursed in accordance with the terms set forth herein.

(b) Purpose of Exhibit B/Additional Escrow Funds. The parties acknowledge that Exhibit B, the Escrow Estimate, is merely an estimate of the Cost of the Work remaining under the Construction Contract. Any line item contained in the Escrow Estimate may cost more or less than estimated, and there may be additional items that will be required to complete the Work. Escrow Agent shall pay any amount submitted in a proper Draw Request without regard to its presence or absence in the Escrow Estimate. Sellers acknowledge their obligations under the Construction Contract to pay the entire Cost of the Work, without regard to the amounts listed on Exhibit B.

3. Procedure for Release of Escrow Funds. The Escrow Funds shall be released to Builder for payment of the Cost of the Work, and to Escrow Agent, in payment for its basic services processing each "Draw Request," as defined below and for all other purposes provided for herein, upon delivery of the following documentation:

(a) Submittal of Draw Request. From time to time, Builder shall provide to Escrow Agent a written draw request on Builder's letterhead in substantially the form attached hereto as Exhibit C (each, a "Draw Request") containing information specific to that particular draw. Each Draw Request shall be executed by Paul Wiezorek, President of Builder, and either Johan Jongsma or Tatyana Jongsma. Execution may be made physically, electronically, or by any other method to indicate execution, and Escrow Agent shall be entitled to rely on any and all such methods. Each Draw Request shall contain a request for direct payment to Escrow Agent for its basic services in processing the Draw request in the amount of \$200 for each draw request, and each Draw Request shall be accompanied by bills, invoices, and/or statements for each other

item for which payment is requested. In the event that Builder does not obtain the execution of the Draw Request by either Seller within three (3) calendar days after the date of Builder's notice to Sellers of Builder's intent to draw on the Escrow Funds, Builder may submit a signed statement certifying that (i) Builder has notified Sellers pursuant to this Escrow Agreement and (ii) Sellers have not executed the draw request within the time period provided above, and such statement shall satisfy the requirement that the draw request be executed by one of the Sellers. The time period shall be calculated in the manner provided in the following example: Builder emails notice on August 1; Sellers have until 11:59:59 p.m., Tampa time, on August 4 for one of them to execute the draw request and deliver it to Builder; in the absence of a signature of either of the Sellers on the draw request presented in the notice, on August 5, Builder may make the signed statement specified above and present the draw request and certification to Escrow Agent. Escrow Agent shall be entitled to rely on any such signed statement pursuant to Section 3.

(b) Disbursement of Requested Funds. Escrow Agent shall disburse the funds requested under the Draw Request from the Escrow Funds within three (3) business days of its receipt of the proper documentation. For each draw request submitted to Escrow Agent, Escrow Agent shall withdraw the funds from the Escrow Account in accordance with the amounts listed in the Draw Request.

(c) Shortage of Funds and Low Balance. If at any time there are not enough Escrow Funds to cover the amount listed in any Draw Request, Escrow Agent shall immediately notify the parties, and Escrow Agent shall pay such amount as may be available to Builder as partial payment, and Sellers shall pay the remainder directly to Builder within two (2) business days of the date of such notice. In the event the amount of Escrow Funds falls below FIFTEEN THOUSAND DOLLARS (\$15,000.00) or if at any time Builder reasonably projects the Escrow Funds to fall below such amount, Builder shall make a reasonable approximation of the amount of funds required to complete the Work, plus \$25,000 as an estimate for first-year corrective work under Section 15, and present that estimate to Sellers. Sellers shall deposit the estimated amount with Escrow Agent by wire transfer within five (5) business days of the date of Builder's notice.

(d) Disbursement of Excess Escrow Funds. After the expiration of the last to occur of (i) the one-year period following the date of the Certificate of Occupancy, as described in Section 15 of the Construction Contract, and (ii) the date on which Sellers have paid Builder for all of the Work and other obligations under the Construction Contract and this Escrow Agreement, and (iii) the date on which Escrow Agent has been completely paid for all of its services hereunder, Builder and either Johan Jongsma or Tatyana Jongsma shall certify to Escrow Agent that the purposes of the Escrow Agreement have been accomplished and authorize the Escrow Agent to disburse the remainder of the Escrow Funds, if any, to Sellers, or as the parties may otherwise direct. The Escrow Agent may reject such authorization if the Escrow Agent has not been completely paid for its services hereunder.

#### 4. Duties of, and Reliance by, Escrow Agent.

(a) Escrow Agent may act in reliance upon any writing, instrument or signature which it, in good faith, believes to be genuine, including, without limitation, emails

from either of the parties, electronic signatures such as DocuSign, and pdf, facsimile, or otherwise electronically delivered documents, and may assume the validity and accuracy of any statements or assertion contained in such writing or instrument. Draw Requests may be delivered to the Escrow Agent by email.

