

## Addendum 1



### **CONTRACT FOR THE CONSTRUCTION OF A CUSTOM HOME at the 64 Pine Hill Road North Subdivision, York, MAINE DRAFT October 1, 2006**

Owners' Names:

Address:

Home Telephone:

Business Telephone:

Cell Phone

Fax:

E-Mail:

1.01 PARTIES: This Contract is between \_\_\_\_\_ (“Owners”) and PHN Homes Construction, Inc., of Ogunquit, ME (“Contractor”). The Owners and Contractor in consideration of the mutual covenants hereinafter set forth agree as follows:

1.02 SCOPE OF WORK: Contractor, for and in consideration of the payments hereinafter provided, agrees to construct a custom home (“subject home”), including specified site work on the following described real estate, owned by Owners, and located in the State of Maine, County of York, on Lot \_\_\_\_\_ of the 64 Pine Hill Road Subdivision, York, Maine, in accordance with the plans and specifications described below. The terms of this Contract shall prevail over any conflicting provisions in the documents incorporated by reference. If a conflict exists between the plans and the specifications, the specifications shall govern.

1.03 PROPERTY TITLE: The Owners represent that they currently hold fee simple title to the subject property.

1.04 CONTRACT PRICE: The Owners have selected a \_\_\_\_\_ styled home of approximately \_\_\_\_\_ sf of conditioned space and a \_\_\_\_\_ car garage. The Contractor estimates that using its “prevailing/standard specifications” as used to construct the Forest Village Condominiums at 1810 Post Road, Wells, Maine, the contract price of the subject home and lot will be as shown on the preliminary budget attached as Exhibit B. The Owners understand that this estimate is not a contract price and that a firm contract price can only be determined once architectural plans and specifications are complete and Contractor can obtain bids for labor and

material. Contractor contract price will be based on Contractor's direct costs for material and labor and 14% of direct costs for Contractor's company overhead and profit. The Contractor will provide a copy of its budget as well as all bids for labor, material, and subcontractors to the Owners periodically. The Owners understand and acknowledge that a contract price is subject to change due to inflation in the costs of material and labor. Accordingly, the final contract price will be established approximately sixty (60) days prior to commencement of construction.

1.05 PAYMENT SCHEDULE: Payments will be made as indicated below and within five (5) days of substantial completion of events 1 through 7 listed below. Time is of the Essence. In the event the Owners utilize an institutional lender, that lender's disbursement schedule must conform substantially to this schedule and be satisfactory to the Contractor.

1. Execution of this Contract	7% of Contract Sum
2. Foundation	12% of Contract Sum
3. Roof Dried-In & Framing	22% of Contract Sum
4. Electrical, Plumbing, & Electrical Rough	35% of Contract Sum
5. Drywall and Trim	12% of Contract Sum
6. Substantial Completion and Issuance of Certificate of Occupancy	12% of Contract Sum

1.06 OMITTED

1.07 CONTRACTOR'S GENERAL OBLIGATIONS: Contractor shall perform all work and provide labor and tools necessary to construct the subject home in accordance with the provisions of this Contract. Construction shall be completed substantially in accordance with the normal standards, practices, and procedures of the Maine homebuilding industry.

1.08 PERMITS and SURVEY: Owners shall pay for all governmental and utility company permits and fees including Building Permits as recognized by the proper authorities at their expense unless otherwise provided for.

1.09 INSURANCE: The Contractor shall purchase and maintain at the Contractor's own expense, all necessary workers' compensation and employer's liability insurance, commercial general liability insurance, and comprehensive automobile liability insurance to protect the Contractor from claims for damages because of bodily injury, including death, and for damages to property that may arise both out of and during operations under this Contract.

The Owners shall purchase and maintain their own liability insurance, including fire and casualty insurance upon the residence, to the full insurable value and shall name the Contractor as an additional insured. Each party shall issue a Certificate of Insurance to the other prior to construction.

The risk of loss of materials shall pass to Owners upon arrival on the site.

