

# BUILDER'S LIMITED WARRANTY and PERFORMANCE STANDARDS



Administered by American Construction & Education Services, Inc.

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THIS BUILDERS WARRANTY IS LIMITED IN COVERAGE. THE PERFORMANCE STANDARDS PROVIDED ARE THE ONLY EXPRESS WARRANTIES COVERING THE HOME. TO THE EXTENT ALLOWED BY LAW, BUILDER SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATING TO, OR RESULTING FROM, ANY DAMAGE TO, OR DEFECT IN, THE HOME, OTHER IMPROVEMENTS, LATENT DEFECTS, OR THE LOT ON WHICH THE HOME IS LOCATED. BUILDER'S MAXIMUM LIABILITY UNDER THIS LIMITED WARRANTY IS PROVIDED FOR IN SECTION 2.01.

ALL DISPUTES RELATING TO THE INTERPRETATION AND/OR IMPLEMENTATION OF THIS LIMITED WARRANTY OR OTHERWISE ARISING IN CONNECTION WITH THE CONSTRUCTION OF THE HOME, OTHER IMPROVEMENTS, THE CONSTRUCTION CONTRACT, OR LATENT DEFECTS, WILL BE RESOLVED THROUGH THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES (WHICH INCLUDE BINDING ARBITRATION) SET FORTH IN THIS LIMITED WARRANTY, EXCEPT TO THE EXTENT THAT THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES CONFLICT WITH THE ARBITRATION AND DISPUTE RESOLUTION PROVISIONS SET FORTH IN THE CONTRACT DOCUMENTS GOVERNING THE PURCHASE OF THE HOME CONSTRUCTED BY THE BUILDER, WHICH WILL BE CONTROLLING. Capitalized terms in this Limited Warranty shall have the meanings given to such terms in Article IV.

## **ARTICLE I BUILDER, OWNER AND ACES**

1.01 Warrantor. THIS LIMITED WARRANTY IS PROVIDED SOLELY BY BUILDER. NO OTHER PERSON OR ENTITY IS RESPONSIBLE FOR FULFILLING THE OBLIGATIONS OF BUILDER UNDER THIS LIMITED WARRANTY.

1.02 Owner. This Limited Warranty is provided by Builder solely to Owner. Owner includes a subsequent Owner or Owners of the Home to the extent that such Owner or Owners agree in writing to be bound by the provisions of this Limited Warranty. However, no assignment or transfer of this Limited Warranty shall serve to extend the original term of this Limited Warranty. This Limited Warranty does NOT apply to Property and/or improvements that have been subject to a foreclosure under Texas law.

1.03 ACES Not a Warrantor. AMERICAN CONSTRUCTION & EDUCATION SERVICES, INC. ("ACES") IS NOT THE WARRANTOR UNDER THIS LIMITED WARRANTY, AND SHALL HAVE NO OBLIGATIONS OR LIABILITIES TO ENSURE THAT THE PERFORMANCE STANDARDS SET FORTH IN THIS LIMITED WARRANTY ARE MET, NOR IS ACES RESPONSIBLE FOR THE COMPLIANCE BY BUILDER OR THE OWNER WITH ANY OTHER PROVISIONS OF THIS LIMITED WARRANTY. ACES ACTS SOLELY IN AN ADMINISTRATIVE CAPACITY TO FACILITATE THE RESOLUTION OF DISPUTES ARISING UNDER THIS LIMITED WARRANTY. BUILDER AND OWNER AGREE TO SUBMIT ANY UNRESOLVED DISPUTES OR CLAIMS TO NON-BINDING MEDIATION. EACH PARTY AGREES TO MAKE A REASONABLE EFFORT TO RESOLVE ANY DISPUTE AT THE MEDIATION PURSUANT TO THE TERMS AND CONDITIONS LISTED IN BOTH 7.02C AND 7.02D OF THIS LIMITED WARRANTY. IF A DISPUTE INVOLVING THIS LIMITED WARRANTY AGAINST ACES REMAINS UNRESOLVED UPON COMPLETION OF THE MEDIATION, SUCH DISPUTE SHALL THEN BE RESOLVED BY BINDING ARBITRATION IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION (THE "AAA") PURSUANT TO THE TERMS AND CONDITIONS LISTED IN 7.03A, 7.03B, 7.03C AND 7.03D OF THIS LIMITED WARRANTY, EXCEPT TO THE EXTENT THAT THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION CONFLICT WITH THE ARBITRATION AND DISPUTE RESOLUTION PROVISIONS SET FORTH IN THE CONTRACT DOCUMENTS GOVERNING THE PURCHASE OF THE HOME CONSTRUCTED BY THE BUILDER, WHICH WILL BE CONTROLLING.

1.04 Relationship of Builder to ACES. ACES is a Texas corporation which has been organized (i) to provide educational opportunities to improve Builders' knowledge of industry practices and standards; and (ii) to foster the prompt, efficient and fair resolution of disputes between Builders and Homeowners that arise under this Limited Warranty. A Builder becomes authorized to issue this Limited Warranty and to participate in the Resolution Procedures by its payment of an enrollment fee established by ACES, accompanied by Builder's certification that Builder has complied with specified construction procedures and inspections. ACES does not independently verify a Builder's statements in the Builder's application for membership to the ACES Builder Program. ACES DOES NOT CONDUCT INSPECTIONS OF HOMES. ACES SOLE FUNCTION IS TO ADMINISTER THE RESOLUTION PROCEDURES AS SET FORTH IN THIS LIMITED WARRANTY.

## **ARTICLE II SCOPE OF WARRANTY**

2.01 Builder's Maximum Liability. NOTWITHSTANDING ANY CONTRARY PROVISION IN THIS LIMITED WARRANTY, TO THE EXTENT ALLOWED BY LAW, BUILDER'S MAXIMUM LIABILITY FOR ALL OF ITS OBLIGATIONS UNDER OR RELATING TO THIS LIMITED WARRANTY IS LIMITED TO THE ORIGINAL PURCHASE PRICE OF THE HOME AND THE LOT ON WHICH IT IS LOCATED OR ITS FAIR MARKET VALUE, WHICHEVER IS GREATER.

2.02 Term and Coverage of this Limited Warranty. Subject to the express exclusions and limitations set forth in this Limited

Warranty, Builder provides to Owner the following coverage under this Limited Warranty. References in this Limited Warranty to a year, a year period, a year of coverage, or the like, shall refer to a calendar year period consisting of 365 days (or 366 days, if an applicable year period includes an additional day for a leap year).

A. Warranty – One Year. Commencing with the Warranty Commencement Date, and continuing for one year, the construction of the Home will conform to the First Year Performance Standards for year one as provided in Article IX, including the warranted tolerances for Major Structural Defects also specified in Article IX. This portion of this Limited Warranty for the first year terminates at the expiration of the one year period commencing on the Warranty Commencement Date. Written notice of an alleged Defect (other than a Defect regarding Systems or Major Structural Defect, which are provided for below) occurring in year one of this Limited Warranty must be mailed to Builder in accordance with Section 6.01 and postmarked, or received by Builder, NO LATER THAN THIRTY (30) DAYS AFTER THE EXPIRATION OF THE FIRST YEAR in order to be eligible for such first year coverage.

B. Warranty – Years One Through Two. Commencing with the Warranty Commencement Date, and continuing for two years, the construction of the Home will conform to the First & Second Year Performance Standards for years one and two as provided in Article IX, including the warranted tolerances for Major Structural Defects also specified in Article IX. This portion of this Limited Warranty for the first & second years terminates at the expiration of the two year period commencing on the Warranty Commencement Date. Written notice of an alleged Defect (other than a Defect regarding Systems or Major Structural Defect, which are provided for below) occurring in year one of this Limited Warranty must be mailed to Builder in accordance with Section 6.01 and postmarked, or received by Builder, NO LATER THAN THIRTY (30) DAYS AFTER THE EXPIRATION OF THE SECOND YEAR in order to be eligible for such first & second year coverage.

C. Warranty-Years One through Six. Commencing with the Warranty Commencement Date and continuing through the date which is six years after the Warranty Commencement Date, the construction of the Home will conform to the Performance Standards and warranted tolerances for Major Structural Defects for the first through the sixth years, as provided in Article IX. Warranty coverage for Warranty- Year One and Warranty- Years One Through Two Items no longer exists during this time period. This portion of this Limited Warranty terminates six years after the Warranty Commencement Date. Written notice of a Major Structural Defect occurring in years one through six of this Limited Warranty must be mailed to Builder in accordance with Section 6.01 and postmarked, or received by Builder, NO LATER THAN THIRTY (30) DAYS AFTER THE EXPIRATION OF THE SIX YEAR COVERAGE IN ORDER TO BE ELIGIBLE FOR SUCH SIX YEAR COVERAGE; PROVIDED, THE NOTICE FROM OWNER TO BUILDER MUST BE PROVIDED NO LATER THAN SIXTY (60) DAYS AFTER OWNER IS AWARE OF ANY MAJOR STRUCTURAL DEFECT WHICH OCCURS DURING THE SIX YEAR PERIOD BEGINNING ON THE WARRANTY COMMENCEMENT DATE.

D. Warranty of Habitability- Years One through Six. All residential construction shall include a warranty of habitability for the period established in section 2.02C, except that if a different minimum period is established by Texas law, that minimum period shall control and the warranty of habitability in this Limited Warranty shall be construed accordingly. This warranty of habitability is Builder's obligation to construct the Home in a manner that is:

- i. safe, sanitary, and fit for human habitation. To be unfit for human habitation means that a construction defect as defined in article 4.05 substantially impairs the functionality of an enclosed area of the Home that is heated and air-conditioned for year-round residential use, excluding the attic, garage, and patio, such that it is no longer habitable.
- ii. in compliance with the Performance Standards

2.03 No Warranty Responsibility if No Timely Notice. BUILDER SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY DEFECTS NOR ANY OTHER OBLIGATIONS IMPOSED ON BUILDER UNDER THIS LIMITED WARRANTY WHATSOEVER, IF BUILDER HAS NOT RECEIVED ACTUAL WRITTEN NOTICE STRICTLY WITHIN THE TIME SPECIFIED IN SECTION 2.02 OF THIS LIMITED WARRANTY.

2.04 Repair, Replacement or Payment of Reasonable Costs. For any Defect covered by this Limited Warranty, Builder may repair, replace, or pay Owner the reasonable cost of repairing or replacing the defective item, as Builder chooses. Builder's right to pay Owner the reasonable cost of repair or replacement shall be available, at Builder's option, in lieu of Builder's responsibility to repair or replace a defective item otherwise provided for in Article IX. Repair of a Major Structural Defect is limited to (i) the repair of damage to the load bearing portion of the Home itself which is necessary to restore its load bearing function, and (ii) the repair of those components of the Home damaged by the Major Structural Defect.

### **ARTICLE III HOME MAINTENANCE**

3.01 Owner's Responsibilities Generally. Improper use, care or maintenance, may void portions of this Warranty and a manufacturer's warranty. In the event that Owner fails to satisfy Owner's responsibilities outlined below, the builder shall bear no responsibility for any alleged deficiency or defect related thereto. Maintenance of the Home and the lot on which it is located are essential to the proper functioning and enjoyment of the Home.



Ongoing maintenance is the responsibility of Owner. Builder is not responsible for maintaining or advising Owner with respect to the maintenance of the Home. Some maintenance items are described in this Limited Warranty, but there are additional ongoing maintenance responsibilities which are not outlined in this Limited Warranty. Owners maintenance must include, for example, such items as repainting and resealing finished surfaces as necessary, maintenance of caulking for the life of the Home, regular inspection and maintenance of mechanical systems, cleaning and proper preservation of grading around the Home and drainage systems to allow for the proper drainage of water from the Home and the lot on which it is located.

Owner shall be responsible for any damage resulting from Owner directed activities including, but not limited to, pressure washing, acid cleaning, drilling holes, attaching fixtures or ornamental such as, décor, patio covers, plant holders, awnings or hose racks and other similar devices. Owner is responsible for mitigating damage to the Home regardless of its cause according to the terms of section 3.04.

In the event that an emergency condition presents an imminent danger or harm to persons or damage to property, Owner should contact emergency service personnel (e.g., fire department, police, etc.) or the utility provider (gas company, electric company, etc.). Builder does not provide emergency response services or response after business hours.

3.02 Owner's Responsibilities for Manufacturer's Products. Owner shall use and perform periodic maintenance on all manufactured products according to the manufacturer's instructions and specifications. Any failure to follow manufacturer's specifications with regard to manufactured products may void the manufacturer's warranty.

3.03 Owner's Responsibilities for Soil Maintenance.

A. Soils containing a high clay content will expand and contract when the moisture content of the soil changes. In areas where there are moisture changes in subsurface soil, Owner must maintain the soils near the foundation of the Home in a manner which will assure a uniform (but not saturated) moisture level in the subsurface soil. Areas of soil with no landscaping may be more susceptible to evaporation and may require more moisture. Close observations of the foundation are especially required during hot and dry periods to verify that soil is not separating from the foundation. Although foundations are designed for soils conditions in the general area in which the Home is located, specific conditions may be encountered that may not be evident in general soils testing.

B. Owner should be aware that the placement of landscaping requiring heavy watering will generally cause a higher moisture content in the area of that portion of landscaping. Such landscaping may create an imbalance with respect to less watered areas not containing landscaping that requires heavy watering. Reasonably balanced moisture content around the entire foundation must be maintained by the Owner. Owner is advised that the watering of trees located within 20 feet of the foundation requires special care, in order to maintain uniform moisture around the Home's foundation.

C. If gutters and downspouts are used, Owner must assure that water does not pool near the foundation of the Home.

3.04 Owner's Responsibilities to Prevent Damage. Owner shall take reasonable and necessary action to prevent damage to the home. For example, such items include, but are not limited to, preventing excessive moisture accumulation by:

- A. properly using ventilation equipment;
- B. preventing excessive temperature fluctuation; and
- C. taking any other action reasonably necessary to avoid excessive moisture, dampness, humidity or condensation in the home that may lead to damage due to excessive moisture or dryness.

Owner is responsible for mitigating damage to the Home regardless of its cause. The duty to mitigate includes timely notice to Builder of any condition or problem described in this Limited Warranty. If Owner fails to give timely notice to Builder after the Owner first observes or has reason to suspect the existence of any condition or defect described in this Limited Warranty, Builder is exempt from any warranty obligation for damage resulting from the delayed notice.

Owner is responsible for damage to the Home caused by the following types of activities, pressure washing, acid cleaning, drilling holes, attaching fixtures or ornamental décor, patio covers, plant holders, awnings or hose racks and other similar devices.

3.05 Owner's Responsibilities to Use Home as Intended. Owner shall properly maintain each component of the home including cleaning, care and upkeep of the home. Owner shall use home components for the purposes for which they are intended and shall not damage, misuse or abuse home components. This Limited Warranty does NOT apply to Property and/or improvements that have been subject to a foreclosure under Texas law.

## **ARTICLE IV DEFINITIONS**

4.01 "ACES": American Construction & Education Services, Inc., acting as administrator to facilitate the resolution of disputes arising in connection with this Limited Warranty.

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4.02 “ACES Builder Program”: The program administered by ACES to facilitate the resolution of disputes between Owners and Builders who are participating in the ACES Builder Program and to provide ongoing educational opportunities to Builders.

4.03 “Applicable Code”: The version of the following Codes or building practices in effect at the time of commencement of construction of the Home, applicable in the order listed:

- (a) The International Residential Code (I.R.C.) for One- and Two-Family Dwellings that is in effect at the time of construction where the Home is built.
- (b) In areas where the I.R.C. is not required or, if a defect (as defined in the Limited Warranty) is not covered by the I.R.C., then locally accepted building practices.

4.04 “Builder”: The Builder named at the beginning of this Limited Warranty or on the Builders Limited Warranty Form signature page. The Builder is also a Contractor or Seller, meaning a person contracting with an Owner for the construction or sale of a new residence constructed by that person or of an alteration of or addition to an existing residence, repair of a new or existing residence, or construction, sale, alteration, addition, or repair of an appurtenance to a new or existing residence. Builder may also be referred to as Seller, Warrantor, or Contractor.

4.05 “Defect”: A component of the Home which does not comply with the Performance Standards expressly set forth in Article IX, and which, is not otherwise excluded from coverage by this Limited Warranty. A defect for purposes of this warranty is the same as a “construction defect” which means a matter concerning the design, construction, or repair of a new residence, of an alteration of or repair or addition to an existing residence, or of an appurtenance to a residence, on which a person has a complaint against a contractor. The term may include any physical damage to the residence, any appurtenance, or the real property on which the residence and appurtenance are affixed proximately caused by a construction defect.

4.06 “Dispute”: A dispute as defined in Section 7.01.

4.07 “Excessive”: Exceeding the normal extents or limits of the manufacturer’s specifications. If manufacturer specifications do not exist, excessive will be defined as beyond the customary performance of the product accepted by industry standards according to the reasonable and best judgement of the inspector assigned to the home.

4.08 “Fixtures, Appliances and Equipment”: Fixtures, appliances and equipment, including, without limitation, water heaters, pumps, stoves, refrigerators, stoves and ranges, compactors, garbage disposals, dishwashers, washers and dryers, bathtubs, sinks, commodes, faucets and valves, lights and fixtures, thermostats, switches, outlets, circuit breakers, automatic door openers, oil tanks and fittings, humidifiers, oil and air purifiers, ventilating fans, air conditioning material and equipment and air handling equipment, and similar items, and includes consumer products as defined in the Magnusen-Moss Warranty Act (15 U.S.C. §2301, et seq.).

4.09 “Foundation Defect”: A Foundation Defect as such term is defined in Subsection III of Section 9.03.

4.10 “Home”: The single family house located at the address provided on the signed Builders Limited Warranty form. Such term also includes a condominium unit conveyed as a single unit or a townhome or duplex conveyed as a single unit. For residences with a shared foundation, the common elements in the building in which the condominium unit is situated and which are shared in common with other units in the building may be conveyed to a Home Owner’s Association (or HOA) and in such case are not covered under this Builders Limited Warranty. Unless otherwise expressly provided, the term “Home” does not include a detached garage or the lot on which the Home is located, nor does such term include any other outbuilding or other improvements referred to in subparagraph S of Section 5.03.

4.11 “Limited Warranty”: All provisions of this Limited Warranty, including, without limitation, Article IX containing the Performance Standards.

4.12 “Major Structural Defect”: A Foundation Defect or a Major Structural Non-Foundation Defect consisting of actual damage to the load-bearing portion of a residence caused by the defect of the load-bearing portion.

4.13 “Major Structural Non Foundation Defect”: A Major Structural Non Foundation Defect, as such term is defined in Subsection III of Section 9.03.

4.14 “Owner”: The Owner or Owners named at the beginning of this Limited Warranty, and such Owner’s or Owners’ successors in title who agree in writing to be bound by the provisions of this Limited Warranty. With respect to condominium common elements, the condominium association is deemed to be the Owner. See Section 8.13 for provisions regarding Owner’s notification to Builder and ACES of Owner’s sale of the Home.

4.15 “Performance Standards”: The Performance Standards expressly set forth in Subsections I, II and III of Section 9.03, subject to certain tolerances and limitations of coverage as further set forth in this Limited Warranty.



- 4.16 “Request for Warranty Performance”: A written request by Owner for correction of an alleged Defect, as further provided in Section 6.01.
- 4.17 “Resolution Procedures”: The administrative intervention, mediation and binding arbitration procedures set forth in Article VII.
- 4.18 “Systems”: The following systems, exclusive of Fixtures, Appliances, and Equipment:
- (a) electrical system, consisting of electrical boxes, wiring and connections up to the public utility connection;
  - (b) plumbing system, consisting of water supply, waste and vent pipes and their fittings; gas supply lines and fittings; water, gas and sewer services piping, and their extensions to the tie-in of a public utility connection in a designated utility easement or right-of-way on or adjacent to the lot on which the Home is located, or on site well and sewage disposal system; septic tanks and their drain field; and
  - (c) heating, cooling and ventilation systems, consisting of duct work, water, steam and refrigerant lines, convectors, registers, radiation elements and dampers.
- 4.19 “Warranty Commencement Date”: The date specified by Builder as the Warranty Commencement Date on the signed Builders Limited Warranty form, or if Builder has not specified such date, (i) if there is a sale and conveyance of the substantially completed Home from Builder to Owner, such date shall be the date of the closing of such sale and conveyance from Builder to the initial Owner, or (ii) if construction occurs on Owner’s property, then such date shall be the earlier of the date of substantial completion of the Home or the date of the initial Owner’s first occupancy of the Home. First occupancy of the Home shall be the first date upon which Owner begins moving furniture and personal effects into the Home. In certain situations, Builder may offer (for the first time) this Limited Warranty to Owner after Owner’s first occupancy; in this situation, refer to Section 8.15 regarding Warranty Commencement Date.
- 4.20 “Warranty Transfer Form”: The Warranty Transfer Form providing for the transfer of this Warranty to a subsequent Owner, as further provided in Section 8.13. The Warranty Transfer Form is available by contacting ACES using the contact information on the back cover of this document.

