

**Brusak Build Contract  
Lot 4 Josey Williams Rd.  
Erwin, NC 28339  
PIN: 0555-93-7039.000**

1. PARTIES: This contract (hereinafter referred to as "Agreement") is made and entered into on this 29th day of April, 2021, by and between James Brusak, Teresa Brusak, hereinafter called "Owner"; and Ken Dawson Homes, Inc., hereinafter called "Contractor".

Contractor's business is a:  Corporation  Partnership  Sole Proprietorship

Contractor's State License #: 59881

Contractor's Address: 2493 NC HWY 242 N. Benson, NC 27504

Contractor's Phone: 919-422-6979

Contractor's Fax: N/A

Contractor's Email: kenndawson@hotmail.com

The project is located at: Lot 4 Josey Williams Rd. Erwin, NC 28339

Owner's Lender (if applicable): Intercoastal Mortgage, LLC

Owner is funding the project without a lender:  Yes  No

In consideration of the mutual promises and conditions contained herein, the parties agree as follows:

**2. OWNER'S REPRESENTATIVE:** The Owner's Representative is

James Brusak, Teresa Brusak

Contractor must coordinate all of its activities, construction, scheduling, and coordination with other Subcontractors, and administrative paperwork on this project in a manner consistent with the terms of this Agreement and in a manner agreeable to the Owner's Representative. In many cases, the Owner's Representative may be the Owner.

**3. CONTRACT DOCUMENTS:** The following documents are incorporated by reference into this Agreement and hereby made contract documents.

**A.** This Agreement

**B.** Plans: Drawn by: Tyndall Engineering; dated TBD; Approx. 9 pages.

**C.** Written description of work attached to this Agreement, if applicable.

**D.** Other: \_\_\_\_\_

**E. OWNER-SUPPLIED MATERIALS:** Owner will furnish the following materials at Owner's sole expense for the project and these owner furnished items will not be marked up or warrantied by Contractor: None

**F. ALLOWANCES:** Allowances for the project that are included in the Lump Sum contract price include the following: Septic \$4500, Tile Material: \$2.00/ ft. LVP Flooring: \$3.00/ft., Lighting \$1800, Appliances: \$1800.

Payment for work designated in the Agreement as ALLOWANCE work has been initially factored into the Lump Sum Price and Payment Schedule set forth in this Agreement. If the final amount of the ALLOWANCE work exceeds the line item ALLOWANCE amount in the Agreement, the difference between the final amount and the line item ALLOWANCE amount stated in the Agreement will be treated as Additional Work and is subject to Contractor's profit and overhead at the rate of 15 %.

If the final amount of the ALLOWANCE work is less than the ALLOWANCE line item amount listed in the Agreement, a credit will be issued to Owner after all billings related to this particular line item ALLOWANCE work have been received by Contractor. The credit will also include the contractor's mark up on the amount of the Allowance

overage. This credit will be applied toward the contractor's next invoice on the project. The contractor and the owner shall both document the cost of all Allowance items with receipts and invoices.

**SCOPE OF WORK:** Contractor will furnish all labor, equipment, tools, dust barriers, materials, scaffolding, transportation, items required for safe operations in accordance with the safety provisions in this Agreement, and supervision to complete in a substantial and workmanlike manner, to the satisfaction of the Owner and/or its Representative, the following work in accordance with all applicable Building Codes and also in accordance with all the Contract Documents specified in this Agreement. All products and materials shall be installed according to manufacturer's written instructions and construction industry standards

**A.** See Scope of Work described above.

**B.** Scope of work is attached to this Agreement. Yes X; No \_\_\_\_\_.

If attached, both parties to initial the Scope of work attachment.

**C.** Additional clarifications to Scope of Work or Project:

Floor Plan Delivered by Randy Yost; Heated down stairs Sq. Footage 2144; Unheated Upstairs Sq. Footage 1203; No Garage; Total 3 Bedrooms 2.5 Bath Finished with additional Full Bath Bath roughed-in as part of the unfinished upstairs area

**D. EXCLUSIONS:**

i. The following work (**LABOR AND MATERIALS**) is excluded from this Agreement:

None

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ii. The following **MATERIALS ONLY** are excluded this Agreement \*:

None

**\*Contractor's labor costs to install the excluded MATERIALS noted in the section immediately above, however, are INCLUDED in this Agreement.**

**5. LUMP SUM CONTRACT AMOUNT AND PAYMENT SCHEDULE:** Owner will pay Contractor the total lump sum of: \$ 299,982.00 (Dollars).

