

**BUILDERS LIMITED WARRANTY  
WITH ARBITRATION**

In consideration of the Agreement for the construction or purchase of a home for the undersigned Buyer/Owner, this Limited Warranty Agreement is extended by \_\_\_\_\_ (the Builder), whose address is \_\_\_\_\_, and is accepted and agreed to by \_\_\_\_\_ (the Buyer/Owner), who is the original Buyer/Owner of the property at the following address: \_\_\_\_\_.

**1. Builder's Limited Warranty.**

A. The Builder warrants for a period of one (1) year that by the standards of construction relevant in Pocatello/Chubbuck, Idaho, floors, ceilings, walls, and other internal structural components of the home ; the plumbing (including the septic tank if Builder installed), heating, and electric wiring systems; and the roof will be free of defects in materials or workmanship. Such Limited Warranty is subject to the terms hereof including specific provisions for other features of the home and appliances which provisions are controlling.

B. The Builder warrants that by the standards of construction relevant in Pocatello/Chubbuck for a period of sixty (60) days that the following items will be free of defects in materials or workmanship: doors (including hardware), windows, electric switches, receptacles, and fixtures; caulking around exterior openings, plumbing fixtures and cabinet work.

**2. Term.**

A. The terms of the various coverages of this Builder's Limited Warranty begin on the date of final settlement or the date when the Buyer/Owner first occupies the home, whichever comes first.

B. Except as otherwise provided herein, the terms of this Limited Warranty terminate one (1) year or sixty (60) days as applicable after commencement. ANY CLAIMS WHICH HAVE NOT BEEN MADE IN WRITING AS PROVIDED HEREIN, WITHIN ONE (1) YEAR OR SIXTY (60) AS APPLICABLE, REGARDLESS OF DISCOVERABILITY, ARE NOT COVERED.

**3. Manufacturers' Warranties.** The Builder assigns and passes through to the Buyer/Owner (to the extent they exist and are assignable), the manufacturers' warranties on all appliances and equipment supplied by Builder. The following items are examples of such appliances and equipment, although not every house includes all of these items and some houses may include appliances or equipment not in this list: range, furnace or heat pump, dishwasher, garbage disposal, ventilating fan, air conditioner.

**4. Exclusions from Coverage. The Builder does not assume responsibility for any of the following, all of which are excluded from the coverage of this limited warranty.**

A. CONSEQUENTIAL OR INCIDENTAL DAMAGES. (SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU).

B. This Warranty does not cover any appliance, piece of equipment, or other items which is a consumer product for purposes of the Magnuson-Moss Warranty Act (15 U.S.C. Sec. 2301 through 2312.)

C. Any defect or damage which is covered by a manufacturers' warranty. (Manufactures warranties will be assigned to Owner under paragraph 2 of this Limited Warranty).

D. Damage resulting from ordinary wear and tear, abuse, neglect, or lack of due care or proper maintenance of the house or from non-residential use of the home.

E. Defects that result from characteristics common to the materials used, such as (but not limited to) warping and deflection of wood; facing, chalking, and checking of paint from exposure to sunlight; cracks that occurred in the drying and curing of concrete, stucco, plaster, bricks, and masonry; drying,shrinking and cracking of caulking and weather stripping.

F. Defects in materials or items installed by the Buyer/Owner or anyone other than the Builder or subcontractors selected by Builder.

G. Work by the Buyer/Owner or anyone other than the Builder or by subcontractors selected by Builder.

H. Loss or damage caused by insects or animals, fire, explosion, smoke, water escape, change or movement of ground water or soils, glass breakage, wind storm, hail, lightning, falling trees, aircraft, vehicles, flood, earthquakes or acts of God.

I. Conditions resulting from condensation on, expansion of, or contraction of materials.

J. Any and all claims not made in writing as provided herein prior to one (1) year or sixty (60) day warranty period, as applicable.

K. Damages which could have been avoided by prompt notification to the Builder.

L. Defects in any item which was not part of the original home as constructed by the Builder. Any defect caused by or worsened by negligence, improper maintenance, lack of maintenance, improper action or inaction, willful or malicious acts by any party other than the Builder, its employees, agents or subcontractors.

