



LIMITED WARRANTY AGREEMENT

This Limited Warranty Agreement is hereby entered into on this the _____ day of _____, 20____, by
hereafter (whether one or more) referred to as Buyer, and _____ hereafter referred to as Seller.

WHEREAS, Seller and Buyer on this same day entered into a Purchase and Sale Agreement (the "Contract") of which this Limited Warranty Agreement is a part, for the sale by Seller and the purchase by Buyer of a house (the "Dwelling") located upon that certain parcel of real property located in _____ County, Alabama, the address of which is _____; and

WHEREAS, Seller has agreed in the Contract to provide to Buyer and Buyer has agreed to accept this Limited Warranty Agreement, in lieu of all other warranties and claims whatsoever, whether implied by law or otherwise.

NOW, THEREFORE, in consideration of the premises, the agreements herein, the agreements set forth in the above mentioned Contract, the payment of the purchase price as set out in the Contract, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree to the terms and conditions of this Limited Warranty Agreement as follows:

1. **Warranty Period.** Seller does hereby provide to Buyer this Limited Warranty Agreement on the Dwelling for a period of **One (1) Year** (the "Limited Warranty Period") beginning on the date of conveyance of title to Buyer or the date of initial occupancy of the Dwelling, whichever occurs first (the "Limited Warranty Commencement Date"), and Buyer does hereby agree to the terms of this Limited Warranty Agreement and further agrees to accept this Limited Warranty Agreement as the only warranty given, in lieu of all other warranties of any kind, expressed or implied, with respect to the Dwelling and the sale thereof to Buyer.

Seller and Buyer have negotiated and agreed upon the Limited Warranty Period and acknowledge that the duration of the Limited Warranty Period, as negotiated between Seller and Buyer, has been material to the amount of the Purchase Price and the other terms and conditions as set forth in the Contract.

Buyer hereby acknowledges that Seller has offered to agree to a Limited Warranty Period of greater duration than that which is set forth in this paragraph 1 and that, rather than accepting the longer duration of the Limited Warranty Period, Buyer has chosen to reduce the cost of the Property as reflected by the amount of the Purchaser Price and to accept the Limited Warranty Period of the duration set forth in this paragraph 1.

2. **Limited Warranty.** Seller hereby warrants to Buyer that, for and during the Limited Warranty Period, the Dwelling will be free from Latent Defects, as hereinafter defined. If a Latent Defect occurs in an item which is covered by this Limited Warranty Agreement, Seller will repair, replace, or pay to Buyer the reasonable cost of repairing or replacing any such item in accordance with the Guidelines described herein. Seller shall in its sole discretion determine whether to repair, replace, or pay the reasonable cost of repairing or replacing any such item. **THE LIABILITY OF SELLER IS STRICTLY LIMITED TO THE OBLIGATION TO REPAIR, REPLACE, OR PAY THE REASONABLE COST OF REPAIRING OR REPLACING ANY SUCH ITEM IN ACCORDANCE WITH THE GUIDELINES DESCRIBED HEREIN, AND ANY RIGHT THAT BUYER MIGHT HAVE TO RECOVER ANY OTHER OR ADDITIONAL DAMAGES IS HEREBY WAIVED AND EXCLUDED. BUYER ACKNOWLEDGES THAT THE SOLE REMEDY AVAILABLE TO BUYER HEREUNDER IS THE RIGHT TO REQUIRE SELLER TO REPAIR, REPLACE, OR PAY THE REASONABLE COST OF REPAIRING OR REPLACING ANY SUCH ITEM IN ACCORDANCE WITH THE GUIDELINES DESCRIBED HEREIN.** Steps taken by Seller to correct any Latent Defect under this Limited Warranty Agreement shall not extend the Limited Warranty Period.

3. **Latent Defect Defined.** For the purposes of this Limited Warranty Agreement, a Latent Defect is defined as and limited to a defect in a necessary component in the Dwelling which (i) is not apparent at the Limited Warranty Commencement Date but which becomes apparent during the Limited Warranty Period; (ii) is not otherwise excluded in this Limited Warranty Agreement; (iii) results in actual physical damage to the Dwelling; (iv) is the direct result of the failure by Seller to construct the Dwelling in accordance with **(i) Residential Construction Performance Guidelines, published by National Association of Homebuilders or (ii)**

the Building Quality Standards a copy of which has been provided by Seller to Buyer, (iii) such other Guidelines for construction as may be provided by Seller to Buyer, or if there are no Guidelines, then applicable building codes)(defined herein as the "Guidelines"); and (v) has been set forth in detail by Buyer in a written notice to Seller prior to the expiration of the Limited Warranty Period. The responsibility of Seller to repair or replace certain items with respect to which there might be a Latent Defect shall be as set forth in the Guidelines. If a specific Latent Defect is not addressed in the Guidelines, then the applicable codes adopted by the local governing body with respect to residential construction standards (or if no such codes have been adopted, then the standards of construction prevailing in the geographical area of the Dwelling) will be used in lieu of the provisions of the Guidelines. The Guidelines lists specific defects that might occur within specified categories of the construction and the responsibilities of Seller and Buyer with respect thereto.