**INSTALLMENTS AS WORK PROGRESSES** according to the following schedule:

**A. Contract Deposit:** 5% of Contract Total: \$ 14,999.10

**B. Second Payment:** Defer To Bank Approved Draw Schedule; Builder Reserves Right to Review and Approve Draw Schedule

\$ \_\_\_\_\_

**C. Third Payment:** Defer To Bank Approved Draw Schedule; Builder Reserves Right to Review and Approve Draw Schedule

\$ \_\_\_\_\_

**D. Fourth Payment** Defer To Bank Approved Draw Schedule; Builder Reserves Right to Review and Approve Draw Schedule

\$ \_\_\_\_\_

**E. Final Payment** is due upon completion of all work under this Agreement (including all punch-list work), inspection and approval of work by building department (if applicable), and Contractor furnishing the following to Owner's Representative:

- All product warranties, manufacturer's maintenance instructions and information to Owner
- See Owner's Representative for approved Release forms and frequency of Submittal of statutory lien releases.

**6. WORK COMMENCEMENT AND COMPLETION TIME:** Work shall commence Within 2 weeks of Receiving permits and shall take approximately 24 weeks to complete. **TIME IS OF THE ESSENCE** in all aspects of Contractor's performance. Contractor shall commence its work immediately after notification by Owner's Representative and shall diligently prosecute its work to completion in a substantial and workmanlike manner in accordance with the contract documents described herein.

Approximate number of days to complete punch list: 7

**7. CHANGES IN WORK:** Owner reserves the right to make changes in the Scope of Work (increases and decreases of any kind) and alterations in material and product selections. Contractor and Subcontractors shall make no changes in the work without issuance of a written change order that is first executed by both Contractor and Owner's Representative. Owner will not pay for verbal change orders.

Contractor must obtain written change orders or, at minimum, email authorization of additional fixed-price change order work **BEFORE** proceeding with any additional work or any variations in specified materials. Contractor shall mark up additional work 15 % for profit and overhead. Additionally, owner shall be credited contractor's profit and overhead at the same rate as noted in the sentence above, on all deductive change orders and on work deleted from the contract by owner.

**8. CONFLICT OF DOCUMENTS:** The work shall be constructed in accordance with the contract documents. In case of a conflict between any plans or other proposals submitted by Contractor, this contract shall control and supersede all other documents. The burden is on the Contractor and all Subcontractors to completely familiarize themselves with the existing site conditions and all contract documents, plans, specifications, reports, addenda, etc., **PRIOR** to signing this Agreement.

If there is a conflict between the drawings and written specifications or other written descriptions of the work, then the written specifications or descriptions will prevail.

**9. INDEPENDENT CONTRACTOR:** Contractor warrants that he is fully experienced, properly licensed and properly qualified as an expert to perform the work described in this agreement. Contractor shall finance its own operations and affirms that it is and shall at all times be an Independent Contractor on this project and not an agent, employee or servant of the Owner.

**10. INSPECTION AND CORRECTION OF WORK:** The work shall at all times be subject to the inspection of the Owner and the Owner's Representative. In the event that at any time a portion of the work is reasonably determined by the Owner or the Owner's Representative to be improper, defective, or of substandard quality, Contractor shall immediately, upon being notified by Owner's Representative to do so, proceed to remove, dispose of and correct the work solely at Contractor's own cost and expense.

**11. PROTECTION OF THE WORK:** The Contractor shall at all times continuously maintain adequate protection of all his work in progress and the existing building and site from all types of damage.

**12. BACK CHARGES AND SET-OFFS:** Owner has the express right to deduct from any payments due to Contractor the cost of repairing damage or defective work caused by Contractor or any of his Subcontractors or material suppliers if Contractor fails to correct this damage (or take significant steps towards repairing this damage) within 72 hours of receiving written notice of damage from Owner's Representative.

**13. INDEMNIFICATION:** All work performed by the Contractor pursuant to any aspect of this agreement shall be done so at the sole risk of Contractor. Contractor (and his Agents), Contractor's Subcontractors (and their Agents and lower-tier Subcontractors) and Subcontractor's material suppliers (and their Agents) shall at all times indemnify, protect, defend and hold harmless Owner and any Owner's Representative named in this Agreement from all loss and damage and against all law suits, arbitrations, actions, legal or administrative proceedings, claims, debts, demands, awards, fines, judgments, damages, consequential damages, liabilities, interest, attorney's fees,

costs, and expenses of any kind or nature whatsoever whether they may arise before, after or during the completion of Contractor's work under this agreement, which are in any manner directly or indirectly caused or contributed to in whole or in part, or claimed to be caused in whole or in part through any act, omission, fault or negligence whether active or passive of Contractor, or anyone acting under his direction, control, or on his behalf in connection with or incidental to the work under this Agreement.