## **ARTICLE V MATTERS THAT ARE NOT WARRANTED**

5.01 Warranty Limited to Items Specified in this Limited Warranty.

a. THIS BUILDERS WARRANTY IS LIMITED IN COVERAGE. THE PERFORMANCE STANDARDS PROVIDED ARE THE ONLY EXPRESS WARRANTIES COVERING THE HOME. TO THE EXTENT ALLOWED BY LAW, BUILDER SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATING TO, OR RESULTING FROM, ANY DAMAGE TO, OR DEFECT IN, THE HOME, OTHER IMPROVEMENTS, LATENT DEFECTS, OR THE LOT ON WHICH THE HOME IS LOCATED. BUILDER’S MAXIMUM LIABILITY UNDER THIS LIMITED WARRANTY IS PROVIDED FOR IN SECTION 2.01.

b. ALL DISPUTES RELATING TO THE INTERPRETATION AND/OR IMPLEMENTATION OF THIS LIMITED WARRANTY OR OTHERWISE ARISING IN CONNECTION WITH THE CONSTRUCTION OF THE HOME, OTHER IMPROVEMENTS, OR THE CONSTRUCTION CONTRACT WILL BE RESOLVED THROUGH the ALTERNATIVE DISPUTE RESOLUTION PROCEDURES (WHICH INCLUDES MEDIATION and BINDING ARBITRATION) set forth in this Limited Warranty.

5.02 Manufacturer’s Warranties. Certain appliances, equipment and other items may be covered by warranties of manufacturers. Builder hereby assigns, without recourse, all manufacturer warranties to Owner. Any rights of Owner under those warranties are provided by the manufacturers, and BUILDER DOES NOT ASSUME ANY OF THE OBLIGATIONS UNDER THOSE MANUFACTURER WARRANTIES AND DOES NOT PROVIDE ANY WARRANTY COVERAGE OF ITEMS COVERED BY MANUFACTURER WARRANTIES. The items that may be covered by manufacturers’ warranties include, but are not limited to any, dishwasher, cooktop, oven, microwave, refrigerator, kitchen vent fan, washer, dryer, central air conditioning coil and compressor, furnace heat exchanger, water heater, carpet, roof, elevator, Smart Home fixtures, and any other items for which the manufacturer offers a warranty.

5.03 Additional Exclusions. Under This Limited Warranty, the Builder does not warrant and shall not be responsible for, and this Limited Warranty shall not extend to or include, or be applicable to, any of the following:

- A. Any and all work performed or material supplied incident to construction, modification or repairs to the Home performed by Owner, or by anyone on behalf of Owner, other than Builder or Builder’s employees, agents, subcontractors or contractors providing work or materials at the direction of Builder. Builder is not responsible for reimbursing Owner for any costs or expenses incurred without prior written agreement between Builder and Owner.

- B. To the extent allowed by law, bodily injury or other consequential or incidental damages, including, without limitation, loss of consortium, mental anguish damages or punitive damages, loss or damage to any personal property, including Fixtures, Appliances, and Equipment, or to any real property, whether or not included in the original purchase price of the Home.
- C. Any damage to the Home, to the extent it is caused or made worse by the failure of Owner or by anyone other than Builder, its employees, agents, subcontractors or contractors providing work or materials at the direction of Builder, to comply with the warranty requirements of the manufacturers of any Fixtures, Appliances and Equipment.
- D. Alterations to the grade of the soils, except alterations done by Builder, its employees, agents, subcontractors or contractors providing work or materials at the direction of Builder. This includes loss or damage caused by failure of Owner to preserve the grading originally established by the Builder.
- E. Dampness or condensation due to the failure of Owner to maintain adequate ventilation, or the effects of such failure on the Home or any other Defect to the Home caused by moisture, rot, mildew, mold, or rust.
- F. Normal wear and tear or normal deterioration.
- G. Normal shrinkage resulting from drying or settlement of construction components within the tolerance of building standards.
- H. Loss or damage caused by or resulting from or in connection with any or all named weather events, accidents, riot and civil commotion, fire, explosion, smoke, water escape, falling objects, aircraft, vehicles, extreme weather conditions such as: lightning, windstorm, hail, flood, hurricane, drought, tropical storms, gale force winds, freezing or extreme temperatures, mudslide, earthquake, volcanic eruption, or other Acts of God, wind driven rain or other water; subsidence or sinkholes, changes in the underground water table, or below ground water that exerts pressure on, seeps, or leaks into the Home, sidewalk, driveway, foundation, swimming pool or other structure.
- I. Loss or damage caused by or resulting from the leakage or seepage of water or moisture, unless such loss or damage is a direct result of a named Defect which was reported within the time specified in section 2.02 of this Limited Warranty.
- J. Loss or damage caused by or resulting from mold unless such loss or damage is proximately caused by a construction defect under this Limited Warranty, which was reported within the time specified in section 2.02 of this Limited Warranty.
- K. Loss or damage caused by or resulting from soil movement including without limitation: heaving, subsidence, expansion, or lateral movement of the soil for which compensation is provided by legislation or which is covered by insurance.
- L. Damage caused by erosion or accretion following the Warranty Commencement Date.
- M. Damage caused directly or indirectly by insects, birds, rodents, vermin or other wild or domestic animals.
- N. Damage dealing with the quality and potability of water.
- O. Loss or damage which arises while the Home is being used for nonresidential purposes, commercial purposes, or for purposes for which the Home was not designed; loss or damage caused by or resulting from abnormal loads placed on floors by Owner or which otherwise exceed normal design load as prescribed by Applicable Code; loss or damage caused by or resulting from unusual or abnormal demand on the electrical system or which otherwise exceeds the normal design electrical capacity as prescribed by Applicable Code or other damage that results if the Home has not been maintained, or has been negligently damaged or abused. Property and/or improvements that have been used at any time for a commercial, for profit, rental (short or long term), leasing or occupancy by any person other than the named owners on this Limited Warranty OR Warranty Transfer Form.
- P. Cost of or responsibility for moving pianos, pool tables, antiques, any furniture or other items, which would generally require special handling; costs of shelter, transportation, food, moving, storage, or other expenses related to inconvenience or relocation during repairs.
- Q. Any condition which does not result in actual physical damage to the Home, including, but not limited to, un-inhabitability or health risk due to the presence or consequence of radon gas, formaldehyde or other pollutants or contaminants, mold, or the presence or effect of hazardous or toxic materials.
- R. Violations of Applicable Code, unless the violation results in a Defect which is otherwise covered by this Limited Warranty. Should a violation cause a Defect covered under this Limited Warranty, the obligation of the Builder shall be limited to repair of the defective warranted portion of the Home; Builder shall not be required to make the Home conform to Code unless required to do so by a governmental authority having jurisdiction over that issue.
- S. Builder's reliance on written information relating to the residence, appurtenance or real property on which the residence and

appurtenance are affixed that was obtained from official government records, if such written information was false or inaccurate and Builder did not know and could not have reasonably known of the written information's falsity or inaccuracy.

- T. Deficiencies in or damage to outbuildings, including detached garages and detached carports (other than to the extent that a detached garage is expressly covered in Article IX), swimming pools and other recreational facilities, driveways, decks, porch stoops, fences, gates, security gates, walkways, patios, retaining walls, bulkheads, boundary walls, landscaping (including sodding, seeding, trees, shrubs, and other plants and planting), or offsite improvements; or any other improvements not part of the Home itself. Owner understands that Builder cannot guarantee that some or all of the trees, shrubs or other plants may not die prior to or following purchase of the Home. Owner releases Builder from any claims for damages to or loss of trees, shrubs or other plants resulting from the work necessary to construct the Home.
- U. After the first year of coverage, concrete floors of basements.
- V. Any Request for Warranty Performance not mailed to Builder, or received by Builder, by the time required in this Limited Warranty.
- W. Any component of the Home which Owner and Builder have agreed in writing to exclude from coverage under this Limited Warranty.
- X. Any Defect(s) covered by this Limited Warranty which Owner repairs, causes to be repaired, or has already repaired without prior written authorization of Builder.
- Y. Alleged damage due to construction activity is excluded if not reported to the Builder in writing prior to closing for new construction or prior to the final payment for remodels.
- Z. Major foundation defect resulting from foundation design flaws if builder complied with licensed Engineer's design and specifications.
- AA. Foreclosure. Notwithstanding any other terms herein, a foreclosure of the property automatically terminates this Limited Warranty, and the foreclosing lender and each subsequent Owner take the property and Improvements "AS IS with all faults."

The foregoing list of exclusions shall not be construed to impose liabilities on Builder, which are not expressly undertaken by Builder under this Limited Warranty.

**5.04 Punch List Items.** Any alleged defect identified in writing prior to the commencement of this Limited Warranty (Punch List Item) will be addressed as a contractual matter per the builder's contract with the buyer. Binding arbitration provisions provided in Article 7.03 will apply to any unresolved disputes pertaining to punch list items EXCEPT TO THE EXTENT THAT THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES CONFLICT WITH THE ARBITRATION AND DISPUTE RESOLUTION PROVISIONS SET FORTH IN THE CONTRACT DOCUMENTS GOVERNING THE PURCHASE OF THE HOME CONSTRUCTED BY THE BUILDER WHICH WILL BE CONTROLLING.

**5.05 Cosmetic Items.** Builder shall not be responsible for any cosmetic repair items except to the extent that a violation of an applicable performance standard exists under this Limited Warranty.

**5.06 Green Building Compliance.** Performance standards concerning green building compliance or certifications are not included in this Limited Warranty unless a violation results in a Defect which is otherwise covered by this Limited Warranty. Should a violation cause a covered Defect, the obligation of the Builder shall be limited to repair of the defective warranted portion of the Home. Any dispute relating to Green Building Compliance shall be governed by the original agreement between owner and builder and not by this Limited Warranty. The foregoing list of exclusions shall not be construed to impose liabilities on Builder, which are not expressly undertaken by Builder under this Limited Warranty.

## **ARTICLE VI PROCEDURES FOR WARRANTY PERFORMANCE; OWNER'S COOPERATION**

**6.01 Request for Warranty Performance.** Any Request for Warranty Performance must be in writing and received by Builder, strictly within the time for notification specified in Section 2.02. The Request may be sent and postmarked via U.S. Mail, emailed, or submitted through the Builder's online Warranty Request form. Such written request for service is called a "Request for Warranty Performance." The Request for Warranty Performance shall describe the alleged Defect, in reasonable detail, and otherwise meet Builder's requirements regarding requests for service.

**6.02 Time for Repairs or Replacements.** If Builder is required under this Limited Warranty to repair or replace a Defect, the appropriate repair (or replacement) will be completed within sixty (60) days after Builder's receipt of the Request for Warranty Performance, or if the matter is disputed, then within sixty (60) days after resolution of the Dispute. However, such sixty (60) day period will be extended

to the extent that Builder's delay is due to inclement weather, unavailability of materials or labor, or other causes beyond Builder's reasonable control. In the event that a repair or replacement would reasonably take more than sixty (60) days in the exercise of Builder's reasonable diligence, the sixty (60) day period will be extended by a reasonable number of additional days as agreed upon in writing by both parties. Builder is not required to incur overtime or weekend expenses.

**6.03 Owner's Cooperation and Access.**

- a. Owner shall cooperate with Builder in connection with Builder's inspection of alleged Defects and in connection with repairs or replacements made by Builder in connection with this Limited Warranty, including the providing of reasonable access to the Home so that Builder may perform the services required under this Limited Warranty. Builder will provide homeowner at least 24 hours notice to commence repairs unless shorter timeframe is agreed upon by both parties in writing. Reasonable access includes without limitation, access to the Home during the time between the hours of 8:00 a.m. and 5:00 p.m. during weekdays. Failure of Owner to cooperate and to provide reasonable access to Builder will result in the extension of the repair/replacement time period provided in Section 6.02, and may relieve Builder of certain of Builder's obligations under this Limited Warranty.
- b. Failure of Owner to provide Builder with reasonable access to the home after resolution of dispute will WAIVE Builder's obligation to perform the required repairs under this Limited Warranty. BUILDER SHALL BE ALLOWED TO COMMENCE REPAIRS WITHIN 10-BUSINESS DAYS FROM RECEIPT OF THE NEUTRAL THIRD PARTY INSPECTION REPORT SCHEDULED BY ACES PER ARTICLE VII 7.01, or UPON RESOLUTION OF THE DISPUTE UNDER 7.02 OR 7.03 or the OWNER WILL WAIVE ANY BUILDER RESPONSIBILITY TO COMPLETE REPAIRS, UNLESS OTHERWISE MUTUALLY AGREED TO IN WRITING BY THE PARTIES.

**ARTICLE VII  
ADMINISTRATIVE INTERVENTION, MEDIATION AND ARBITRATION PROCEDURES**

**7.01 Administrative Intervention.** If any dispute or claim arises between Owner and Builder relating to the interpretation and/or implementation of this Limited Warranty or otherwise in connection with the construction of the Home, other improvements or the lot on which the Home is located, including any repairs made under this Limited Warranty (any such dispute or claim, and right or remedy therefore, collectively called a "Dispute"), Owner and Builder agree that they will each make every reasonable effort to settle the Dispute through prompt communication and participation in an Administrative Intervention.

- a. Administrative Intervention starts with a written request for ACES to schedule a third party inspection. This request can be made by either Owner or Builder. Both parties have the right to attend the inspection(s) or they may choose to designate a representative to attend on their behalf.
- b. The requesting party shall submit a written Request for Administrative Intervention to ACES. In order to avoid undue delay in the resolution process, the requesting/disputing party must submit the request in writing prior to the expiration of 90-days from builders receipt of the Request for Warranty Performance under Article VI. This Request for Warranty Performance shall include a list of alleged defect or defects and a copy of the written request for Warranty Performance sent to builder. Upon request, Owner shall supply ACES with copies of any reports, photographs, tests or other information relating to a potential defect. After the Request is received, ACES will schedule the Inspection.
- c. Cost of Inspection. The cost of the inspection will be borne equally between Owner and Builder and paid to ACES at least 48-hours prior to the scheduled inspection date. For warranty issues related to six year items, refer to procedures on pages 53 and 54.
- d. Inspection Report Furnished to Builder and Owner. After the inspection, the inspector will furnish a report to ACES citing responsibility for the disputed item(s) and citing the applicable Warranty provision and/or Performance Standard(s). ACES will submit the third party report to Builder and Owner in writing. Owner and Builder will make every reasonable effort to settle the Dispute based on the assignment of responsibility for the claim under the related Warranty and Performance Standards. For warranty issues related to six year items, refer to procedures on pages 53 and 54.
- e. Resolution of Dispute. If this report resolves the dispute, builder will have 60-days from the date the report is received to complete the required repairs in accordance with Article 6.02.
- f. Reasonable Access. Owner shall allow reasonable access to the builder for the completion of repairs in accordance with Art. VI 6.03.

**7.02 Mediation.**

- A. If Owner and Builder are unable to resolve a Dispute through the Administrative Intervention provided for in Section 7.01, Owner and Builder agree to submit the Dispute to non-binding mediation. Prior to the commencement of the mediation, Owner and Builder agree that they will implement the notice, inspection and settlement offer procedures pursuant to the provisions of the Residential Construction Liability Act, Chapter 27 of the Texas Property Code (such Act, as amended from time to time, called the "RCLA"). Accordingly, promptly after the Administrative Intervention, Owner shall give Builder notice of Owner's claim as required under RCLA, Owner shall provide Builder with all reports, bids, studies, photographs or other documentation which Owner believes substantiates the claim. Owner and Builder shall proceed to carry out the inspection and settlement offer procedures set forth in RCLA. At the conclusion of the inspection and settlement offer procedures set forth in RCLA, to the extent that Owner rejects or is deemed to have rejected Builder's offer of settlement or Builder fails to make a settlement offer, Owner and Builder shall proceed with the mediation procedures set forth below to resolve any remaining Dispute.



- B. Following completion of the RCLA notice, inspection and settlement offer procedures, either Owner or Builder shall notify ACES to assist in arranging the mediation. The mediation will be conducted by a mediator chosen by Owner and Builder from ACES' list of construction mediators. Each mediator on the list provided by ACES shall be an impartial third party meeting the requirements of Section 154.052 of the Texas Civil Practice and Remedies Code and shall have construction mediation experience. Owner and Builder will negotiate in good faith to select the mediator from the ACES construction mediator list. Selection of the mediator will be made within seven (7) days after ACES has provided the construction mediator list to Builder and Owner. The mediation shall occur promptly after the selection of the mediator, but in no event more than thirty (30) days after the selection of the mediator, unless extended by the consent of Owner and Builder. The costs of such mediation shall be shared equally by Owner and Builder. In the event the parties cannot agree on a mutually acceptable mediator, either party shall have the right to request that AAA (as defined below), acting through its regional vice president, having jurisdiction, appoint a qualified mediator. Owner and Builder, by mutual agreement, may establish an alternative procedure to select a mediator.
- C. Each party agrees to make a reasonable effort to resolve any Dispute at the mediation. Each party shall attend, the mediation or be represented by a person with authority and discretion to negotiate a complete resolution of the Dispute. The mediator shall determine the format and rules (which shall be consistent with this mediation provision) for the mediation, and the mediation session shall be private. The mediator will keep confidential all information learned in private caucus with any party, unless specifically authorized by such party to make disclosure of the information to the other party. The mediator shall be disqualified as a witness, consultant, expert or counsel for any party with respect to the Dispute. Mediation is a compromise negotiation, and the entire mediation process will be confidential. The conduct, statements, promises, offers, views and opinions shall not be discoverable or admissible in any legal proceeding for any purpose; provided, however, evidence otherwise discoverable or admissible is not excluded from discovery or admission as a result of its use in the mediation.
- D. The cost of mediation is to be borne equally by Owner and Builder.

### 7.03 Binding Arbitration.

- A. If a Dispute remains unresolved upon completion of the mediation provided for in Section 7.02, or if the dispute is otherwise in connection with the construction of the home, other improvements, the construction contract, or latent defects as described by the Section 5.0.1(b), such Dispute shall then be resolved by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (the "AAA, EXCEPT TO THE EXTENT THAT THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES CONFLICT WITH THE ARBITRATION AND DISPUTE RESOLUTION PROVISIONS SET FORTH IN THE CONTRACT DOCUMENTS GOVERNING THE PURCHASE OF THE HOME CONSTRUCTED BY BUILDER, WHICH WILL BE CONTROLLING. SUCH ARBITRATION WILL BE BINDING AND FINAL ON BOTH PARTIES PURSUANT TO BOTH STATE AND FEDERAL LAW. TO THE EXTENT ALLOWED BY LAW, OWNER AND BUILDER WAIVE THE RIGHT TO PURSUE ANY OTHER RESOLUTION OF A DISPUTE (INCLUDING A PROCEEDING IN ANY JUDICIAL FORUM) ARISING UNDER OR IN CONNECTION WITH THIS LIMITED WARRANTY, OR OTHERWISE RELATING TO THE CONSTRUCTION OF THE HOME, OTHER IMPROVEMENTS OR THE LOT ON WHICH THE HOME IS LOCATED. The award or decision rendered by the arbitrator may, however, be enforced in any court of competent jurisdiction.
- B. The arbitration hearing shall occur in a location determined to be appropriate by the arbitrator. The substantive laws of the State of Texas, and applicable federal law, shall apply with respect to the subject matter of the arbitration, with full effect given to the provisions of this Limited Warranty, including, without limitation, Section 7.05 below. The arbitrator shall have broad discretion to determine what matters and issues are properly included within the Disputes to be resolved by arbitration. This arbitration provision shall survive closing, breach or termination of this Limited Warranty.
- C. Under this arbitration provision, neither Owner nor Builder will have the right to litigate any claim in Court or to have a jury trial on that claim, or to engage in pre-arbitration discovery except as provided for in the arbitration rules. Further, Owner will not have the right to participate as a representative or member of any class of claimants pertaining to any claim subject to arbitration. The arbitrator's decision will generally be final and binding. Other rights that Owner would have if Owner went to Court may also not be available in arbitration. The arbitration provision applies to any claim, dispute or controversy (whether in contract, regulatory, tort, or otherwise, whether pre-existing, present or future and including constitutional, statutory, common law, intentional tort, equitable claims, and claims for additional or punitive damages) arising from or relating to the contract between Owner and Builder and this Limited Warranty, as well as any oral or written statements related to same.
- D. The cost of arbitration is to be borne equally by Owner and Builder.

