

LIMITED WARRANTY AGREEMENT

Ash Creek Homes, Inc., hereinafter referred to as "Company", P. O. Box 341749, Austin, TX. 78734 extends the following limited warranty to:

_____ hereafter referred to as "Owner," who has contracted with the Company for purchase of a single family residence located at XXXXXXXXXXXXXXXXXXXX, Bee Cave, Texas, Travis County, State of Texas.

The commencement date of the limited warranty is _____, 20____, and depending on the particular component of construction, extends for a period of ONE YEAR, TWO YEARS or TEN YEARS in accordance with the Express Home Warranty performance standards promulgated by the Texas Association of Builders ("TAB").

1. COVERAGE ON UNIT EXCEPT CONSUMER PRODUCTS

The Company expressly warrants to the original Owner of the Unit that the Unit will be free from defects in materials and workmanship due to noncompliance with the Express Home Warranty performance standards set forth in the TAB guidelines in effect on the date of this limited warranty.

2. COVERAGE ON CONSUMER PRODUCTS

For purposes of this Limited Warranty Agreement, the term "consumer products" means all appliances, equipment, and other items that are consumer products for the purposes of the Magnuson-Moss Act (15 U.S.C., sections 2301-2312) and which are located in the Unit on the commencement date of the warranty. The Company expressly warrants that all consumer products will, for a period of one year after the commencement date of this warranty, be free from defects due to noncompliance with generally accepted standards in the state of Texas, which assure quality of materials and workmanship. ANY IMPLIED WARRANTIES FOR MERCHANTABILITY, WORKMANSHIP, OR FITNESS FOR INTENDED USE ON ANY SUCH CONSUMER PRODUCTS SHALL TERMINATE ON THE SAME DATE AS THE EXPRESS WARRANTY STATED ABOVE. The Company hereby assigns to Owner all rights under manufacturers' warranties covering consumer products. Defects in items covered by manufacturers' warranties are excluded from coverage of this limited warranty, and Owner should follow the procedures in the manufacturers' warranties if defects appear in these items. This warranty gives you specific legal rights, and you may have other rights which vary from state to state.

3. COMPANY'S OBLIGATIONS

If a covered defect occurs during the warranty period, the Company agrees to repair, replace, pay the Owner the reasonable cost of repairing or replacing the defective item, or repurchase the Unit from the Owner in accordance with the Buy-Back provision in Paragraph 24 of the Residential Earnest Money Agreement between Owner and the Company. The Company's total liability under this warranty is limited to the purchase price of the Unit. The choice among repair, replacement, payment or repurchase is the Company's. Any steps taken by the Company to correct defects shall not act to extend the term of this warranty. All repairs by the Company shall be at no charge to the Owner and shall be performed within a reasonable length of time.

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4. OWNER'S OBLIGATION

Owner must provide normal maintenance and proper care of the Unit according to this warranty, the warranties of manufacturers of consumer products, and generally accepted standards of the State of Texas. The Company must be notified in writing, by the Owner, of the existence of any defect before the Company is responsible for the correction of that defect. Written notice of a defect must be received by the Company prior to the expiration of the warranty on that defect and no action at law or in equity may be brought by the Owner against the Company for failure to remedy or repair any defect about which the Company has not received timely notice in writing. Owner must provide access to the Company during its normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., to inspect the defect reported and, if necessary, to take corrective action.

5. INSURANCE

In the event the Company repairs or replaces or pays the cost of repairing or replacing any defect covered by this warranty for which the Owner is covered by insurance or a warranty provided by another party, Owner must, upon request of the Company, assign the proceeds of such insurance or other warranty to the Company to the extent of the cost to the Company of such repair or replacement.

6. CONSEQUENTIAL OR INCIDENTAL DAMAGES EXCLUDED

CONSEQUENTIAL OR INCIDENTAL DAMAGES ARE NOT COVERED BY THIS WARRANTY OR BY THE COMPANY.

