

## BUILDER'S ONE YEAR LIMITED HOME WARRANTY

Warranty to \_\_\_\_\_ of \_\_\_\_\_ (the "Builder"), extends the following One Year Limited Home Warranty to \_\_\_\_\_, an Oklahoma \_\_\_\_\_, who have contracted with **Builder** for the construction and/or purchase of a home (the "Home") located at \_\_\_\_\_ (the "Property"), whose legal description is:

Throughout this Builder's Limited One Year Home Warranty, hereinafter referred to simply as "**Limited Warranty**," the words "**Buyer**", "**You**" and "**Your**" refer to the original purchaser of the Home. The other words and phrases that appear in boldface type also have special meaning. Refer to the Definitions section, whether one or more so that **You** will understand the special terminology applicable to this **Limited Warranty**.

The commencement date of the Limited Warranty is \_\_\_\_\_, 2002. This date is called the "**Warranty Date**" below. Coverage under the **Limited Warranty** ends one year from the **Warranty Date**.

<p><b>THIS LIMITED WARRANTY EXCLUDES COVERAGE FOR IMPLIED WARRANTIES, CONSEQUENTIAL DAMAGES AND CONSUMER PRODUCTS.</b></p>
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### I. GENERAL TERMS

- A. **Binding Arbitration.** Any disputes which may between Buyer and Builder relating to the Home, the Property or this **Limited Warranty**, including claims that the Builder was negligent or committed fraud in building the Home and/or selling the Property, shall be resolved by binding arbitration, in the manner described in "Requesting Warranty Performance Under This Limited Warranty" below.
- B. **Builder's Choice of Remedy.** If **You** discover a **Defect** during the **Limited Warranty**, **Builder** will repair, replace, or pay **You** the actual cost of repairing or replacing the **Defect** within a reasonable time after **Builder's** inspection or testing confirms the existence of the **Defect**. The choice among repair, replacement, or payment is solely that of the **Builder**.
- C. **Complaints in Writing.** **You** must inform **Builder** of complaints under this **Limited Warranty** in writing. Complaints communicated only by telephone or in face-to-face discussions will not protect **Your** rights under this **Limited Warranty**.
- D. **Scope of Repair.** **Builder's** repair of any **Defect** under this **Limited Warranty** shall include repair and cosmetic correction of surfaces, finishes and coverings, original with the **Home**, which require removal and replacement in order to repair the **Defect**, or to repair other damage to the **Home**, as originally constructed, directly attributable to the **Defect**. **Builder's** repair under this **Limited Warranty** will restore damaged components of the **Home**, original with the **Home**, to a condition approximating the condition just prior to the **Defect**, but not necessarily to a like new condition. Such repair, when undertaken by **Builder**, will be performed utilizing materials of like kind and quality to those original with the **Home**.
- E. **Breach of Warranty.** This **Limited Warranty** shall not be considered breached by the existence of a **Defect**, but rather is only breached by **Builder's** failure to correct a **Defect** in accordance with the terms and conditions of this **Limited Warranty**.

### II. SCOPE AND TERM OF LIMITED WARRANTY

- A. **Builder** warrants that commencing with the **Warranty Date**, and continuing for one year, the construction of the **Home** will conform to the **Performance Standards** and the warranted tolerances for structural components. This **Limited Warranty** terminates one year after the **Warranty Date**. Written notice of an alleged **Defect** must be received by **Builder** within thirty (30) days after the expiration date of the **Limited Warranty** in order to be eligible thereunder.

### III. WHAT IS NOT COVERED BY THIS WARRANTY

- A. The **Limited Warranty** does not cover:
1. Bodily injury or any loss or damage to personal property.
  2. Any **Consequential Damages**, including but not limited to, damage to the Home that is caused by a covered defect but is not itself a covered defect, cost of shelter, transportation, food, moving, storage or other incidental expenses related to relocation during repairs. Some states do not allow the exclusion or limitation of incidental or consequential damages, so this limitation may not apply to you.
  3. Any **Defects** caused by, contributed to, aggravated by, or resulting, in whole or in part, from: (a) changes of the grading of the ground by anyone other than **Builder** or **Builder's** employees, agents, or subcontractors; (b) changes or alterations made to the **Home** by anyone after the **Warranty Date**, except those performed by **Builder** or **Builder's** employees, agents, or subcontractors; (c) any deficiency in materials or work supplied by anyone other than **Builder** or **Builder's** employees, agents, or subcontractors; (d) negligence, improper maintenance or improper use of a **Home** by anyone; (e) dampness, condensation, mold, mildew or fungus due to **Your** failure to maintain adequate ventilation or keep the Home clean; or (f) failure of, or damage to, any part of the Home not built by **Builder** or **Builder's** employees, agents or subcontractors.
  4. Any bodily injury, loss, damage, costs, expenses and any **Defects** caused by, contributed to, aggravated by, or resulting, in whole or in part, from: (a) fire; (b) explosion; (c) smoke; (d) water escape; (e) falling objects; (f) aircraft; (g) vehicles; (h) Acts of God; (i) lightning; (j) hail; (k) floods; (l) wind driven water; (m) insects, rodents or vermin; (n) moisture, rot, corrosion, rust, mold, mildew or fungus.
  5. Any **Defects** caused by, contributed to, aggravated by, or resulting, in whole or in part, from any earth movement including, but not limited to: (a) earthquake, landslide or mudslide; (b) mine subsidence, sinkholes or changes in the level of the underground water table; (c) any volcanic eruption, explosion or effusion.
  6. Any **Defects** caused by, contributed to, aggravated by, or resulting, in whole or in part, from wind, including, but not limited to: (a) hurricanes; (b) tornadoes; (c) tropical storms; (d) gale force winds.

