

**Agreement Between
Owner and Contractor**

THIS AGREEMENT made this ____ day of June 2019, **BETWEEN** MIHAI DANILA and POLIANA DANILA (collectively “Owner”), and SCARLETT OAK DESIGN BUILD, LLC (“Contractor”) to perform the work identified in Article 2 in accordance with the Project Contract Documents (as hereinafter defined).

The Project: Perform construction remediation work to address water infiltration in the foundation crawlspace of the single-family home on the premises located at 149 Mountain Rest Road, New Paltz, New York in accordance with the scope of work attached hereto as Schedule “A” (the “Work”).

WHEREAS, Contractor constructed a single-family home on the property located at 149 Mountain Rest Road, New Paltz, New York (“Subject Property”) and sold said property to Owner with a closing on or around July 20, 2018;

WHEREAS, Owner has periodically observed standing water in the foundation crawlspace, and water is believed to be infiltrating the foundation;

WHEREAS, Owner first provided notice to Contractor of water in the foundation crawlspace around the end of September 2018;

WHEREAS, Contractor assumes the obligation to undertake reasonable measures to prevent further water infiltration in the foundation crawlspace, but makes no admission of liability or wrongdoing;

WHEREAS, Owner and Contractor hereby desire to amicably work together to resolve the issue of water infiltrating the foundation crawlspace and enter into an agreement that sets forth the rights, duties, obligations, and responsibilities of Owner and Contractor;

NOW, THEREFORE, for the full agreement, in consideration of mutual promises contained herein, the parties to this Agreement hereby state, confirm, warrant, represent, and agree as follows:

ARTICLE 1 – SCOPE OF WORK.

Contractor agrees to commence the Work in accordance with the specifications set forth in Schedule “A”, attached hereto and made a part hereof (“Project Contract Documents”), as soon as reasonably practical following the execution of this Agreement, subject to identifying a short-term rental property for Owners (see Article 4) and the availability thereof, as well as the schedule of Contractor labor.

If and only if the Work is unsuccessful at preventing water infiltration in the foundation crawlspace, which determination will be made no less than thirty (30) days from completion of the Work, then Contractor shall take further action to remedy the water infiltration. The scope of any further action will be determined by Contractor and based upon the circumstances presented

following the Work and the opinion(s) of a properly credentialed professional engineer(s) ("Further Action"). Contractor will provide Owner with a written scope of work and any engineer(s) opinion(s) prior to commencing Further Action.

The Work will be deemed unsuccessful if, between the 31st day and one (1) year from the completion of the Work, there is an instance of material water infiltration in the foundation crawlspace that produces standing water and is readily observable and did not arise from an extraordinary rain/flooding event (such as a hurricane).

Following completion of the Work, Owner shall notify Contractor of any instance of water infiltration in the foundation crawlspace within twenty-four (24) hours of first observing said water infiltration. Contractor shall make all reasonable efforts to inspect the Subject Property within twenty-four (24) hours of receipt of notice from Owner.

If there is no material instance of water infiltration in the foundation crawlspace within one (1) year of completion of the Work, then it will be deemed that the Work was successful in properly and appropriately remediating any issues associated with water infiltration. In this event, Contractor will have no obligation to perform further work, and all parties' duties under this Agreement will be deemed satisfied and discharged.

Following completion of the Work, Contractor is not responsible for water infiltration caused by extreme weather events (including but not limited to instances of excessive precipitation), natural disasters, acts of god, or any other similar event that could cause water infiltration or otherwise jeopardize the moisture barrier of any below-grade foundation space in a single-family home.

If Contractor defaults or neglects to carry out the Work substantially in accordance with the Project Contract Documents, then Owner may provide Contractor with written notice to correct such default within a ten (10) business-day period. If Contractor fails to commence and continue correction of such default with reasonable promptness and diligence after receipt of such ten (10) business day written notice from Owner, then Owner may, without prejudice to other remedies, correct such deficiencies and charge cost back to Contractor.

ARTICLE 2 – SCHEDULE OF WORK. Once commenced, the Work on the Project is expected to take approximately fourteen (14) days to complete. If Further Action is necessary, the expected length of time to complete said work will be determined when applicable and communicated to Owner in writing. Contractor shall diligently strive for completion by the stated times above and to complete the Further Action in the shortest time practicable; however, Contractor shall not be liable for completion dates beyond the stated times so long as the delay is reasonable under the circumstances. Contractor shall not be responsible for unforeseen delays beyond Contractor's control, including inclement weather, acts of God, labor disputes, fire, prolonged transportation delays, injuries, or other causes beyond Contract's control or which justify a delay. Contractor shall provide Owner with any requested scheduling information relating to the Work. Contractor shall coordinate the Work with Owner and all other subcontractors and suppliers on the Project so as not to unreasonably delay or damage their performance, or the timely completion of the Work. Owner may visit the site to keep reasonably informed about the progress and quality of the Work only at times when Contractor and its workers are not onsite and engaged in performance of the Work, and Contractor shall provide Owner with access to the premises therefor. Owner

acknowledges and appreciates that, during the Work, the premises is a construction site and access thereto involves inherent risks to personal safety. Owner assumes any and all risk of accessing the premises while Work is in progress. Notwithstanding the foregoing, in the event Contractor is delayed in the performance of the Work by any act or omission of Owner, or by industry-wide strikes, lockouts, embargoes, fire, unavoidable casualties, national emergency, acts of God, unusually severe weather conditions not reasonably anticipatable, or by any other causes which Contractor could not reasonably control or circumvent, then the Completion Date shall be extended for a period equal to the impact of such delay.

