

PURCHASE AND SALE AGREEMENT

Conventional Form

With Limited Warranty

This document and the exhibits and attachments are not final or complete instruments, they include several options which may be included or deleted, and should not be executed in their present form. The HBAA and its local chapters do not assume any liability for damages arising from the use of this document and the exhibits and attachments thereto and give no opinion that any of the terms and conditions in this document and the exhibits and attachments should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated between the parties based upon the respective interests, objectives, and bargaining positions of all interested parties. Seek specific legal advice from your lawyer.

This PURCHASE AND SALE AGREEMENT (hereinafter "this Agreement") is hereby bargained for, made, and entered into on the _____ day of _____, 20_____, by and between _____ (hereinafter referred to as "Seller") and _____ (hereinafter, whether one or more, referred to as "Buyer").

WITNESSETH:

Buyer desires to purchase from Seller, and Seller has agreed to sell to Buyer, the following described real property (the "Land") situated in _____ County, Alabama, and more particularly described as follows:

Address: _____

Legal description: _____

(See attached Exhibit I for legal description of the Land if not inserted in the above space.)

together with all improvements thereon, if any (the Land and said improvements hereinafter referred to together as the "Property"). The Property either has been or will be improved with a residential dwelling (the "Dwelling") in accordance with the provisions of this Agreement. As a part of the negotiation of the terms and provisions of this Agreement, Buyer and Seller have negotiated between themselves the terms and provisions of a Limited Warranty Agreement and **[Insert here one, but only one, of either "a Preoccupancy Inspection Agreement as described herein below" or "Acknowledgment of Acceptance as described herein below" and remove as an exhibit the one that was not selected].**

NOW, THEREFORE, in consideration of the foregoing recitals, the agreements contained herein and attached hereto, the provisions of the Limited Warranty Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller do hereby agree as follows:

1. Purchase and Sale. Buyer hereby agrees to purchase the Property from Seller, and Seller hereby agrees to sell the Property to Buyer.

2. Purchase Price. The purchase price to be paid by Buyer to Seller for the conveyance of the Property, as improved with the Dwelling, shall be the sum of _____ Dollars (the "Purchase Price") and shall be payable as follows:

Earnest Money, payable upon the execution of this Agreement, in the amount of	\$ _____
Additional Earnest Money, payable on or before _____ in the amount of	\$ _____
Additional Earnest Money, payable on or before _____ in the amount of	\$ _____
The balance of the Purchase Price, in immediately available funds, payable upon the conveyance of the Property in the amount of	\$ _____
Total Purchase Price	\$ _____

All payments of Earnest Money and Additional Earnest Money (the Earnest Money and Additional Earnest Money are sometimes hereinafter referred to collectively as the "Earnest Money") shall be paid to Seller and may be spent by Seller as Seller deems appropriate, unless provided otherwise in this Agreement. The Earnest Money may be immediately expended by Seller toward the costs of constructing or completing the construction of the Dwelling or other improvements to the Property or for any other purpose that Seller deems appropriate.

3. **Financing.** The provisions of this paragraph shall be applicable only if initialed by both Seller and Buyer. This Agreement is subject to Buyer being able to obtain a conventional loan in the amount of \$ _____ (the "Loan"). Buyer agrees to make application for the Loan within ten (10) days after the date of this Agreement and to exert all reasonable efforts and diligence to obtain approval of the Loan. Buyer agrees to keep Seller fully informed of the status of Buyer's efforts to secure the approval of the Loan. Buyer shall provide such evidence as may be required by Seller, including a written commitment for the Loan, to confirm the final approval of the Loan. Seller shall have the right to delay the commencement of the construction of the Dwelling, if applicable, or delay the completion of the construction of the Dwelling, if applicable, until such time as Seller has determined, to the satisfaction of Seller, that the Loan has been or is likely to be approved. Any such determination by Seller shall be for the sole benefit of Seller and may not be relied upon in any manner by Buyer. The failure of Buyer to secure and deliver to Seller, on or before _____ days after the date of this Agreement, a commitment for the Loan in a form acceptable to Seller, shall entitle Seller, at the election of Seller, to terminate this Agreement, whereupon the Earnest Money, if any, shall be refunded by Seller to Buyer within thirty (30) days after such termination, without interest, and reduced in an amount equal to any out-of-pocket costs incurred by Seller in connection with or related to the application for the Loan or the process of the consideration thereof.