7. Any costs or expenses arising from, or any **Defects** caused by, contributed to, aggravated by, or resulting, in whole or in part, from: (a) the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants**, including, without limitation, any liability arising from uninhabitability or health risk attributable to **Pollutants**, contaminants or irritants (including, without limitation, the presence or consequence of radon gas, formaldehyde, arsenic, fiberglass, methylene chloride, acids, alkalis and chemicals or any other substance or compound that is or may be in the building materials used to construct the Home) or attributable to the presence of or proximity to hazardous or toxic materials; (b) any governmental direction or request to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize **Pollutants**.
8. Any **Defects** that become apparent after the **Home** is no longer used primarily as a residence.
9. Any **Defects** caused by, contributed to, aggravated by, or resulting, in whole or in part, from abnormal loading on floors which exceeds design loads.
10. Any damage to **Consumer Products**.
11. Any **Defects** which **You** have not taken timely action to minimize.
12. Any **Defects** covered by any other express warranty.
13. Any nonconformity with local building codes, regulations, or requirements which has not resulted in a **Defect**. This **Limited Warranty** does not cover building code violations in the absence of a **Defect**. In such instance, **Your** recourse is under the building code and not under this **Limited Warranty**. This exclusion in no way mitigates or relieves the Builder of its obligation to build in accordance with applicable building codes.

- B.** The **Limited Warranty** does not cover any loss or damage as a result of any **Defects** which would not have occurred in the absence of one or more of the events or conditions listed in 4, 5, 6 or 7 in Section A above. The **Limited Warranty** does not cover any such loss or damage regardless of: (1) The cause of the excluded event or condition; or (2) other causes of the loss or damage; or (3) whether other causes acted concurrently or in any sequence with the excluded event or condition to produce the loss or damage.

#### **IV. REQUESTING WARRANTY PERFORMANCE UNDER THIS LIMITED WARRANTY**

- A.** **Your** duties under this **Limited Warranty** are as follows:

1. If **You** believe that the **Home** contains a **Defect**, **You** must advise **Builder** by written notice. **You** must send **Your** written notice no later than thirty (30) days after the date the **Limited Warranty** expires. If such notice is not postmarked or received by **Builder** by that deadline, **Builder** shall have no obligation to remedy a **Defect**.
2. **You** must cooperate with **Builder** and **Builder's** employees, agents, and subcontractors in every effort to investigate **Defects**, including, without limitation, granting the right of reasonable access to the **Home** to monitor, investigate, or correct **Defects**, upon reasonable notification to **You**. In the event **You** withhold access to the **Home** from **Builder**, **Builder** shall have no obligation to remedy **Defects**.
3. Except at **Your** own cost, **You** will not voluntarily make any payment or assume any obligation or incur any expense for the correction of items which **You** believe to be covered by this **Limited Warranty** without **Builder's** prior written approval. In the event of an **Emergency Situation**, approval is granted to **You** to make reasonable repairs, temporary or permanent, provided such repairs are confined solely to the protection of the **Home** from further damage and that **You** shall notify **Builder** as soon as possible, but no later than 5 days after the repairs are undertaken, and provided further that **You** shall keep an accurate record of such repair expenditures.