4. LIMITATION UPON LIABILITY. THE SOLE REMEDY AVAILABLE TO BUYER UNDER THIS LIMITED WARRANTY AGREEMENT IS THE RIGHT TO REQUIRE SELLER TO REPAIR, REPLACE, OR PAY THE REASONABLE COST OF REPAIRING OR REPLACING LATENT DEFECTS AS HEREIN DEFINED, IN THE DWELLING AS PROVIDED FOR IN THE GUIDELINES. SELLER'S TOTAL LIABILITY UNDER THIS LIMITED WARRANTY AGREEMENT SHALL NOT EXCEED THE ORIGINAL PURCHASE PRICE PAID TO SELLER UNDER THE CONTRACT, LESS THE VALUE OF THE REAL PROPERTY UPON WHICH THE DWELLING IS LOCATED. THIS LIMITED WARRANTY AGREEMENT DOES NOT EXTEND TO OR INCLUDE LIABILITY FOR INCIDENTAL, INDIRECT, COMPENSATORY OR CONSEQUENTIAL DAMAGES.

5. Pre-Closing Inspection. Prior to closing the purchase of the Dwelling, Buyer and Seller will inspect the Dwelling and Buyer will either complete and execute the Preoccupancy Inspection Agreement as provided for on Exhibit I and any exceptions, omissions, or malfunctions agreed upon and noted thereon will be corrected promptly by Seller, or execute the Acknowledgment of Acceptance in accordance with the form attached hereto as Exhibit II. Seller may elect, at the discretion of Seller, to correct all exceptions, omissions, or malfunctions and document, with Buyer, such corrections of exceptions, omissions, or malfunctions, prior to proceeding with closing, and may extend the Closing as necessary to complete said corrections.

6. Assignment of Insurance and Warranties to Seller. In the event Seller repairs, replaces, or pays to Buyer the reasonable cost of repairing or replacing any Latent Defect covered by this Limited Warranty Agreement which is covered by insurance or other warranties, Buyer will, upon the request by Seller, assign the products or proceeds of such insurance or warranties to Seller to the extent of the cost to Seller of such repair, replacement, or payment and cause any lender with a lien or right to such products or proceeds of such insurance to release its interest therein.

7. Exclusions and Disclaimers. This Limited Warranty Agreement shall not extend to, include, or be applicable to (a) defects in garages, storage buildings or other outbuildings not attached to the Dwelling; swimming pools; other recreational facilities; driveways; walkways; retaining walls; fences; landscaping (including sodding, seeding, shrubs, trees, and plantings); or items furnished or installed by Buyer or by parties who have dealt directly with Buyer; or (b) defects which are the result of characteristics common to the materials used, such as (but not limited to) warping and deflection of wood; the presence of mildew, mold, spores, fungi, or other moisture-related conditions; fading, chalking, and checking of paint due to sunlight; cracks due to drying and curing of concrete, stucco, plaster, bricks, and masonry; shrinking and cracking of caulking and weatherstripping; or non-uniformity of appearance of brick and mortar; or (c) defects resulting from failure to perform general maintenance, including but not limited to the presence or growth of mildew, mold, spores, fungi, or other moisture-related conditions; negligence; normal wear and tear; improper maintenance; or improper operation of the Dwelling or any part of the systems in the Dwelling; and Buyer hereby waives and disclaims any claim arising out of any such defects.

Buyer acknowledges that Buyer has read, understood, and accepted the foregoing paragraph.