### 7.04 General Provisions Regarding Dispute Resolution. Owner and Builder acknowledge that they have carefully read the dispute resolution provisions provided in this Limited Warranty. The provisions in this Limited Warranty requiring administrative intervention,



mediation, and arbitration of Disputes shall be specifically enforceable by any court of competent jurisdiction. The dispute resolution provisions contained in this Limited Warranty shall apply with respect to all disputes, claims, rights and obligations which arise out of or in connection with this Limited Warranty or in connection with the construction of the Home, other improvements or the lot on which the Home is located. The parties have agreed to be bound by these provisions in order to minimize the time and costs which would otherwise be the likely result if Disputes were submitted to a judicial forum. If either Owner or Builder shall seek a judicial forum in contravention of this Limited Warranty, such party shall, to the extent allowed by law, reimburse the other party or parties for their costs and expenses, including attorney's fees, incurred in seeking dismissal of such litigation, and the venue shall be in any court of competent jurisdiction in which Builder's principal office is located.

The parties agree that during the pendency of any dispute resolution, the Owner and its agents/representatives shall be obligated to act in such a way that does not exacerbate or increase the condition or potential damage to the Home resulting from any alleged Construction Defect.

7.05 Residential Construction Liability Act. Owner and Builder acknowledge that the RCLA applies to construction defects and that the RCLA applies with respect to this Limited Warranty and any disputes or claims regarding or in any way related to construction defects in connection with the Home, other improvements, the contract between Owner and Builder, and this Limited Warranty. Owner and Builder understand that the RCLA contains provisions to expedite the resolution of claims. OWNER AND BUILDER ALSO ACKNOWLEDGE AND AGREE THAT A REQUEST FOR WARRANTY PERFORMANCE SHALL NOT BE CONSTRUED AS A NOTICE OF CONSTRUCTION DEFECT UNDER RCLA, AND THAT ANY NOTICE UNDER RCLA SHALL BE SEPARATELY SENT TO BUILDER IN THE MANNER REQUIRED BY RCLA. Owner and Builder acknowledge that RCLA CONTROLS TO THE EXTENT OF ANY CONFLICT BETWEEN RCLA AND ANY OTHER LAW, INCLUDING THE DECEPTIVE TRADE PRACTICES CONSUMER PROTECTION ACT, SUBCHAPTER E, CHAPTER 17, TEXAS BUSINESS & COMMERCE CODE (the "DTPA"), as provided by the RCLA and DTPA.

**THE CONTRACT BETWEEN THE PARTIES AND THIS LIMITED WARRANTY ARE SUBJECT TO CHAPTER 27, PROPERTY CODE. THE PROVISIONS OF THAT CHAPTER MAY AFFECT YOUR RIGHT TO RECOVER DAMAGES ARISING FROM THE PERFORMANCE OF THE CONTRACT BETWEEN THE PARTIES AND THIS WARRANTY. IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT ARISING FROM THE PERFORMANCE OF THIS WARRANTY AND THE CONTRACT BETWEEN THE PARTIES AND THAT DEFECT HAS NOT BEEN CORRECTED THROUGH NORMAL WARRANTY SERVICE, YOU MUST PROVIDE NOTICE REGARDING THE DEFECT TO THE CONTRACTOR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, NO LATER THAN THE 60TH DAY BEFORE THE DATE YOU FILE SUIT TO RECOVER DAMAGES IN A COURT OF LAW. THE NOTICE MUST REFER TO CHAPTER 27, PROPERTY CODE, AND MUST DESCRIBE THE CONSTRUCTION DEFECT. IF REQUESTED BY THE CONTRACTOR, YOU MUST PROVIDE THE CONTRACTOR AN OPPORTUNITY TO INSPECT AND CURE THE DEFECT AS PROVIDED IN CHAPTER 27, PROPERTY CODE.**

7.06 Additional Documents. Owner and Builder shall execute such documents as may reasonably be required by the mediator or the arbitrator, including documents regarding the confidentiality of information and documents exchanged or produced.

7.07 Claim Limitation. THE PERIOD DURING WHICH OWNER SHALL HAVE THE RIGHT TO COMMENCE THE RESOLUTION PROCEDURES FOR ANY DISPUTE UNDER OR IN CONNECTION WITH THIS LIMITED WARRANTY SHALL BE ON OR BEFORE TWO YEARS AFTER OWNER HAS DISCOVERED OR, WITH THE EXERCISE OF REASONABLE DILIGENCE, SHOULD HAVE DISCOVERED THE CONSTRUCTION DEFECT OR OTHER CONDITION FORMING THE BASIS OF THE DISPUTE. This Section shall not be construed to modify Owner's obligation to submit a Request for Warranty Performance by the time specified in this Limited Warranty, nor to extend the express term of any warranty specified in Section 2.02.

## **ARTICLE VIII MISCELLANEOUS**

8.01 Method of Repair. Repairs required under this Limited Warranty shall be performed in the manner, and using such materials and methods, as are considered advisable by Builder and consistent with any Applicable Code or the Performance Standards of this Limited Warranty. In connection with the repair of a Defect, Builder will cosmetically repair, if necessary, components of the Home which have to be removed or altered in order to repair a Defect. However, repairs will be to the condition, not necessarily new, existing immediately prior to the Defect. See Section 8.02 below for additional provisions regarding repairs.

8.02 Finishing and Touch Up. Finished surfaces altered incident to required repairs will be finished or touched up to match surrounding areas as closely as practicable. However, an exact match is not required and cannot be guaranteed. In connection with the required repair of finish materials (such as paint and wallpaper), Builder will match the standard and grade, as closely as reasonably possible. Builder will attempt to match finishes, but will not be responsible for discontinued patterns or materials, or color or shade variations.

8.03 No Extension of Warranty. Steps taken to correct Defects shall not act to extend any term of warranty coverage under this Limited Warranty. Generally, any repairs or corrective actions by Builder will, however, be subject to the Performance Standards applicable to the repaired or corrected item. A CLAIM FOR A DEFECTIVE REPAIR SHALL BE MADE BY OWNER ON OR

BEFORE ONE YEAR AFTER THE REPAIR WAS COMPLETED. SUCH CLAIM WILL BE SUBJECT TO THE DISPUTE RESOLUTION PROVISIONS SET FORTH IN ARTICLE VII.

8.04 Assignment of Insurance Proceeds. If Builder repairs or replaces, or pays the, reasonable cost of repairing or replacing, any Defect covered by this Limited Warranty which is covered by any other insurance or warranty, Owner will assign the proceeds of such insurance or the rights under such warranties to Builder to the extent of the cost to Builder of the repair, replacement or payment in connection with such Defect. Nothing in this paragraph, however, shall require the Owner to file any claim with an insurance carrier.

8.05 Invalid Provisions. Should any provision of this Limited Warranty be deemed unenforceable, that determination will not affect the enforceability of the remaining provisions.

8.06 Applicable Law. This Limited Warranty shall be governed by the laws of the State of Texas, and as further provided in this Limited Warranty.

8.07 No Modification. This Limited Warranty may not be modified or amended in any manner except upon written amendment signed by both Builder and Owner.

8.08 Owner's Release of Builder. When Builder finishes repairing or replacing a Defect, or pays Owner the reasonable cost of repairing or replacing a Defect, and if requested by Builder, Owner agrees to sign a release of Builder's obligations with respect to the Defect. However, this section shall not prejudice Owner's rights for warranty service on the item repaired to the extent expressly provided in this Limited Warranty.

8.09 Parties Bound. This Limited Warranty shall be binding on Builder and any successor or assigns who expressly assumes Builder's obligations under this Limited Warranty, and Owner and Owner's heirs and personal representatives.

8.10 Certain Terms. Use of one gender in this Limited Warranty includes the other gender, and the use of the plural includes the singular, as may be appropriate.

8.11 No Other Agreements or Representations. This Limited Warranty contains the entire warranty obligations of Builder to Owner with respect to the matters referred to in this Limited Warranty, and supersedes any previous agreements, representations or communications relating to this Limited Warranty, express or implied, whether oral or written to the extent allowed by law. OWNER ACKNOWLEDGES THAT BUILDER HAS MADE NO REPRESENTATIONS, PROMISES, WARRANTIES OR AGREEMENTS, ORAL OR WRITTEN, WITH RESPECT TO THIS LIMITED WARRANTY OR ANY COMPONENT OF THE HOME OR OTHER IMPROVEMENTS, EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THIS LIMITED WARRANTY (INCLUDING ANY WRITTEN AMENDMENT OF THIS LIMITED WARRANTY, EXECUTED BY OWNER AND BUILDER AT THE TIME THIS LIMITED WARRANTY IS EXECUTED BY OWNER AND BUILDER, AND ATTACHED TO THIS LIMITED WARRANTY).

8.12 Notices. All notices required under this Limited Warranty must be in writing and be sent to the recipient's address shown in this Limited Warranty, or to any other address of which the recipient has previously notified the other party in writing.

8.13 Notification Regarding Subsequent Owner. To assign this Limited Warranty to a subsequent Owner, the purchasing Owner at the time of the sale shall execute the Warranty Transfer Form (i) containing the identification and signatures of the purchasing Owner, and (ii) containing a statement that the purchasing Owner wishes to be subject to the benefits and obligations of this Limited Warranty. This Limited Warranty shall transfer only to a subsequent Owner who is the named Owner on a recorded Deed and who occupies the Home as the Owner's primary residence. A non-occupying landlord is not eligible to be an Owner under Section 1.02. This Limited Warranty does NOT apply to Property and/or improvements that have been subject to a foreclosure under Texas law.

8.14 Builder's Failure to Meet Requirements of the ACES Builder Program. This Limited Warranty shall have no effect unless Builder is properly enrolled in the ACES Builder Program on the Warranty Commencement Date (or, if Section 8.15 is applicable, the date upon which Owner and Builder execute this Limited Warranty).

8.15 Limited Warranty Given in Connection with Existing Home. This Limited Warranty may be given by Builder in the situation in which this specific Limited Warranty is not referred to in the construction or purchase and sale agreement between Owner and Builder. If this situation applies to Owner and the Home referred to in this Limited Warranty, the Warranty Commencement Date is (i) if there was a sale and conveyance of the substantially completed Home from Builder to Owner, such date shall be the date of the closing of such sale and conveyance from Builder to the initial Owner, or (ii) if construction occurred on Owner's property, then such date shall be the earlier of the date of substantial completion of the Home or the date of the initial Owner's first occupancy of the Home. The purpose of this provision is to cause the Warranty Commencement Date to generally be the same date at which the Warranty Commencement Date would have occurred, had Owner and Builder provided for this specific Limited Warranty in the original construction or purchase and sale agreement.

8.16 Breach of this Limited Warranty. Failure of Builder to correct or to pay the reasonable cost to correct a Defect required under the provisions of this Limited Warranty shall be deemed to be a violation of this Limited Warranty; however, the mere occurrence of a Defect shall not be deemed to be a violation of this Limited Warranty.

8.17 No Modification Because of Builder's Action. No action by Builder to repair, replace or pay for an alleged deficiency in a component of the Home or other improvements which is not covered by this Limited Warranty, will operate to enlarge or modify Builder's obligations under this Limited Warranty.

## **ARTICLE IX PERFORMANCE STANDARDS**

9.01 Introduction. The Performance Standards and other provisions in this Article IX are an integral part of this Limited Warranty. This Article IX provides for certain responsibilities of Builder and Owner under this Limited Warranty. Builder does not have a responsibility of repair, replacement or payment in connection with some of the Performance Standards, as further provided in specific provisions of this Article IX.

9.02 Owner Maintenance Responsibilities. NOTE THAT VARIOUS COMPONENTS OF THE HOME AND THE LOT ON WHICH IT IS LOCATED REQUIRE PROPER AND CONTINUING MAINTENANCE BY OWNER. SOME SPECIFIC RESPONSIBILITIES OF OWNER ARE INCLUDED UNDER SPECIFIC TOPICS IN THIS ARTICLE IX. EXAMPLES OF OTHER OBLIGATIONS OF OWNER ARE SET FORTH ELSEWHERE IN THIS LIMITED WARRANTY.

9.03 Performance Standards and Description of Possible Deficiencies. The Performance Standards list specific items within separate areas of coverage. The Performance Standards are expressed in terms of performance criteria. For easy comprehension, the format is designed as follows:

- A. Possible Deficiency. A brief statement of a problem that may be encountered.
- B. Performance Standard. A Performance Standard relating to a Possible Deficiency.
- C. Responsibility. A statement of the corrective action required of Builder to repair the deficiency and/or a statement of Owner's maintenance responsibilities. Provisions regarding maintenance responsibilities of Owner with regard to possible deficiencies shall not be construed to limit or modify other responsibilities of Owner referred to elsewhere in this Limited Warranty.

**Subsections I, II and III below describe those items which are warranted (subject to the limitations specified in the Responsibility sections and other parts of this Limited Warranty) during the first year warranty period, through the second year warranty period, and through the six year warranty period, respectively. The commencement of warranty coverage for each warranty period is the Warranty Commencement Date. Any alleged damage due to construction activity must be reported to the Builder in writing prior to closing.**

### **SUBSECTION I. ITEMS WARRANTED DURING THE FIRST YEAR ONLY, RELATED PERFORMANCE STANDARDS AND RESPONSIBILITY**

#### **1. SITE WORK**

##### **A. Drainage/Grading.**

1.A.1 Possible Deficiency. Improper drainage of the area near the foundation of the Home.

Performance Standard. Prior to the Warranty Commencement Date, the necessary grades and swales shall have been established by Builder to insure proper drainage away from the Home. Standing or ponding water should not remain for extended periods in the immediate area of the foundation after a rain (generally no more than 24 hours). However, in swales which drain other areas, or in areas where sump pumps discharge, a longer period can be anticipated (generally no more than 48 hours). The possibility of standing water after an unusually heavy rainfall should be anticipated. No grading determination will be made while there is frost or snow on the ground, or while the ground is saturated. Yards shall have swales and grades that provide for proper drainage away from the Home in accordance with Code or other government regulations.

Responsibility. Builder is responsible only for initially establishing the proper grades and swales away from the Home in accordance with Code or other government regulations. Owner is responsible for maintaining such grades and swales once they have been properly established.

1.A.2 Possible Deficiency. Settling or sinking of soil shall not interfere with the drainage patterns of the lot or have a vertical depth of 6 inches or more.

Performance Standard. The Homeowner shall maintain the drainage pattern and protect the grading contours from erosion,

blockage, over-saturation or any other changes. The possibility of standing water, not immediately adjacent to the foundation but in the yard, after prolonged or an unusually heavy rainfall event should be anticipated by the Homeowner. Builder is only responsible for soils within 10 feet of the foundation

Responsibility. If the soil fails to meet the standard stated in this Subsection, the Builder shall take such action as is necessary to bring the variance within the standard.

## **B. Ground Settlement at the Foundation.**

### **1.B.1 Possible Deficiency. Settling of ground around foundation.**

Performance Standard. Settling or sinking of soil around Home's foundation should not interfere with water drainage away from the Home or have a vertical depth of 6 inches or more.

Responsibility. Upon request by Owner during the first year warranty period, Builder will fill settled areas affecting proper drainage away from Home. However, such repair will be done by Builder one time only during this warranty period. Owner is responsible for removal and replacement of shrubs or other landscaping affected by placement of such fill if not originally installed by Builder.

## **C. Raised Floor Foundations or Crawl Spaces.**

### **1.C.1 Possible Deficiency. Improper drainage for crawl space.**

Performance Standard. A crawl space shall be graded and drained properly to prevent surface run-off from accumulating deeper than 2 inches in areas 36 inches or larger in diameter. Exterior drainage around perimeter crawl space wall shall not allow water to accumulate within 10 feet of the foundation for more than 24 hours after a rain except in a sump that drains other areas.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard. The Homeowner shall not modify improperly the existing grade or allow water from an irrigation system to cause water to accumulate excessively under the foundation. The Homeowner shall not allow landscape plantings to interfere with proper drainage away from the foundation. The Homeowner shall not use crawl space for storage of any kind.

### **1.C.2 Possible Deficiency. Water enters through crawl space or basement floor.**

Performance Standard. Water shall not enter through the basement or crawl space wall or seep through the basement floor.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard. The Homeowner shall not modify improperly the existing grade or allow water from an irrigation system to cause water to accumulate excessively near the foundation. The Homeowner shall not allow landscape plantings to interfere with proper drainage away from the foundation.

## **2. CONCRETE**

### **A. Concrete Slab on Grade (Home and Attached Garage Foundations).**

#### **2.A.1 Possible Deficiency. Concrete foundation cracks.**

Performance Standard. Shrinkage and curing cracks are cosmetic and are not unusual in concrete foundations, and can be expected, due to normal drying and settling. Foundation cracks should not exceed 1/8 inch in width or 1/16 inch in vertical displacement. This Performance Standard is not intended to mean, nor shall it be construed to mean, that a foundation crack exceeding 1/8 inch in width or 1/16 inch in vertical displacement is necessarily a Major Structural Defect.

Responsibility. Owner is responsible for maintaining yard grading so surface water drains away from the foundation of the Home. Owner must keep the soil uniformly moist around the foundation's perimeter, but not saturated, and Owner will take precautions in adding plants or trees near the foundation that may have an adverse effect due to excessive watering or drying of one portion of the foundation's perimeter. Failure to maintain uniform moisture content around the foundation may relieve Builder of responsibility. If not due to an act or omission of Owner, Builder is responsible for repairing cracks exceeding 1/8 inch in width or 1/16 inch in vertical displacement, by patching or other methods as determined by Builder.

#### **2.A.2 Possible Deficiency. Cracks in concrete slab on grade floors under finish flooring.**



Performance Standard. Cracks should not rupture the finish flooring material.

Responsibility. Owner's responsibilities regarding grading and soil moisture are addressed in Subsection 2.A.1 above. If not due to an Owner act or omission, Builder is responsible for repairing cracks that rupture the finish flooring so that they are not readily apparent when the finish flooring is in place. See also Subsection 7 below regarding Finishes.

2.A.3 Possible Deficiency. Uneven concrete floors/slabs.

Performance Standard. Concrete floor slabs in living spaces that are not otherwise designed with a slope for drainage, such as a laundry room, shall not have excessive pits, depressions or unevenness equal to or exceeding 3/8 inch in any 32 inches and shall not have separations or cracks that equal or exceed 1/8 inch in width or 1/16 inch in vertical displacement. If a concrete floor slab in a living space fails to meet the standard stated in this paragraph, the Builder shall take such action as is necessary to bring the variance within that standard.

Responsibility. Owner's responsibilities regarding grading and soil moisture are addressed in Subsection 2.A.1 above. Builder will correct or repair to meet the Performance Standard.

2.A.4 Possible Deficiency. Varying or unsatisfactory finish texture, pitting, scaling or spalling of concrete work.

Performance Standard. None; cosmetic appearance of concrete surfaces that do not constitute a Major Structural Defect are specifically not warranted.

Responsibility. Builder has no responsibility; such condition is not covered by this Limited Warranty.

2.A.5 Possible Deficiency. Cracking of basement floor.

Performance Standard. Minor cracks in concrete basement floors are normal. Cracks should not exceed 3/16 in width or 1/8 inch in vertical displacement.

Responsibility. Builder will repair cracks exceeding the Performance Standard by surface patching or other methods as determined by Builder.

2.A.6 Possible Deficiency. Separation in expansion joint in concrete slab.

Performance Standard. A separation in an expansion joint in a concrete slab shall not equal or exceed 1/4 inch vertically or 1 inch horizontally from an adjoining section because of settlement, heaving, or separation.

Responsibility. Builder shall take such action as is necessary to bring the variance within the standard.

2.A.7 Possible Deficiency. Slab has protruding objects, such as nail, rebar, or wire mesh.

Performance Standard. Concrete slabs shall not have protruding objects, such as nail, rebar, or wire mesh.

Responsibility. Builder shall take such action as necessary to bring the variance within the stated standard.

**B. Concrete Flatwork - Includes Driveways, Walkways, Steps, Stoops and Patios that are Installed by Builder and are Not Part of the Home's Foundation.**

2.B.1 Possible Deficiency. Flatwork cracks and/or heaving of flatwork.

