

- I. **DESCRIPTION OF SERVICES.** PCC will provide the following services (collectively, the "Services or Subject Work") for New Construction of a Single Family Home, and any and all exclusions from the description of "Services" or "Subject Work" will be attached hereto and made part as Part B.
  
- II. **CONTRACT PRICE.** The Property Owner shall pay PCC for the performance of the Subject Work and the furnishing of materials pursuant to this Agreement the sum of \$( "contract price) in accordance of the payment schedule which is attached as Part C. All payments for the base contract price shall be made within ten ( 10) days after invoice is submitted to the Property Owner by PCC. If payment is not made within ten ( 10) days, PCC may cease work until such time as payment is remitted. Any delay in the date of Substantial Completion resulting from the cessation of Subject Work by PCC shall not be the responsibility of PCC. Payment shall be remitted directly from Property Owner's bank to PCC. Said payment is not conditions upon Property Owner obtaining mortgage, loan, or the sale of Property Owner's current residence, etc., All construction materials are market price conditioned, unless otherwise noted.
  
- III. **TERM.** This Contract will remain in effect until job is finished and customer is satisfied.
  
- IV. **LEGAL DESCRIPTION AND SURVEY.** Client will supply a legal description and/or survey and/or lot plan of the Subject Property in order to establish the building lines in accordance with the applicable zoning regulations and laws. Client will supply plot plan, if outlined in Part B, and will be paid for by Property Owner as determined.
  
- V. **PCC RESPONSIBILITY.**
  - (a) PCC will supervise and direct the Subject Work, and will be responsible for all construction methods, sequences and procedures, and for coordinating all portions of the Work.
  - (b) PCC will pay for and obtain all necessary permits required for the Subject Work. (Client to reimburse at 2<sup>nd</sup> draw) Property Owner agrees to hold PCC, it's employees, officers and agents harmless from any delays caused by any permit application.

- (c) PCC will pay for all required inspections necessary for the proper execution and completion of the Subject Work.
- (d) Unless otherwise specifically provided in this Agreement, PCC will 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 Subject Work.
- (e) PCC will keep the Subject Property free from accumulation of waste materials or rubbish caused by its operations. Upon PCC determining that the Work is complete, PCC will remove all of its waste materials and rubbish from and about the project as well as its tools, construction equipment, machinery and surplus materials.
- (f) PCC shall repair, replace or fix any damage caused to the property by PCC's subcontractors.

VI. **INDEMNIFICATION.** PCC agrees to indemnify and hold **"Property Owner"** harmless from all claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against **"Property Owner"** that result from the acts or omissions of PCC and/or PCC's employees, agents, or representatives.

VII. **SUBSTANTIAL COMPLETION.** The date of Substantial Completion of the work is the date when construction is sufficiently complete so that Owner can occupy or utilize the single family residence, with a Certificate of Occupancy ("Substantial Completion"). Further, if grading and seeding cannot be completed prior to the date of Substantial Completion due to inclement weather, PCC shall complete the same at such time as weather may permit. Property Owner agrees not to escrow funds at time of Substantial Completion for any reason.

VIII. **DEFAULT.** The occurrence of any of the following shall constitute a material default under this Contract:

- a. The failure to make a required payment when due.
- b. The insolvency or bankruptcy of either party.

c. The subjection of any of either party's property to any levy, seizure, general assignment for the benefit of creditors, application or sale for or by any creditor or government agency.

d. The failure to make available or deliver the Services in the time and manner provided for in this Contract.

IX. **REMEDIES ON DEFAULT.** In addition to any and all other rights a party may have available according to law, if a party defaults by failing to substantially perform any provision, term or condition of this Contract (including without limitation the failure to make a monetary payment when due), the other party may terminate the Contract by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have 10 days from the effective date of such notice to cure the default(s). Unless waived by a party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Contract and recover from the Property Owner for all Work executed and for any proven loss sustained upon any materials, equipment, tools, labor, and construction equipment and machinery, including reasonable profit and damages applicable to the entire project.