Buyer:

This Limited Warranty Agreement shall not extend to, include or be applicable to any loss, damage, or injury caused by or resulting from any events, conditions or circumstances not within the complete control of Seller; riots; civil commotion; fire; explosion; smoke; accidents; water escape; mildew, mold, spores, fungi, or other moisture-related conditions; falling objects; aircraft; vehicles; acts of God; lightning; windstorm; hail; flood; mud slides; damage to personal property; earthquakes; volcanic eruptions; wind driven water; radon gas; the presence of fiberglass (also known as rock wool) as a component in the construction of the Dwelling; infestation from termites or other insects; sink holes; subsurface conditions; or changes in the underground water table; including, but not limited to, any mental anguish or bodily injury and any incidental, consequential, or secondary damages caused or claimed to be caused thereby; and Buyer hereby waives and disclaims any claim arising out of any such loss, damage or injury.

Buyer acknowledges that Buyer has read, understood, and accepted the foregoing paragraph.

Buyer:

This Limited Warranty Agreement does not limit or enhance any manufacturer's warranty that is given on any appliance, fixture, equipment, or material included within the Dwelling ("Manufacturer's Warranted Items"). The warranties supplied by the manufacturers, either directly or indirectly, to Buyer, on some Manufacturer's Warranted Items, may be greater in both scope and time than warranties provided in this Limited Warranty Agreement. These warranties are the property of Buyer, and Seller shall deliver all such warranties at the pre-occupancy inspection and transfer the rights that Seller has in such warranties, if any, to Buyer. Buyer will file with the manufacturer any forms contained in these manufacturer's warranties that are necessary to activate such warranties. These Manufacturer's Warranted Items are specifically not covered by this Limited Warranty Agreement, and Buyer shall rely on the manufacturers to correct any deficiencies with respect to these Manufacturer's Warranted Items.

Buyer acknowledges that Buyer has read, understood, and accepted the foregoing paragraph.

Buyer:

8. Access to the Dwelling. Buyer must provide Seller with reasonable workday access to the Dwelling in order to perform any warranty service required under this Limited Warranty Agreement. Failure or refusal of Buyer to provide such access to Seller will relieve Seller of its obligations under this Limited Warranty Agreement.

9. Opportunity to Perform. Prior to filing any action under this Limited Warranty Agreement, Buyer must give to Seller reasonable notice of and a reasonable opportunity to repair, replace, or pay the reasonable cost of repairing or replacing any Latent Defect covered hereunder. SUCH NOTICE MUST, IN ANY EVENT, BE GIVEN IN THE MANNER DESCRIBED IN PARAGRAPH 13 OF THIS LIMITED WARRANTY AGREEMENT AND MUST BE GIVEN PRIOR TO THE EXPIRATION OF THE LIMITED WARRANTY PERIOD. Buyer acknowledges that the right of Buyer to require Seller to repair, replace, or pay the reasonable cost of repairing or replacing any Latent Defect covered hereunder is the sole and exclusive remedy available to Buyer.

10. Arbitration. Seller and Buyer acknowledge and agree that all claims, disputes or other matters in question arising out of or relating in any way to this Agreement or the breach thereof ("Claim"), shall be submitted to mediation with a mutually agreed upon mediator within forty-five (45) days of notice of the Claim. In the event no mediated resolution is reached within sixty (60) days of the party's notice of the Claim, all Claims shall be resolved by binding arbitration as provided for herein. Seller and Buyer acknowledge and agree that this transaction substantially affects interstate commerce by virtue of the materials and components contained in the Dwelling. Any controversy, claim, or dispute arising out of or relating to this Agreement, or the breach thereof, or the transaction contemplated hereby, shall be settled by binding arbitration pursuant to the Federal Arbitration Act, 9 USC § 1, et seq., and shall be administered in accordance with the Construction Industry Rules of the American Arbitration Association. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. All parties agree to be bound by the decision of this arbitration. The decision of the Arbitrator shall be a final and binding resolution, which may be entered as a judgment by a court of competent jurisdiction; and may then be enforced by use of legal remedies.

11. No Assignment. This Limited Warranty Agreement is provided to Buyer only and is not transferable or assignable by Seller or Buyer nor enforceable by any subsequent owner or occupant of the Dwelling.

12. General Provisions.

(a) If any provision of this Limited Warranty Agreement is determined by a court of competent jurisdiction to be unenforceable, that determination will not affect the enforceability of the remaining portions.

(b) This Limited Warranty Agreement shall be binding upon Seller and Buyer and their respective heirs, executors, administrators, successors and assigns.

(c) This Limited Warranty Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

(d) The titles or headings to the paragraphs included herein are for convenience only and shall not add to, reduce, limit, or modify in any manner the content thereof.

(e) The use of one gender shall include all other genders, the use of singular shall include the plural, and the use of the plural shall include the singular, all as may be appropriate to the context in which they are used.