ARTICLE 3 – PERMITS, FEES, AND NOTICES. The Contractor shall obtain and pay for any building permits and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Project.

ARTICLE 4 – RELOCATION. Contractor agrees to provide reasonable alternate housing for Owner during the Work for a consecutive period no longer than fourteen (14) days in a location reasonably approximate to the Subject Property. Contractor will assume the costs and fees associated with the short-term rental of a house, apartment, or other reasonable living space (“short-term rental property”). The short-term rental property need not be equal in size or condition to Owner’s home on the Subject Property but will be reasonable in size and condition to house the number of people staying in said rental for the duration of the rental. Contractor and Owner will work together to find a suitable short-term rental property and Contractor will have the final-approval authority concerning the short-term rental property. Contractor’s approval regarding same will not be unreasonably withheld. To the extent Owner pays up-front for the short-term rental property, Owner has the right to be reimbursed by Contractor for its costs and expenses associated with the short-term rental property up to fourteen (14) days of said rental.

ARTICLE 5 – CHANGES. Any change in the scope of Work must be done by written Change Order signed by Contractor and Owner. The change order shall include conforming changes in the construction time, if any.

ARTICLE 6 – INDEMNIFICATION AND INSURANCE. Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs in connection with the Work to be performed by Contractor, since these are solely Contractor’s rights and responsibilities under this Agreement. Contractor shall be responsible for reasonable precautions for the safety and prevention of damage, injury, or loss to employees, subcontractors, suppliers, professionals, or other consultants resulting from the Work and to the Subject Property and the property adjacent or near thereto. Contractor shall purchase and maintain builder’s risk and any other insurance which is reasonable and customary in order to protect Contractor and Owner from any claims that may arise out of or result from Contractor’s performance of the Work hereunder and/or for which Contractor may be legally liable, in a company or companies lawfully authorized to do business in New York.

Owner hereby agrees to indemnify and hold harmless Contractor, and Contractor’s director’s, officer’s, employees, and subcontractors, from and against all claims, damages, losses, and expenses, including reasonable attorney’s fees, arising out of performance of the Work: (1) for bodily injury, illness, or death or (2) for property damage, including loss of use, caused in whole

or in part by Owner's negligent act or omission, or the negligent or intentional act of any subcontractor or of any other employee, agent or independent contractor hired directly by Owner for whose acts Owner is directly liable and whom Contractor did not hire or directly pay.

ARTICLE 7 –LIMITED WARRANTY. Contractor fully warrants that the Work will conform to the Project Contract Documents, will be delivered unto Owner free and clear of all liens and encumbrances, and will be free from all substantial deficiencies and defects in materials and/or workmanship for a period of one (1) year from the date of completion of the Project (the “Warranty Period”). All materials and equipment shall be installed, connected, handled, used, erected, cleaned, and conditioned in accordance with the instructions of the supplier so as to preserve all warranty and guaranty rights thereto, and all such warranty and guaranty rights shall expressly run to the benefit of Owner. Owner shall promptly notify Contractor in writing detailing with specifics of all claimed deficiencies or defects (“Notice of Warranty Claim”). Owner shall permit Contractor to perform a reasonable inspection and testing, if necessary, of the Subject Premises within a reasonable time following receipt of Notice of Warranty Claim. Contractor shall correct defective work within a reasonable time after receiving the Notice of Warranty Claim from Owner during the Warranty Period and performance of an inspection. Contractor’s warranty shall exclude any deficiencies or defects caused by the partial or whole negligence of Owner or Owner’s guests, invitees, or licensees. If a defect is discovered in an item(s) covered by this Limited Warranty, Contractor will repair or replace the defective item(s), or pay Owner the reasonable cost of repairing or replacing the defective item(s), within a reasonable time after Owner has notified Contractor of each defect as evidenced by Contractor's receipt of a Notice of Warranty Claim and after Contractor's inspection or testing verifies the existence of a defect, whichever is later. This express written Limited Warranty is the only warranty made by Contractor, or any other party, in connection with the work to be performed under this Agreement. Neither Contractor nor any other party makes any other Expressed or Implied Warranty which is not set out in this contract and Owner acknowledges, understands, and agrees that any and all Implied Warranties as to the quality or condition of the Work are hereby disclaimed and waived, including any Implied warranty of habitability, merchantability, or fitness for a particular purpose, and Contractor agrees to comply with the provisions of the Expressed Limited Warranty and Owner accepts the Express Limited Warranty as a substitute for all warranties, including the Implied Warranty of habitability.