7. OTHER EXCLUSIONS

THE FOLLOWING ADDITIONAL ITEMS ARE EXCLUDED FROM LIMITED WARRANTY:

- a. Damage due to ordinary wear and tear or lack of maintenance.
- b. Damage normally covered by a standard insurance policy.
- c. Damage caused by natural catastrophes, acts of nature or acts of God, including, without limitation, freezing, fire, smoke, explosion, water escape, flood, wind, wind-driven rain, hail, lightning, earthquake, earth movement, and falling trees, or power surges or other similar circumstances outside of Company's control.
- d. Damage caused by abuse of the Unit or use of the Unit in a manner for which it is not intended.
- e. Any loss or damage that arises while the Unit is being used primarily for nonresidential purposes.
- f. Any defect or damage that is covered by a manufacturer's warranty that has been assigned to Owner under paragraph 2 of this Limited Warranty.

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- g. Damage resulting from or made worse by failure of the Owner and/or the community association to take appropriate action to prevent further damage, including without limitation the failure to notify Company of any defect or damage within the lesser of sixty (60) days, or such shorter period as will avoid worsening of the defect or damage, after Owner and/or the community association discovered or should have discovered it and the failure to notify Company of damage due to any soils or ground surface settlement problems within a reasonable time after Owner discovered or should have discovered it.
- h. Damage to the Unit caused by Owner or by any guest, tenant or invitee of Owner, or by any other third party (including without limitation vandalism).
- i. Damage caused by animals, birds, vermin, rodents, insects (including termites) or pets.
- j. Damage resulting from expansion, subsidence or lateral movement of the soil.
- k. Defects caused by materials furnished, or any work or alterations performed, by anyone other than Company.
- l. Non-structural cracks equal to or less than 1/4" in width in masonry walls and veneers and non-structural cracks in concrete that has floor covering if the cracks rupture the floor covering. Such cracks are not unusual in such surfaces and frequently occur due to the normal settling of units.
- m. Cracks equal to or less than 1/8" in drywall. Such cracks are not unusual in such surfaces and frequently occur due to normal settling of a unit.
- n. Cracks in ceramic tile, grouting of ceramic tile joints or at junctions with other materials, such as a bathtub. These cracks are common due to normal shrinkage.
- o. Wood cracks or minor openings of wooden joints such as in panel doors, mitered casings and solid paneling, and interior drywall cracks around windows and sills. Such cracks and openings are generally caused by normal shrinkage during the drying out process of the wood and may be mitigated with proper maintenance, including caulking.
- p. Special, incidental or consequential damages of any kind (including, but not limited to, damages for emotional distress or loss of wages) arising from any defect, whether or not such defect is covered by this Warranty, by any other warranty, or otherwise (including, without limitation, lodging, meal or transportation expenses incurred by Owner while a defect exists or is being repaired).

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- q. Special, incidental or consequential damages of any kind (including, but not limited to, damages for emotional distress or loss of wages) arising from the failure of any third party service provider (i.e., utility company, telephone company or cable company) to provide its particular service, including, without limitation, lodging, meal or transportation expenses incurred by Owner while such service is interrupted.
- r. Personal property damage or bodily injury.

8. DISPUTE RESOLUTION PROCEDURE

- a. Intent of Parties. The procedures described in this Warranty are the exclusive methods to resolve any claims under this Warranty. Owner agrees that in the event that any dispute or disputes which pertain to the coverage of this Warranty (“Dispute(s)”), such Disputes shall be resolved according to the “Mediation” provisions of Section 8(b) below.

In the event that Owner is not satisfied with Company’s repair of any defect subject to a warranty claim, Owner understands and agrees that this Warranty requires that Owner follow the resolution process for construction defects described in Declaration of Condominium Regime which applies to the Unit which is recorded in the Official Records of Travis County, Texas (the “Declaration”). The dispute resolution procedures set forth in this Section 8 pertain to disputes as to whether a particular item is covered by this Warranty. Disputes pertaining to construction defects or the repair of any defect covered by this Warranty must be resolved in accordance with the Declaration.