Performance Standard. Shrinkage and curing cracks and/or heaving are not unusual in concrete flatwork and can be expected. Shall not exceed 1/4 inch vertical displacement or horizontal separation due to construction activities. Builder should be notified in writing prior to closing.

Responsibility. If an exterior slab is cracked, separated or displaced beyond the limitations of the performance standard, the Builder shall take action to bring the crack within the acceptable standard. However, the Homeowner shall not over-water the surrounding soil, allow the surrounding soil to become excessively dry, or allow heavy equipment to be placed on the concrete.

Performance Standard. Exterior concrete shall not contain a protruding object, such as a nail, rebar or wire mesh. If an exterior concrete surface has a protruding object, the Builder shall take such action as is necessary to bring the variance within the standard stated in this paragraph.



Performance Standard. Concrete corners or edges shall not be damaged excessively due to construction activities. If a concrete corner or edge is damaged excessively, the Builder shall take such action as is necessary to bring the variance within the standard stated in this paragraph. Builder should be notified in writing prior to closing.

2.B.2 Possible Deficiency. Deterioration of wooden flatwork expansion joints.

Performance Standard. None.

Responsibility. Builder has no responsibility; such condition is not covered by this Limited Warranty.

2.B.3 Possible Deficiency. Separation in an expansion joint in an exterior concrete.

Performance Standard. A separation in an expansion joint in an exterior concrete shall not equal or exceed 1/2 inch vertically from an adjoining section or 1 inch horizontally, including joint material.

Responsibility. Builder shall take such action as is necessary to bring the variance within the standard.

2.B.4 Possible Deficiency. Separation in a control joint.

Performance Standard. A separation in a control joint shall not equal or exceed 1/4 inch vertically or 1/2 inch horizontally from an adjoining section.

Responsibility. Builder shall take action as is necessary to bring the variance within the stated standard.

2.B.5 Possible Deficiency. Varying or unsatisfactory finish texture, pitting, scaling or spalling of concrete flatwork.

Performance Standard. None; cosmetic appearance of concrete flatwork surfaces are specifically excluded from coverage under this Limited Warranty.

Responsibility. Builder has no responsibility; such condition is not covered by this Limited Warranty. The Homeowner shall not over-water surrounding soil or allow the surrounding soil to become excessively dry. The Homeowner shall not allow heavy equipment to be placed on the concrete.

2.B.6 Possible Deficiency. Standing water on concrete flatwork.

Performance Standard. Water may drain across concrete flatwork. The possibility of water ponding on flatwork after a rain can be anticipated. Water should not pond more than 1/2 inch deep when measured 24 hours after rain. Determination shall not be made when the ground is saturated.

Responsibility. Owner is responsible for maintaining the drainage pattern as established by Builder, and not causing flatwork to hold water by altering drainage by the addition of soil, sod, landscaping, or other improvements. Failure to maintain established drainage may relieve Builder of responsibility. If not due to an Owner act or omission, Builder will take corrective action to assure drainage of flatwork to meet the Performance Standard.

2.B.7 Possible Deficiency. Exterior surface is slippery.

Performance Standard. The finish on exterior concrete shall not be excessively smooth, so that the surface becomes slippery.

Responsibility. Builder shall take action as is necessary to bring the variance within the stated standard. A concrete surface that has been designated to be smooth is excluded from this performance standard.

2.B.8 Possible Deficiency. Concrete stair steepness and dimensions.

Performance Standard. Concrete stair steepness and dimensions, such as tread width, riser height, landing size, and stair way width shall comply with the Code.

Responsibility. Builder shall take action as is necessary to bring the variance within the standard for Code compliance.

2.B.9 Possible Deficiency. Loose handrails.

Performance Standard. Handrails shall remain securely attached to concrete stairs.

Responsibility. Builder shall take such actions necessary as to attach the rails securely.

2.B.10 Possible Deficiency. Concrete stairs or stoops settle or heave.

Performance Standard. Concrete stairs or stoops shall not settle or heave in an amount equal to or exceeding 3/8 inch. Concrete stairs or stoops shall not separate from the Home in an amount equal to or exceeding 1 inch, including joint material.

Responsibility. Builder shall take such actions necessary to bring the variance within the stated standard.

2.B.11 Possible Deficiency. Driveway with a negative slope.

Performance Standard. A driveway will not have a negative slope unless due to site conditions, the lot is below the road.

Responsibility. If a driveway has a negative slope due to site conditions, it shall have swales or drains properly installed to prevent water from entering the garage. If a driveway has a negative slope that allows water to enter the garage in normal weather conditions, the Builder shall take such action as is necessary to prevent water from entering the garage due to driveway slope.

**C. Slab (Detached Garage).**

2.C.1 Possible Deficiency. Concrete foundation cracks.

Performance Standard. Concrete floor slabs in detached garages, carports or porte-cocheres shall not have excessive pits, depressions, deterioration or unevenness. Separations or cracks in these slabs shall not equal or exceed 3/16 inch in width, except at expansion joints, or 1/8 inch in vertical displacement. If a concrete floor slab in a detached garage, carport or porte-cochere does not meet the standards stated in this paragraph, the Builder shall take such action as is necessary to bring the variance within the standard.

Performance Standard. Plaster adhesive over concrete slab underpinning shall not flake off more than 1 square foot in one spot within 36 square inches or more than 3 feet over the entire surface of the Home.

Responsibility. Owner is responsible for maintaining yard grading so surface water drains away from the foundation of the detached garage. Owner must keep the soil uniformly moist around the foundation's perimeter, but not saturated, and Owner will take precautions in adding plants or trees near the foundation that may have an adverse effect due to excessive watering or drying of one portion of the foundation's perimeter. Failure to maintain uniform moisture content around the foundation may relieve Builder of responsibility. Builder will repair cracks exceeding the Performance Standard by surface patching or other methods as determined by Builder.

**3. MASONRY**

3.1 Possible Deficiency. Cracks in masonry walls or masonry veneer walls.

Performance Standard. Cracks due to shrinkage are common in mortar joints or brick in masonry construction. Cracks should not exceed 1/8 inch in width.

Responsibility. Builder will repair cracks in excess of Performance Standard by pointing or patching. Builder will not be responsible for color variations between the old and new mortar.

3.2 Possible Deficiency. Masonry basement or foundation wall cracks.

Performance Standard. Cracks due to shrinkage are not unusual in mortar joints of masonry foundation walls. Cracks should not be greater than 1/8 inch in width.

Responsibility. Builder will repair cracks in excess of 1/8 inch in width by pointing or patching. Builder will not be responsible for color variations between the old and new mortar.

3.3 Possible Deficiency. Rust stains develop on door or window lintel areas.

Performance Standard. Lintels are manufactured from steel products, which develop rust over time due to exposure to air and/or moisture.

Responsibility. Owner is responsible for maintaining paint on lintels. Builder has no responsibility; such conditions are not covered by this Limited Warranty.

3.4 Possible Deficiency. Masonry wall bows.

Performance Standard. A masonry wall shall not bow in an amount equal to or in excess of 1 inch when measured from the base to the top of the wall.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard. The standard does not apply to natural stone products.

3.5 Possible Deficiency. Masonry unit or mortar is broken/loose.

Performance Standard. A masonry unit or mortar shall not be broken or loose.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

3.6 Possible Deficiency. Masonry unit or mortar deteriorates.

Performance Standard. A masonry unit or mortar shall not deteriorate.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

3.7 Possible Deficiency. Dirt, stains, or debris on masonry from construction activities.

Performance Standard. Masonry shall not have dirt, stain, or debris on the surface due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

3.8 Possible Deficiency. Gap between masonry and adjacent material.

Performance Standard. A gap between masonry and adjacent material shall not equal or exceed 1/4 inch in average width and all such gaps shall be caulked.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

3.9 Possible Deficiency. Mortar obstructs functional opening.

Performance Standard. Mortar shall not obstruct a functional opening, such as a vent, weep hole, or plumbing cleanout.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard. The Homeowner shall not put any material into weep holes. Weep holes are an integral part of the wall drainage system and must remain unobstructed.

## 4. CARPENTRY

### A. Framing.

4.A.1 Possible Deficiency. Subfloor appears loose or squeaks.

Performance Standard. Floor squeaks or loose subfloor are common to new construction, and a squeak proof floor cannot be guaranteed. Under normal use, the floor should not make excessive popping or squeaking noises. Subflooring shall not have excessive humps, ridges, depressions, or slope in any room that exceeds 3/8 inch in any 32 inch direction.

Responsibility. Builder will correct the condition only if caused by an improperly nailed subfloor. Builder will repair such condition one time only during the first year warranty period. Further, Builder has no obligation to repair a floor squeak unless Owner identifies the specific location of the condition.

4.A.2 Possible Deficiency. Bowed walls.

Performance Standard. All interior and exterior walls have slight variances on their finished surfaces. Bowing of walls should not detract from or blemish the finish surface of the walls. Walls should not bow more than 1/4 inch out of line within any 32 inch horizontal measurement as measured from the center of the bow or depression or 1/2 inch within any 8 foot vertical measurement.

Responsibility. Builder will repair to meet Performance Standard by a method determined by Builder.

4.A.3 Possible Deficiency. Walls out of plumb.

Performance Standard. Walls should be level, plumb and square to all adjoining openings or other walls within 1/4 inch in any 32 inch measurement.

Responsibility. Builder will repair to meet the Performance Standard by a method or methods determined by Builder.

## **B. Finish Carpentry (Interior).**

### 4.B.1 Possible Deficiency. Open joints in interior trim.

Performance Standard. Joints in moldings or joints between moldings and adjacent surfaces should not result in open joints exceeding 1/8 inch in width.

Responsibility. Builder will repair open joints not meeting the Performance Standard one time only during the first year warranty period. Caulking is an acceptable method of repair.

### 4.B.2 Possible Deficiency. Crack in beam or post.

Performance Standard. A crack in a beam or post shall not equal or exceed 1/2 inch in width at any point along the length of the crack.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

### 4.B.3 Possible Deficiency. Non-structural post/beam with warp or twist.

Performance Standard. A non-structural post or beam shall not have a warp or twist equal or exceeding 1 inch in an 8 foot length. Warping or twisting shall not damage beam pocket.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

## **C. Finish Carpentry (Exterior).**

### 4.C.1 Possible Deficiency. Open joints between exterior trim elements, including siding and masonry.

Performance Standard. A joint between two trim pieces shall not have a separation that leaks or is equal to or exceeding 1/4 inch in width and all trim joints shall be caulked.

Responsibility. Builder will repair open joints not meeting the Performance Standard one time only during the first year warranty period. Caulking is an acceptable method of repair.

### 4.C.2 Performance Standard. Exterior trim and eave block shall not warp in an amount equal to or exceeding 1/2 inch in an 8 foot run.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard one time only during the first year.

### 4.C.3 Performance Standard. Exterior trim and eave block shall not cup in an amount equal to or in excess of a 1/4 inch in a 6 foot run.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard one time only during the first year.

### 4.C.4 Performance Standard. Exterior trim and eave block shall not have cracks or splits equal to or in excess of 1/8 inch in average width.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard one time only during the first year.

### 4.C.5 Performance Standard. Trim shall not have nails that completely protrude through the finished surface of the trim but nail heads may be visible on some products.

(A) If a nail protrudes from the finished surface of the trim, the Builder shall take such action as is necessary to bring the variance within the standard within the standard stated in paragraph 5 of this Subsection.

- (B) Some products specify that the nails be flush with the trim surface. When these products are used, visible nail heads are not considered protruding nails as long as they are painted over.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard one time only during the first year.

4.C.6 Performance Standard. Trim shall not have a nail stain.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard one time only during the first year.

## **D. Stairs.**

4.D.1 Possible Deficiency. Steepness or dimensions of stairs.

Performance Standard. Stair steepness and dimensions such as tread width, riser height, landing size and stairway width, shall comply with the Code.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

4.D.2 Possible Deficiency. Squeaking or popping of stairs.

Performance Standard. Under normal residential use, stairs shall not make excessive squeaking or popping sounds.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

## **E. Interior Trim.**

4.E.1 Possible Deficiency. Joint separation in interior trim.

Performance Standard. An interior trim joint separation shall not equal or exceed 1/8 inch in width or shall not separate from adjacent surfaces equal to or in excess of 1/8 inch and all joints shall be caulked or puttied.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

4.E.2 Possible Deficiency. Surface damage of interior trim.

Performance Standard. The interior trim shall not have surface damage, such as scratches, chips, dents, gouges, splits, cracks, warping, or cupping that is visible from a distance of 6 feet or more in normal light due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

4.E.3 Possible Deficiency. Hammer marks on interior trim.

Performance Standard. A hammer mark on trim shall not be visible from a distance of 6 feet or more when viewed in normal light.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

4.E.4 Possible Deficiency. Nail hole in interior trim.

Performance Standard. A nail or nail hole in interior trim shall not be visible from a distance of 6 feet or more when viewed in normal light.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

## **5. PROTECTION FROM MOISTURE AND TEMPERATURE CHANGES**

### **A. Insulation.**

5.A.1 Possible Deficiency. Insufficient insulation.

Performance Standard. Prior to the Warranty Commencement Date, Builder will have installed insulation in accordance with



applicable Code requirements and to the specifications in the purchase and sale contract between Owner and Builder.

Responsibility. Builder will install insulation to meet the Performance Standard.

5.A.2 Possible Deficiency. Blown insulation settles and reduces the R-value.

Performance Standard. Blown insulation in the attic shall not displace or settle so that it reduces the R-value below manufacturer's specifications, the building plans, and the Code.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

5.A.3 Possible Deficiency. Gap between insulation batts; gap between insulation batts and framing member.

Performance Standard. A gap equal to or in excess of 1/4 inch between insulation batts or a gap between insulation batts and framing members is not permitted.

Responsibility. If a gap equal to or greater than 1/4 inch occurs between the insulation batts or a gap occurs between an insulation batt and a framing member, the Builder shall take such action as is necessary to bring the variance within the stated standard.

5.A.4 Possible Deficiency. Insulation blocks soffit vent.

Performance Standard. Insulation shall not cover or block a soffit vent to the extent that it blocks the free flow of air.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

## **B. Louvers and Vents.**

5.B.1 Possible Deficiency. Louvers, vents, or other installed attic openings leak.

Performance Standard. A vent, louver, or other installed attic opening shall not leak. Builder is not responsible for leaks caused by extreme weather.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

## **C. Roofing, Rooftop Decks, Siding and Windows.**

5.C.1 Possible Deficiency. Roof or flashing leaks.

Performance Standard. Roofs or flashing should not leak under normally anticipated conditions, but flashing should normally prevent water penetration. Roofs should not leak, but leaks caused by ice or snow build up, or wind driven rain, are not covered by this Limited Warranty.

Responsibility. Owner must, from time to time, replace caulk/mastic that is used to seal flashing to other materials. Owner will keep leaves and debris off of the roof and out of gutters and downspouts. Builder will repair verified roof or flashing leaks caused by normally anticipated conditions. Normally anticipated conditions do not include tropical storms, hurricanes, tornadoes and other similar severe weather. Leaks due to wind driven rain or caused by ice or snow build up or Owner action or negligence, are not covered by this Limited Warranty. In the event of a leak which is not the Builder's responsibility, Owner's Homeowner Insurance Policy may cover such claim.

5.C.2 Possible Deficiency. Roofing appearance conditions, including; without limitation, shingles not laying flat, roof wood panel outlines visible and mildew on shingles.

Performance Standard. The cosmetic appearance of applied roofing materials is not a warranted condition under this Limited Warranty, except roof tile cracks that detract from the overall appearance of the house (not caused by extreme weather conditions). Roofing materials in a humid climate may mildew.

Responsibility. Builder is responsible for installing roofing according to manufacturer guidelines. Builder has no responsibility for the cosmetic appearance of roofing unless there are excessive roof tile cracks that detract from the overall appearance of the house (not caused by extreme weather conditions); otherwise such a condition is not covered by this Limited Warranty. Homeowner is responsible for periodically maintaining the roof including build up of debris, snow or ice. The Homeowner should take action to prevent downspouts and clogging of gutters.

5.C.3 Possible Deficiency. Standing water on flat roof.

Performance Standard. Water should drain from flat roof, except for minor ponding following rainfall or where the roof is specifically designed for water retention.

Responsibility. Builder will take corrective action to assure proper drainage of roof, in accordance with the Performance Standard.

5.C.4 Possible Deficiency. Shingles, tiles, or metal fall off.

Performance Standard. Shingles, tiles, metal or other roofing materials shall not become loose or fall off in wind speeds less than those set forth in the manufacturer's specifications.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

5.C.5 Possible Deficiency. Skylight leaks.

Performance Standard. A skylight shall not leak.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

5.C.6 Possible Deficiency. Water fails to drain on built-up roof.

Performance Standard. Water shall drain from a built-up roof within two hours after cessation of rainfall. The standard does not require that the roof dry completely within the time period.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

5.C.7 Possible Deficiency. Pipes or vents designed to penetrate the roof are without water diversion methods.

Performance Standard. A pipe, vent, fireplace, or other object designed to penetrate the roof shall not be located within the area of roof valley centerline without proper "cricketing" or other Code-approved water diversion methods.

Responsibility. If a pipe, vent, fireplace or other object designated to penetrate the roof is not correctly located as provided in the performance standard, the Builder shall take such action as is necessary to bring the variance within the standard.

5.C.8 Possible Deficiency. Exterior moisture barrier on roof allows moisture penetration.

Performance Standard. The exterior moisture barrier of the roof shall not allow moisture penetration.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard. The Homeowner shall not make penetrations through exterior moisture barrier of the roof.

5.C.9 Possible Deficiency. Delamination of veneer siding or joint separation.

Performance Standard. All siding will be installed according to manufacturer specifications. Trim Joint separations should be less than 1/4 inch and all joints should be caulked.

Responsibility. Owner must protect siding from damage, including water from sprinklers, and will maintain caulking during the life of the Home. Builder will repair or replace siding to meet the Performance Standard unless caused by Owner's failure to maintain siding properly. Repaired area may not match in color and/or texture. For surfaces of the new materials requiring paint, Builder will paint the new materials only. Newly painted surface may not match original surface in color

5.C. 10 Possible Deficiency. Siding misaligned, unevenly spaced, gapped or bowed, nail protrusion/stains, siding knots, cupping, cracks/splits.

Performance Standard.

- (1) Exterior siding shall be equally spaced and properly aligned. Horizontal siding shall not equal or exceed 1/2 inch off parallel with the bottom course or 1/4 inch off parallel with the adjacent course from corner to corner.
- (2) Siding shall not gap or bow. A siding end joint shall not have a gap that leaks or that equals or exceeds 1/4 inch in width. Siding end joint gaps shall be caulked. A bow in siding shall not equal or exceed 3/8 inch out of line in a

32 inch measurement.

- (3) Nails shall not protrude from the finished surface of siding but nail heads may be visible on some products where allowed by the manufacturer's specifications.
- (4) Siding shall not have a nail stain.
- (5) Siding and siding knots shall not become loose or fall off.
- (6) Siding shall not delaminate.
- (7) Siding shall not cup in an amount equal to or exceeding 1/4 inch in a 6 foot run.
- (8) Siding shall not have cracks or splits that equal or exceed 1/8 inch in width.

Responsibility 5.C.10 (items 1-8). Builder shall take such action as is necessary to bring the variance within the stated standard one time only during the first year.

5.C.11 Possible Deficiency. Exterior sheathing delaminates or swells.

Performance Standard. Exterior sheathing shall not delaminate or swell.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard. Homeowner shall not make penetrations in the exterior finish of a wall that allow moisture to come in contact with the exterior sheathing.

5.C.12 Possible Deficiency. Window leaks.

Performance Standard. Window leaks should not occur under normally anticipated conditions or allow excessive accumulation of moisture inside a door or window. Normally anticipated conditions do not include tropical storms, hurricanes, tornadoes or other similar severe weather. Leaks caused by wind driven rain are excluded from coverage under this Limited Warranty.

Responsibility. Owner will maintain weather stripping and caulking, as caulking materials expand and contract due to temperature variations and difference in materials. Builder will repair any verified window leaks caused by normally anticipated conditions (which do not include tropical storms, hurricanes, tornadoes or other similar severe weather). Leaks due to wind driven rain or caused by ice build-up or Owner action or negligence are excluded from coverage under this Limited Warranty. In the event of a leak which is not the Builder's responsibility, Owner's Homeowner Insurance Policy may cover such claim.

5.C.13 Possible Deficiency. Ice build-up on roof.

Performance Standard. Ice build-up is likely to occur at the eaves of a roof during prolonged cold spells. Build up occurs when snow and ice accumulate and gutters and downspouts freeze.