#### **V. BINDING ARBITRATION**

- A.** **Scope of Arbitration.** If **Builder** fails to respond to **Your** written notice or **Builder** does not correct the **Defects** in the way **You** think this **Limited Warranty** requires, or **Builder** does not agree that the condition is covered by this **Limited Warranty**, or if any other disputes arise which relate in any way to this **Limited Warranty**, then such matters shall be submitted to binding arbitration. Any and all disputes arising out of, or in any way related to, this **Limited Warranty** (including, without limitation, disputes as to what issues shall be submitted to arbitration; alleged breach of the **Limited Warranty**; and alleged violations of consumer protection, unfair trade practice, or other statutes or that **Builder** practiced fraud or acted negligently in building the Home or selling the Property) shall be submitted to binding arbitration.
- B.** **Arbitration Procedure.** The parties must give written notice of their intent to proceed to arbitration to the other party no later than thirty (30) days after the date the **Limited Warranty** expires. Binding arbitration shall be conducted by the Construction Arbitration Services, Inc., 2777 Stemmons Freeway, Suite 650, Dallas, TX 75207, (214) 638-2700, according to its rules and procedures. Upon request, the applicable rules and procedures will be provided to **You** by that organization. The award of the arbitrator shall be final, binding, and enforceable as to both **You** and **Builder**, except as modified, corrected, or vacated in accordance with the applicable arbitration rules and procedures, or, where those rules are silent, the United States Arbitration Act (9 U.S.C. '1 et seq.). **You** and **Builder** agree that this **Limited Warranty** involves commerce and disputes arising under it shall be governed by the United States Arbitration Act. The arbitrator will determine **Your** and the **Builder's** rights and obligations under this **Limited Warranty**, including, without limitation, any rights and remedies conferred upon either **You** or **Builder** by federal, state, or local statutes and ordinances in connection with this **Limited Warranty**.
- C.** **Cost of Arbitration.** This arbitration shall be the exclusive forum for resolving disputes for both **You** and **Builder**. The costs of such arbitration shall be borne by **You** and **Builder** equally.

#### **VI. GENERAL CONDITIONS**

- A.** **Limit of Liability.** **Builder's** limit of liability under this **Limited Warranty** is the amount of the purchase price of the **Home** less the fair market value of the land on which it is located. That amount is the most **Builder** will expend or pay for all **Defects** regardless of the number of warranty claims made. **You** must sign a full release of all legal obligations with respect to the **Defects** when **Builder** has finished correcting or replacing the **Defects**, or when **Builder** has paid **You** the actual cost of correcting or replacing the **Defects**.
- B.** **Independence From The Contract Of Sale.** This **Limited Warranty** is independent of the contract between **You** and **Builder** for the construction of the **Home** and/or its sale to **You**. Nothing contained in the construction and/or sales contract between **You** and **Builder** can restrict or override the provisions of this **Limited Warranty**.

- C. **No Assignment To Subsequent Homeowners.** This **Limited Warranty** shall not transfer to a subsequent **Homeowner** to whom the **Home** is sold.
- D. **Assignment of Manufacturers' Warranties.** **Builder** hereby assigns to **You** the manufacturers' warranties on all appliances and equipment installed in the **Home**. **You** should follow the procedure set forth in the applicable manufacturer's warranty should any appliance or item of equipment malfunction. **Builder's** obligation under this **Limited Warranty** as to any appliances and equipment installed by **Builder** in the **Home** is limited to the workmanlike installation of such appliances and equipment, and further only applies where such appliances and equipment are not **Consumer Products**.
- E. **General Provisions.**
1. Should any provision of this **Limited Warranty** be deemed unenforceable by a court of competent jurisdiction, that determination will not affect the enforceability of the remaining provisions.
  2. Use of one gender in this **Limited Warranty** includes all other genders, and the use of the plural includes the singular, as may be appropriate.
  3. This **Limited Warranty** is to be construed in accordance with the laws of the State of Oklahoma except insofar as its construction is governed by the United States Arbitration Act.
- F. **Other Warranties.** In the event that **Builder** repairs, replaces, or pays **You** the reasonable cost to repair or replace a **Defect**, or other related damage to the **Home** covered by this **Limited Warranty**, which repair or replacement is covered by other warranties, **You** must, upon **Builder's** request, assign the proceeds of such warranties, or **Your** rights under such warranties, to **Builder** to the extent of **Builder's** cost of such repair or replacement. This paragraph in no way modifies or amends sub-paragraph 12 of "What Is Not Covered By This Warranty."