Seller: _____	Buyer: _____
_____	_____

4. **The Dwelling.** The Property either has been or will be improved with the Dwelling. **(The parties should select one, but only one, of the following subparagraphs by initialing the subparagraph which is applicable.)**

As of the execution of this Agreement, the Dwelling has been completed and Buyer has inspected and accepted the Dwelling, as completed, subject to the preoccupancy inspection to be made by Buyer and Seller pursuant to the Limited Warranty Agreement and the [Insert here one, but only one, of either "the Preoccupancy Inspection Agreement" or "Acknowledgment of Acceptance" and remove as an exhibit the one that was not selected] , both of which are attached hereto and both of which are described in greater detail elsewhere in this Agreement.	Seller:

	Buyer:

<p>The construction of the Dwelling has been commenced and, as of the date of this Agreement, is only partially complete. Buyer has inspected the portion of the Dwelling which has been constructed and finds same to be acceptable. The construction of the Dwelling shall be completed by Seller in accordance with the provisions of this Agreement and the Limited Warranty Agreement and in general conformity with the plans and specifications (the "Plans and Specifications") described on Exhibit A and incorporated herein, except that, to the extent that the portion of the Dwelling which has been constructed as of the date of this Agreement is different from the Plans and Specifications, then the Plans and Specifications shall be deemed modified to be consistent with the actual construction.</p>	<p>Seller:</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p>Buyer:</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/>
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<p>The construction of the Dwelling has not yet been commenced. Seller agrees that the Dwelling shall be constructed in accordance with the provisions of this Agreement and the Limited Warranty Agreement and in general conformity with the Plans and Specifications attached hereto as Exhibit A and incorporated herein.</p>	<p>Seller:</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p>Buyer:</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/>
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The Plans and Specifications, if applicable, have been signed and dated simultaneously with the execution of this Agreement by both Seller and Buyer and any changes in the Plans and Specifications which have been agreed upon by both Seller and Buyer have been clearly shown and initialed by both Seller and Buyer. The construction of the Dwelling shall be deemed completed upon the issuance of a certificate of occupancy by the applicable governmental building inspection department, if there is such a department in the jurisdiction in which the Property is located, and, if no such department exists, then upon the reasonable determination by Seller that the construction of the Dwelling is substantially complete.

5. Changes to Plans and Specifications. If Seller has agreed to construct the Dwelling or complete the construction of the Dwelling in general conformity with Plans and Specifications pursuant to the preceding paragraph, Seller shall be under no obligation to make any changes, additions or alterations to the Plans and Specifications. Seller may elect to make changes, additions or alterations to the Plans and Specifications upon the request of Buyer; however, Seller shall not be obligated to do so. In the event that Seller and Buyer agree upon changes, additions or alterations to the Plans and Specifications, then such agreement shall become effective only upon the execution by both Seller and Buyer of a written change order, in a form which is acceptable to Seller and which sets forth the changes to be made and the additional consideration to be paid by Buyer to Seller in connection therewith, and the payment by Buyer to Seller of such portion of said additional consideration as shall be required by Seller. Any such additional consideration shall be in addition to the Purchase Price and any payments of said additional consideration by Buyer to Seller shall not be a credit against the Purchase Price and shall be non-refundable. Seller shall not be obligated to agree to any such changes, additions or alterations to the Plans and Specifications and may condition any such agreement upon such matters as Seller shall, in sole discretion of Seller, determine, including, but not limited to, the payment of additional consideration by Buyer, the approval of such changes by Buyer's lender and the local building inspection officials, if any. In the event that Seller agrees to such changes and has not received all of the additional consideration to be paid in connection therewith, then the balance of said consideration shall be paid at the closing of the sale of the Property. Notwithstanding the foregoing, Seller shall have the right to make such changes, additions, or alterations to the Plans and Specifications as shall be required by any governmental officers who have jurisdiction or authority over the construction of the Dwelling, or to cause the construction of the Dwelling to be in compliance with any applicable building codes or other applicable governmental laws, rules, or regulations, without notice to or approval by Buyer.

6. Decorating Allowance. Seller may allow Buyer to select some or all of the decorating items to be incorporated into the Dwelling, provided that same have not already been incorporated therein. Such items may include brick, paint colors, roof colors, light fixtures, wall paper, and floor covering for which Seller shall establish allowances. Buyer shall make such selections within seven (7) working days after the request by Seller. If selections of Buyer exceed the amount of allowances established by Seller, then Buyer shall pay such portion of any such excess as shall be required by Seller at the time of making the selections, and the balance, if any, shall be paid upon the Closing, in addition to the Purchase Price. The allowances established by Seller and which are included in the Purchase Price are attached hereto as Exhibit B. In no event shall the Purchase Price be reduced as the result of the expenditure of less than the allowance for any particular item.

7. Condition of the Land.

(a) Buyer hereby affirms that, before signing this Agreement, Buyer has personally walked upon and inspected the Land. Buyer acknowledges that Buyer and its representatives have had an opportunity to enter the Land for the purpose of conducting such engineering studies, site investigations and analyses (including soil tests) as Buyer deems desirable to determine whether the soil or other conditions of the Land are acceptable to Buyer. Buyer agrees that Buyer is acquiring the Land "AS-IS" without any representation or warranty on the part of Seller other than as to the title.