1.10 CHANGES AND ALTERATIONS: Pursuant to 10 MRSA Sec. 1488, “*any alteration or deviation from the above contractual specifications that involve extra cost will be executed only upon the parties entering into a written change order.*” After the execution of this Contract, Owners may make changes or alterations in plans or specifications only if approved in writing by an officer of the Contractor. Then such changes or alterations shall be by written change order setting forth their description and their additional costs to Owners, and Owners shall pay such additional costs at the time such change order is signed by the respective parties. The basis for the costs of any change orders shall be the Contractor’s direct costs plus fourteen percent (14%). Credits due the Owners for reductions in scope of work shall be only for direct costs.

1.11 MATERIALS: Should any materials provided for in the specifications not be available in the quantities required or at the time needed by Contractor for proper construction process, Contractor or manufacturer shall have the right at Contractor’s election, to substitute equivalent materials available for the same construction purposes. The products to be furnished will be of reasonable quality, having latitudes of acceptability that are usual and allowable under standard grading rules and other recognized construction inspection agencies.

1.12 RESOLUTION OF DISPUTES: If a dispute arises concerning the provisions of this contract or the performance by the parties, then the parties agree to settle this dispute by jointly paying for one of the following (check only one):

(A) Binding arbitration as regulated by the Maine Uniform Arbitration Act, with the parties agreeing to accept as final the arbitrator’s decision (  );

(B) Nonbinding arbitration, with the parties free to not accept the arbitrator’s decision and to seek satisfaction through other means, including a lawsuit (  );

(C) Mediation, with the parties agreeing to enter into good faith negotiations through a neutral mediator in order to attempt to resolve their differences (  ); or

(D) The parties are not required to select one of the above dispute methods. They are optional. If the parties do not select one of these options, check here (  ).

1.13 CONTROL OF CONTRACTOR: The subject home to be constructed under this Contract shall be under the Contractor’s control and possession from the commencement of the work thereon until the completion of the same and payment in full of the Contract Price and any costs of changes or alterations. The Owners shall not give instructions or orders directly to employees or workmen of the Contractor except to persons designated as authorized representatives of the Contractor. The Owners shall inspect the progress of construction only at times scheduled by the Contractor so as to insure the site is reasonably safe and to avoid interference with the work in progress.

1.14 OCCUPANCY: Owners agree not to occupy or take possession of the subject home until a final inspection has been conducted with the Contractor, a punchlist as prescribed in Section 1.19 has been prepared, the home has been fully accepted by the Owners, and all payments due under this Contract have been paid in full to the Contractor. If the Owners breach this provision

and take possession of the property prior to full acceptance and payment, the Contractor's limited warranty will become null and void, the Owners will waive all claims against the Contractor and the Owners will pay the Contractor one hundred dollars (\$100) per day for each day of occupancy prior to formal acceptance. Owners agree that said payments are not a penalty, but constitute a reasonable forecast of the damages that the Contractor will suffer because of Owners' breach of this Contract.

1.15 **WORK BY OWNERS:** Owners shall not perform or have performed by others any work on the subject home except with the express written consent of the Contractor which will be granted only if the Contractor, in his sole discretion, determines that such outside work will not adversely impact his schedule and/or interfere with the Contractor's employees and/or subcontractors.

1.16 **TIME OF COMPLETION:** Construction of the subject home is estimated to be substantially complete within two hundred twenty (220) days of the issuance of Town building permit. Contractor does not guarantee a firm completion date for construction of the subject home. Contractor shall make every reasonable and diligent effort to meet the estimated construction schedule, but shall not be obliged to provide or compensate Owners for any accommodations or inconvenience to Owners as the result of any construction delays. Further, such delays shall not serve to cancel, amend, or diminish any of the Owners' obligations herein.