X. **WARRANTIES.** PCC shall provide its services and meet its obligations under this Contract in a timely and workmanlike manner, using knowledge and recommendations for performing the services which meet generally acceptable standards in PCC's community and region, and will provide a standard of care equal to, or superior to, care used by service providers similar to PCC on similar projects.

a. PCC expressly warrants that it will correct any material defects in the heating, plumbing, air conditioning, electrical, roofing or major structural systems to the property constructed by PCC for Property Owner per this agreement, after Property Owner notifies PCC in writing within twelve (12) months of the date of substantial completion, provided that such defects do not result in whole or in material part from work, or from alteration or other acts performed other than by PCC, Acts of God, or any other causes not direction attributable to PCC. All

other express or implied warranties are excluded, including specifically any and all warranties of merchantability or fitness for a particular purpose. PCC shall have the sole right to determine whether a defect shall be corrected by repair or replacement. In no event shall builder be liable for special or consequential damages or personal injuries arising from any breach of the warranty of this agreement.

- b. All workmanship to conform to North Carolina Building Code.
- c. Specifically, and without limitation, no warranty is given with respect to:
  - i. Any appliances, component equipment and the like for which the manufacturer thereof issues a separate warranty except as to PCC's workmanship with respect to the installation of the equipment. PCC shall assign Property Owner all guarantees or warranties extended by the manufacturer for any household appliance or equipment installed by PCC.
  - ii. Any and all materials, equipment or components provided by Property Owner, not purchased or supplied by PCC, and any and all components associated.
  - iii. Should Property Owner select and/or purchase stainless steel appliances, PCC will not be in any way responsible for any inherited imperfections due to the nature of the material surface. Defects such as scratches and dents may occur in transporting the appliances; should the quality of the product not meet the standards and expectations of the Property Owner, then the Property Owner should contact the manufacturer for their warranty regarding repair or replacement of the appliances. Property Owner agrees to hold PCC harmless for any and all claims related to repair or replacement of stainless steel appliances.
  - iv. Nail pops, seam ridge and shrinkage in drywall, lumber, trim millwork and wood floors.
  - v. Settling of areas around the house, driveways, or trenches where utility lines and/or pipes are located underground.
  - vi. Cracking, dripping or discoloration of or imperfections in grout, drywall, stucco, concrete or slab.

- vii. Shrinking or warping of doors less than one-half (1/2) inch.
- viii. Color variations in fixtures, appliances, painted walls, painted cabinetry, stained wood, stained cabinetry, tile, brick, siding, caulk, mortar, concrete or stucco.
- ix. Quantity or quality of any and all landscaping components.
- x. Dampness in ground floor / on slab levels.
- xi. Any condensation problems, including but not limited to windows, skylights, or attics.
- xii. Act of God related damages to subject property.

XI. **CHANGES / SUBSTITUTIONS.** PCC is given the option in PCC's sole discretion to make substitutions of materials of equal or better quality without additional cost to Owner whenever PCC finds it necessary or expedient to do so, and PCC will have the right to make any minor change or changes in the construction of the subject that PCC may in its responsible direction find necessary in the course of construction. However, if a major change is necessary, Property Owner will be notified of the proposed change.

XII. **SELECTIONS.** All options and color selections should be chosen within three (3) weeks of signing this Agreement. Should Property Owner fail to make options and color selections as hereinbefore set forth, PCC is hereby irrevocably authorized to proceed with the installation of materials of a color and design selected by PCC within the prescribed allowance set forth in specifications.

XIII. **SUBCONTRACTORS.** All subcontractors used by PCC will be properly insured and will supply certificates of insurance for the Work. Property Owner agrees to use all subcontractors as specified by PCC. Under no circumstances will the Property Owner allow any work to be done to the Subject Property by any contractor other than those approved by PCC. In the event Property Owner does permit work to the Subject Property by an unapproved subcontractor, Property Owner will be responsible for any costs incurred by PCC for coordinated and if applicable, repairs at the rate of \$100.00 per hour plus materials.