(b) Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any written instrument delivered to it, nor as to the identity, authority, or rights of any person executing such written instrument.

(c) The duties of Escrow Agent shall be limited to compliance with written terms of this Escrow Agreement and to delivery of the Escrow Funds in accordance with written instructions executed by Builder and either Johan Jongsma or Tatyana Jongsma as herein described, or, in the alternative, the certification of Builder that neither Seller has timely signed the Draw Request as provided in Section 3.

(d) Escrow Agent is hereby authorized to rely, and shall be protected in relying upon, any written direction, request, waiver, consent, certificate or other paper or document furnished to it and signed by both Builder and either Johan Jongsma or Tatyana Jongsma, or, in the alternative, the certification of Builder that neither Seller has timely signed the Draw Request as provided in Section 3, notwithstanding that such direction may be, or appear to be, in conflict with, or supplemental to, the terms of this Escrow Agreement. Escrow Agent may, but shall not be required to, forward any communications received from Buyer to any other party.

(e) The parties do not require that Escrow Agent interpret the substantive provisions of the Escrow Agreement, including, without limitation, any of the Exhibits hereto; rather, the parties intend only that Escrow Agent hold the Escrow Funds in escrow and deliver the Escrow Funds pursuant to this Escrow Agreement.

(f) In the event that Escrow Agent receives written instructions from Builder or either Johan Jongsma or Tatyana Jongsma, which instructions are contrary to this Escrow Agreement, or receives any other written communication which it deems to be inconsistent or in dispute, it shall take whatever action it deems appropriate, in its sole discretion, to resolve such inconsistency, which may include, but shall not be limited to depositing part or all of the Escrow Funds with the clerk of the court having jurisdiction over the matter and filing an action for interpleader.

5. Liability and Non-conflict of Escrow Agent. Escrow Agent and its shareholders, employees, successors and assigns shall not be liable for anything which it may do or refrain from doing in connection herewith, providing it is not found by a court of competent jurisdiction to have acted with gross negligence or willful and intentional misconduct. The parties acknowledge that Escrow Agent may from time-to-time serve as counsel for one of the parties hereto, and that Escrow Agent's duties hereunder shall not be a conflict in continuing to represent said party during or following the duration of this Escrow Agreement.

6. Termination of Escrow Agent's Duties and Liability. Upon Escrow Agent's delivery of the Escrow Funds in accordance with the provisions hereof, the escrow established hereby shall terminate and Escrow Agent shall thereafter be released of all duties, obligations and liabilities hereunder.

7. Fees, Expenses, and Indemnification.

(a) Fees and Expenses. Sellers and Builder shall compensate Escrow Agent for its services hereunder and, in addition, shall reimburse Escrow Agent for all of its reasonable out-of-pocket expenses, including, without limitation, attorneys' fees, postage and delivery fees, copying charges, and the like. All compensation and reimbursement obligations shall be payable on demand by the Escrow Agent. Escrow Agent shall be compensated from the Escrow Funds for its fees and costs in preparation of this Escrow Agreement and any other documents and services relating in any way to this Escrow Agreement and \$200 for processing each standard basic draw request. In addition to the foregoing basic fee, Escrow Agent shall charge its standard hourly rate of \$350 per hour (i) for Draw Requests that are, in the reasonable determination of Escrow Agent, complicated, for example, by the disagreement of the parties, and (ii) for any other time which the Escrow Agent devotes to matters under or arising out of this Escrow Agreement. The Escrow Agent is authorized to and may disburse from time to time, to itself from the Escrow Funds, the amount of any compensation and reimbursement of out-of-pocket expenses due and payable hereunder. Escrow Agent shall provide the parties seven (7) calendar days prior notice of any disbursement from the Escrow Funds to itself in respect of any compensation or reimbursement hereunder and, subject to the Escrow Agent's right to redact information in such invoices and other statements which is otherwise protected by attorney client privilege, shall furnish to the parties copies of all related invoices and other statements.

(b) Indemnification of Escrow Agent. Builder and Sellers, and their heirs, successors and assigns, hereby jointly and severally agree to indemnify, defend and hold Escrow Agent, its partners, employees, successors and assigns, harmless from and against any and all causes of action, claims, counterclaims, demands, lawsuits, costs, expenses, obligations, damages and deficiencies, including interest penalties and attorney's fees and paraprofessional fees and expense (including those related to appeals), and all other expenses and liabilities of every kind and nature which Escrow Agent may sustain or incur in connection with its performance under this Escrow Agreement.