Responsibility. Prevention of ice build-up on the roof is an Owner maintenance item. Builder has no responsibility; such condition is not covered by this Limited Warranty.

## **D. Gutters and Downspouts.**

5.D.1 Possible Deficiency. Gutters and/or downspouts leak.

Performance Standard. Gutters and downspouts should not leak, but gutters may overflow during heavy rain.

Responsibility. Owner must keep gutters and downspouts free of leaves and debris, which could cause overflow and damage to the gutters. Builder will repair leaks, if not due to Owner failure to keep gutters and downspouts free of leaves and debris or due to Owner negligence, such as placing ladders against gutters or downspouts.

5.D.2 Possible Deficiency. Water standing in gutters.

Performance Standard. When gutter is unobstructed by leaves and debris, the water should not exceed 1/2 inch in depth after the cessation of a rainfall. Small amounts of water may stand in certain sections of gutters, and should not be a cause of concern. Gutters are installed with a very slight angle to facilitate draining; "out of level" is not a condition covered under this Limited Warranty.

Responsibility. Builder will correct to meet Performance Standard unless standing water is due to extreme weather conditions. Homeowner shall maintain and clean gutters and downspouts to prevent build-up of debris or other obstructions.

## **E. Sealants.**

### 5.E.1 Possible Deficiency. Leaks due to inadequate caulking.

Performance Standard. Joints and cracks should be properly caulked to prevent the entry of water. Ceramic tile, cultured marble and similar materials should be caulked to adjoining surfaces to prevent water penetration. This Performance Standard does not apply to, and Builder has no responsibility for leaks caused by, wind driven rain, or water which is forcibly applied to the Home.

Responsibility. Caulk, even though properly installed, will shrink. Owner must maintain caulking during the life of the Home. Builder will repair and/or caulk joints or cracks to meet the Performance Standard one time only during the first year warranty period.

### 5.E.2 Possible Deficiency. Exterior moisture barrier allows accumulation of moisture inside the barrier.

Performance Standard. An exterior moisture barrier shall not allow an accumulation of moisture inside the barrier.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard. Homeowner shall not make penetrations through the exterior moisture barrier that permit the introduction of moisture inside the barrier.

## **F. Water Leaks in Basement.**

### 5.F.1 Possible Deficiency. Leaks in basement.

Performance Standard. Leaks should not result in actual trickling of water. However, leaks caused by improper landscaping or failure to maintain proper grades are not covered by this Limited Warranty. Dampness of the walls or floors in the basement may occur in new construction and is not a deficiency.

Responsibility. Owner will maintain proper grades, and will landscape in such a manner as to prevent uneven watering. Builder will take such action as necessary to correct basement leaks causing trickling water except where the cause is determined to result from Owner action or negligence.

## **6. DOORS AND WINDOWS**

### **A. Doors Generally.**

#### 6.A.1 Possible Deficiency. Sliding/screen doors on track.

Performance Standard. A sliding door and a door screen shall stay on track.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard. The Homeowner shall clean and lubricate sliding door and door screen hardware as necessary.

#### 6.A.2 Possible Deficiency. Inadequate spacing between interior door and floor covering.

Performance Standard. The spacing between an interior door bottom and original floor covering, except closet doors, shall not exceed 1½ inches and shall be at least 1/2 inch. The spacing between an interior closet door bottom and original floor covering shall not exceed 2 inches and shall be at least 1/2 inch.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

#### 6.A.3 Possible Deficiency. Door delaminates.

Performance Standard. A door shall not delaminate.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

#### 6.A.4 Possible Deficiency. Door panel splits.

Performance Standard. A door panel shall not split so that light from the other side is visible.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

6.A.5 Possible Deficiency. Door binds.

Performance Standard. A door shall open and close without binding.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

6.A.6 Possible Deficiency. Door warps.

Performance Standard. A door shall not warp to the extent that it becomes inoperable. A warp in a door panel shall not equal or exceed 1/4 inch from original dimension measured vertically, horizontally, or diagonally from corner to corner.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

6.A.7 Possible Deficiency. Improper fit of storm door.

Performance Standard. A storm door shall open and close properly and shall fit properly.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

6.A.8 Possible Deficiency. Movement of the door.

Performance Standard. When a door is placed in an open position, it shall remain in the position it was placed, unless the movement is caused by airflow.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

6.A.9 Possible Deficiency. Dented/scratched metal door.

Performance Standard. A metal door shall not be dented or scratched due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

## **B. Wood and Plastic Doors.**

6.B.1 Possible Deficiency. Warpage of exterior doors.

Performance Standard. Exterior doors will warp to some degree due to moisture and temperature differential on inside and outside surfaces. However, they should not, if properly maintained, warp to the extent that they become inoperative or cease to be weather resistant or exceed National Woodwork Manufacturers Association Standards (less than 1/4 inch, measured vertically, horizontally or diagonally from corner to corner.)

Responsibility. Owner is responsible for regular, necessary maintenance of exterior door finishes. Builder is responsible for replacement of a door that fails to meet National Woodwork Manufacturers Association Standards. (For maintenance information, see provisions in Subsection 7.G.3 below.)

6.B.2 Possible Deficiency. Warpage of interior and closet doors.

Performance Standard. Interior doors (full openings) should not warp in excess of National Woodwork Manufacturers Association Standards (1/4 inch, measured vertically, horizontally or diagonally from corner to corner).

Responsibility. Builder will correct, refinish or replace, at Builder's option, doors not meeting the Performance Standard, to match existing doors as nearly as reasonably possible.

6.B.3 Possible Deficiency. Shrinkage of door insert panels shows raw wood edges.

Performance Standard. Panels will shrink and expand and may expose unpainted surface.

Responsibility. Builder has no responsibility; such condition is not covered by this Limited Warranty.



## **C. Garage Doors.**

6.C.1 Possible Deficiency. Garage doors fail to operate properly, under normal use.

Performance Standard. Under normal use, garage doors should operate properly: remain in place in any open position and operate smoothly on its track.

Responsibility. Builder will correct or adjust garage doors not operating properly under normal use, except where the cause is determined to result from Owner action or negligence. However, Builder is not responsible if Owner installs a garage door opener system.

6.C.2 Possible Deficiency. Garage doors allow water entry.

Performance Standard. Garage doors will be installed as recommended by the manufacturer. Some entrance of water and snow can be expected. The gap under the garage door shall not exceed 1/2 inch in width or allow excessive water intrusion.

Responsibility. Builder will adjust or correct garage doors to meet the Performance Standard.

6.C.3 Possible Deficiency. Metal garage door scratched.

Performance Standard. A metal garage door shall not be dented or scratched due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

6.C.4 Possible Deficiency. Operation of garage door opener.

Performance Standard. A garage door opener, if provided, shall operate properly in accordance with the manufacturer's specifications.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard. Homeowner shall maintain tracks, rollers, and chains and shall not block or bump sensors to electric garage door openers.

6.C.5 Possible Deficiency. Operation of garage door spring.

Performance Standard. A garage door spring shall operate properly and shall not lose tension, break, or be undersized.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

6.C.6 Possible Deficiency. Position of garage door.

Performance Standard. A garage door shall remain in place at any open position, operate smoothly, and not be off track.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

## **D. Both Doors and Windows.**

6.D.1 Possible Deficiency. Infiltration of air/dust.

Performance Standard. When closed a door or window shall not allow excessive infiltration of air or dust.

Responsibility. Builder shall take such action as is necessary to bring the variance to the stated standard.

6.D.2 Possible Deficiency. Accumulation of moisture inside the door or window.

Performance Standard. When closed, a door or window shall not allow excessive accumulation of moisture inside the door or window. Most door and window assemblies are designed to open, close, and weep moisture-allow condensation or minor penetration by the elements to drain outside.

Responsibility. Builder shall take such action as is necessary to bring the variance to the stated standard. The Homeowner

shall keep weep holes on windows and doors free of dirt build up and debris, thereby allowing water to drain properly.

6.D.3 Possible Deficiency. Window screen with improper fit.

Performance Standard. A screen in a door or window shall fit properly and shall not be torn or damaged due to construction activities. A screen shall not have a gap equal to or exceeding 1/4 inch between the screen frame and the window frame.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

6.D.4 Possible Deficiency. Latches/locks are loose.

Performance Standard. A door or window latch or lock shall close securely and shall not be loose or rattle.

Responsibility. Builder shall take such action as is necessary to bring the variance to the stated standard.

6.D.5 Possible Deficiency. Paint/stain of door or window.

Performance Standard. A door or window shall be painted or stained according to the manufacturer's specifications.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

6.D.6 Possible Deficiency. Broken or scratched glass.

Performance Standard. Glass in doors or windows shall not be broken or scratched due to construction activities or improper installation.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard if deficiency was discovered and noted during final walk through..

**E. Wood, Plastic and Metal Windows.**

6.E.1 Possible Deficiency. Movement in double hung windows.

Performance Standard. A double hung window shall not move more than 2 inches when put in an open position.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

6.E.2 Possible Deficiency. Malfunction of windows.

Performance Standard. Windows should operate with reasonable ease, as designed, but there is no distinction for different types of windows.

Responsibility. Owner will keep tracks and rollers lubricated, adjusted, and clean. Builder will correct or repair to the Performance Standard.

6.E.3 Possible Deficiency. Condensation and/or frost on windows.

Performance Standard. Windows will collect condensation on interior surfaces when extreme temperature differences and high humidity levels are present. Condensation is usually the result of climatic/humidity conditions, and Owner should take care to avoid damage to finishes such as, for example, windowsills or gypsum wallboard, for which Builder will not be responsible. No condensation between panes in a sealed insulated glass unit is acceptable. Windows with a sealed insulated glass unit should perform according to manufacturer's specifications.

Responsibility. Unless directly attributed to faulty installation, window condensation and frost conditions are not the responsibility of Builder.

**F. Weatherstripping and Seals.**

6.F.1 Possible Deficiency. Air and water infiltration around doors and windows.

Performance Standard. Some infiltration is normally noticeable around doors and windows, especially during high winds. While not a Builder obligation, Owner may wish to have storm doors and storm windows installed at Owner's expense to reduce air and water infiltration.

Responsibility. Builder will adjust or correct poorly fitted doors, windows and poorly fitted weatherstripping one time only during the first year warranty period.

## **G. Mirrors, Interior Glass, and Shower Doors.**

6.G.1 Possible Deficiency. Mirrors, interior glass, shower doors are not mounted securely.

Performance Standard. A mirror, interior glass, or shower door shall not be loose and shall be securely mounted or attached to the supporting surface. Fixtures, such as towel bars or door handles, shall be securely mounted.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

6.G.2 Possible Deficiency. Mirror, interior glass, shower doors are damaged.

Performance Standard. A mirror, interior glass, or shower door shall not be damaged due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

6.G.3 Possible Deficiency. Shower door leak.

Performance Standard. A shower door shall not leak due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

6.G.4 Possible Deficiency. Imperfections in mirrors or shower doors.

Performance Standard. Imperfections in a mirror or shower door shall not be visible from a distance of 2 feet or more when viewed in normal light.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

6.G.5 Possible Deficiency. Shower door does not open properly.

Performance Standard. When opening and closing, a shower door shall operate easily and smoothly without requiring excessive pressure.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

## **7. INTERIOR FINISHES**

### **A. Lath and Plaster.**

7.A.1 Possible Deficiency. Cracks in interior wall and ceiling surfaces.

Performance Standard. As the Home “dries in”, cracks are not unusual in interior wall and ceiling surfaces. Cracks should not exceed 1/8 inch in width.

Responsibility. Builder will repair cracks exceeding 1/8 inch in width to meet Performance Standard, one time only during the first year warranty period.

### **B. Gypsum Wallboard.**

7.B.1 Possible Deficiency. Nail pops, blisters in tape, blemishes, or seam lines in gypsum wallboard on ceilings and walls.

Performance Standard. Nail pops, blisters in tape, blemishes, or seam lines not exceeding 1/8 inch in width are common in gypsum wallboard installations.

Responsibility. Builder will repair one time only during the first year warranty period. (See also Subsection 7.C & 7.G below, regarding Painting, Varnish, Stains and Caulking.)

### **C. Drywall.**

7.C.1 Possible Deficiency. Bow or depression in drywall.

Performance Standard. A drywall surface shall not have a bow or depression that equals or exceeds 1/4 inch out of line within any 32 inch horizontal measurement as measured from the center of the bow or depression or 1/2 inch within any 8 foot vertical measurement.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

**7.C.2 Possible Deficiency.** Bow or depression in the ceiling.

Performance Standard. A ceiling made of drywall shall not have bows or depressions that equal or exceed 1/2 inch out of line within a 32 inch measurement as measured from the center of the bow or depression running parallel with the ceiling joist or 1/3 inch deviation from the plane of the ceiling within any 8 foot measurement.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

**7.C.3 Possible Deficiency.** Drywall crack.

Performance Standard. A drywall surface shall not have a crack such that any crack equals or exceeds 1/32 inch in width at any point along the length of the crack.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

**7.C.4 Possible Deficiency.** Crowning at drywall joint.

Performance Standard. Crowning at a drywall joint shall not equal or exceed 1/4 inch within a 12 inch measurement centered over the drywall joint. Crowning occurs when a drywall joint is higher than the plane of the drywall board on each side.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

**7.C.5 Possible Deficiency.** Drywall surface has surface imperfections.

Performance Standard. A drywall surface shall not have surface imperfections such as blisters, cracked corner beads, seam lines, excess joint compound or trowel marks that are visible from a distance of 6 feet or more in normal light.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

**7.C.6 Possible Deficiency.** Drywall is out of plumb.

Performance Standard. A drywall surface shall not be out of level (horizontal), plumb (vertical), or square (perpendicular at a 90-degree angle) such that there are variations in those measurements to wall or surface edges at any opening, corner, sill shelf, etc. shall not equal or exceed 3/8 inch in any 32 inch measurement along the wall or surface. This standard shall not apply to remodeling projects where existing conditions do not permit the Builder to achieve the performance standard. At or about the time of discovery of such a preexisting condition, a remodeler shall notify the Homeowner, in writing, of any existing condition that prevents achievement of the standard.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

**7.C.7 Possible Deficiency.** Nails or screws visible in drywall.

Performance Standard. Nails or screws shall not be visible in a drywall surface from a distance of 6 feet under normal lighting conditions. If nails or screws are visible, the Builder shall take such action as is necessary to bring the variance within the standard.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

## **D. Tile & Natural Stone.**

**7.D.1 Possible Deficiency.** Cracks in tile, or the tile becomes loose or is scratched.

Performance Standard. Tile should not crack or become loose and should remain secured to the substrate.

Responsibility. Builder will replace cracked tiles and re-secure loose tiles if damaged due to construction activity. Builder will attempt to match, but will not be responsible for discontinued patterns or color variations in tile or grout. Builder has

no responsibility for scratches. Cracks are Homeowner maintenance item unless due to construction activity.

7.D.2 Possible Deficiency. Color and surface finish do not match.

Performance Standard. Color and surface variations are inherent in tile products, and are to be expected, along with other natural conditions such as veining, lustre and texture variations. Color variations between field hard surfaces and trim hard surfaces should not vary excessively due to construction activities. Natural products such as flagstone, marble, granite, slate, and other quarry tile will have color variations.

Responsibility. Owner is responsible for the special maintenance requirements of ceramic and natural surface tile products and should be aware that many common cleaning materials will damage them. Color and surface variations are not a Builder, responsibility and are not a condition covered by this Limited Warranty.

7.D.3 Possible Deficiency. Surface imperfections.

Performance Standard. A surface imperfection in floor hard surface shall not be visible from a distance of 3 feet or more in normal light. A surface imperfection in non-floor hard surface shall not be visible from a distance of 2 feet or more in normal light.

Responsibility. If a hard surface fails to meet the standards due to construction activities, the Builder shall take such action as is necessary to bring the variance within the standard.

7.D.4 Possible Deficiency. Leak.

Performance Standard. Hard surfaces shall not leak.

Responsibility. Builder shall take such action as is necessary to bring the variance to the stated standard.

7.D.5 Possible Deficiency. Displacement at a joint.

Performance Standard. The surfaces of two adjacent hard surfaces shall not vary in an amount equal to or exceeding 1/16 inch displacement at a joint, with the exception of transition trim pieces.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.D.6 Possible Deficiency. Irregular grout line.

Performance Standard. Hard surface layout or grout line shall not be excessively irregular. Natural products such as flag stone, marble, granite, slate or other quarry tile will have size variations that may create irregular layouts or grout lines.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.D.7 Possible Deficiency. Grout discolored.

Performance Standard. Grout shall not change shade or discolor excessively due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.D.8 Possible Deficiency. Cracks appear in grouting of tile joints or at junctions with other materials (such as a bathtub).

Performance Standard. Cracks in grouting of tile joints shall not crack or deteriorate.

Responsibility. Re-grouting of cracks is a maintenance responsibility of Owner during the life of the Home, and is necessary to protect the Home from damage due to moisture entry. Builder will repair cracked grouting, if necessary, one time only during the first year warranty period. Builder will not be responsible for color variations between old and new grout, or discontinued grout.

7.D.9 Possible Deficiency. Floor has excessive pits, depressions, or unevenness.

Performance Standard. Hard surface floors located in a living space that is not otherwise designed for drainage, shall not have pits, depressions, or unevenness that equals or exceeds 3/8 inch in any 32 inches. Travertine is excluded due to natural pits and depressions found inherently in the stone.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.



## **E. Finished Wood, Engineered Hardwood, & Laminate Flooring.**

7.E.1 Possible Deficiency. Cracks develop between flooring boards or scratches.

Performance Standard. Wood flooring shall not have open joints and separations that equal or exceed 1/8 inch.

Responsibility. Owner is responsible for maintaining the flooring as specified by the manufacturer. Builder will repair cracks in excess of 1/8 inch by filling or replacing, at Builder's option; Builder has no responsibility for scratches.

7.E.2 Possible Deficiency. Indentations in finished wood floor.

Performance Standard. Finished wood floor will show indentations, especially high heel marks. No excessive humps or depressions that exceed 3/8 inch in any 32 inch direction.

Responsibility. Owner should be aware that finished wood flooring may be easily damaged. For example, high heels exert high pressure on a very small area and can cause indentations. Owner is responsible for maintaining the flooring as specified by the manufacturer. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.E.3 Possible Deficiency. Deficiency in the finished coat on wood flooring, including, without limitation, peeling, wear, cloudiness and foreign matter.

Performance Standard. The finished coat should not peel off of the wood flooring.

Responsibility. Owner is responsible for maintaining the flooring as specified by the manufacturer. Builder will refinish or replace wood floor that is peeling. Builder is not responsible for color variations of boards that are replaced. Wear, cloudiness and/or foreign materials (such as dust) that affect the finished coat are specifically not warranted and Builder has no responsibility.

7.E.4 Possible Deficiency. Uneven planks or boards in finished wood flooring.

Performance Standard. There should be no more than a 1/16 inch of variation in height at any joint between two boards.

Responsibility. Owner is responsible for maintaining the flooring as specified by the manufacturer. Builder is responsible for repairing or replacing boards that do not meet the Performance Standard. Builder is not responsible for color variations.

7.E.5 Possible Deficiency. Finished wood flooring becomes loose from foundation or subfloor. (Note: This Performance Standard does not apply to floating wood floors.)

Performance Standard. Nailed down or glued down finished wood flooring shall remain securely attached to the foundation or subfloor, unless the wood flooring is designed to be installed without nails, glue, adhesives, or fasteners.

Responsibility. Owner is responsible for maintaining the flooring as specified by the manufacturer. Builder is responsible for either nailing or gluing to correct the condition. Injecting glue by drilling a small hole in the finished wood flooring is an acceptable method of repair.

7.E.6 Possible Deficiency. Squeaks or popping noises from finished wood flooring when walked on.

Performance Standard. Finished wood flooring is a natural product that contracts and expands with temperature and humidity changes. A noise free finished wood floor cannot be guaranteed.

Responsibility. Owner is responsible for maintaining consistent temperature and humidity levels, and for maintaining the floor according to manufacturer specifications. Builder will correct condition, only if caused by improper nailing or gluing, one time only during the first year warranty period. Further, Builder has no obligation to repair a floor squeak unless Owner identifies the specific location of the condition.

7.E.7 Possible Deficiency. Floorboards cup.