M. Bodily injury or damage to personal property or damage to real property which is not part of the original home as construction by Builder.

N. Any item listed as a non-warrantable condition on the Statement of Non-Warranted Conditions provided herewiththat is incorporated into this warranty.

**5. No Other Warranties.** This expressed limited warranty is the only warranty provided by Builder. ALL OTHER WARRANTIES INCLUDING IMPLIED WARRANTIES WHICH INCLUDE (BUT IS NOT LIMITED TO) WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY, AND GOOD WORKMANSHIP AND ANY WARRANTY THAT MIGHT BE CONSTRUED TO COVER THE PRESENCE OF RADON OR OTHER ENVIRONMENTAL POLLUTANTS ARE HEREBY DISCLAIMED.

**6. Notification of Defects.** if Buyer/Owner believes a defect is covered by this limited warranty, the Buyer/Owner must, prior to the termination of the one (1) year or sixty (60) day warranty period as applicable, write a letter describing the defect to the Builder and send it by certified mail return receipt requested to the Builder at the Builder's office address below:

Representative \_\_\_\_\_  
Company \_\_\_\_\_  
Street \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Emergency Number (\_\_\_\_\_) \_\_\_\_\_

The Buyer/Owner must tell the Builder in writing what times during the day that the Buyer/Owner will be at home, so that the Builder can schedule service calls appropriately. If an emergency exists or if a delay will cause extra damage (for instance, a defective pipe has burst), the Buyer/Owner must telephone the Builder immediately. Only emergency reports will be taken by phone. Failure to promptly notify the Builder of an emergency under this limited warranty relieves the Builder of all liability for replacement, repair, and all other damages.

**7. Repairs.** Upon receipt of the buyer's or owner's written report of a defect, if the defective item is covered by this warranty,

the Builder will repair or replace it at no charge to the Buyer/Owner within sixty (60) days (longer if weather conditions, labor problems, or materials shortages cause delays). The work will be done by the Builder or subcontractors chosen by the Builder. The Builder has sole discretion to choose between repair or replacement.

**8. Not Transferable.** This limited warranty is extended to the Buyer/Owner as the first purchaser of the home and is not transferable. In the event the first purchaser sells the home or moves out of it, this limited warranty automatically terminates.

**9. Arbitration.**

A. Binding Arbitration. With exception of the remedies preserved herein (which includes claims for money within the jurisdiction limits of the small claims court of the State of Idaho) all disputes are subject to binding arbitration. Upon the demand of a party hereto made before the institution of any judicial proceeding or not more than 60 days after service of a complaint, third party complaint, cross-claim or counterclaim or any answer thereto or any amendment to any of the above, any Dispute (as defined below) shall be resolved by binding arbitration in accordance with the terms of this Arbitration Program. A "Dispute" shall include any action, dispute, claim or controversy of any kind, whether founded in contract, tort, statutory or common law, equity, or otherwise, that can not be litigated in the Small Claims Court of the State of Idaho, now existing or hereafter arising between any of the Parties arising out of, pertaining to or in connection with the construction or purchase of the home or this warranty or any related agreements, documents, or instruments ("Documents"). Any Party who fails to submit to binding arbitration following a lawful demand by another Party shall bear all costs and expenses, including reasonable attorneys' fees, (including those incurred in any trial, bankruptcy proceeding or on appeal) incurred by the other Party in obtaining a stay of any pending judicial proceeding and compelling arbitration of any Dispute. **THE PARTIES UNDERSTAND THAT BY THIS AGREEMENT THEY HAVE DECIDED THAT THEIR DISPUTES SHALL BE RESOLVED BY BINDING ARBITRATION RATHER THAN IN COURT, AND ONCE DECIDED BY ARBITRATION NO DISPUTE CAN LATER BE BROUGHT, FILED OR PURSUED IN COURT EXCEPT TO ENFORCE DECISION OF THE ARBITRATOR.**

B. Governing Rules. Arbitration conducted pursuant to this Arbitration Program shall be administered by the American Arbitration Association ("AAA"), or other mutually agreeable administrator ("Administrator") in accordance with the terms of this Arbitration Program and Building Arbitration Rules of the AAA or other rules mutually agreeable. Proceedings hereunder shall be governed by the provisions of the AAA or other rules agreed to by the parties. The arbitrator(s) shall otherwise resolve all Disputes in accordance with the applicable substantive law of the State of Idaho. Judgment upon any award rendered hereunder may be entered in any court having jurisdiction.