## **VII. DEFINITIONS**

- A. **Builder** means the entity that built the **Home** identified on Page 1 of this Limited Warranty.
- B. **Consequential Damages** means any loss or injury other than the actual cost to correct **Defects**, including, without limitation, costs of shelter, transportation, food, moving and storage; other incidental expenses related to inconvenience or relocation during repairs to the **Home**; or diminished market value of the **Home**.
- C. **Consumer Product** means any appliance, item of equipment, or other item in the **Home** which is a **Consumer Product** as defined in the Magnuson-Moss Warranty Act (15 U.S.C. ' 2301, et seq.). The following are examples of **Consumer Products**, although other items in the **Home** may be **Consumer Products**: refrigerator, trash compactor, range, dishwasher, garbage disposal, hot water heater, clothes washer and dryer, and thermostat.
- D. **Defect(s)** mean deficiencies in workmanship or materials used in constructing the **Home**, which deficiencies fail to conform with the standards and warranted tolerances set out in the **Performance Standards**.
- E. **Deflection** means the difference in elevation of high and low points along a diagonal, horizontal, or vertical plane caused by stress induced deformation of a load bearing member. **Deflection** is measured from any two end points and a third reference point. The reference point may be located at any distance between the two end points.
- F. **Emergency Situation** means an event or condition which creates imminent potential for damage to the **Home** or creates a substantially unsafe living condition due to **Defects** that become evident to **You** at a time other than **Builder's** normal business hours.
- G. **Home** means a single family house (attached or detached) covered by this **Limited Warranty**. The term does not include the following, without limitation: outbuildings, including detached garages and detached carports (except outbuildings which contain the plumbing, electrical, heating, cooling or ventilation **Systems** serving the **Home**); swimming pools and other recreational facilities; driveways; walkways; patios; decks; porch stoops; boundary walls; retaining walls; bulkheads; fences; landscaping (including, without limitation, sodding, seeding, shrubs, trees and plantings); off-site improvement(s); or any other improvements that are not part of the **Home**.
- H. **Homeowner** means the first person to whom the **Home** is sold, or for whom such **Home** is constructed.
- I. **Limited Warranty** means only this express warranty provided to **You** by **Builder**.
- J. **Performance Standards** means those standards and tolerances for materials and workmanship given to **You** by the **Builder** and incorporated by reference into this **Limited Warranty**.
- K. **Pollutants** shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including formaldehyde, arsenic, fiberglass, methylene chloride or other chemical, compound or substance found in the building materials used to construct the **Home**; petroleum products; radon gas; smoke; vapor; soot; fumes; acids; alkalis; and chemicals; mold, mildew, fungus and the spores produced by them, including any toxic substance, compound or bioaerosol produced by or associated with them; and waste. Waste shall include, without limitation, materials to be recycled, reconditioned, or reclaimed.
- L. **Systems** mean the following:
- (1) plumbing system - all gas supply lines and fittings; water supply, waste, and vent pipes and their fittings; septic tanks and their drain fields; and water, gas, and sewer services piping and their extensions to the tie-in of a public utility connection or on-site well and sewage disposal system; (2) electrical system - all wiring, electrical boxes, switches, outlets, and connections up to the public utility connections; (3) heating, cooling, and ventilation system - all duct-work; steam, water, and refrigerant lines; and registers, connectors, radiation elements, and dampers.
- M. **Warranty Date** means, the date on which title to the **Home** is transferred by **Builder** to **You** or the date that the **Home** is first used by **You** for residential purposes, whichever occurs first.

## **VIII. THE ONLY WARRANTY GIVEN BY THE BUILDER AND DISCLAIMER**

**BY SIGNING BELOW, YOU ACKNOWLEDGE THAT (a) YOU HAVE THOROUGHLY EXAMINED THE HOME, (b) YOU HAVE READ AND UNDERSTAND THE LIMITED WARRANTY, AND (c) THAT THE BUILDER HAS MADE NO GUARANTEES, WARRANTIES, UNDERSTANDINGS, NOR REPRESENTATIONS (NOR HAVE ANY BEEN MADE BY ANY REPRESENTATIVE OF THE BUILDER) THAT ARE NOT SET FORTH IN THIS LIMITED WARRANTY.**

**YOU FURTHER UNDERSTAND AND ACKNOWLEDGE THAT (1) NO IMPLIED WARRANTIES WHATSOEVER APPLY TO THE HOME OR THE PROPERTY; (2) THE BUILDER DISCLAIMS ANY IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF HABITABILITY, WORKMANSHIP AND MATERIALS TO THE EXTENT ALLOWED BY LAW; AND (3) ANY IMPLIED WARRANTIES THAT EXIST DESPITE THIS DISCLAIMER ARE LIMITED TO A PERIOD OF ONE YEAR FROM THE DATE OF CLOSING OR INITIAL OCCUPANCY, WHICHEVER OCCURS FIRST. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THIS LIMITATION MAY NOT APPLY TO YOU.**

The undersigned acknowledge having read, understood, and received a copy of this Limited Warranty and the Performance Standards.

**BUYER(S)**

\_\_\_\_\_  
\_\_\_\_\_

STATE OF OKLAHOMA                    )  
  )        ss:  
COUNTY OF OKLAHOMA                )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ AND \_\_\_\_\_.

My Commission Expires:

\_\_\_\_\_

Notary Public

SEAL

**BUILDER**

By:

\_\_\_\_\_

STATE OF OKLAHOMA                    )  
  )        ss:  
COUNTY OF OKLAHOMA                )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ for \_\_\_\_\_.

My Commission Expires:

\_\_\_\_\_

Notary Public

SEAL