- XIV. **MOLD.** Mold is found in both the indoor and outdoor environment, including homes. Mold growth is highly dependent on the presence of moisture. When a mold spore comes into contact with a wet or damp surface indoors, the mold begins to grow. Mold spores will not grow unless there is moisture present in your home. Therefore, as a homeowner, whether or not you experience mold growth depends to a large extent on how you maintain your home and whether there is a source of moisture present in your home. As a Builder, our responsibility is limited to things that we can control and which are provided for in our warranty. By executing this Agreement you agree that as a Builder we are not responsible for any damages caused by mold, including but not limited to, property damage, personal injury, loss of income, emotional distress, loss of use and adverse health effects.
- XV. **GRADING AND DRAINAGE:** Although the Subject Property may incur a specific drainage problem, it may lie within the bounds of a problem area. Builder will have the sole discretion to establish all vertical and horizontal contours in elevations of grading and the Subject Work will be erected upon the Subject Property at such location thereon and at such elevation as PCC in its sole discretion shall deem advisable. In cases in which Subject Property contains an engineered Storm Water Management Plan or Grading / Landscaping plan, these will be followed by PCC and its licensed landscaping Subcontractor. Wherein trees exist upon the Subject Property, PCC will take reasonable effort to avoid damage; however, in no event will Builder be liable for damage to trees. PCC shall leave all areas with trees in their natural state if so determined by PCC. Vegetation shall remain or be removed at the sole discretion of PCC. Upon completion, PCC shall rake and seed only those areas disturbed by grading. Grading will be done with the soil that exists on the Subject Property. No soil will be brought in to elevate or add due to the topography unless specifically noted.
- XVI. **PROPANE GAS.** In the event propane gas is selected for Subject Work, it is agreed that a lease contract for the propane tank and an agreement for subsequent propane deliveries will be signed by Property Owners with the company that installed the propane tank on the premises. Property Owners hereby authorize PCC to have propane

tank filled prior to settlement and agree to credit PCC cost at the time of substantial completion of the Subject Work.

- XVII. **NO ASSIGNMENT.** This Agreement shall not be assigned or transferred by Owner without the written consent of Builder being first had and obtained. Subject to the provisions regarding assignment by Builder, this Agreement shall extend to and bind the heirs, administrators, successors and assigns of the respective parties hereof.
- XVIII. **HEADINGS.** The headings to such paragraphs hereof are of no legal significance and are only for convenience.
- XIX. **ENTIRE AGREEMENT.** This Agreement and the Exhibits hereto constitute the sole and entire Agreement between the parties concerning the subject matter hereof and may not be modified, discharged or amended, except by in writing signed by a duly authorized representative of Owner and an officer of Builder.
- XX. **FORCE MAJEURE.** If performance of this Contract or any obligation under this Contract is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.
- XXI. **ARBITRATION.** Any controversies or disputes arising out of or relating to this Contract shall be resolved by binding arbitration in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association. The parties shall select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Contract. In the event the parties are unable to agree to such a

selection, each party will select an arbitrator and the two arbitrators in turn shall select a third arbitrator, all three of whom shall preside jointly over the matter. The arbitration shall take place at a location that is reasonably centrally located between the parties, or otherwise mutually agreed upon by the parties. All documents, materials, and information in the possession of each party that are in any way relevant to the dispute shall be made available to the other party for review and copying no later than 30 days after the notice of arbitration is served. The arbitrator(s) shall not have the authority to modify any provision of this Contract or to award punitive damages. The arbitrator(s) shall have the power to issue mandatory orders and restraint orders in connection with the arbitration. The decision rendered by the arbitrator(s) shall be final and binding on the parties, and judgment may be entered in conformity with the decision in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under the prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this Contract.

XXII. **CONFIDENTIALITY.** PCC, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of PCC, or divulge, disclose, or communicate in any manner, any information that is proprietary to “**Property Owner**”. PCC and its employees, agents, and representatives will protect such information and treat it as strictly confidential. This provision will continue to be effective after the termination of this Contract. Upon termination of this Contract, PCC will return to “**Property Owner**” all records, notes, documentation and other items that were used, created, or controlled by PCC during the term of this Contract.

XXIII. **NOTICE.** Any notice or communication required or permitted under this Contract shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the addresses listed above or to such other address as one party may have furnished to the other in writing. The notice shall be deemed received when delivered or signed for, or on the third day after mailing if not signed for.