1.17 **OMITTED**

1.18 **OMITTED**

1.19 **FINAL INSPECTION AND ACCEPTANCE:** When the Contractor deems the subject home to be substantially complete, the Contractor will schedule a joint acceptance inspection with the Owners and such inspection will be conducted within five (5) days. At the acceptance inspection, a punchlist will be made by the Owners and Contractor of items that are to be corrected and adjusted within sixty (60) days after the Owners' occupancy. If the home is substantially complete, the Owners will sign the punchlist certifying that the subject home has been completed to the Owners' satisfaction subject to the punchlist and Contractor's limited warranty. The subject home is deemed to be substantially complete when it is fit for habitability under Maine law and a Certificate of Occupancy has been issued by the Town of York Code Enforcement Officer. If the Owners do not believe the subject home is substantially complete, the Owners, within two (2) days will provide the Contractor with a list of items the Owners believe must be completed prior to acceptance. Funds for incomplete punch list items will not be escrowed.

1.20 **FINANCING:** If the construction of the subject home is being financed by a lending institution, the Owners shall provide evidence of adequate financing to the Contractor at least sixty (60) days prior to the Contractor's planned commencement of construction. In the event conclusive evidence of financing is not provided to the Contractor as prescribed, the Contractor may either cancel this Contract or increase the total contract price, not to exceed .02% per day (7% per annum), to compensate it for additional costs incurred by the delay.

1.21 INSTITUTIONAL CONSTRUCTION DISBURSEMENTS: In the event the Owners are financing the construction of the subject home, the Owners agree to cooperate with the Contractor to insure that construction disbursements due the Contractor are promptly disbursed by lender. The Owners will sign, within three (3) days, any documents required by the Owners' lender authorizing disbursements to the Contractor. In the event requested loan disbursements are not made within ten (10) days of the Contractor's request, the Contractor may cease work until such payments are made and may increase the total contract price, not to exceed .02% per day or 7% per annum to compensate it for additional costs incurred by the delay.

1.22 ALLOWANCES: If the Contract Price includes the allowances, the allowances include both materials and installation unless expressly noted otherwise. The Owners and Contractor agree that the allowances are not to be construed as bids by the Contractor and that the allowances may vary from the actual cost based on the Owners' selections. The Owners' costs will be the Contractor's direct costs plus fourteen percent (14%).

1.23 SELECTIONS: Upon signing this Contract, the Contractor will provide the Owners with a list of items to be selected by the Owners, including allowance items, materials, and colors required during the construction process. The Owners must make all selections within thirty (30) days of finalization of architectural plans, sign the completed selection list, and return it to the Contractor in order to avoid construction delays and mistakes. In the event the Owners' selections are not made as required by this Section, the Contractor may either stop work until the selections are complete or make the selections itself.

1.24 WARRANTY: Upon completion and fully acceptance by the Owners, the Contractor shall guarantee all workmanship and materials in accordance with the terms and conditions of the attached Limited Warranty Agreement, Exhibit A. This Limited Warranty is in lieu of all other guarantees and warranties, express or implied, except to the extent that Maine law provides consumer protection by the following language:

*In addition to any additional express warranties agreed to by the parties, the contractor warrants that the work will be free from faulty materials; constructed according to the standards of the building code applicable for this location; constructed in a skillful manner and fit for habitation. The warranty rights and remedies set forth in the Maine Uniform Commercial Code apply to this contract. Any action for breach of warranty or contract must be commenced within one year after a Certificate of Occupancy has been issued.*

1.25 MAINE ENERGY STANDARDS: Maine Statute Chapter 214 establishes minimum energy efficient building standards for new residential construction. The building construction described above and in the attached specifications meets or exceeds the minimum required standards.

1.26 ASSIGNMENT: This Contract is not assignable by the Owners unless the Contractor approves such assignment in writing.

1.27 GOVERNING LAW: This Contract of Sale and Purchase shall be governed by and interpreted under the laws of the State of Maine.

1.28 NOTICES: All notices and demands required herein shall be made in writing by first class mail, mailed to the Contractor and Owners at the addresses set forth on Page 1 or hand delivered.

