

RESIDENTIAL CONSTRUCTION CONTRACT

This Contract made this the 27th day of December, 2019 by and between
Cumberland Homes, Inc., a North Carolina corporation (hereinafter referred to as "Contractor");
and Derrick Sterling Montague of Harnett County, North Carolina
(Hereinafter referred to as "Buyer/s").

WITNESSETH

WHEREAS, Buyer/s wish to construct a single family home on a certain 1.5 acre tract of land located in Harnett County, North Carolina, owned by Derrick Montague as is more particularly described on a map recorded in Book 2019 Page 47 in the Office of the Register of Deeds of Harnett County, North Carolina, a copy of which is hereto attached and by reference incorporated herein, marked EXHIBIT "A"; and

WHEREAS Contractor is a North Carolina corporation with its principal office at 108 Commerce Drive, Dunn, Harnett County, North Carolina, 28334, and said corporation is duly authorized and licensed to contract and build this residence in Harnett County, North Carolina;

1. LOCATION AND MODEL DESCRIPTION:

Home to be constructed on 1.5 Acre Lot on Ball Road, Holly Springs, NC as the, "The Sidney" with 2,370 SF.

- a. SPECIFICATIONS: The Contractor agrees to build, and the Buyer/s agree to pay the contract sum for a residential dwelling, on the real estate property hereinabove referred to on "Exhibit A."
- b. The house shall be built in accordance with the plans, specifications and schedule of allowances as is more particularly described on Exhibit "B" hereto attached and by reference incorporated herein.

2. SCOPE OF WORK:

- a. PLANS: The plans, which shall be a reference for the home construction as agreed upon by the Owner and Contractor are described as follows:

"The Sidney " Reversed by Eastern Plans, LLC. Dated November 2015.

- b. CHANGE ORDERS: It is understood and agreed that if any changes are made from the original plans and specifications, said changes will be in writing, signed by both parties; and it is further understood and agreed that there shall be an appropriate additional charge from such additional work or higher grade of material as determined by the mutual agreement of the parties. Such additional charge shall be due and payable WITHIN FIFTEEN DAYS OF the change order being signed.
- c. ORIENTATION AND ENVIRONMENT: Contractor shall confer with Owner/s and shall orient a dwelling house as directed by the Owner/s. See attached plot plan marked Exhibit "C".
- d. SUBCONTRACTORS: Contractor may, at its discretion, engage subcontractors to perform work hereunder, provided Contractor shall fully pay said subcontractors and in all incidents remain responsible for the proper completion of the work performed under this Contract. Contractor shall furnish Owner/s, appropriate releases or waivers of lien for all work performed or materials provided.
- e. INSURANCE: Contractor warrants that it is adequately insured for injury to its employees and others incurring loss or injury as a result of the acts of Contractor or its employees or subcontractors.

3. PERMITS:

The Contractor shall, at its own expense, furnish and obtain all permits necessary to the construction of the dwelling house and shall comply with all laws or regulations, local, state, or federal bearing on the conduct of the work, or if unforeseen conditions arise, shall notify Owners immediately if the specifications are at variance therewith.

4. TIME OF COMPLETION:

The construction herein provided for shall be completed within six (6) months from commencement of the construction. During construction, the Contractor shall meet and confer with the Owner/s on at least a monthly basis and discuss the ongoing construction and whether or not it is on a timely basis to be completed as herein provided and, if not, why not. If construction is not on a timely basis, steps will be taken immediately to insure that construction is completed as herein provided on or before the date herein provided. If the parties are unable to mutually agree upon the necessity of any extension date, if any, then the matter shall be submitted to arbitration herein provided.

5. DELAYS:

The Contractor agrees to make the house habitable within six (6) months from commencement of the construction. Completion of the house is, however, subject to causes beyond the control of the Contractor, which may prevent or delay such completion including any of the following: Weather availability of materials, government rulings, or regulations, Acts of God, vandalism, selection delays and changes by the owners.

