

## Winter Homes LLC Limited Warranty

This warranty agreement (hereinafter referred to as the “Warranty”) made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between Winter Homes, LLC (hereinafter referred to as the “Builder”) and, \_\_\_\_\_ (jointly or individually referred to hereinafter as “Purchaser”), involving the improvements constructed at \_\_\_\_\_ (hereinafter referred to as the “Property”).

**WHEREAS**, the Builder has caused the Property to be built for sale to the Purchaser or under contract with the Purchaser, and;

**WHEREAS**, the Builder does hereby agree to provide a limited warranty on the Property for a period of one year following the closing of the sale of the Property or the Purchaser’s occupancy of the Property, whichever should occur first upon certain conditions and in substitution of and to the exclusion of any and all other warranties, express or implied.

**NOW THEREFORE**, in consideration of the payment of all sums due from the Purchaser to the Builder, and other good and valuable consideration and the premises and agreements herein, the parties agree as follows:

1. The Builder warrants the Property to be free from latent defects for a period of ONE YEAR following closing of the sale of the Property or the Purchaser’s occupancy of the Property, whichever should occur first. A latent defect is defined as a defect not apparent at time of occupancy or closing, but which becomes apparent within one year following closing of the sale of the Property or the Purchaser’s occupancy of the Property, whichever should occur first, and such defect has been caused by the Builder’s failure to construct improvements in general conformity with the standards of construction prevailing in the geographical area of the Property. Normal characteristic behavior of building materials, wear and tear, general maintenance, and like items DO NOT constitute a latent defect in construction. THIS WARRANTY IS PROVIDED IN LIEU OF ANY AND ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY AND WORKMANSHIP.

2. The Builder shall not be liable under this Warranty for any warranty items unless the Purchaser submits a warranty claim describing the alleged defect before midnight of the final day of the one-year Warranty term. Notice to the Builder shall be made by submitting a warranty request through Buildertrend ([www.buildertrend.com](http://www.buildertrend.com)), ONLY. No warranty submissions will be accepted by any other method. Instructions for the submission of warranty claims via Buildertrend are available to the Purchaser within the document entitled “How to Submit Warranty Claims via Buildertrend” attached hereto and labeled as “Exhibit A.”

3. In the event the Builder takes steps to correct any alleged defect pursuant to this Warranty, such actions shall not extend the one-year term of this Warranty.

4. THIS WARRANTY IS SUBJECT TO ARBITRATION. If a dispute arises from or relates to this Warranty or the breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to endeavor first to settle the dispute by mediation undertaken by any mediator agreed to by the parties. The parties further agree that any unresolved controversy or claim arising out of or relating to this

Warranty, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be in Madison County, Alabama. The arbitration shall be governed by the laws of the State of Alabama. The parties each agree that the provisions of this Warranty involve and concern interstate commerce. The binding arbitration provisions of this Warranty arise under the Federal Arbitration Act (9 U.S.C. §1, *et seq.*).

5. The Builder assigns to the Purchaser, the Builder's rights, if any, under manufacturers' warranties on appliances and items of equipment included in the Property to the extent such rights are assignable. The Builder assumes no responsibility for such manufacturers' warranties. The Purchaser agrees to follow the procedures in these warranties if defects appear in such appliances or equipment. These items include but are not limited to: appliances, water heaters, generators, heating and cooling equipment, garage door openers, outdoor kitchen appliances, fireplace burners, exhaust fans, plumbing fixtures and whirlpool/air bath equipped tubs.

6. The Builder does not assume responsibility for any of the following, all of which are expressly excluded from coverage under this Warranty:

- a) Defects in appliances and equipment covered by manufacturer's warranty.
- b) Incidental, consequential, or secondary damage caused by a breach of this Warranty.
- c) Defects which are the result of characteristics common to the materials used, such as (but not limited to) warping and deflection of wood, mildew and fading, chalking and fading paint due sunlight, cracks due to drying and curing of concrete, stucco, plaster, bricks and masonry, drying shrinking and cracking of caulking and weatherstripping.
- d) Conditions resulting from condensation on, or expansion or contraction of materials.
- e) Defective design or materials supplied by the Purchaser or installed under the Purchaser's direction, or defects in, or caused by anything not built into, or installed on the Property pursuant to contract between the Builder and the Purchaser.
- f) Damages due to ordinary wear and tear, use, abuse or lack of proper maintenance.
- g) Loss or injury due to the elements.
- h) Landscaping, including sod, seeding, shrubs, trees and plantings.
- i) Damages caused by insects, squirrels, rodents or other animals.
- j) Non-uniformity of appearance of brick, including but not limited to used or simulated used brick.
- k) Chips, scratches, cracks or marks in tile, woodwork, walls, porcelain, brick, plumbing fixtures, Formica, granite, quartz, marble and glass not expressly identified to Builder on the pre-closing inspection.
- l) Dripping faucets, hose bibs and toilet adjustments.
- m) Utility service lines installed by developer, municipality or service company and back filling or stumping thereof.

n) Deteriorations or defects in asphalt paving.

2

o) Movement, shifting, expansion or plasticity of the soils beneath or within the Property or changes in the under-ground water table and subsurface soil structures.

p) Damages or losses not caused or created by the Builder or its employees, agents, contractors or subcontractors.

q) Damages resulting from accidents, riots, civil commotion, acts of God or nature, including but not limited to, fire, explosion, smoke, water escape, underground springs, underground anomalies, sink holes, windstorms, hail, snow, ice, freezing rain, lightning, fallen trees, aircraft, vehicles, floods, earthquakes, mudslides, wind driven water, acts of terrorism, reflection of the sun or volcanic eruptions.

r) Loss or damages resulting from the Purchaser's failure to minimize such loss or damage or to notify the Builder or its employees as provided herein.

s) Losses or damages to or resulting from defects in improvements which are not part of the Property, defects in outbuildings, such as detached garages and carports, swimming pools, detached recreational buildings and facilities, defects in driveways, walkways, streets, street creep, patios, decks, boundary and retaining walls, bulkheads, fences, lawn sprinkler/irrigation systems and landscaping of all types, including damage to trees, etc. during the course of construction, French drains, sink holes and dry rot.

t) Any loss or damages which arises when the Property is used for non-residential purposes.

u) Damages to real property other than to the improvements constructed upon the Property.

v) Damage resulting from, or aggravated by changes to the Property, by anyone.

w) Loss or damages resulting from, or aggravated by, or occurring to modifications or additions to the Property made after the Purchaser occupies the Property, except those modifications undertaken by the Builder in performance of this Warranty.

x) Personal property damage, bodily injury, punitive damages or legal fees.

y) Loss or damages resulting from a failure to maintain proper humidity levels in the Property or aggravated by dampness or condensation caused by the Purchaser's failure to maintain proper ventilation.

z) Any defect which does not result in actual physical damage to the Property.

aa) Any defect, damages or loss caused or aggravated by a failure of anyone other than the Builder, its agents, employees, contractors or subcontractors to comply with any manufacturer's warranty requirements concerning appliances, fixtures or equipment.

bb) Loss or damages resulting from toxins, carcinogenic or suspected carcinogenic fumes or substances, such as, but not limited to, acids in the soil, radon, radon gas, radon daughters, radon progeny or mold.

cc) Water infiltration into a basement or crawl space within the one year following closing of the sale of the Property or the Purchaser's occupancy of the Property, whichever should occur first.

dd) Loss or damages resulting from the weight and/or performance of any type of waterbed or other furniture excessive in weight or other abnormal loading of floors.

ee) Loss or damages resulting from weight stored in the Property in excess of the Builder's design

specifications.

ff) Loss or damages resulting from a loss in water supply, or potability or clarity of water supply.

3

gg) Loss or damages resulting from frozen or clogged drain lines.

hh) Solar panel systems or their installation or operation.

ii) Standing or ponding water on the Property which does not directly affect the foundation of the improvements on the Property.

jj) Loss or damage caused directly or indirectly by flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these (whether or not driven by wind), water which backs up from sewers or drains, changes in the water table which were not reasonably foreseeable, or water below the surface of the ground (including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool, or other structure) wetlands, springs or aquifers.

kk) Soil erosions and run-off caused by a failure of the Purchaser to maintain established grades, drainage structures and swales, stabilized soil, sodded, seeded and landscaped area.

ll) Any storm water or soil erosion/sedimentation control approved by the local governing jurisdiction for the Property.

mm) Any glass breakage.

nn) The removal and or replacement of items not originally installed by the Builder where removal and replacement are required to repair a defect.

oo) Alterations or repairs of the Property undertaken by the Purchaser or the Purchaser's agents or contractors.

