

NORTH CAROLINA
CONSTRUCTION CONTRACT
CHATHAM COUNTY

THIS CONSTRUCTION CONTRACT (the "Contract") is made and entered into this 16th day of October, 2020 by and between Poythress Construction Company, Inc. ("Builder") and Carlos S Catalahana and Arlete Catalahana ("Owners").

For and in consideration of the mutual covenants herein contained, the parties hereby agree as follows:

1. a. Lot Purchase: The Builder agrees to sell and Owners agree to purchase those building lot described as Lot 125 Phase 2B, Montvale Subdivision, Cary NC ("Property") on or before December 16, 2020 and the purchase price will be \$265,000. *LOT ONLY*

b. Construction: The Builder agrees to construct a single-family residence on, the Property. The Builder shall complete the construction according to the plans, specifications, and description of materials, all of which have been signed by the parties and attached hereto and made a part hereof.

The total price of the Property and Construction will be **\$1,139,800.00**.

2. Construction by Builder shall begin, provided Owners have closed on the purchase of the above-referenced lot, within thirty (30) days after (1) execution of the Contract, and (2) receipt of all permits for construction from the appropriate governmental authority. Delay of commencement due to weather or other matters beyond Builder's control shall not be deemed to be a breach of this Contract. Failure to commence construction as set forth herein, other than due to inclement weather or other matters beyond the control of Builder, shall be deemed to be a breach of this Contract by Builder. In the event construction cannot commence due to inability to obtain required permits, then either party may terminate this Contract by delivering written notice to the other, in which event Owners shall reimburse Builder for all costs and expenses incurred by Builder in preparation for construction. Such reimbursement may be deducted from the initial deposit made pursuant to Section 4(a) herein and the balance of the deposit shall be returned to Owners. In the event the initial deposit is insufficient to fully reimburse Builder for all of said expenses, then Owners shall deliver such additional amounts to Builder upon demand and presentation of an invoice.

3. The Owners are supplying construction financing for the house described herein in an amount sufficient to complete construction of the house at the price set forth herein.

4. The price to be paid by the Owners to the Builder for the construction provided in this Contract is **(\$874,800.00)**. Said amount shall be payable as follows:

house (a) A 10% initial deposit of **(\$87,480.00)** at the time of contract signing.

CP
10/17/20
2:18 PM EDT
dotloop verified

AC
10/17/20
2:32 PM EDT
dotloop verified

KP
10/16/20
3:21 PM EDT
dotloop verified

(b) Real Estate Fees in the amount of **\$68,388.00** (6% of the contract price \$1,139,800) are paid at the time of Lot Purchase.

(c) The balance of disbursements in the amount of **(\$718,932.00)** shall be made pursuant to the Construction Loan Advance Schedule attached hereto as Exhibit A and drawn from an account at Regions Bank. The total percentage disbursed pursuant to the Construction Loan Advance Schedule shall be based on 90% of the contract price. Regions Bank will perform Construction Loan Advance Schedule inspections and release the construction draws disbursements directly to Poythress Construction Company, Inc.

Time is of the essence as to the payment of disbursements provided in Paragraphs (b) above. Failure to make any such disbursements within in (5) days of request by Builder shall be a breach of this Contract and shall entitle Builder to cease all construction activity until such deposit is made. All deposits and disbursements in Paragraphs (a)-(b) shall be non-refundable and shall be used as deemed appropriate by Builder, but in no event shall payment of any deposits reduce any disbursements according to the Schedule attached as Exhibit A. Builder shall execute a lien waiver upon receipt of the final construction payment.

5. Governing Law; Arbitration. The parties desire to avoid and settle without litigation or arbitration any future disputes which may arise between them relative to this Contract. Accordingly, the parties hereby agree to engage in good faith negotiations to resolve any such dispute. In the event that they are unable to resolve any such dispute by negotiation, then any dispute, other than any dispute regarding the Owners' failure to provide timely payment hereunder, shall be submitted for arbitration under the North Carolina Arbitration Act, if the parties so agree, or otherwise to arbitration by a single arbitrator in accordance with the Rules of the American Arbitration Association then in effect. The award rendered by the arbitrator shall be binding as between the parties and judgment on such award may be entered in any court having jurisdiction thereof. The parties shall share the costs of any arbitration in proportion to the degree which each prevails as determined by the arbitrator. In any arbitration, reasonable discovery in accordance with the North Carolina Rules of Civil Procedure shall be allowed on any issue or matter in dispute. The arbitrator shall have the authority to impose sanctions under Rule 1 and other applicable North Carolina Rules. This shall not preclude either party from seeking preliminary injunctive relief against the other in the event warranted by applicable legal principles. In the event such relief is pending, ensuring proceedings shall be by arbitration as set forth herein.