C. Preservation of Remedies. No provision of, nor the exercise of any rights under this arbitration clause shall limit the right of any Party to: (1) pursue a claim within the venue and jurisdiction of the Small Claims Department of the Magistrate Division of the District Courts of the State of Idaho as defined at Idaho Code § 1-2301, for claims for money which do not exceed \$3,000; (2) pursue claims of lien or to foreclose a lien or mortgage against any real or personal property collateral or security, as necessary to preserve such remedy or to enforce any arbitration award, or obtain a personal or deficiency award; (3) exercise self-help remedies (including repossession and set-off rights); or (4) obtain provisional or ancillary remedies such as injunctive relief, sequestration, attachment, claim & delivery, replevin, garnishment, or the appointment of a receiver from a court having jurisdiction. Such rights can be exercised at any time except to the extent such action is contrary to a final award or decision in any arbitration proceeding and shall not constitute a waiver of the right of any Party to Arbitration. Any claim or Dispute related to exercise of any self-help, auxiliary or other rights under this paragraph shall be a Dispute hereunder.

D. Arbitrator Powers and Qualifications; Awards. The Parties agree to select a neutral "qualified" arbitrator to resolve any Dispute hereunder. In the event the parties cannot agree then the parties shall proceed as provided by the provisions of the AAA, except as provided herein. The arbitrator(s) shall be empowered to, at the written request of any Party in any Dispute, (1) to consolidate in a single proceeding any multiple party claims that are substantially identical or based upon the same underlying transaction; and (2) to consolidate any claims and Disputes between other Parties which arise out of or relate to the subject matter hereof, including all claims by or against subcontractors or suppliers. In any consolidated proceeding the first arbitrator(s) selected in any proceeding shall conduct the consolidated proceeding unless disqualified due to conflict of interest. The arbitrator(s) shall be empowered to resolve any dispute regarding the terms of this arbitration clause, including questions about the arbitrability of any Dispute, but shall have no power to change or alter the terms of this Arbitration Program. Each party shall be responsible to pay for one-half (1/2) of the cost and fees of the arbitration and their respective costs including attorneys' fees in any arbitration. The award of the arbitrator(s) shall be in writing and shall set forth the factual and legal basis for the award.

E. Miscellaneous. All statutes of limitation applicable to any Dispute shall apply to any proceeding in accordance with this arbitration clause. The Parties agree, to the maximum extent practicable, to take any action necessary to conclude an arbitration hereunder within 180 days of the filing of a Dispute with the Administrator. The arbitrator(s) shall be empowered to impose sanctions for any Party's failure to proceed within the times established herein. Arbitrations shall be conducted in Pocatello, Idaho. The provisions of this Arbitration Program shall survive any termination, amendment, or expiration hereof or of the Documents unless the Parties otherwise expressly agree in writing. 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 as required by applicable law or regulation. If any provision of this Arbitration Program is declared invalid by any court, the remaining provisions shall not be affected thereby and shall remain fully enforceable.

**10. Entire Agreement.** This Builder's Limited Warranty and Statement of Non-Warranted Conditions constitute the entire integrated agreement and understanding between the parties, superseding all prior communications, oral or written. No statements, promises, or inducements made by either party or agent of either party, express or implied, shall be valid or binding if not contained in this written agreement. No modifications to the Agreement shall be effective or binding unless in writing over the duly authorized signatures of the parties hereto. This section shall not be deemed waived by any modification or alteration which does not conform to the above provisions of this section.

**11. Invalidity.** In the event that any one or more of the provisions of this Warranty shall for any reason be held to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall be unaffected thereby and any implied warranties construed to be applicable or not disclaimable by a court of competent jurisdiction shall be deemed limited to the warranty period (term) set forth herein.

Entered into as of date of last signature of the parties hereto.

\_\_\_\_\_  
(Buyer/Owner)

\_\_\_\_\_  
Builder

\_\_\_\_\_  
(Buyer/Owner)

By \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date