(c) Indemnification of Builder. Sellers, their heirs, successors, and assigns, hereby jointly and severally agree to indemnify, defend and hold Builder and Builder's partners, employees, heirs, successors and assigns, harmless from and against any and all causes of action, claims, counterclaims, demands, lawsuits, costs, expenses, obligations, damages and deficiencies, including interest penalties and attorney's fees and paraprofessional fees and expense (including those related to appeals), and all other expenses and liabilities of every kind and nature which Builder may sustain or incur in connection with, arising out of or relating in any way to this Escrow Agreement.

(d) Survival. The obligations of the parties under this Section 6 shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Agent.

8. Resignation of Escrow Agent. Escrow Agent may resign upon ten (10) days prior written notice to Builder and Sellers, and such resignation shall be effective on the date specified in the notice. Upon the delivery of the Escrow Funds by the resigning Escrow Agent to a successor escrow agent appointed by the mutual written agreement of Builder and Sellers, Escrow Agent shall be released from all liability and obligation hereunder. In the event Builder and Sellers fail to agree on a successor escrow agent, Escrow Agent may select an impartial member of the Bar Association, as determined in Escrow Agent's reasonable discretion, in the state in which the Property is located to become the successor escrow agent.

9. Notices. Any notice, request, instruction or other document deemed by any of the parties hereto to be necessary or desirable to be given to any other party hereto shall be in writing (including by email or facsimile communication), hand delivered by messenger or courier service, telecommunicated, emailed or mailed by overnight courier (airmail if intended recipient is outside the continental United States), by certified mail (postage paid), return receipt requested, to the following address:

If to Builder:

Wiez Construction & Design, Inc.  
P.O. Box 18672  
Tampa, FL 33679-8672  
Email: [paul@wiezchoice.com](mailto:paul@wiezchoice.com)

If to Sellers:

Addressed to either or both Sellers at:  
851 Brightwaters Blvd. NE  
St. Petersburg, FL 33704  
Email: [johan@jongsma.me](mailto:johan@jongsma.me)\*  
(\*email to this address shall serve as notice to both Sellers)

If to Escrow Agent:

Gibbons | Neuman  
Attn.: Rod B. Neuman  
3321 Henderson Blvd.  
Tampa, FL 33609  
Email: [neuman@gibblaw.com](mailto:neuman@gibblaw.com), with a copy to [jgilbert@gibblaw.com](mailto:jgilbert@gibblaw.com)

or to such other address as any party may designate by notice complying with the terms of this Section. Builder and Sellers will provide Escrow Agent notice of their respective subsequent addresses upon moving. Each such notice shall be deemed delivered (i) on the date of delivery of the notice, if by personal delivery or courier service; (ii) on the date of transmission with

confirmed receipt if by telecommunication; (iii) on the date of transmission without rejection if by email; and (iv) if mailed as provided herein, the date upon which the return receipt is signed, or delivered is refused, or the date the notice is designated by the postal authorities to be non-deliverable, as appropriate.

10. Entire Agreement. This Escrow Agreement contains the entire agreement between the parties hereto, and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter hereof. No oral understandings, statements, promises or inducements contrary to the terms of this Escrow Agreement exist.

11. Waiver and Modification. Except as otherwise provided herein, the waiver of any term, provision or condition of this Escrow Agreement shall be effective only if in writing and signed by the parties hereto, and then only in the specified instance and for the particular purpose for which it was given. No failure to exercise nor delay in exercising any right or power hereunder shall operate as a waiver thereof. No modification or amendment hereof shall be valid and binding, unless it is in writing and signed by the parties hereto.

12. Benefit. This Escrow Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective legal representatives, and permitted successors and permitted assigns.

13. Attorneys' Fees. In addition to the fees payable to Escrow Agent for service as Escrow Agent hereunder, in the event of any dispute arising in connection with this Escrow Agreement, the prevailing party shall be entitled to recover all costs and expenses incurred, including, without limitation, attorney's fees and professional fees and costs for services related to said dispute, whether such expenses are incurred prior to or subsequent to the filing of any litigation, and including the costs of all post-judgment proceedings. The obligation imposed by this section shall survive the termination of the Escrow and the termination of this Escrow Agreement.

[Agreement Continues on Next Page]

*[Signature Page to Escrow Agreement]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Escrow Agreement,  
as of the date and year first written hereinabove.

"BUILDER"

WIEZ DESIGN AND CONSTRUCTION, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"SELLERS"

  
\_\_\_\_\_  
Johan Jongsma  
  
\_\_\_\_\_  
Tatyana Jongsma

"ESCROW AGENT"

GIBBONS, NEUMAN, BELLO, SEGAL  
ALLEN & HALLORAN, P.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT B**  
**ESCROW ESTIMATE**

**EXHIBIT A**  
**CONSTRUCTION CONTRACT**

**EXHIBIT C**  
**FORM OF DRAW REQUEST**