Any dispute regarding the Owners' failure to provide timely payment hereunder shall be submitted to arbitration or pursued by Builder in the forum of Builder's choice and, for this limited purpose, the Owners hereby voluntarily submit to venue and jurisdiction of such a dispute in Wake County, North Carolina.

6. The parties agree that Owners shall be responsible for providing the construction financing with payments to be made as provided herein.

7. Construction shall be deemed completed when:

(a) The house has been completed substantially in accordance with the plans and specifications referenced in Section 1; and

10/17/20
2:18 PM EDT
dotloop verified

10/17/20
2:32 PM EDT
dotloop verified

10/16/20
3:21 PM EDT
dotloop verified

(b) A certificate of occupancy has been issued by the appropriate governmental authority with respect to the house.

8. The construction pursuant to this Contract provides for a turn-key job and all work and expenses except, closing costs and financing costs, relative to the construction, including building permits, tap fees, and labor shall be paid by the Builder. The lot shall be purchased by Owners.

9. The Builder will provide Liability Insurance, Builder's Risk Insurance, and Workman's Compensation Insurance on the project. Owners shall be responsible for purchasing and maintaining their own liability insurance and, at their option, may maintain such insurance as will protect them against claims which may arise from operations under the Contract. Builder shall name owners as additional insured for General Liability and Builders Risk. This insurance shall include the interests of the Owners, the Builder, subcontractors and sub-subcontractors in the work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage, including, without duplication of coverage, theft, vandalism, and malicious mischief. In the event of a casualty loss, either party shall have the right to terminate this Contract. In the event of termination by either party, Owners shall pay to Builder for all work completed prior to the casualty event, including Builder's profit accrued to said date. Builder shall provide invoices representing all work completed. If neither party elects to terminate, then the parties shall modify this Contract to reflect any adjustments required due to the casualty. If the parties are unable to agree upon contractual modifications within thirty (30) days after the casualty event, then the Contract shall be deemed terminated. The parties agree that in the event of a casualty loss covered by insurance, neither party shall have a claim against the other and each party waives any right of subrogation against the other to the extent insurance covers the loss.

10. Owners shall pay and Builder shall not be responsible for any and all interest, closing costs, appraisals, attorneys' fees and other expenses related to construction by Owners.

11. Owners agree that they will not occupy the premises until such time as construction has been completed as defined herein or upon consent of Builder.

12. Builder shall supervise and direct the work using its best skill and attention and shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under this Contract.


13. The Builder shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated in the work.

14. The Builder warrants to the Owners that all materials and equipment incorporated in the work will be new, unless otherwise specified, and all work will be of good quality, free from faults and defects and in conformance with the Contract. All work not conforming to these requirements may be considered defective.

15. The Builder agrees to comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work during the term of construction.


10/17/20
2:18 PM EDT
dotloop verified


10/17/20
2:32 PM EDT
dotloop verified


10/16/20
3:21 PM EDT
dotloop verified

16. Builder will endeavor to complete the construction of the house in a timely manner from the date of commencement of construction.

In the event of any delay caused by:

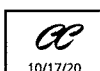
- (a) Any act or neglect of Owners;
- (b) Any changes ordered in the construction;
- (c) Material shortages, adverse weather conditions, or delays in transportation or work by subcontractors which were not reasonably anticipated or
- (d) Acts of God

the expected completion shall be extended by a reasonable period of time.