1.29 FACSIMILE COPIES: The parties hereto agree that fully executed and dated facsimile (FAX) or e-mailed copies of this Contract, if utilized, will be binding on the parties as if they were originals.

1.30 ENTIRE AGREEMENT: Owners acknowledge receipt of a true copy of this Contract, and acknowledge that they have read the entire Contract and understand the contents thereof and that the Contractor has made no statement or promise nor entered into any understanding, verbal or otherwise, in conflict with this Contract, or which would in any way invalidate or enlarge any of its provisions. Any modifications, changes, or alterations to this Contract shall be in writing and signed by both parties.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Owner

PHN Homes Construction, Inc.

\_\_\_\_\_  
Robert A. Satter, President

**EXHIBITS**

Exhibit A. Limited Warranty Agreement

Exhibit B. Estimated Budget

## EXHIBIT A

# LIMITED WARRANTY

This Limited Warranty is given to \_\_\_\_\_  
(Herein after "Owners") from PHN Homes Construction, Inc. (hereinafter "Contractor"), for  
the dwelling located at \_\_\_\_\_

### 1. TERMS OF COVERAGE

The terms of the various coverage's of the Limited Warranty is for one (1) year, beginning on the date of the Certificate of Occupancy is issued. This date is referred to in this document as the "date of warranty commencement."

### 2. COVERAGES

**For the term of this Limited Warranty, Contractor warrants that the subject home and its systems will be free from all material defects in materials and workmanship other than minor or cosmetic defects and will be in compliance with all applicable building, sanitary, and electrical codes. Specific coverages and standards are outlined in Section 5 below.** Owners must, within sixty (60) days of possession, notify the Contractor of the defects in workmanship which should be visible or apparent to Owners. Following this sixty-day period, any reported defects shall be presumed to have been in satisfactory condition on the date of warranty commencement.

### 3. MANUFACTURERS' WARRANTIES

The Contractor hereby assigns to Owners all manufacturers' warranties on all appliances and equipment which were originally granted to the Contractor. A part of the assignment of these manufacturers' warranties may include a specific procedure which must be followed to make the warranty effective. The procedure may require notification or registration by Owners to the manufacturer, or the requirement that Owners mail a warranty card to the manufacturer. At the acceptance inspection the Contractor will provide the Owners with applicable warranty documents.

The Owners' failure to register or mail a warranty card, if any, according to any manufacturers' requirement shall not create any liability on the Contractor for express or implied warranties on equipment or appliances. The forwarding of such warranty material to manufacturers is the Owners' sole responsibility.

### 4. DEFINITIONS

Appliances, Fixtures and Equipment: The term "Appliances, Fixtures and Equipment" (including their fittings, attachments, controls, and appurtenances) shall include but not be

limited to furnaces, boilers, fuel tanks and fittings, humidifiers, air handling equipment, ventilating fans, water heaters, pumps, stoves, refrigerators, garbage disposals, compactors, dishwashers, washers and dryers, bathtubs, sinks, toilets, faucets and fittings, lighting fixtures and circuit breakers.

Minor and Cosmetic Defects: Despite adherence to high quality workmanship standards and the use of quality materials, all new dwellings will go through a period of settlement and shrinkage causing hairline cracks, some wood shrinkage and warping and other similar minor defects, all of which are unavoidable and are not covered by this Limited Warranty.

Systems: The term "systems" (exclusive of appliances, fixtures, and equipment, as specified above) means the following:

- a. Plumbing System: Water and gas supply lines and fittings and water supply, waste and vent pipes and their fittings and their field drains, water gas and sewer service piping, and their extensions to the tie-in of a public utility connection.
- b. Electrical System: All wiring, electrical boxes, and connections up to the public utility connection.
- c. Heating, Cooling and Mechanical Systems: All ductwork, steam, water and refrigerant lines, registers, convectors, radiation elements, and dampers.