Performance Standard. Owner is responsible for maintaining the flooring as specified by the manufacturer. Strips of floorboard shall not cup in an amount that equals or exceeds 1/16 inch in height in a 3 inch distance when measured perpendicular to the length of the board. This standard does not apply to non-hardwood materials that typically shrink

after installation or structural floors that are designed to serve as the finished floor. If the floor is designed as a structural finish floor, the Builder must provide a written explanation of the characteristics of that floor to the Homeowner.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.E.8 Possible Deficiency. Excessive shade changes or discoloration.

Performance Standard. Unless installed as a specialty feature, wood flooring shall not have excessive shade changes or discoloration due to the construction activities of the Builder.

Responsibility. Owner is responsible for maintaining the flooring as specified by the manufacturer. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.E.9 Possible Deficiency. Stains, spots, or scratches.

Performance Standard. Unless installed as a specialty feature, wood flooring shall not be stained, spotted, or scratched due to construction activities of the Builder.

Responsibility. Owner is responsible for maintaining the flooring as specified by the manufacturer. Builder shall take such action as is necessary to bring the variance within the stated standard.

## **E. Finished Concrete Flooring.**

7.F.1 Performance Standard.

- (1) A finished slab, located in a living space that is not otherwise designed for drainage, shall not have pits, depressions or unevenness that equals or exceeds 3/8 inch in any 32 inches.

(a) If a finished concrete slab in a living space fails to meet the standard stated in paragraph (1) of this Subsection, the Builder shall take such action as is necessary to bring the variance within the standard.

(b) Finished concrete slabs in living spaces that are designed for drainage, such as a laundry room, are excepted from the standards stated in paragraph (1) of this Subsection.

- (2) Finished concrete slabs in living spaces shall not have separations, including joints, and cracks that equal or exceed 1/8 inch in width or 1/16 inch in vertical displacement. If a finished concrete slab in a living space fails to meet the standard stated in this paragraph, the Builder shall take such action as is necessary to bring the variance within the standard.

## **G. Vinyl Flooring & Linoleum.**

7.G.1 Possible Deficiency. Nail pops appear on the surface of vinyl flooring.

Performance Standard. Nail pops breaking the surface should not appear.

Responsibility. Builder will correct nail pops which have broken the surface. Builder will repair or replace, at Builder's sole option, vinyl floor covering in the affected area with similar material. Builder is not responsible for color variations in the floor covering. Patching of vinyl flooring is an acceptable method of repair. If the pattern has been discontinued, Owner will select a comparable pattern and material of the same grade as the original.

7.G.2 Possible Deficiency. Debris detectable.

Performance Standard. Debris, sub-floor seams, nails and/or screws shall not be detectable under the vinyl floor from a distance of 3 feet or more in normal light.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.G.3 Possible Deficiency. Depressions or ridges appear in the vinyl flooring due to subfloor irregularities.

Performance Standard. Readily apparent depressions or ridges should not exceed 1/8 inch. The ridge or depression measurement is taken as the gap created at one end of a 6 inch straightedge placed over the depression or ridge with 3 inches of the straightedge on one side of the deficiency, held tightly to the floor.

Responsibility. Builder will take corrective action as necessary, to bring the deficiency within the Performance Standard so that the affected area is not readily visible. Builder is not responsible for color variations in floor covering. Patching of

vinyl flooring is an acceptable method of repair. If the pattern has been discontinued, Owner will select a comparable pattern and material of the same grade as the original.

7.G.4 Possible Deficiency. Tears, cuts, gouges and scratches in vinyl.

Performance Standard. A vinyl floor can be torn, cut, gouged or scratched, especially when furniture or appliances are moved. Vinyl flooring shall not be scratched, gouged, cut, or torn due to construction activities.

Responsibility. Owner is responsible for insuring that a vinyl floor is not damaged. Builder has no responsibility, unless damage is due to construction activity; such condition is not covered by this Limited Warranty.

7.G.5 Possible Deficiency. Vinyl floor shall not lift, bubble or become unglued

Performance Standard. A vinyl floor should remain securely attached.

Responsibility. Bubbles are not uncommon in a newly laid floor and may work themselves out. Builder will repair or replace, at Builder's sole option, the affected vinyl flooring to meet the Performance Standard. Builder is not responsible for color variation of floor covering, or for conditions caused by Owner neglect or abuse. Patching of vinyl flooring is an acceptable method of repair. If the pattern has been discontinued, Owner will select a comparable pattern and material of the same grade as the original.

7.G.6 Possible Deficiency. Seams or shrinkage gaps show at vinyl flooring joints.

Performance Standard. Gaps should not exceed 1/16 inch in width in vinyl floor covering joints. Where dissimilar materials abut, a gap not to exceed 1/8 inch is permissible.

Responsibility. Builder will repair or replace, at Builder's sole option, the affected vinyl flooring to meet the Performance Standard. Builder is not responsible for color variation of floor covering, or for conditions caused by Owner neglect or abuse. Patching of vinyl flooring is an acceptable method of repair. If the pattern has been discontinued, Owner will select a comparable pattern and material of the same grade as the original.

7.G.7 Possible Deficiency. Vinyl flooring shows stains.

Performance Standard. Different grades of vinyl flooring have various stain inhibitors in them, but no vinyl flooring is stain proof. On all vinyl flooring, rubberbacked mats will cause stains to appear. There should be no stains due to construction activity.

Responsibility. Owner will obtain best possible results from vinyl flooring if manufacturer specifications are followed and floor is maintained. Builder has no responsibility unless due to construction activity; such condition is not covered by this Limited Warranty.

7.G.8 Possible Deficiency. Vinyl floor is mildewing.

Performance Standard. Vinyl flooring that has been maintained according to manufacturer specifications should not discolor.

Responsibility. Builder will repair or replace, at Builder's sole option, the affected vinyl flooring to meet the Performance Standard. Builder is not responsible for discontinued patterns or color variations of floor covering, or for conditions caused by Owner neglect or abuse. Builder will attempt to match, but will not be responsible for discontinued patterns or color variations.

7.G.9 Possible Deficiency. Not square to the most visible wall.

Performance Standard. Vinyl flooring shall be installed square to the most visible wall and shall not vary by 1/4 inch in any 6 foot run.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.G.10 Possible Deficiency. Seam alignment.

Performance Standard. The seam alignment in vinyl flooring shall not vary such that the pattern is out of alignment in an amount that equals or exceeds 1/8 inch.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.G.12 Possible Deficiency. Sub-flooring causes rupture.

Performance Standard. Sub-flooring shall not cause vinyl flooring to rupture.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

## **H. Carpeting.**

7.H.1 Possible Deficiency. Open carpet seams.

Performance Standard. Carpet seams may be visible but shall be smooth without a gap or overlap. If the carpet fails to meet the standards stated in this paragraph, the Builder shall take such action as is necessary to bring the variance within the standard.

Responsibility. Builder will correct to meet the Performance Standard.

7.H.2 Possible Deficiency. Carpet becomes loose or wrinkled.

Performance Standard. Carpet should not become loose or wrinkled and will lay flat and be securely fastened.

Responsibility. Builder will re stretch or resecure carpeting to meet the Performance Standard, if original installation was performed by Builder during the first year warranty period.

7.H.3 Possible Deficiency. Stains and spots on carpet, or fading.

Performance Standard. Carpets are not warranted against fading, stains or spots unless stains were created during construction activity.

Responsibility. Owner is responsible for maintaining carpet in accordance with manufacturer specifications. Builder is not responsible for spots or stains on carpeting or fading of carpet. If spots are caused by a manufacturing defect, the manufacturer is responsible for repairing or replacing the carpet. (See Article V, Section 5.02, "Manufacturer's Warranties".)

7.H.4 Possible Deficiency. Carpet wear.

Performance Standard. Carpet will wear, especially in high traffic areas.

Responsibility. Builder has no responsibility; such condition is not covered by this Limited Warranty.

## **I. Painting, Varnish, Stains and Caulking.**

7.I.1 Possible Deficiency. Exterior paint or stain peels, deteriorates or fades.

Performance Standard. Exterior paints or stains should perform as specified by the manufacturer during the first year warranty period; paint will have been applied according to manufacturer specifications. However, fading is normal and the degree of fading is dependent on climatic conditions. Exterior paints and stains should not deteriorate excessively excluding extreme weather condition.

Responsibility. Maintaining an adequate cover of paint during the life of the Home is an Owner maintenance responsibility. Owner should be aware of the effects of climatic conditions on the Home. For example, excessive heat and moisture as experienced in the Texas Gulf Coast area are detrimental to paint; Homeowners in that area may need to repaint more frequently than those in other regions. If paint or stain does not meet the Performance Standard, Builder will properly prepare and refinish affected areas, matching color as closely as reasonably possible. Where finish deterioration affects the majority of a wall area, the whole area will be refinished.

7.I.2 Possible Deficiency. Painting made necessary because of other repair work.

Performance Standard. Repairs required under this Limited Warranty should be finished to match surrounding areas as closely as reasonably possible and should not deteriorate excessively excluding extreme weather conditions.

Responsibility. Builder will finish repair areas as described, but is not responsible for color variations.

7.1.3 Possible Deficiency. Fading or peeling of varnish or lacquer finishes an exterior doors.

Performance Standard. Exterior varnish, polyurethane, or lacquer finishes shall not deteriorate excessively. Exterior varnish, polyurethane, or lacquer finishes that are subject to direct sunlight are excluded from this standard.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.1.4 Possible Deficiency. Fading or peeling of varnish or lacquer finishes on interior woodwork, including doors.

Performance Standard. Under normal use, natural finishes on interior woodwork, including doors, should not fade, peel, or deteriorate excessively.

Responsibility. Builder will retouch affected areas to meet the Performance Standard, matching color as closely as reasonably possible.

7.1.5 Possible Deficiency. Scratches, dents, nicks and gouges on painted, varnished or lacquered finishes.

Performance Standard. None allowed due to construction activity.

Responsibility. Builder has no responsibility; such condition is not covered by this Limited Warranty unless damage occurs during construction activity.

7.1.6 Possible Deficiency. Mildew or fungus on painted surfaces.

Performance Standard. Mildew or fungus will form on a painted surface and can be aggravated by climatic conditions.

Responsibility. Builder cannot practicably control mildew and fungus formation. Owner must clean mildew and fungus as a regular Owner maintenance item. Builder has no responsibility; such condition is not covered by this Limited Warranty.

7.1.7 Possible Deficiency. Excessive color, shade, or sheen variation of paint.

Performance Standard. Paint or stain shall not have excessive color, shade, or sheen variation. This standard shall not apply to stained woodwork.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.1.8 Possible Deficiency. Coverage of intended surface of paint.

Performance Standard. Paint shall cover all intended surfaces so that unpainted areas shall not show through paint when viewed from a distance of 6 feet in normal light.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.1.9 Possible Deficiency. Paint overspray.

Performance Standard. Paint over-spray shall not exist on any surface for which it was not intended.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.1.10 Possible Deficiency. Washability or scrubbability of paint.

Performance Standard. A paint product shall perform as represented by the manufacturer to meet the manufacturer's specifications for washability and/or scrubbability.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.1.11 Possible Deficiency. Caulk shrinks or cracks appear on interior surfaces, especially at wood moldings.

Performance Standard. Caulk should be properly installed. However, Caulk, even though properly installed, will shrink.

Responsibility. Owner is responsible for maintenance of caulking during the life of the Home. Builder will repair one time only during the first year warranty period, and only those areas designed to prevent water penetration (i.e. ceramic tile around sinks, tubs or showers and cultured marble).



**J. Wall Covering.****7.J.1** Possible Deficiency. Peeling of wall covering.

Performance Standard. Peeling or bubbling of wall covering should not occur.

Responsibility. Builder will repair or replace peeling wall covering. Builder has no responsibility for discontinued patterns or variations in colors.

**7.J.2** Possible Deficiency. Pattern repeats do not match.

Performance Standard. Pattern repeats in wall coverings shall match. Wall coverings shall be installed square to the most visible wall. Pattern repeats shall not vary in an amount equal to or exceeding 1/4 inch in any 6 foot run.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

**7.J.3** Possible Deficiency. Seams separate or gap in wall covering.

Performance Standard. A wall covering seam shall not separate or gap.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

**7.J.4** Possible Deficiency. Lumps and ridges in the wall covering.

Performance Standard. Lumps or ridges in a wall covering shall not be detectable from a distance of 6 feet or more in normal light.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

**7.J.5** Possible Deficiency. Discolored, stained, spotted wall covering.

Performance Standard. Wall coverings shall not be discolored, stained, or spotted due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

**7.J.6** Possible Deficiency. Scratched, gouged, cut, or torn wall covering.

Performance Standard. Wall coverings shall not be scratched, gouged, cut, or torn due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

**7.J.7** Possible Deficiency. Washability or scrubbability of wall covering.

Performance Standard. Wall coverings shall perform as represented by the manufacturer to meet the manufacturer's specifications for washability and/or scrubbability.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

**K. Hardware and Fixtures.****7.K.1** Possible Deficiency. Scratches and tarnish on brass finish.

Performance Standard. None. Hardware and fixtures should not be damaged due to construction activities and should be securely fastened without excessive catching.

Responsibility. Owner is responsible for the special maintenance requirements of brass finished products and should be aware that many common cleaning products will damage them. Builder has no responsibility; such condition is not covered by this Limited Warranty.

**7.K.2** Possible Deficiency. Tarnished, blemished, or corroded.

Performance Standard. Hardware finishes shall not be tarnished, blemished, corroded, or stained due to construction activities, unless the finish is installed as a specialty feature. The Builder is not responsible for tarnished, blemished, or stained hardware finishes that have been damaged by factors beyond the manufacturer's or the Builder's control such as the Homeowner's use of abrasive pads or cleaners, harsh chemicals, alcohol, organic solvents or deterioration caused

by exposure to outdoor elements such as salt air or humidity.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.K.3 Possible Deficiency. Catching or binding.

Performance Standard. Hardware shall function properly, without catching, binding or requiring excessive force to operate.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.K.4 Possible Deficiency. Scratched, chipped, dented.

Performance Standard. Hardware shall not be scratched, chipped, cracked, or dented due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.K.5 Possible Deficiency. Hardware is loose.

Performance Standard. Hardware shall be installed securely and shall not be loose.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard. Homeowner shall not exert excessive force on the hardware.

## **L. Interior Ironwork.**

7.L.1 Possible Deficiency. Rust of interior ironwork

Performance Standard. Interior ironwork shall not rust.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard. The Builder is not responsible for ironwork finishes that rust due to factors that are beyond the manufacturer's or Builder's control, such as the Homeowner's use of abrasive pads or cleaners, harsh chemicals, alcohol, organic solvents or deterioration caused by exposure to humidity.

## **M. Shelving.**

7.M.1 Possible Deficiency. Shelving not installed to measurements.

Performance Standard.

*Closet Rod* - The length of a closet rod shall not be shorter than the actual distance between the end supports in an amount equal to or exceeding 1/4 inch and shall be supported by stud-mounted brackets no more than 4 feet apart.

*Shelf* - The length of a shelf shall not be shorter than the actual distance between the supporting walls by an amount equal to or exceeding 1/4 inch and shall be supported by stud-mounted brackets no more than 4 feet apart. End supports shall be securely mounted.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

## **N. General Cabinets and Countertops.**

7.N.1 Possible Deficiency. Countertop or backsplash is not secured to substrate.

Performance Standard. Countertops shall be secured according to manufacturer's specifications.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.N.2 Possible Deficiency. Surface cracks, joint delaminations and chips in high pressure laminates on vanity and kitchen cabinet countertops.

Performance Standard. Countertops fabricated with high pressure laminate coverings should not delaminate and must remain secure to the substrate with no imperfections due to construction activities.

Responsibility. Builder will replace delaminated coverings. Builder is not responsible for chips and cracks unless made as a result of construction activities. Builder is not responsible for color variations in any replaced countertop.

7.N.3 Possible Deficiency. Joint separation, chips, dents, scratches, or cracks in non-laminate countertops and backsplashes.

Performance Standard. For non-laminate countertops and backsplashes, the joints between the countertop surfaces, between countertop surface and the backsplash or side-splash and between adjoining backsplash panels may be visible, but shall not separate. A countertop shall not have a chip, crack, dent, or scratch due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.N.4 Possible Deficiency. Countertops not level.

Performance Standard. Countertops shall be level to within 1/4 inch in any 6 foot measurement.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.N.5 Possible Deficiency. Countertop bows.

Performance Standard. A countertop shall not bow or warp in an amount equal to or exceeding 1/16 inch per lineal foot.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.N.6 Possible Deficiency. Visible seam in laminate countertop.

Performance Standard. A seam in a laminate countertop or backsplash may be visible but shall not be separated or displaced.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.N.7 Possible Deficiency. Surface imperfection in laminate countertop or backsplash.

Performance Standard. A surface imperfection in a laminate countertop or a backsplash shall not be visible from a distance of 3 feet or more when viewed in normal light due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.N.8 Possible Deficiency. Kitchen cabinet doors or drawer fronts warp.

Performance Standard. Cabinet doors shall open and close with reasonable ease. Cabinet doors shall be even and shall not warp more than 1/4 inch when measured from the face to the point of the furthest point of the door or drawer front when closed. Some warping, cupping, bowing or twisting is normally caused by surface temperature and humidity changes.

Responsibility. Builder will correct or replace doors or drawer fronts not meeting the Performance Standard. Builder is not responsible for exact matching of cabinet door and drawer front finishes.

7.N.9 Possible Deficiency. Separation of cabinet moldings from adjacent ceiling or walls.

Performance Standard. Separation of cabinet moldings from adjacent ceiling or walls should not exceed 1/4 inch in width, if not subject to abnormal loads placed by Owner.

Responsibility. Builder will correct to meet Performance Standard. Caulking is an acceptable method of repair.

## **O. Concrete Countertops.**

7.O.1 Possible Deficiency. Excessive pits, depressions, or unevenness.

Performance Standard. A concrete countertop shall not have excessive pits, depressions, or unevenness that equal or exceed 1/8 inch in any 32 inch measurement.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.O.2 Possible Deficiency. Separations or cracks.

Performance Standard. A concrete countertop shall not have separations or cracks equal to or exceeding 1/16 inch in width or 1/64 inch in vertical displacement.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.O.3 Possible Deficiency. Stains, spots, or scratches.

Performance Standard. A finished concrete countertop shall not be stained, spotted, or scratched due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.O.4 Possible Deficiency. Chipped edge.

Performance Standard. A concrete countertop shall not have a chipped edge that extends beyond 1/16 inch from the edge of the countertop due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

7.O.5 Possible Deficiency. Discolored.

Performance Standard. A concrete countertop shall not change shade or discolor excessively due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

## **8. EXTERIOR FINISHES**

### **A. Stucco.**

8.A.1 Possible Deficiency. Cracks in exterior stucco wall surfaces.

Performance Standard. Cracks are not unusual in exterior stucco wall surfaces. Cracks should not be greater than 1/16 inch or greater in width, or offset or out of plane.

Responsibility. Builder will repair cracks exceeding 1/16 inch in width during the first year warranty period. Builder has no responsibility for cracks caused by homeowner modifications to the stucco surface.

8.A.2 Possible Deficiency. Mildew or fungus on stucco surfaces.

Performance Standard. Mildew or fungus will form on a stucco surface and can be aggravated by climatic conditions.

Responsibility. Builder cannot practicably control mildew and fungus formation. Owner must clean mildew and fungus as a regular Owner maintenance item. Builder has no responsibility; such condition is not covered by this Limited Warranty.

8.A.3 Possible Deficiency. Stucco is bowed, uneven or wavy.

Performance Standard. Stucco surfaces shall not be excessively bowed, uneven or wavy. This standard shall not apply to decorative finishes.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard one time only in the first year.

8.A.4 Possible Deficiency. Broken or loose stucco.

Performance Standard. Stucco shall not be broken or loose.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard during the first year warranty period.

8.A.5 Possible Deficiency. Deterioration of stucco.

Performance Standard. Stucco shall not deteriorate excessively.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard during the first year warranty period. The Homeowner shall not allow water from irrigation systems to contact stucco finishes excessively.

8.A.6 Possible Deficiency. Dirt, stain, or debris on stucco.

Performance Standard. Stucco shall not have dirt, stain, or debris on surface due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

8.A.7 Possible Deficiency. Surface imperfections on stucco.

Performance Standard. Stucco surfaces shall not have imperfections that are visible from a distance of 6 feet under normal daylight lighting conditions that disrupts the overall uniformity of the finished pattern.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard during the first year warranty period. This standard shall not apply to surface imperfections visible only using critical light angles.

8.A.8 Possible Deficiency. Lath exposed.

Performance Standard. The lath shall not be exposed.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard during the first year warranty period.

8.A.9 Possible Deficiency. Separation between stucco and accessories.