**14. INSURANCE:** Before commencing work on the project, the Contractor shall supply to Owner's Representative, duly issued certificates of General Liability Insurance.

In the event of any damages of any kind caused by any Contractor or any Subcontractors, the Contractor's and Subcontractor's insurance shall operate as the primary insurance and no other insurance of the Owner shall be called on to contribute to a loss related to this project.

**15. SAFETY MEASURES:** It is the sole responsibility of the Contractor to continually operate, monitor and supervise all of its operations in a manner that meets or exceeds all statutes and regulations that establish safety requirements as established by state law. In addition, all of Contractor's activities (whether labor or materials) shall at all times comply with all OSHA standards and regulations and all applicable governmental laws and orders governing safe operations.

Contractor shall erect, install and maintain all pedestrian traffic areas, warning signs, barricades, first aid kits, and other protective means as may be necessary for the protection of all persons and work in progress on the site from injury.

Finally, by signing this agreement, Contractor knowingly and willingly accepts and assumes full responsibility for the safe operation of all of its activities and the activities of all its Subcontractors of every tier and the protection of other persons and property during the entire course of this project.

**16. CLEANUP:** On a **DAILY BASIS**, and at his own expense, Contractor will clean up its work areas and keep them in a safe and sanitary condition on a daily basis. On a regular basis, Contractor will remove all of its debris from the site.

**17. EXPRESS WARRANTY:** Contractor unconditionally guarantees that all material supplied by Contractor will be new and of good quality (unless any used materials are specified in this Agreement), and that all work performed by Contractor will be performed in a substantial and workmanlike manner. Contractor shall not substitute materials called for by the contract documents without the written approval of the Owner or Owner's Representative. Contractor unconditionally guarantees it will, at its own expense, at the request of Owner or Owner's Representative, promptly replace or repair any work, equipment, or materials that fail to function properly for a period of no less than twelve months following the issuance of the final building department approval of the project. Contractor will also repair any surrounding parts of the structure (and/or personal property) that are damaged due to any failure in Contractor's work for the period of twelve months following the issuance of the final building department approval. This express warranty is in addition to any implied warranties under state or federal laws. Contractor provides no warranty on any Owner-supplied materials, fixtures, appliances, etc.

**18. TERMINATION FOR CAUSE / CONTRACTOR DEFAULT:** If Contractor fails to commence or prosecute the work hereunder promptly and diligently at all times, or, in the opinion of the Owner's Representative falls significantly behind schedule, or Contractor fails in any way to perform the conditions contained within this Agreement, or any of the conditions relating to Contractors contained in this agreement, or repeatedly fails to follow the instructions of the Owner's Representative, Contractor may be terminated for default by Owner or Owner's Representative after being given 48 hours' notice by Owner's Representative if Contractor fails to take significant steps to cure his default. Owner agrees to make payments to Contractor in accordance with the terms of this Agreement as long as Contractor is not in default under this Agreement.

**19. LAWS AND REGULATIONS:** Contractor, its employees and representatives and Subcontractors of every tier, shall at all times comply with any applicable laws, ordinances, rules and regulations, whether Federal, State or Municipal, particularly those relating to wages, prevailing wages, hours, working conditions, safety, all applicable Building Codes, and the payment of all taxes of any kind. Contractor is responsible for obtaining all required governmental permits for the work unless otherwise agreed to herein.



**20. DISPUTE RESOLUTION: ARBITRATION OF DISPUTES & ATTORNEY'S FEES**

Any dispute over the dollar limit of the Small Claims Court arising out of this Agreement that is not settled by informal attempts to resolve shall be settled by binding arbitration. If the parties are not able to informally resolve disputes arising from this Agreement, an experienced private construction arbitrator shall be mutually selected by the parties to conduct a binding arbitration in accordance with state law, including, but not limited to the right of limited discovery. The arbitrator shall also be a licensed attorney or retired judge who is familiar with construction law. If the parties are unable to mutually agree on an arbitrator within 30 days of written demand for arbitration by one of the parties, then either of the parties may submit the dispute to the American Arbitration Association for binding arbitration according to the Construction Industry Rules of the American Arbitration Association and the AAA shall administer the binding arbitration.