6. CONTRACT SUM:

- a. The Owner/s shall pay the Contractor for performance of this turnkey Contract, the fixed amount of \$233,500, Subject to adherence to attached specifications and schedule of allowances.
 - i.) Less \$ 7,000 Builder's Deposit.
 - ii.) To be adjusted by any outstanding change orders or allowance overages.
 - iii.) Balance \$226,500 to be paid based on percentage of work completed from Buyer's Lender Inspections.

The Builder's Deposit is not to be considered an earnest money deposit and will be used by Seller in the construction described above. The building deposit shall be refundable only in the event of a material breach of the contract by seller.

7. Settlement: N/A

The proper execution and delivery of to the closing attorney all documents necessary to complete the transaction contemplated by this contract, including the settlement statement, and other loan or conveyance documents, and payments of all funds necessary to complete such transaction.

Tentative Completion date will be:

7/31/2020

8. BUILDER'S RISK INSURANCE:

The Contractor shall effect and maintain a Builder's Risk Policy with extended coverage upon the entire structure on which the work of this Contract is to be done to one hundred percent (100%) of the insurable value thereof, including items of labor and materials connected therewith whether in or adjacent to the structure insured.

9. BINDING ARBITRATION:

- a. Any disagreement arising out of this Contract, or the application of any provisions thereof, shall be submitted to an arbitrator, or arbitrators not interested in the finances of this Contract. The parties hereto may agree on one arbitrator or may select one each and these shall select a third; and the decision of two of the arbitrators shall constitute the award. And, it is mutually agreed that such arbitrator award shall be binding and have the same weight as a legal decision on the dispute herein arising.

- b. The Parties hereto consent to a judgement upon the award rendered by such arbitrators and may be entered in the General Court of Justice, Superior Court Division of Harnett County, North Carolina, and such judgment, in accordance with the award rendered by the arbitrators, shall be binding on all parties hereto and shall be a condition precedent to any right of legal action that either party may have against the other.

10. POSSESSION AND COMPLETION:

The Owner/s shall not be entitled to possession of the house and shall not move any materials into the house and until it:

- a. Has been substantially completed in accordance with plans and specifications;
- b. Has received final approval from all regulatory agencies;
- c. Has been accepted by the Owner/s; and
- d. The Contractor consents thereto.
- e. Obtained a Certificate of occupancy

11. REPRESENTATION AND WARRANTIES OF CONTRACTOR:

- a. The Contractor makes the following representations and warranties, each of which shall be true and correct as of the date of execution of this Contract, which representations and warranties shall survive said execution and remain in full force and effect after the completion of the construction as provided in this Contract:

- i. Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of North Carolina, with full requisite corporate power to carry on its business as now being conducted .
 - ii. Contractor hereby certifies and represents that he is licensed as a General Contractor under the provisions of the Act of North Carolina Legislature, Session of 1952, as amended, regulating the practice of General Contracting and that his License No. is 59493 as assigned by the North Carolina Licensing Board for General Contractors; and that such License has no other restrictions nor is in a state of suspension but is valid as of the time of the execution of this Contract without restriction. Contractor further represents that under his existing License, he is duly authorized to enter into a contract and to erect residential construction projects with a cost of an unlimited amount.
- b. Contractor guarantees to Owner/s that the construction performed pursuant to this Contract is free from defects in materials and workmanship for a period of one (1) year from the date of the Certificate of Occupancy, said workmanship and materials to be that of ordinary skill and materials utilized, meeting prevailing standards of quality and in compliance with all building codes.
- i. This limited guarantee is in lieu of all other guarantees and warranties, expressed or implied. This sole and exclusive warranty is expressly subject to Owner/s properly maintaining all items in connection with home ownership, and applies only to construction work that has not been subject to accident, misuse, or abuse as well as to the construction work that has not been modified, altered, defaced or had repairs made or attempted by others. This warranty applies to the property only as long as it remains in the possession of the original Owner/s named above.
 - ii. Should Contractor receive a complaint relative to this warranty, Contractor shall first be given an opportunity to make any repairs, replacement or corrections to the defective construction and materials, at no cost to the Owners within thirty (30) days, or a reasonable time considering the defect. Contractor must be notified within ten (10) days of first knowledge of defect by Owners.
 - iii. Items and systems the Contractor will not repair or replace include the following:
 - a. Imperfections arising in nonstructural components from normal settling or drying;
 - b. Landscape Items; and
 - c. All manufacturer's warranties or guarantees on appliance and components are hereby assigned from the Contractor to the Owners and are therefore hereby excluded from this Warranty.
 - iv. If disagreements result as a result of the terms or scope of this warranty, the dispute resolution mechanism shall be the same as previously indicated in this Contract entitled ARBITRATION.