Performance Standard. A separation between the stucco joints shall not equal or exceed 1/16 inch in width.

Responsibility. Builder will caulk one time only in the first year.

8.A.10 Possible Deficiency. Separation between stucco and adjacent material.

Performance Standard. A separation between a stucco surface and adjacent material shall not equal or exceed 1/2 inch in width and all separations shall be caulked.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard during the first year warranty period.

8.A.11 Possible Deficiency. Functional opening obstructed by stucco.

Performance Standard. Stucco shall not obstruct a functional opening, such as a vent, weep hole, or plumbing cleanout.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard during the first year warranty period.

8.A.12 Possible Deficiency. Stucco screed ground clearance.

Performance Standard. Stucco screed shall have a minimum clearance of at least 4 inches above the soil or landscape surface and at least 2 inches above any paved surface.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard during the first year warranty period.

8.A.13 Possible Deficiency. Exterior Installation Finish Systems (EIFS) ground clearance.

Performance Standard. EIFS stucco screed shall have a minimum clearance of at least 2 inches above any paved surface or 4 inches above any unpaved surface.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard during the first year warranty period.

8.A.14 Possible Deficiency. Drainage detail at vertical to horizontal stucco transitions.



Performance Standard. Drainage detail at vertical to horizontal transitions shall not be missing or obstructed.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard during the first year warranty period.

## **B. Irrigation Systems.**

8.B.1 Possible Deficiency. System leaks or clogs.

Performance Standard. An irrigation system shall not leak, break, or clog due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

8.B.2 Possible Deficiency. System coverage is incomplete.

Performance Standard. An irrigation system shall be installed such that sprinkler coverage shall be complete and water shall not spray an unintended area due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

8.B.3 Possible Deficiency. System operates improperly.

Performance Standard. The irrigation system control shall operate in accordance with manufacturer's specifications.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard. The Builder shall provide the Homeowner with instructions on the operation of the irrigation system at closing.

## **C. Fencing.**

8.C.1 Possible Deficiency. Fence leans.

Performance Standard. A fence shall not fall over and shall not lean in excess of 2 inches out of plumb due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

8.C.2 Possible Deficiency. Broken fence boards.

Performance Standard. A wood fence board shall not be broken due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

8.C.3 Possible Deficiency. Broken masonry unit or mortar in fence.

Performance Standard. A masonry unit or mortar in a fence shall not be broken or loose. A crack in a masonry unit shall not occur. A crack in the mortar shall not equal or exceed 1/8 inch in width.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

8.C.4 Possible Deficiency. Weep holes in masonry wall.

Performance Standard. A masonry wall shall have adequate weep holes in the lowest course as required by the Code to allow seepage to pass through the wall.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

## **D. Pest Control.**

8.D.1 Possible Deficiency. Openings allow birds, rodents, or other small animals into Home.

Performance Standard. Builder shall make reasonable and necessary effort to prevent birds, rodents, or other small animals

from entering into Home or attic space through eave returns, truss blocks, attic vents, and roof vent openings.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

## **E. Outdoor Kitchens.**

8.E.1 Performance Standard. Outdoor Kitchens shall perform according to intended design for one year.

Responsibility. (See analogous Interior Finishes performance standards applicable to relevant materials included in the Outdoor Kitchen.) Builder shall repair according to related performance standard or take such action as necessary to repair damage caused by construction activities.

## **9. LOUVERS, VENTS, FIREPLACES AND CHIMNEYS**

### **A. Louvers and Vents.**

9.A.1 Possible Deficiency. Inadequate ventilation of attics and crawl spaces.

Performance Standard. Attic and crawl spaces will be ventilated as required by Applicable Code.

Responsibility. Builder will provide for adequate ventilation according to Applicable Code. Builder will not be responsible for alterations to the original system made by Owner.

### **B. Fireplaces and Chimneys.**

9.B.1 Possible Deficiency. Fireplace or chimney does not draw properly.

Performance Standard. Fireplace and chimney should function properly. (It is normal to expect that high winds can cause temporary negative draft situations. Similar negative draft situations can also be caused by obstructions such as large branches of trees too close to the chimney. Some Homes may need to have a window opened slightly to create an effective draft, if they have been insulated and weatherproofed to meet high-energy conservation criteria.)

Responsibility. Builder will determine the cause of malfunction and correct.

9.B.2 Possible Deficiency. Brick chimney separation from structure to which it is attached.

Performance Standard. Brick chimneys will often incur slight amounts of separation from adjoining walls. Separation should not exceed 1/2 inch from the main structure in any 10 foot vertical measurement.

Responsibility. Builder will determine the cause of separation and correct if Performance Standard is not met. Caulking is an acceptable method of repair.

9.B.3 Possible Deficiency. Firebox paint changed by fire.

Performance Standard. None. Heat from fires will alter finish.

Responsibility. Builder has no responsibility; such condition is not covered by this Limited Warranty.

9.B.4 Possible Deficiency. Cracked firebrick and mortar joints.

Performance Standard. None greater than 1/4 inch in width. Heat from fires will cause cracking.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

9.B.5 Possible Deficiency. Water infiltration of the firebox.

Performance Standard. A firebox shall not have excessive water infiltration under normal weather conditions. Water infiltration of the firebox can be expected during periods of heavy rain.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

9.B.6 Possible Deficiency. Refractory panel cracks.

Performance Standard. A refractory panel shall not crack or separate.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard. The Homeowner shall not use synthetic logs or other materials not approved by the manufacturer.

9.B.7 Possible Deficiency. Fireplace doors do not operate properly.

Performance Standard. A fireplace door shall operate properly. Fireplace doors shall meet evenly and shall not be out of alignment from one another in an amount equal to or exceeding 1/8 inch in any direction.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

9.B.8 Possible Deficiency. Gas leak in fireplace.

Performance Standard. A fireplace shall not have a gas leak.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

9.B.9 Possible Deficiency. Gas logs not positioned properly.

Performance Standard. Gas logs shall be positioned in accordance with the manufacturer's specifications.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard. The Homeowner shall not reposition or relocate the logs after the original placement. The Homeowner shall not place the logs in a manner that does not allow the flame to flow through the logs according to the manufacturer's specifications.

9.B.10 Possible Deficiency. Fireplace fan noise.

Performance Standard. A fireplace fan shall not exceed the noise level established by the manufacturer's specifications.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

## **10. PLUMBING (Year One Only)**

### **A. Water Supply System.**

10.A.1 Possible Deficiency. Plumbing pipes freeze and burst.

Performance Standard. Drain, waste, vent, and water pipes should be adequately protected, as required by Applicable Code.

Responsibility. Owner is responsible for draining or otherwise protecting lines and exterior faucets exposed to freezing temperatures. Builder will correct situations not meeting Applicable Code only in the first year.

10.A.2 Possible Deficiency. Noisy water pipes.

Performance Standard. There will be some noise from the water pipe system due to the flow of water and from the expansion of pipes. However, there should be no "water hammer" or excessive noise.

Responsibility. Builder cannot remove all noises due to water flow and pipe expansion. However, Builder will correct to eliminate "water hammer" only in the first year.

### **B. Plumbing Fixtures.**

10.B.1 Possible Deficiency. Faucet or valve leaks.

Performance Standard. No valve or faucet should leak or drip due to a defect in workmanship or materials.

Responsibility. Builder will repair or replace a leaking faucet or valve if due to a defect in workmanship or materials only in the first year.

10.B.2 Possible Deficiency. Deficient plumbing fixtures or trim fittings.

Performance Standard. Plumbing fixtures or fittings should comply with standards of the manufacturer.

Responsibility. Builder will repair or replace any deficient plumbing fixture or fitting which does not meet the Performance Standard only in the first year.

10.B.3 Possible Deficiency. Chipped or cracked fixture surface.

Performance Standard. A fixture surface shall not have a chip, crack, dent, or scratch due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

10.B.4 Possible Deficiency. Tarnished or blemished fixture.

Performance Standard. A fixture shall not have tarnish, blemishes, or stains unless installed as a specialty feature. Fixture finishes that are tarnished, blemished, or stained due to high iron, manganese or other mineral content in water are excluded from this standard.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year.

10.B.5 Possible Deficiency. Fixture fastener corrodes.

Performance Standard. A fixture or fixture fastener shall not corrode.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year. A Builder is not responsible for corrosion caused by factors beyond the manufacturer's or the Builder's control, including the Homeowner's use of corrosive chemicals or cleaners or corrosion caused by water content.

10.B.6 Possible Deficiency. Installation of decorative gas appliance.

Performance Standard. A decorative gas appliance shall be installed in accordance with manufacturer's specifications and when so installed shall function in accordance with manufacturer's representations.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year.

10.B.7 Possible Deficiency. Fixtures are loose.

Performance Standard. Fixtures shall be secure and not loose.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year. The Home Owner shall not exert excessive force on a fixture.

10.B.8 Possible Deficiency. Operation of fixture stopper.

Performance Standard. A fixture stopper shall operate properly and shall retain water in accordance with the manufacturer's specifications.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year.

10.B.9 Possible Deficiency. Toilet runs continuously.

Performance Standard. The toilet equipment shall not allow water to run continuously.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only the in the first year. If toilet equipment allows water to run continuously, the Homeowner shall shut off the water supply or take such action as is necessary to avoid damage to the Home.

10.B.10 Possible Deficiency. Toilet installed improperly.

Performance Standard. A toilet shall be installed and perform in accordance with the manufacturer's specifications.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year. In the event of water spillage, the Homeowner shall shut off the water supply and take such action as is necessary

to avoid damage to the Home.

10.B.11 Possible Deficiency. Crack in tub or shower pan.

Performance Standard. A tub or shower pan shall not crack.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year.

10.B.12 Possible Deficiency. Squeaking of tub or shower pan.

Performance Standard. A tub or shower pan shall not squeak excessively.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year.

10.B.13 Possible Deficiency. Water heater improperly installed.

Performance Standard. A water heater shall be installed and secured according to the manufacturer's specifications and the Code.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year.

10.B.14 Possible Deficiency. Waste disposal unit improperly installed.

Performance Standard. A waste disposal unit shall be installed and operate according to the manufacturer's specifications.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year.

10.B.15 Possible Deficiency. Sump pump improperly installed.

Performance Standard. A sump pump shall be installed in accordance with the manufacturer's specifications and shall operate properly when so installed.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year.

10.B.16 Possible Deficiency. Cracking or chipping of porcelain or fiberglass surfaces.

Performance Standard. None.

Responsibility. Chips and cracks on surfaces of bathtubs and kitchen sinks can occur when surface is hit with sharp or heavy objects. Builder has no responsibility; such condition is not covered by this Limited Warranty.

10.B.17 Possible Deficiency. Rusting, pitting, staining or denting of stainless steel sink.

Performance Standard. None.

Responsibility. Owner is responsible for the special maintenance requirements of stainless steel, and should be aware that many common cleaning materials will damage stainless steel. Builder has no responsibility; such condition is not covered by this Limited Warranty.

10.B.18 Possible Deficiency. Sewer gas inside Home.

Performance Standard. A sewer gas odor originating from the plumbing system shall not be detectable inside the Home under conditions of normal residential use.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year. The Home Owner shall keep plumbing traps filled with water.

10.B.19 Possible Deficiency. Blocked vent stack.



Performance Standard. A vent stack shall be free from blockage and shall allow odor to exit the Home.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year.

## 11. HEATING, COOLING, AND VENTILATION (Year One)

### A. Heating and Cooling.

#### 11.A.1 Possible Deficiency. Inadequate heating.

Performance Standard. Heating system should be capable of producing an inside temperature of 68°F, as measured in the center of each room at a height of 3 feet above the floor and 2 feet from any wall, under local outdoor winter design conditions as specified in ASHRAE handbook. A room to room temperature variation of up to 4 degrees is acceptable.

Responsibility. Owner is responsible for obtaining, installing and maintaining adequate window coverings, which are an integral factor in maintaining proper indoor temperatures. If Owner adjusts dampers and registers, it could affect the resulting room temperatures. Owner must maintain unit according to manufacturer specifications. Builder will correct heating system to provide the required temperatures only in the first year. In any event, the Home should never be heated to higher than 82 degrees Fahrenheit.

#### 11.A.2 Possible Deficiency. Inadequate cooling.

Performance Standard. Where air conditioning is provided, the cooling system should be capable of maintaining a temperature of 23°F below outdoor ambient temperature, as measured in the center of each room at a height of 5 feet above the floor, under local outdoor summer design conditions as specified in ASHRAE handbook. In the case of outside temperatures exceeding 95°F, a differential of 15 degrees from the outside temperature should be maintained. A room to room temperature variation of up to 4 degrees is acceptable.

Responsibility. Owner is responsible for obtaining, installing and maintaining adequate window coverings, which are an integral factor in maintaining proper indoor temperatures. The heating and cooling system is designed and created for the specific size and configuration of the Home; any changes should be made only in consultation with an HVAC professional, including closing off of rooms, closing and opening dampers and vents, and thermostat set backs in excess of 80 degrees. Such alterations may subject the Home to conditions such as high humidity and mildew growth, which are not conditions Builder can control or will be responsible for. Owner must maintain equipment according to manufacturer specifications. Builder will correct cooling system to provide the required temperatures only in the first year. In any event, the Home should never be cooled to lower than 72 degrees Fahrenheit.

### B. Condensation Lines.

#### 11.B.1 Possible Deficiency. Condensation lines clog up.

Performance Standard. Obstructions due to construction activity should be removed and unobstructed condensation lines provided prior to Warranty Commencement Date.

Responsibility. Unless routinely cleaned, condensation lines will clog eventually under normal use. Owner must properly maintain the condensation lines, which includes periodically checking for the free flow of condensate (water) from the line and clear the line when necessary. Builder will provide unobstructed condensation lines at the Warranty Commencement Date; otherwise, Builder has no responsibility.

#### 11.B.2 Possible Deficiency. Installation of drip pan and drain line.

Performance Standard. A drip pan and drain line shall be installed under a horizontal air handler as per the Code.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year. The Homeowner shall periodically check for the free flow of condensate (water) from the line and clear the line when necessary.

#### 11.B.3 Possible Deficiency. Insulation of refrigerant line.

Performance Standard. Insulation shall completely encase the refrigerant line according to the Code.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year. The Homeowner shall ensure that insulation on the refrigerant line is not damaged or cut due to Home maintenance or landscape work.

11.B.4 Possible Deficiency. Installation of exterior compressor pad.

Performance Standard. An exterior compressor unit shall be installed on a stable pad that supports the unit and is no more than 1 inch out of level. The bottom of the exterior compressor unit support shall not be below ground level.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year. The Homeowner shall ensure that settlement of the exterior compressor unit pad does not occur due to Home maintenance, landscape work, or excessive water from irrigation.

## **C. Evaporative Cooling.**

11.C.1 Possible Deficiency. Improper mechanical operation.

Performance Standard. Mechanical equipment should function properly at temperature standard set according to manufacturer specifications.

Responsibility. Builder will correct or adjust so that blower and water system operate as designed only in the first year.

## **D. Ventilation- Air Distribution.**

11.D.1 Possible Deficiency. Noisy ductwork.

Performance Standard. When metal is heated it expands, and when cooled it contracts. The result is ‘ticking’ or ‘crackling’ which is generally to be expected, but there should be no excessive noise.

Responsibility. Builder has no responsibility; such condition is not covered by this Limited Warranty. Builder will repair excessively noisy ductwork only in the first year.

11.D.2 Possible Deficiency. Oilcanning.

Performance Standard. The stiffening of the ductwork and the gauge of the metal used should be such that ducts do not “oilcan.” The booming noise caused by “oilcanning” is not acceptable.

Responsibility. Builder will correct to eliminate “oilcanning” only in the first year.

## **E. Venting.**

11.E.1 Possible Deficiency. Improper venting of appliances.

Performance Standard. An appliance shall be vented according to the manufacturer’s specifications.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard. only in the first year.

11.E.2 Possible Deficiency. Installation of back draft dampers.

Performance Standard. Back draft dampers shall be installed and function according to the manufacturer’s specifications.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year.

## **12. ELECTRICAL (Year One)**

### **A. Electrical Conductors, Fuses, and Circuit Breakers.**

12.A.1 Possible Deficiency. Fuses blow or circuit breakers (excluding ground fault interrupters) “kick out.”

Performance Standard. Fuses and circuit breakers should not activate under normal usage. Should perform to Code.

Responsibility. Owner is responsible for assuring that a load exceeding that which is normal is not placed on the electrical system. In instances where extraordinary electrical loads are necessary (as, for example, with respect to computer systems, major appliances in the garage, etc.) Owner is responsible for assuring that designated circuits or special wiring is properly installed. Builder will check wiring circuits for conformity with applicable Code. For normal load and use conditions, Builder will correct circuitry not conforming to applicable Code only in the first year.

## **B. Fixtures, Outlets, Doorbells, and Switches.**

12.B.1 Possible Deficiency. Air drafts from electrical outlets.

Performance Standard. Electrical junction boxes on exterior walls may produce air flow whereby the cold air can be drawn through the outlet into a room, but should not be excessive. The condition is not unusual in new Home construction.

Responsibility. Builder has no responsibility; such condition is not covered by this Limited Warranty unless the airflow is excessive.

12.B.2 Possible Deficiency. Malfunction of electrical outlets, switches or fixtures.

Performance Standard. Outlets, switches and fixtures should operate as designed and per applicable Code.

Responsibility. Builder will repair or replace outlets, switches and fixtures not meeting the Performance Standard only in the first year.

12.B.3 Possible Deficiency. Chipped or cracked fixture or trim plate.

Performance Standard. A fixture or trim plate shall not be chipped, cracked, dented or scratched due to construction activity.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

12.B.4 Possible Deficiency. Tarnished or blemished fixture or trim plate.

Performance Standard. A fixture or trim plate shall not be tarnished, blemished, or stained due to construction activities.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard.

12.B.5 Possible Deficiency. Installation of fixture, electrical box, or trim plate.

Performance Standard. A fixture, electrical box, or trim plate shall be installed in accordance with the Code and shall be plumb and level.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year.

12.B.6 Possible Deficiency. Operation of fixtures.

Performance Standard. Fixtures, such as lights, fans, and appliances, shall operate properly when installed in accordance with the manufacturer's specifications.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year.

12.B.7 Possible Deficiency. Noisy exhaust fan.

Performance Standard. An exhaust fan shall operate within the manufacturer's specified noise level.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard in the first year only and only if originally installed incorrectly.

12.B.8 Possible Deficiency. Operation of smoke detector.

Performance Standard. A smoke detector shall operate according to the manufacturer's specifications and shall be installed in accordance with the Code.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard only in the first year.

## **C. Service and Distribution.**

12.C.1 Possible Deficiency. Ground fault interrupter or ARC breakers trip frequently.

Performance Standard. Ground fault interrupters and ARC breakers are sensitive safety devices installed into the electrical system to provide protection against electrical shock. These sensitive devices can be tripped easily, and may indicate that a circuit is overloaded, that the connected appliance contains a faulty ground, or other problem. Should perform to Code and manufacturer specifications and instructions.

Responsibility. Builder will install ground fault interrupter in accordance with applicable Code. Tripping is to be expected and is not covered by this Limited Warranty, unless due to a violation of applicable Code. For Owner responsibilities, see Subsection 13.A.1 above. The Homeowner shall not plug appliances that require constant electrical flow, such as refrigerators and freezers, into an outlet with a ground fault interrupter.

### **SUBSECTION II. ITEMS WARRANTED DURING THE FIRST & SECOND YEARS ONLY RELATED PERFORMANCE STANDARDS AND RESPONSIBILITY**

## **1. PLUMBING (Year One & Year Two)**

### **A. Water Supply.**

1.A.1 Possible Deficiency. Water supply system fails to deliver water.

Performance Standard. All on site service connections to municipal water main and private water supply are Builder's responsibility. Private systems will be designed and installed in accordance with applicable Code.

Responsibility. Builder will repair if failure is the result of defective workmanship or materials or installation not in accordance with applicable Code in the first and second years only. If conditions beyond Builder's control disrupt or eliminate the sources of the supply, Builder has no responsibility.

1.A.2 Possible Deficiency. Leakage in pipes.

Performance Standard. No leaks should exist in any drain, waste, vent or water pipe. Condensation on pipes does not constitute leakage, and is not covered by this Limited Warranty.

Responsibility. Builder will make repairs which are necessary to eliminate leakage in the first and second years only, according to the Performance Standard. Homeowner shall shut off water supply immediately if such is required to prevent further damage to the Home.

1.A.3 Possible Deficiency. Stopped up sewers, fixtures and drains.