- b. Mediation. All or any Disputes shall first be submitted to mediation as set forth in this Section 8(b).
 - (i) Selection of Mediator. The parties shall select one (1) mediator. If the parties cannot agree upon a mediator, any party may petition the District Court of Travis County for appointment of the mediator. No person shall serve as a mediator in any dispute if such person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption or bias or prevent a prompt commencement of the mediation process.
 - (ii) Commencement of Mediation. Within ten (10) days after selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in Travis County, or such other place as is mutually acceptable by the parties.

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- (iii) Mediation Proceedings. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of any or all disputes. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement of any or all disputes. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of any or all disputes, provided that the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.
 - (iv) Admissible Evidence. Prior to the commencement of the mediation proceedings, the mediator and all parties to the mediation shall execute an agreement pursuant to Texas law in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to, court proceedings, reference proceedings or arbitration hearings.
 - (v) Attendance/Recordation of Mediation Sessions. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.
 - (vi) Allocation of Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the expenses of any witnesses, or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.
- c. Arbitration. In the event the parties do not reach a settlement of the Dispute through mediation, then, upon notice by either party the Dispute shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its applicable rules. The arbitrators shall be empowered to impose sanctions and to take such other actions as the arbitrators deem necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and applicable law. The arbitrators shall have the power to award recovery of all costs and fees (including attorney's fees, administrative fees, and arbitrators' fees) to the prevailing party. Each party agrees to keep all Disputes and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Dispute or issue any press release regarding any Dispute without the written consent of the other parties to the Dispute.

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- d. NOTICE: BY EXECUTING THIS WARRANTY, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THIS WARRANTY DECIDED BY THE MEDIATION AND ARBITRATION PROCEDURES SET FORTH ABOVE AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A JURY TRIAL. IF YOU REFUSE TO SUBMIT TO MEDIATION AND/OR ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO DO SO. YOUR AGREEMENT TO THE MEDIATION AND ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO DECIDE ANY DISPUTES REGARDING COVERAGE OF THIS WARRANTY BY MEDIATION AND/OR ARBITRATION. FURTHERMORE, WE HAVE READ AND UNDERSTAND THE CONSTRUCTION DEFECT RESOLUTION PROCEDURES SET FORTH IN THE DECLARATION AND AGREE THAT ANY DISPUTES REGARDING A CONSTRUCTION DEFECT OR THE REPAIR OF ANY DEFECT COVERED BY THIS WARRANTY SHALL BE RESOLVED BY THE PROVISIONS SET FORTH IN SUCH ARTICLE.

- e. **NOTWITHSTANDING ANY PROVISION FOR MEDIATION OR ARBITRATION CONTAINED HEREIN, ALL PARTIES AGREE AND ACKNOWLEDGE THAT THE COMPANY SHALL AT ALL TIMES RETAIN THE OPTION TO REPURCHASE THE UNIT PURSUANT TO PARAGRAPH 24 OF THE RESIDENTIAL EARNEST MONEY AGREEMENT BETWEEN OWNER AND THE COMPANY AS A FULL AND FINAL RESOLUTION TO ANY CLAIM. THIS PROVISION SHALL SUPERCEDE ANY AWARD GRANTED AT ARBITRATION.**

9. EXCLUSIVE WARRANTY

THE COMPANY AND OWNER AGREE THAT THIS LIMITED WARRANTY ON THE UNIT IS IN LIEU OF ALL WARRANTIES OF HABITABILITY OR WORKMANLIKE CONSTRUCTION OR ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, TO WHICH OWNER MIGHT BE ENTITLED, EXCEPT AS TO CONSUMER PRODUCTS. NO EMPLOYEE, TRADE CONTRACTOR, OR AGENT OF THE COMPANY HAS THE AUTHORITY TO CHANGE THE TERMS OF THIS LIMITED WARRANTY.

DATED the _____ day of _____ 20____.

COMPANY:

Ash Creek Homes, Inc.

By: _____

Printed Name: _____

Title: _____

Date: _____

OWNER:

By: _____

Printed Name: _____

Date: _____

By: _____

Printed Name: _____

Date: _____