17. The Builder shall be entitled to additional compensation for services requested that are not covered by this Contract and for costs and expenses incurred by the Builder as a result of changes made by the Owners. The Owners reserve the right to order work changes in the nature of additions, deletions or modifications to the plans and specifications or drawings without invalidating this Contract, but the Owners agree to make corresponding adjustments and to pay for any additional costs for the work performed. All work order changes shall be in writing, signed by the Owners and by a representative of the Builder or communicated electronically and shall specify the adjustment, if any, the cost of the work change. Construction delays caused by change orders shall be added to the time provided for completion of construction. If any change order shall encompass a deletion from the plans and specifications as to entitle the Owners to a credit toward the purchase price, said change order shall state the credit agreed to, to which the Owners are entitled. Any additional costs caused by a change order shall be paid by Owners at the time of the Parties agreement to the change and associated charge.

18. Builder has included in the purchase price of the house all allowances as stated in the specifications. Items covered by the allowances shall be supplied for such amounts and by such parties as the Builder may direct. Allowances shall be applied to the cost to Builder of the materials and labor described by such allowances and all applicable taxes. Whenever the cost for an allowance item is more than the allowance, the difference shall be paid to Builder at the time of the Parties agreement to the change and associated charge. In the event Owners do not fully utilize any allowances as set forth in the attached plans and specifications, the total sum not expended shall be credited to the Owners as a reduction of the aforesaid purchase price.

19. Owners may enter and inspect the house for the limited purpose of determining whether the work performed or being performed conforms to the plans and specifications and the terms of this Contract. In the event that during construction the Owners shall reasonably determine that such construction is not proceeding in accordance with plans and specifications or in accordance with this Contract, Owners shall give notice to Builder specifying the particular deviation, deficiency or omission, and Builder shall forthwith correct such deviation, deficiency or omission unless Builder gives notice of disagreement with such alleged failure. In the event Builder gives notice of disagreement, then the parties shall endeavor to reconcile any such disagreement and if


10/17/20
2:18 PM EDT
dotloop verified


10/17/20
2:32 PM EDT
dotloop verified


10/16/20
3:21 PM EDT
dotloop verified

the parties are unable to reconcile, then the disagreement shall be submitted to a third party for arbitration pursuant to Section 5 of this contract.

20. Builder guarantees workmanship and materials in accordance with reasonable standards of the locality of this dwelling for a period of one (1) year from the completion date. Builder will make any repairs necessitated by failure of this warranty.

21. Prior to final payment date, Builder shall notify Owners when, in the opinion of Builder, the house is complete. Upon such notification, Owners shall promptly inspect the house and deliver to Builder a comprehensive list of all deficiencies on the construction that are detectable by a visual examination of all exposed portions of the house. If Owners occupy the house prior to completion of all such deficiencies, then final payment shall be made at the time of occupancy. Upon receipt of Owners' list, Builder shall promptly and diligently correct all actual construction deficiencies so listed.

22. Builder shall assign and deliver to Owners at final payment all guarantees and warranties of all components comprising the house to the extent the same are assignable.

23. In the event Builder has performed, complied with or observed all of the terms, conditions and provisions of this Contract required to be performed, complied with or observed by Builder, but Owners do not perform their obligations hereunder, then Builder shall be entitled to recover against Owners for breach of this Contract, including all amounts due for work completed pursuant under this Contract as well as for all profit of Builder included within the price set forth herein. In addition, if Owners fail to make any payment within ten (10) days after written demand by Builder, then Builder shall have the right to terminate this Contract and to receive payment of all amounts for work completed together with all profit include within the price set forth herein.

24. This Contract states the entire agreement between the parties and shall not be amended or modified unless in writing and signed by all parties hereto.

25. This Contract shall be construed and enforced in accordance with the laws of the State of North Carolina and shall be binding upon the parties, their heirs, executors, administrators, successors and assigns.


10/17/20
2:18 PM EDT
dotloop verified


10/17/20
2:32 PM EDT
dotloop verified


10/15/20
3:21 PM EDT
dotloop verified

Poythress Construction Company, Inc.

By: *Kevin Poythress* dotloop verified
10/16/20 3:21 PM EDT
78O2-ZLUA-Y8IO-PVQO
Kevin Poythress, President

Carlos Catalahana dotloop verified
10/17/20 2:18 PM EDT
BQ8K-U5PI-Y0XN-6ZJD
Buyer

Ariete Catalahana dotloop verified
10/17/20 2:32 PM EDT
PABA-MUVA-1NIZ-QT8T
Buyer

10/16/2020

Date