Performance Standard. Sewers, fixtures and drains should operate properly and shall not become clogged or stopped up due to construction activity.

Responsibility. Owner is responsible for assuring that no foreign objects are introduced sewers, fixtures and drains. Builder will not be responsible for sewers, fixtures and drains which are clogged through Owner's negligence. Builder will be responsible for any stoppage resulting from Builder's construction materials or workmanship defects. Homeowner shall shut off water supply immediately if such is required to prevent damage to the Home.

1.A.4 Possible Deficiency. Water pressure fails to meet certain ranges.

Performance Standard. Water pressure shall not exceed 80 pounds per square inch in any part of the water supply system located inside the Home. Minimum static pressure at the building entrance for either public or private water service shall be 40 pounds per square inch in any part of the water supply system. This standard assumes the public or community water supply reaches the Home side of the meter at 40 pounds per square inch.

Responsibility - If the water pressure is excessively high, the Builder shall take such action as is necessary to bring the variance within the stated standard in the first and second years only. The Builder is not responsible for water pressure variations originating from the water supply source.

## **B. Pipes.**

### **1.B.1 Possible Deficiency. Improper installation of pipes.**

Performance Standard. Pipes shall be installed and insulated in accordance with the Code and manufacturer's specifications.

Responsibility. If a water pipe bursts, the Builder shall take such action as is necessary to bring the variance within the stated standards. The Homeowner is responsible for insulating and protecting exterior pipes and hose bibs from freezing weather and for maintaining a reasonable temperature in the Home during periods of extremely cold weather. The Homeowner is responsible for maintaining a reasonable internal temperature in a Home regardless of whether the Home is occupied or unoccupied and for periodically checking to ensure that a reasonable internal temperature is maintained.

### **1.B.2 Possible Deficiency. Leaking gas pipe.**

Performance Standard. A gas pipe shall not leak, including natural gas, propane or butane gas.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard in the first and second years only. If a gas pipe is leaking, the Homeowner shall shut off the source of the gas if the Homeowner can do it safely.

## **C. Septic Tank System.**

### **1.C.1 Possible Deficiency. Capability of the system.**

Performance Standard. A wastewater treatment system should be capable of properly handling normal flow of household effluent in accordance with the Texas Commission on Environmental Quality requirements.

Responsibility. Builder shall take such action as is necessary for the wastewater treatment system to perform to the stated standard in the first and second years only. The Builder is not responsible for:

- (A) system malfunctions or damage due to the addition of a fixture, equipment, appliance, or other source of waste or water into the septic system by a person other than the Builder or a person working at the Builder's direction; or
- (B) malfunctions or limitations in the operation of the system attributed to a design restriction imposed by state, county, or local governing agencies; or
- (C) malfunctions caused by freezing, soil saturation, soil conditions, changes in ground water table or any other acts of nature.

### **1.C.2 Possible Deficiency. Septic system fails to operate properly.**

Performance Standard. Septic system should function adequately during all seasons, under climatic conditions normally or reasonably anticipated (based on local records) for the location of the Home. Septic system will be designed and installed to comply with applicable Code.

Responsibility. Builder will repair, or otherwise correct, a malfunctioning or non-operating system if failure is caused by inadequate design, faulty installation or other cause relating to actions of Builder or contractors or subcontractors under Builder's control in the first and second years only. Builder will not be responsible for system malfunction or damage which is caused by Owner negligence, lack of system maintenance or other causes attributable to actions of the Owner or Owner's contractors not under the control of Builder, including, but not limited to, the addition of fixtures, items of equipment, appliances or other sources of waste or water to the plumbing system served by the septic system, and damage, or changes, to the septic system installation or surrounding soil conditions critical to the system's functioning.

## **2. HEATING, COOLING, AND VENTILATION (Year One & Year Two)**

### **A. Heating And Cooling.**



2.A.1 Possible Deficiency. Inadequate heating.

Performance Standard. Heating system should be capable of producing an inside temperature of 68°F, as measured in the center of each room at a height of 3 feet above the floor and 2 feet from any wall, under local outdoor winter design conditions as specified in ASHRAE handbook. A room to room temperature variation of up to 4 degrees is acceptable.

Responsibility. Owner is responsible for obtaining, installing and maintaining adequate window coverings, which are an integral factor in maintaining proper indoor temperatures. If Owner adjusts dampers and registers, it could affect the resulting room temperatures. Owner must maintain unit according to manufacturer specifications. Builder will correct heating system to provide the required temperatures in the first and second years only. In any event, the Home should never be heated to higher than 82 degrees Fahrenheit.

2.A.2 Possible Deficiency. Leaking refrigerant line.

Performance Standard. A refrigerant line shall not leak. Condensation on a refrigerant line is not a leak.

Responsibility. Builder shall take such action to bring the variance within the stated standard in the first and second years only, unless the damage was caused by the Homeowner.

2.A.3 Possible Deficiency. Inadequate cooling.

Performance Standard. Where air conditioning is provided, the cooling system should be capable of maintaining a temperature of 23°F below outdoor ambient temperature, as measured in the center of each room at a height of 5 feet above the floor, under local outdoor summer design conditions as specified in ASHRAE handbook. In the case of outside temperatures exceeding 95°F, a differential of 15 degrees from the outside temperature should be maintained. A room to room temperature variation of up to 4 degrees is acceptable.

Responsibility. Owner is responsible for obtaining, installing and maintaining adequate window coverings, which are an integral factor in maintaining proper indoor temperatures. The heating and cooling system is designed and created for the specific size and configuration of the Home; any changes should be made only in consultation with an HVAC professional, including closing off of rooms, closing and opening dampers and vents, and thermostat set backs in excess of 80 degrees. Such alterations may subject the Home to conditions such as high humidity and mildew growth, which are not conditions Builder can control or will be responsible for. Owner must maintain equipment according to manufacturer specifications. Builder will correct cooling system to provide the required temperatures in the first and second years only. In any event, the Home should never be cooled to lower than 72 degrees Fahrenheit.

2.A.4 Possible Deficiency. Differences in thermostat temperature.

Performance Standard. A thermostat reading shall not differ by more than 4 degrees from the actual room temperature taken at a height of 5 feet above the floor in the center of the room where the thermostat is located. The stated performance standard is related to the accuracy of the thermostat and not to the performance standard of the room temperature.

Responsibility. If the thermostat reading differs more than 4 degrees from the actual room temperature taken at a height of 5 feet above the floor in the center of the room where the thermostat is located, the Builder shall take such action as is necessary to bring the variance within the stated standard in the first and second years only.

2.A.5 Possible Deficiency. Equipment installation.

Performance Standard. Heating and cooling equipment shall be installed and secured according to the manufacturer's instructions and specification and shall not move excessively.

Responsibility. If the heating or cooling equipment is not installed and secured in accordance with manufacturer's instructions and specifications or moves excessively, the Builder shall take such action as is necessary to properly install and secure the equipment in the first and second years only.

## **B. Vents, Grills, and Registers.**

2.B.1 Possible Deficiency. Improper operation of vents, grills.

Performance Standard. A vent, grill, or register shall operate easily and smoothly when applying normal operating pressure

when adjusting.

Responsibility. If a vent, grill, or register does not operate easily and smoothly when applying normal pressure when adjusting, the Builder shall repair the vent, grill, or register so that it operates with ease of use when applying normal operating pressure in the first and second years only.

2.B.2 Possible Deficiency. Improper installation of vents, grills.

Performance Standard. A vent, grill, or register shall be installed in accordance with the Code and manufacturer's instructions and specifications and shall be secured to the underlying surface.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard in the first and second years only.

## C. Ductwork.

2.C.1 Possible Deficiency. Insulation.

Performance Standard. Ductwork shall be insulated in unconditioned areas according to the Code.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard in the first and second years only.

2.C.2 Possible Deficiency. Secured.

Performance Standard. Ductwork shall be secured according to the manufacturer's instructions and specifications and shall not move excessively.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard in the first and second years only. Homeowner must not put any load on ductwork.

2.C.3 Possible Deficiency. Separates or leaks.

Performance Standard. Ductwork shall be sealed and shall not separate or leak in excess of the standards set by the Code.

Responsibility. If the ductwork is not sealed, if separated or leaks in excess of the standards set by the Code, the Builder shall take such action as is necessary to bring the variance within the stated standard in the first and second years only.

## 3. ELECTRICAL (Year One & Year Two)

### A. Electrical Conductors, Fuses, and Circuit Breakers.

3.A.1 Possible Deficiency. Installation of electrical wiring.

Performance Standard. Electrical wiring installed inside the Home shall be installed in accordance with the Code and any other applicable electrical standards and shall function properly from the point of demarcation, as determined by the respective utility.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard in the first and second years only. Builder shall not be responsible for utility improvements from the meter/demarcation point to the utility poles or the transformer.

3.A.2 Possible Deficiency. Electrical load capacity.

Performance Standard. Electrical wiring shall be capable of carrying the designated load as set forth in the Code. All electrical equipment shall be used for the purpose and/or capacities for which it was designed and in accordance with manufacturer's specifications.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard in the first and second years only.

3.A.3 Possible Deficiency. Electrical panel capacity.

Performance Standard. The electrical panel and breakers shall have sufficient capacity to provide electrical service to the Home during normal residential usage.

Responsibility. If the electrical panel or breakers do not have sufficient capacity to provide electrical service to the Home during normal residential usage, Builder shall take such action as is necessary to bring the variance within the stated standard in the first and second years only. Builder is not responsible for electrical service interruptions caused by external conditions such as power surges, circuit overloads, and electrical shorts.

3.A.4 Possible Deficiency. Failure of wiring to carry its designed load.

Performance Standard. Wiring should be capable of carrying the designed load for normal residential use.

Responsibility. Use of some appliances may cause a dimming of lights, even though the system is operating correctly. Builder will check wiring for conformity with Applicable Code. Builder will repair wiring not installed according to Applicable Code in the first and second years only. See Subsection 13.A.1 above, for Owner responsibilities.

3.A.5 Possible Deficiency. Circuit breakers trip and fuses blow repeatedly.

Performance Standard. The electrical panel and breakers shall have sufficient capacity to provide electrical service to the Home during normal residential usage such that a circuit breaker shall not trip and fuses shall not blow repeatedly under normal residential electric usage.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard in the first and second years only. The Builder is not responsible for circuit breaker trips or blown fuses that have functioned as designed to protect the Home from external conditions such as power surges, circuit overloads, and shorts.

3.A.6 Possible Deficiency. Ground fault interrupter or ARC breakers trip frequently.

Performance Standard. Ground fault interrupters and ARC breakers are sensitive safety devices installed into the electrical system to provide protection against electrical shock. These sensitive devices can be tripped easily, and may indicate that a circuit is overloaded, that the connected appliance contains a faulty ground, or other problem. Should perform to Code and manufacturer specifications and instructions.

Responsibility. Builder will install ground fault interrupter and ARC breakers in accordance with Applicable Code. Tripping is to be expected and is not covered by this Limited Warranty, unless due to a violation of Applicable Code. For Owner responsibilities, see Subsection 13.A.1 above. The Homeowner shall not plug appliances that require constant electrical flow, such as refrigerators and freezers, into an outlet with a ground fault interrupter.

## **B. Fixtures, Outlets, Doorbells, and Switches.**

3.B.1 Possible Deficiency. Installation of outlet, doorbell, or switch.

Performance Standard. An outlet, doorbell, or switch shall be installed in accordance with the manufacturer's specifications and the Code and shall operate properly when installed in accordance with the manufacturer's specifications and the Code.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard in the first and second years only.

3.B.2 Possible Deficiency. Installation of fixture, electrical box, or trim plate.

Performance Standard. A fixture, electrical box, or trim plate shall be installed in accordance with the Code and the manufacturer's specifications and shall be properly secured to the supporting surface.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard in the first and second years only.

3.B.3 Possible Deficiency. Repeated flickering of lights.

Performance Standard. A light shall not dim, flicker, or burn out repeatedly under normal circumstances. A lighting circuit shall meet the Code.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard in the first and second years only.

## C. Service and Distribution.

3.C.1 Possible Deficiency. Installation of wiring/outlets for cable, telephone, or Ethernet.

Performance Standard. Wiring or outlets for cable television, telephone, Ethernet, or other services shall be installed in accordance with the Code and any applicable manufacturer's specifications.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard in the first and second years only. A Builder is not responsible for the failure of wiring or other utility service connectors or conduits that being before the point at which the service enters the Home.

3.C.2 Possible Deficiency. Operation of outlets and wiring.

Performance Standard. Wiring or outlets for cable television, telephone, Ethernet, or other service inside the Home or on the Home side of the meter/demarcation point shall function properly when installed in accordance with the Code and any applicable manufacturer's standards.

Responsibility. Builder shall take such action as is necessary to bring the variance within the stated standard in the first and second years only. Builder is not responsible for the failure of wiring or other utility service connectors or conduits that begin before the service enters the Home.

## III. MAJOR STRUCTURAL DEFECTS THAT ARE COVERED BY THIS LIMITED WARRANTY DURING YEARS ONE THROUGH SIX

### 1. GENERAL

A. The term "Major Structural Non Foundation Defect" means actual physical damage to a load bearing component of the Home specifically listed below, if meeting all of the following requirements:

- (i) actual physical damage to any of the load bearing portions of the Home listed below; and
- (ii) that is caused by defect of a load bearing component listed below; and
- (iii) that affects its load bearing function; and
- (iv) the reasonable and customary cost to repair such component listed below exceeds \$250, if the Request for Warranty Performance is submitted by Owner during years three through six of coverage.

Such load bearing components of the Home which may be Major Structural Non Foundation Defects, if meeting all of the above conditions, are:

- (a) load bearing walls;
- (b) floor framing systems (joists and trusses);
- (c) roof framing systems;
- (d) structural girders;
- (e) lintels (other than lintels supporting veneers);
- (f) load bearing beams; and
- (g) structural columns.

Examples of components that are not load bearing components are:

- (a) electrical, plumbing, heating, cooling ventilation systems and mechanical systems;
- (b) Fixtures, Appliances and Equipment;
- (c) paints and stains;
- (d) doors and windows, trim, cabinets, insulation and hardware;
- (e) roofing and sheathing;
- (f) dry wall and plaster;
- (g) exterior siding;
- (h) brick, stone, stucco, or veneer;
- (i) floor covering and subflooring materials;
- (j) wall tile and other wall coverings;
- (k) non load bearing walls and partitions; and
- (l) concrete floors of attached garage and basements that are built separately from foundation walls or other structural

elements of the Home.

- B. Subject to the provisions of this Limited Warranty, Builder will repair or replace a Major Structural Defect occurring during the six year warranty period. However, repair of a Major Structural Defect is limited to the following:
- (i) the repair of damage to the load bearing portion of the Home itself, which is necessary to restore its load bearing function; and
  - (ii) the repair of those items or components of the Home damaged by the Major Structural Defect.
- C. The term “Foundation Defect” means a defect of the foundation of the Home, as determined by a professional, licensed engineer following the standards for determination of a Foundation Defect stated below in subsection 2.

## 2. DETERMINATION OF FOUNDATION DEFECT

- A. Introduction. The main purpose of a foundation is to provide a floor surface and a support for the structure above it. To support the structure above, the foundation must provide sufficient stiffness, or rigidity, so that undue distress does not occur in the frame structure above. When a foundation bends or flexes excessively, distress will show in various forms, including, without limitation, interior wallboard or plaster cracks, doors out of square, doors that do not open or close properly, cracks in exterior cladding materials, cracks in brick veneer and/or, separation of adjacent components such as door or window frames, or building frames and trim elements. Some of these signs of distress may be unequal shrinkage of dissimilar materials such as concrete and wood or wood and brick. Some are due to normal seasonal changes in foundation supporting soil volumes because of changes in natural moisture contents.

Homeowners, engineers, architects, Code enforcers, legal bodies or others, may define a foundation defect in different ways, depending upon the subjective opinion of the inspecting party. A foundation defect is defined by some engineers as the point at which the foundation no longer provides stable support to the load-bearing elements of the structure, while to some Homeowners a sticking door signifies defect of the foundation. In either case, it would appear that stability or how stable the structure is constitutes its measure of performance.

An alternative method of determination reduces differing inspection results. This alternative method is the quantification of the instability of a structure supported by the foundation by inspection of appropriate loads and analysis of the individual structural components in accordance with their original and affected capacities. Instability of a ground supported foundation slab depends on many variables and, therefore, may be determined by a quantitative analysis of the performance of the foundation and a prediction of the future performance of the original design intent.

Determination of whether or not a “Foundation Defect” exists, as used in this Limited Warranty, will be made by an Engineer when all of these three conditions are met and taking into account the following relevant factors:

- (1) calculations show that either excessive deflection or excessive tilt of the slab foundation exists; and
- (2) there is actual physical damage to the foundation affecting its load-bearing function to the degree that it materially affects the physical safety of the occupants of the Home; and
- (3) there is more than minor associated cosmetic damage to the interior or exterior finishes of the Home.

“Excessive deflection” (bending or angular distortion) means a calculation of vertical distance that exceeds  $L/360$ , where “L” is the distance between any two points not less than 20 feet apart on the surface of the foundation, and deflection is the vertical distance between the foundation surface and a line connecting those two points. For example, for an L of 20’ (240”) excessive deflection exists when the vertical distance is greater than  $240''/360 = 0.667''$  or two-thirds of an inch.

“Excessive tilt” (planar rotation) means post-construction movement – after allowing for customary construction tolerance because no slab is poured perfectly level – that is greater than 1% measured from edge-to-edge across an entire expanse of the foundation in any direction.

Additionally, the Engineer must consider relevant factors affecting foundation performance, including but not limited to, (i) trees, vegetation, planter boxes, flower beds, a patio, pool, structure or surface, that was added by the homeowner, (ii) homeowner failure to maintain proper soil moisture content through proper watering or irrigation, and (iii) homeowner changes to lot grading or drainage. The Engineer may determine that excessive foundation movement caused by such factors is not a Foundation Defect under this Performance Standard.

- B. Foundation Defect Resolution Provisions. In the event that Owner believes that there is a Foundation Defect with respect to the Home, the parties agree that the following provisions will apply:



1. Owner shall notify Builder of the alleged Foundation Defect within the time period set forth in Section 2.02 of this Limited Warranty. Builder will inspect the alleged Foundation Defect and notify Owner of Builder's determination of whether a Foundation Defect has occurred.
2. If Owner disagrees with Builder's determination of whether a Foundation Defect has occurred, Owner may request that ACES schedules a third party inspection. The inspector chosen will inspect the Home and make a preliminary determination of whether or not a Foundation Defect has occurred. The cost of the inspection will be borne equally by Owner and Builder and paid to ACES before the inspection occurs. If the inspector finds there is a Foundation Defect, and Builder agrees with such determination, Builder will repair the Foundation Defect. Owner and Builder shall require that any inspection report prepared pursuant to this subparagraph 2 (or subparagraph 3 below), will be in writing, and will accurately set forth the evaluation and calculations of the inspector. Each inspection report shall contain measurements, photographs and any other back up documentation necessary to make the report complete, and will contain a general resolution for the Foundation Defect. In the event that ACES has developed a format for inspection reports, Owner and Builder will require that any inspection report comply with that format.
3. If the foundation inspection report issued under subparagraph 2 above indicates that there is not a Foundation Defect, then Owner shall have the right to select an engineer from ACES' foundation engineer list, to perform an additional inspection. If the foundation inspection report issued under subparagraph 2 above indicates that there is a Foundation Defect, then Builder shall have the right to select an engineer from ACES' foundation engineer list, to perform an additional inspection. If Builder selects the engineer, as provided in this subparagraph, Builder will pay the cost of the engineer's inspection. If Owner selects the engineer, as provided in this subparagraph, Owner will pay for the engineer's inspection; however, if the engineer selected by Owner determines that there is a Foundation Defect as calculated pursuant to the Foundation Stability Guide, Builder will reimburse Owner for the cost of the engineer's inspection. Owner and Builder may obtain the cost of the engineer's proposed inspection and report from ACES (which cost will not exceed a reasonable and customary amount for such inspection) at the time the engineer is selected. If after the issuance of the engineer's inspection report, Builder and Owner do not agree on whether a Foundation Defect has occurred, then the alternative resolution procedures in Article VII of this Limited Warranty shall apply.

**ACES is not an insurer. No insurance is provided by ACES in connection with this Limited Warranty.** No provision in this Limited Warranty shall be deemed to imply that Builder's obligations in this Limited Warranty are insured or that any insurance is otherwise furnished in favor of Owner or any other person or entity.

administered by  
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