(f) No person shall be deemed to possess any third-party beneficiary right pursuant to this Limited Warranty Agreement. It is the intent of Seller and Buyer that no direct benefit to any third party is intended or implied by the execution of this Agreement.

13. Notice to Seller. Buyer shall notify Seller in writing before the expiration of the Limited Warranty Period of any alleged defect covered by this warranty. Such notice and any other notices to be given to Seller hereunder must be sent by certified mail to Seller at the following address:

Attention:

FAILURE OF BUYER TO GIVE SUCH WRITTEN NOTICE TO SELLER BEFORE THE EXPIRATION OF THE LIMITED WARRANTY PERIOD SHALL BAR ANY RIGHT TO RECOVERY BY BUYER PURSUANT TO THIS LIMITED WARRANTY AGREEMENT.

14. Consumer Products. This Limited Warranty Agreement does not extend to or cover any appliance, piece of equipment, or any item defined as a consumer product for purposes of the Magnusson-Moss Warranty Act (15 USC 2301-2312, as amended).

15. WAIVER OF WARRANTIES AND CLAIMS. THIS LIMITED WARRANTY AGREEMENT IS GIVEN IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY AND WORKMANSHIP AND IS ALSO IN LIEU OF ANY CLAIMS FOR CONSEQUENTIAL DAMAGES, MENTAL ANGUISH OR DISTRESS, AND FOR DAMAGES BASED UPON NEGLIGENCE, AND BUYER HEREBY EXPRESSLY WAIVES AND DISCLAIMS ANY SUCH WARRANTIES AND CLAIMS WITH RESPECT TO BOTH THE DWELLING AND THE REAL PROPERTY UPON WHICH THE DWELLING HAS BEEN CONSTRUCTED.

Buyer acknowledges that Buyer has read, understood, and accepted the foregoing paragraph.

Buyer:

16. SOLE WARRANTY/ENTIRE AGREEMENT. IT IS SPECIFICALLY AGREED BY THE PARTIES HERETO THAT THIS LIMITED WARRANTY AGREEMENT IS ACCEPTED BY BUYER AS THE SOLE WARRANTY GIVEN BY SELLER. BUYER ACKNOWLEDGES THAT THIS LIMITED WARRANTY AGREEMENT IS THE ENTIRE AGREEMENT OF THE PARTIES RELATED TO WARRANTIES. BUYER FURTHER AGREES THAT BUYER HAS NOT RELIED UPON ANY ORAL OR WRITTEN STATEMENTS, UNDERTAKINGS, OR REPRESENTATIONS EXCEPT AS SPECIFICALLY SET FORTH IN THIS LIMITED WARRANTY AGREEMENT AND THAT NO PRIOR AGREEMENT OR UNDERSTANDING PERTAINING TO WARRANTIES SHALL BE VALID OR OF ANY FORCE OR EFFECT. THE COVENANTS AND AGREEMENTS OF THIS LIMITED WARRANTY AGREEMENT CANNOT BE ALTERED, CHANGED, MODIFIED, OR ADDED TO, EXCEPT IN A WRITTEN INSTRUMENT SIGNED BY BUYER AND SELLER. NO REPRESENTATION, INDUCEMENT, UNDERSTANDING, OR ANYTHING OF ANY NATURE WHATSOEVER MADE, STATED, OR REPRESENTED BY SELLER OR ON SELLER'S BEHALF, EITHER ORALLY OR IN WRITING, (EXCEPT AS SPECIFICALLY SET FORTH IN THIS LIMITED WARRANTY AGREEMENT) HAS INDUCED BUYER TO ENTER INTO THIS LIMITED WARRANTY AGREEMENT OR SHALL BE ENFORCEABLE IN ANY MANNER AGAINST SELLER.

Buyer acknowledges that Buyer has read, understood, and accepted the foregoing paragraph.

Buyer:

17. Bargained-For Exchange / Survival. The terms and provisions of this Limited Warranty Agreement have been fully negotiated between Buyer and Seller as a part of the negotiation of the terms and provisions of the Contract, and the terms and provisions hereof are an integral part of the terms and provisions of such Contract. Buyer and Seller agree to be fully bound by the terms and provisions of this Limited Warranty Agreement and agree that this Limited Warranty Agreement shall survive the Closing and the conveyance of title to the Property, as described in the Contract.

[Signatures are on the Following Page]

IN WITNESS WHEREOF the parties hereto have set their hands and seals on this the _____ day of _____,
20____.

SELLER:

By:_____

Its:_____

Witness

BUYER:

Witness

Witness