- XXIV. **ENTIRE CONTRACT.** This Contract contains the entire agreement of the parties regarding the subject matter of this Contract, and there are no other promises or conditions in any other agreement whether oral or written. This Contract supersedes any prior written or oral agreements between the parties.
- XXV. **AMENDMENT.** This Contract may be modified or amended if the amendment is made in writing and signed by both parties. Change Orders will be billed, due upon receipt after completion. Invoices and progress updates will be provided during construction. In addition, any **ROT REPAIR or ADDITIONAL LABOR** that is needed above and beyond will be at a **\$60.00 per man per hour PLUS** materials needed to repair/change order unless otherwise quoted or specialty trade. Homeowner will be notified and billed as a change order upon completion of rot repairs.
- XXVI. **SEVERABILITY.** If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- XXVII. **WAIVER OF CONTRACTUAL RIGHT.** The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.
- XXVIII. **APPLICABLE LAW.** This Contract shall be governed by the laws of the State of North Carolina.
- XXIX. **TIMING.** All work will be completed in a timely manner. Timing is subject to HOA Approval, market conditions regarding lead time on materials delivery and schedule as provided by PCC.

- XXX. **HOA APPROVAL.** Work is subject to HOA approval, obtained by Property Owner. Contractor requests all copies of HOA approval.
- XXXI. **PERMIT APPROVAL.** Work is subject to permits obtained through local required ordinances. Contractor requests all copies of permits obtained by Property Owner. All permits obtained by Contractor will provide copy to Property Owner.
- XXXII. **CAPITAL IMPROVEMENT.** All Capital Improvement work is subject to an on-file E-589CI, Affidavit of Capital Improvement.
- XXXIII. **BUILDER'S INSURANCE.** PCC will procure and maintain at all times during the existence and prior to the full completion of the Services, Worker's Compensation Insurance for all of its employee's engaged in the Services, and in the case of any work by subcontractor, PCC will require the subcontractor to provide General Liability and Worker's Compensation Insurance for all the latter's employees to be engaged in such work. In addition, PCC will procure and maintain General Liability Insurance in amount determined by PCC.
- XXXIV. **PROPERTY OWNER'S INSURANCE.** For New Construction, Property Owner shall procure and maintain at all times during and prior to the full completion of work, Property Owner's own liability insurance and at Property Owner's option, may maintain such insurance as will protect property owner against claims which may arise from operations under this Agreement. Owner will also procure and maintain at all times during and prior to the full completion of all Work, property insurance and builders insurance upon the entire Work at the Subject Property to the full insurable value thereof. This insurance will include the interests of the Property Owner, PCC, subcontractors and subcontractors in the work and will insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including without the duplication of coverage theft, vandalism, and malicious mischief. Any loss under this property insurance is to be adjusted with the Property Owner and made payable to the Property Owner as trustee to the insureds, as their interests may appear, subject to the requirements of any mortgage clause.

- XXXV. **LIABILITY.** Neither PCC nor PCC's agents can be liable or responsible for consequential damages or personal injury resulting from conditions inherent to the Subject Work construction or a site under construction before or after the date of Substantial Completion including any incidental expenses that may be incurred by the Owner. These conditions include but are not limited to construction defects, mud, dust, construction materials and debris, construction vehicles and machinery, road obstructions or road settlement, high manholes and inlets, high curb depressions, etc. Owner agrees to hold the Builder, it's employees, officers and agents harmless from any and all consequential damages or personal injury resulting from conditions inherent to the Subject Work construction or a site under construction whether they occur before or after the date of Substantial Completion including any incidental expenses that may be incurred by the Owner or a guest of the Owner.
- XXXVI. **SITE INSPECTION.** Unscheduled visits to the work site on the Subject Property are an interruption to PCC's business and a potential safety hazard. Property Owner agrees not to visit work site without prior notification and approval of PCC. Property Owner agrees to hold PCC, it's employees, officer and agents harmless from any and all consequential damages or personal injury resulting from conditions inherent to home construction or a site under construction whether they occur before or after the date of Substantial Completion including any incidental expenses that may be incurred by the Property Owner or a guest of the Property Owner during a site inspection of the Subject Property.
- XXXVII. **BREACH OF CONTRACT.** In addition to any other right or remedy provided by law, if "Property Owner" fails to pay for the Services when due, PCC has the option to treat such failure to pay as a material breach of this Contract, and may cancel this Contract and/or seek legal remedies. All money collected will be used towards items specified in contract. Work that is completed is to be paid for per direction of invoices.