7. In the event the Builder makes repairs pursuant to this Warranty, the Builder shall not be responsible for color matching, variation in colors of materials. The Builder shall not be responsible for replacing defective materials with exact duplicate materials. However, Builder shall make reasonable efforts, in its sole and exclusive discretion, to provide replacement materials at the same or similar quality to those items being replaced. The Builder shall complete warranty repairs in accordance with the **Residential Construction Performance Guidelines, Consumer Reference Sixth Edition (hereinafter referred to as the Guidelines)**) attached hereto and labeled as "Exhibit B." The Guidelines relate to warranty repair standards and do not alter the duties or protections under this Warranty. In the event of a conflict between this Warranty and the Guidelines, this Warranty shall control.

8. The Purchaser agrees to make the Property available for inspections and repairs during normal working hours. The Purchaser's failure to provide such access to the Builder, shall relieve the Builder of its obligations under this Warranty. The Builder shall determine in its sole and exclusive discretion whether to repair or replace defective materials, or to pay the reasonable cost of repair or replacement of such materials. IF THE BUILDER IS NOT AFFORDED THE FIRST RIGHT TO REPAIR OR RESOLVE ANY ALLEGED DEFECT, NO WARRANTY COVERAGE WILL BE EFFECTIVE ON THAT ITEM AND ALL PURCHASER'S RIGHTS HEREUNDER SHALL BE DEEMED WAIVED. The Builder shall determine in its sole and exclusive discretion the method of repair of any warrantable defects.

9. The Builder's total liability of this Warranty is limited to and shall not exceed the sale price of the Property.

10. In the event any one or more of the provisions contained in this Warranty shall for any reason be held by a court or arbitrator of competent jurisdiction in whole or in part to be invalid, illegal, or unenforceable in any respect, the court or arbitrator shall sever such provision or provisions from this Warranty in the

4

narrowest manner possible, and such invalidity, illegality, or unenforceability shall not affect any other provision of this Warranty.

11. It is intended that the use of one gender herein includes all genders and the singular includes the plural.

12. This agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

13. This Warranty constitutes the entire understanding between the Builder and the Purchaser with respect to any and all warranties, express or implied, and supersedes any prior communications and understandings with respect to its subject matter.

14. Neither the Builder nor the Purchaser may assign this Warranty without the other party's prior written consent. This Warranty is NOT TRANSFERABLE TO ANY SUBSEQUENT HOME BUYER.

15. Time is of the essence.

16. Other provisions:

A. IT IS THE RESPONSIBILITY OF THE PURCHASER TO REMOVE HOSES FROM FROST PROOF HOSE BIBS. A FAILURE TO REMOVE A HOSE FROM A HOSE BIB BEFORE A FREEZE CAN RESULT IN DAMAGE TO WATER LINES AND PIPES. IT IS THE RESPONSIBILITY OF THE PURCHASER TO AVOID OVERTIGHTENING SPIGOT HANDLES. HOSE BIBS AND LEAKS RESULTING FROM HOSE BIBS ARE NOT COVERED UNDER ANY WARRANTY.

(Signature) (Signature)

B. MAHOGANY AND OTHER WOOD EXTERIOR DOORS are not covered under any warranty. This type of door requires ongoing regular maintenance depending on how exposed the door is to the elements such as direct long hours of sunlight, short overhang protection, etc. It is the Purchaser's responsibility to maintain exterior mahogany and other wood exterior doors. Mahogany and other wood exterior doors contract and expand during weather changes throughout the year and requires adjustments during seasonal changes. These adjustments are the responsibility of the Purchaser.

(Signature) (Signature)

C. The Purchaser agrees if the Purchaser makes a service call that involves a non-warranty item, the Purchaser will be responsible for a \$150 service call fee and any costs associated with non-warranty

repair.

(Signature) (Signature)

5

IN WITNESS WHEREOF, the parties hereto have executed this Warranty on the date so

indicated. **Purchaser:**

(Print Name) (Signature) (Date)

(Print Name) (Signature) (Date) **Builder: Winter Homes LLC**

(Print Name) (Signature) (Date)