## **5. COVERAGES**

Structures: For a period of one year after date of warranty commencement, the floors, ceilings, walls and other internal structural components of the dwelling, which are not covered by other parts of this LIMITED WARRANTY, will be free of substantial defects in workmanship and materials.

We warrant that the doors and windows installed in your home are of excellent quality; however, it must be understood that wood swells and shrinks in accordance with moisture and humidity. There is an abnormal amount of moisture in a new home, and because of the nature of wood, and drywall, you may experience some sticking and binding. To make every door and window in your home completely free from any sticking and binding at the outset would only result in their being loose and ill-fitting in the future. Similarly, and for the same reasons, hairline cracks may develop at corners around doors and windows in all surfaces. Unfortunately, it is impossible to insure that such cracks will not occur due to the nature of the materials and the effects of the weather upon them. Therefore, hairline cracks and seams are not covered by this warranty as they do not represent a structural failure. The structural and load bearing components of the premises are warranted for one (1) year against defects in material and workmanship and against substantial shifting or settling and damages to the dwelling resulting therefrom. It is understood that minor cracking in concrete walls and floors (i.e. one eighth (1/8) inch or less) is generally considered normal, and not covered by this warranty. Similarly, hairline cracks may develop at the corners around

windows and doors, and this is considered normal given the nature of the materials and the effect of moisture, heating and cooling, and weather conditions and are not covered by the warranty.

Basement: For a period of one (1) year after date of warranty commencement, the basement will be free of water caused by seepage occurring during periods of rain. However, it is impossible to assure you that condensation will not occur as this is the nature of new concrete; and, therefore, we expressly do not guaranty against dampness by reason of condensation. Moreover, it is the Owners' responsibility to correct any minor settlement near the foundation which may cause water pockets.

Not covered by this warranty is seepage due to unusual flooding or rains greater than two (2) inches in twenty-four (24) hours. It is not possible to prevent concrete from minor cracking because of the nature of the material. All major cracks and cracks which emit water, are covered for one (1) year. It is understood that we will take all possible measures to prevent water problems in the basement but in the event we cannot correct the problem, a sump pump may have to be installed. The Owners shall pay for the sump pump, and we will be responsible for its installation.

Plumbing and Sewer Systems: For a period of one (1) year after date of warranty commencement, the plumbing and sewage system will be free of substantial defects in workmanship materials. If, in the course of correcting a stoppage, any foreign objects are found in the system, the Owners will pay the entire cost of correction. Dripping faucets or loose fixtures occurring within one hundred eighty (180) days after the date of warranty commencement, will be repaired by the Contractor. It is the Owners' responsibility to insure that exterior faucets are drained and shut off before the advent of winter. Frozen exterior faucets are not the responsibility of the Contractor.

Roof: For a period of one (1) year after date of warranty commencement, the roof will be free from leaks caused by defects in workmanship or materials. Expressly not covered are leaks resulting from "ice back-up." It is the responsibility of the Owners to insure free passage in gutters and downspouts at all times. Damage, if any, caused by windblown rain or snow through roof, gable or soffit vents and louvers into attic space is excluded from the provision of this warranty.

Heating System: The heating system is warranted to heat the home to a temperature of seventy-two (72) degrees at the thermostat when the outside temperature is zero (0). This warranty is for a period of one (1) year from the date of warranty commencement. The Contractor will make heating adjustments for up to one hundred eighty (180) days after date of warranty commencement except in instances where the thermostat fails to reach seventy-two (72) degrees with an outside temperature of zero (0) degrees. The Owners should clean and change filters monthly during the heating season. An oil burner should be clean and flues inspected yearly, preferably during summer months. Furnace pilots should be left on during the summer to insure a dry furnace basement.

Air-Conditioning System: The Unico air conditioning system used in your home is a high performance system that uses mini-ducts and high velocity air to facilitate the improved mixing of air resulting in superior comfort. In addition to lowering air temperatures, the system extracts moisture resulting in lower humidity. Your system was designed to lower the inside temperature from 92 degrees to 72 degrees with air at 22% relative humidity. This performance exceeds the ASHRAE standard for Maine.