12. WAIVER AND DISCLAIMER OF IMPLIED WARRANTIES:

- a. The Contractor will provide a ten (10) year structural warranty upon receiving final payment at no additional cost to the Owners. Both parties agree and hereby waive the right to recover from each other consequential and punitive damages.
- b. Disclaimer of implied Warranties. The foregoing expressed warranties, set out in the preceding paragraphs, are accepted by the Owner/s and Contractor in lieu of all other warranties expressed and/or implied.
- c. Owner/s and Contractor acknowledge that they have read, understand and voluntarily agree to be bound by the provisions of these Paragraphs.

13. BREACH OF CONTRACT:

- a. In the event an action is filed by either the Owner/s or the Contractors to enforce its rights and remedies under the terms of this Contract, both parties agree to pay to the prevailing party reasonable attorney's fees not exceeding a sum equal to fifteen percent (15%) of any amount of damages determined to be due upon the breach by arbitration.
- b. Should Owner/s breach this contract, Contractor shall be allowed to be released from his duties herein with no further liability to himself or his company. In that event, the Homeowners shall pay all of the outstanding bills the Contractor owes for the construction of the home plus Ten Percent (10%) commission.

14. INSURANCE:

The Contractor shall maintain a professional liability insurance policy providing coverage in an amount of not less than Five Hundred Thousand (\$500,000.00) per incident during the duration of this Contract, and shall provide written evidence of such insurance to the owners.

15. RESTRICTION ON ASSIGNABILITY:

This is binding upon heirs, executors, successors and assigns, and administrators of the respective Owner/s, and it is expressly understood and agreed that neither Owner/s nor Contractor will assign this Contract for any purpose without the prior written consent of all parties hereto.

16. SPECIFIC PERFORMANCE:

Owner/s and Contractor agree that each would be irreparably harmed by the failure of the other to satisfy its obligations under this Contract and that consequently either party may specifically enforce the other party's obligations hereunder. The enforcement of this provision shall be through arbitration as herein set forth.

17. SURVIVAL REPRESENTATION WARRANTIES AND COVENANT:

All representations , warranties and covenants made by any party to this Contract, either in this Contract or pursuant hereto, shall be deemed to survive the completion of the dwelling house and surrendering possession thereof to the Owner/s for a period of one (1) year from the date of occupancy of the dwelling house by Owners.

18. This Contract, including the Exhibits and Schedules referred to herein, which are incorporated by reference and made a part hereof, contains the entire agreement and understanding of the parties hereto with respect to the subject matter contained herein, and all prior agreements or understandings of the parties hereto are hereby revoked. This agreement may be amended or terminated only by a written instrument, signed by all the parties. There are no agreements, restrictions, promises, warranties, covenants or other undertakings other than those expressly set forth herein.


19. GOVERNING LAW AND VENUE:

This Contract shall be constructed and enforced in accordance with the laws of the State of North Carolina.

20. DEED AT CLOSING WILL BE MADE TO: N/A

WHEREFORE, the parties hereto have hereunto set their hand and seal the day and year first above written.

CUMBERLAND HOMES, INC.

By:  12/27/19
_____ Date
Danny E. Norris, VP

 12/27/19
_____ Date
Owner