Judgment upon the award may be entered in any Court having jurisdiction thereof. The arbitrator's award shall be detailed and set forth both the legal and factual basis of the award.

**NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION DECIDED BY NEUTRAL AND BINDING ARBITRATION AS PROVIDED BY STATE LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR A JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" SECTION ABOVE. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE BUSINESS AND PROFESSIONS CODE OR OTHER APPLICABLE LAWS. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.**

**I, (WE) HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE**

**“ARBITRATION OF DISPUTES” PROVISION TO NEUTRAL AND BINDING  
ARBITRATION.**

\_\_\_\_\_

OWNER

\_\_\_\_\_

OWNER

\_\_\_\_\_

CONTRACTOR

**21. ENTIRE AGREEMENT, MODIFICATION, SEVERABILITY:** This Agreement represents the entire agreement and legal understanding of the parties. It shall be deemed to have been drafted by both parties to this Agreement.

**22. REVIEW OF AGREEMENT BY INDEPENDENT COUNSEL:** Both parties to this Agreement have been strongly advised to have this Agreement reviewed by their own attorney prior to signing it. Both parties to this Agreement have either had this Agreement reviewed by their own attorney prior to signing it or have knowingly and willingly waived their right to do so and agree to be bound by the terms of this Agreement.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
CONTRACTOR

Date: \_\_\_\_\_ By: \_\_\_\_\_  
OWNER

Date: \_\_\_\_\_ By: \_\_\_\_\_  
OWNER

Brusak Contract Addendum  
Erwin 2144 Plan Summary

- Foundation: Stem Wall Slab, Brick front, Parge sides and rear
- 100% Vinyl Exterior Siding; Standard Stock Color; Vinyl Porch Ceilings; Vinyl Shutters
- Driveway pipe and permit
- Shingle: Timberline HD
- Vinyl Single Hung Windows w/ half screen
- Concrete rear patio
- Truss roof system
- One large gable upstairs centered over width of front porch or 3 individual dormers
- 2 exterior spigots
- Goodman Heat Pump
- Electric Water Heater
- Eliminate Beverage Center
- Gas log fireplace trimmed in slate with mantle; Fireplace vents to room not exterior
- Concrete Front Porch; Vinyl Front Porch Rail
- No Garage but will layout plot plan for future garage
- Conventional Septic Tank for 3 BR home
- Water tap and hook-up provided
- Plan design and engineering included
- All building and environmental permits included
- Landscaping: Fine graded, Straw and seed; plants along front of the house with pine straw
- Up to 40 feet of concrete driveway and park pad.
- 200 Amp service with slots for future expansion
- Lighting Allowance \$1800; Includes bulbs and smoke detectors
- Plumbing Fixtures: Delta Windemere Series; Comfort Height (Handicap Toilets)
- Interior Doors: Hollow core; 3/0 Width
- Interior Trim general: 445 casing and matching base boards
- MDF Wood shelves in closets
- Sheetrock: Smooth walls and ceilings
- Handicap rails in showers
- Zero threshold master shower for wheel chair accessibility; Framed clear glass enclosure; Storage Niche; corner marble seat
- Fiberglass tub/shower combo in Bath 2
- Cultured Marble tops in baths
- Schedule 1 or 2 Granite tops in kitchen
- Kitchen cabinets full overlay (JK Cabinetry or Carolina Heartwood) shaker style
- Appliance Allowance: Dishwasher, Electric Stove, Hood \$1800
- Tile Backsplash behind hood in kitchen
- Tile in wet areas; Allowance \$2.00 sq ft tile material only
- LVP through rest of home; Allowance \$3.00/ft material only
- Fiberglass exterior doors

- Upstairs 1203 ft unfinished; will rough-in bathroom / tub/shower combo and provide HVAC line set and floor the area with ¾ TG OSB
- Towel bars, tissue holders provided
- Insulation to code: R38 ceiling; R10 in stem wall; R15 walls
- 3 wall colors and 1 trim color allowance
- Fortis Door handles and bolts
- 1 year builder warranty as required by NC General Statute on structural, mechanical, electrical, plumbing

Total: \$296,900

Note: I highly encourage LVP floors in the wet areas for many homeowners. They are durable, water-proof and in most cases pet- proof and will eliminate t-Molds and reducers (bumps) at doors; LVP is almost zero maintenance compared to tile