Painting: The painting and/or staining of the dwelling is warranted for a period of one (1) year from date of warranty commencement against chipping, peeling or blistering, or excessive fading and chalking. It is understood that sunlight, weather conditions, cooking, smoking, etc., will slightly alter the color of the paint, and the Contractor cannot be responsible for minor variations in shading or coloring that may occur during painting and/or touch up work under the warranty provision of this agreement.

Wood Flooring: Flooring is warranted against swelling and buckling for a period of one (1) year from the date of warranty commencement. Shrinkage and separation of floorboards is normal and is, therefore, not covered under the provisions of the warranty. Should you experience some shrinkage and separation of the floorboards, this condition can be retarded by raising the relative humidity within the dwelling.

Fireplace: All fireplaces and chimneys are built according to state and local building codes, and are warranted for one (1) year after date of warranty commencement. Any wood stoves installed by the Owners must be inspected by local building and fire inspectors. The Contractor is not responsible for any problems relating to wood stoves.

Lawn and Shrubs: The Contractor accepts no responsibility for the growth of grass or shrubs. Once the Contractor grades, seeds and/or sods, and fertilizes the yard, the Owners must water the plants and grass sufficiently and plant ground cover where necessary to prevent erosion. The Contractor will not regrade a yard, nor remove or replace any shrubs or trees except for those that are noted as diseased at final inspection.

Other: For a period of one (1) year after the date of warranty commencement, the doors (including hardware), windows, electrical switches, receptacles, plumbing fixtures, and cabinet work will be free of defects in workmanship or materials.

## **6. EXCLUSIONS FROM COVERAGE**

The Contractor specifically does not assume responsibility for any of the following items, each of which is specifically excluded from this Limited Warranty:

a. Defects in appliances, fixtures, or pieces of equipment that are covered by a manufacturer's warranty. The Owners must follow the manufacturer's warranty claim procedure if a defect appears.

b. Damage due to ordinary wear and tear, abusive use, misuse, or lack of proper maintenance of the dwelling or its component parts or systems.

c. Defects which are the result of characteristics common to materials used, such as, but not limited to, warping or deflection of wood; fading, chalking and checking of paint due to sunlight; cracks in concrete, drywall, brick or masonry; and drying, shrinking and cracking of caulking and weather-stripping.

d. Defects in items installed by the Owners or anyone other than by Contractor or subcontractor at Contractor's order.

e. Loss or injury due to the elements or major storm event.

f. Conditions resulting from condensation on, or expansion or contraction of materials.

g. Consequential or incidental damages.

## **7. NO OTHER WARRANTY**

This Limited Warranty is the only express warranty granted by the Contractor except for warranty rights granted under Maine statutes.

## **8. CLAIMS PROCEDURE AND REPAIRS**

If a defect appears that the Owners think is covered by this Limited Warranty, the Owners must notify the Contractor promptly in writing. In the case of emergency situations where time is critical the Contractor may be telephoned. **However, only emergency reports will be taken by phone.**

Repairs: Upon receipt of a written report of a defect, if the defect is covered by the Limited Warranty, the Contractor will repair or replace the defect within 45 days. The work must be done by the Contractor, or subcontractors chosen by the Contractor. The choice between repair or replacement is reserved to Contractor.

## **9. DISPUTE SETTLEMENT**

Any controversy or claim arising out of or relating to this Limited Warranty, or breach thereof, shall be settled by the means specified in Section 1.12 of the Construction Contract between Owners and Contractor.

**CONTRACTOR**  
PHN Homes Construction, Inc.

By: Joan Satter, President

We hereby acknowledge that we have read this LIMITED WARRANTY and agree to the terms as specified therein.

**OWNERS**

\_\_\_\_\_ Dated: \_\_\_\_\_

\_\_\_\_\_ Dated: \_\_\_\_\_