This Limited Warranty specifically excludes any and all punitive, secondary, incidental, or consequential damages caused by any defect or breach hereof, and Contractor is not liable for any punitive, secondary, incidental, or consequential damages. No steps taken by Contractor to correct defects shall act to extend the scope or duration of this Limited Warranty or to make verbal agreements with respect thereto so long as the defects are corrected. All items for correction must be in written form. Contractor assumes no responsibility if Owner allows someone to enter the Premises when Owner is not present. This Limited Warranty is not assignable, and any attempted assignment shall be null and void. The warranty shall lapse upon Owner's failure to comply with the terms of this agreement. Owner's subsequent compliance with the terms of this agreement, will not cause the term of Warranty Period to extend beyond the time period set forth above.

The Owner has read and approved the Limited Warranty, including the terms, conditions, and exclusions thereof, and agrees that said Limited Warranty is in lieu of any warranty of the Contractor under this Agreement or implied at law and shall govern in the event if any conflict or inconsistency between the terms hereof and this Agreement.

ARTICLE 8 – NOTICES. All notices required under this Agreement shall be in writing and sent to the parties at least one the following addresses (or such other addresses or means as may be agreed to between the parties in writing):

Contractor: 144 Sparkling Ridge Road, New Paltz, NY 12561
E-mail: nora@norascarlett.com and lowelldeutschlander@gmail.com (if giving notice by e-mail, Owner must send notice to both email addresses)

Owner: 149 Mountain Rest Road, New Paltz, NY 12561
E-mail: polianthestuberosa@gmail.com and viridium@gmail.com (if giving notice by e-mail, Contractor must send notice to both email addresses)

ARTICLE 9 - CONSIDERATION. In exchange for performance of the Work as herein defined, Owner agrees to fully release and forever discharge Contractor and its respective agents, representatives, beneficiaries, successors, heirs, and assigns of any and all obligations, claims, liabilities, and causes of action which it now has or may have growing out of or connected in any way with water in the foundation crawlspace prior to the date in which work contemplated under this Agreement begins. Unless otherwise provided in the Project Contract Documents, Contractor shall provide or cause to be provided, all labor, materials, equipment, tools, machinery, utilities, and other facilities and services necessary for proper execution and completion of the Work. Contractor shall promptly pay any professionals, suppliers, subcontractors, and other consultants retained directly by Contract, and shall obtain lien releases therefrom.

ARTICLE 10 - CHOICE OF LAW AND VENUE. All claims and disputes relating to this contract shall be governed by the laws, ordinances and regulations of the State of New York. Any action brought or commenced hereunder shall be brought exclusively in the Courts located in the County of Ulster or the federal court located in the United States District Court for the Northern District of New York. Contractor and Owner expressly submit to the exclusive jurisdiction of said courts and hereby waive any objections to the jurisdiction thereof including, without limitation, any objections based on forum non conveniens.

ARTICLE 11 – NO AMENDMENT UNLESS IN WRITING. This Agreement may not be amended, altered, modified, or otherwise changed except in writing executed by all Parties hereto and expressly stating that it is an amendment to this Agreement. The undersigned hereby acknowledge and agree that they, and each of them, will make no claim, and hereafter waive any right that they now have, or they hereafter may have, based upon any alleged oral alteration, oral amendment, or other changes based upon any alleged oral warranty, representation, or promise except as set forth expressly in this Agreement.

ARTICLE 12 – SEVERABILITY. The provisions of this Agreement are severable, and if any provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, such holding shall not affect or impair any other provision of this Agreement.

ARTICLE 13 – BINDING EFFECT. This Agreement shall be binding upon each of the Parties to this Agreement and upon their respective heirs, administrators, representatives, executors,

successors, and assigns, and shall inure to the benefit of each of the Parties to the Agreement and to their respective representatives, successors, and assigns.

This Agreement is entered into as of the day and year first written above.

OWNER:

CONTRACTOR:

SCARLETT OAK DESIGN BUILD, LLC

By:

Mihai Danila

By:

Nora Scarlett, Member

By:

Poliana Danila

SCHEDULE A
PROJECT CONTRACT DOCUMENTS

WORK SPECIFICATIONS

1. The exterior of the foundation around the crawlspace will be excavated from the inside corner under the entryway porch (west side) around to the inside corner under the covered back porch (east side).
2. All gutter downspouts shall be removed and protected and re-installed after completion of all other tasks.
3. The existing footing drains will be damaged by the excavation work and in this excavated area they will be replaced. The new footing drains will comply with provisions of the NYS foundation code and will be placed alongside the footing. If these new drains are not able to be hooked into the remaining footing drains a new drain will be dug out to daylight on the east side of the house.
4. A waterproofing membrane will be applied to the exterior of the foundation wall and top of exposed footing. Waterproofing will only be applied to the exterior walls of the crawlspace.
5. The penetrations through the wall for the electric line and septic drain will be inspected and if necessary re-sealed with hydraulic cement before waterproofing membrane is applied.
6. Backfilling of the excavated trench will be done with free draining fill based off the suggestions of professional engineer(s) who have inspected the exposed trench.
7. Final grading will ensure positive drainage away from the foundation wall around all the excavated areas.