(b) Buyer waives all claims, present and future, against Seller and Seller's agents, employees, successors, assigns, members, owners, managers, partners, officers and contractors based upon or connected with the condition of the Land and hereby releases Seller and Seller's agents, employees, successors, assigns, members, owners, managers, partners, officers and contractors from any liability whatsoever therefor. This provision shall survive the closing of this sale. In addition, the deed to be delivered by Seller to Buyer as described in this Agreement shall contain a release from damages in the form set forth below:

This conveyance is made with the express reservation and condition that Grantees, for themselves and on behalf of their heirs, administrators, executors, successors, assigns, contractors, permittees, licensees and lessees, hereby release and forever discharge Grantor from any and all liability, claims and causes of action, whether arising at law (by contract or in tort) or in equity with respect to damage or destruction of property and injury to or death of any person located in, on, or under the surface of or over the property herein conveyed, as the case may be, which are caused by, or arise as a result of, past, present, or future soil, subsoil, or other conditions (including, without limitation, sinkholes, underground mines, subsurface waters, and limestone formations) under or on the subject property, whether contiguous or non-contiguous. Grantees acknowledge that they have made their own independent inspections and investigations of the subject property and are purchasing the subject property in reliance upon such inspections and investigations. For purposes of this paragraph, Grantor shall mean and refer to the members, managers, agents, employees, successors, assigns, members, owners, managers, partners, officers and contractors of Grantor and any successors and assigns of Grantor.

(c) Buyer acknowledges that Buyer has been advised to investigate the purchase of insurance for protection in the event of earthquakes or sinkholes and that Seller has made no representation or warranty with respect to the availability of such insurance coverage.

(d) The Purchase Price does not include any costs or contingencies for rock or other abnormal surface conditions, and Buyer shall be responsible for the costs of correcting any such conditions. Should such abnormal conditions be encountered on the building site in connection with foundations and footing excavation or installation of sewer lines, on-site sewage disposal systems, water lines, or other utility services, Seller shall promptly inform Buyer of same and estimated costs of the additional work. Such costs may include, but are not necessarily limited to, blasting expenses, jack hammer and drill operations. The actual costs will be reflected in an increase in the Purchase Price at Closing.

8. Maintenance and Prevention of Moisture-Related Conditions.

(a) Buyer hereby acknowledges and agrees that, upon the closing and occupancy of the Property by Buyer: (i) it shall be the responsibility and obligation of Buyer to maintain the Property, including the Dwelling and all components thereof, in good condition and repair, including all caulking, water seals, exterior surfaces and finishes, mortar, water pipes, drainage systems, HVAC pipes and systems, basement and crawl space areas, gutters, roofs, and landscaping, for the prevention of water penetration, mildew, mold, spores, fungi, damage to wood and other materials, and other moisture-related conditions; (ii) the failure to do so could result in health-related problems and/or damage to the Property; (iii) Seller shall have no liability or responsibility with respect to same; and (iv) Buyer hereby waives and disclaims any claims against Seller arising out of any such condition and any loss, damage, or injury resulting therefrom.

(b) Buyer further acknowledges and agrees that: (i) if Buyer becomes aware of water intrusion into the Property, Buyer should respond immediately; (ii) in cases of serious water damage, Buyer should hire construction and indoor air quality consultants to assess the damage and determine what remediation is needed; (iii) inadequate remediation, even if well-intentioned, will only create more problems; (iv) water damaged materials may need to be removed, and the source of the water intrusion should be addressed; (v) the Property may have to be vacated while remediation work is in progress; and (vi) a certified

industrial hygienist experienced with testing for molds in indoor environments should be retained to determine whether the water damage has caused a source of mold growth and amplification.

(c) Buyer further acknowledges and agrees that: (i) unusual odors should also be investigated promptly; (ii) unusual odors may be indicative of water intrusion and mold growth; and (iii) chronic complaints of illness (especially respiratory, breathing, or allergy-type problems), headaches or nausea may indicate indoor air quality problems and should be taken seriously and investigated promptly.

9. The Closing. The closing of the purchase and sale of the Property (the "Closing") shall occur on or before the _____ day of _____, 20____ (the "Closing Date") except that Seller shall have a reasonable time thereafter within which to perfect title or cure title defects, and further provided that the Closing Date may be extended by Seller for such additional time as Seller shall determine to be reasonably necessary (a) as the result of any delay in the approval of Buyer's Loan; or (b) to complete the construction of the Dwelling, if applicable, as the result of any delays in the progress of construction due to items such as, but not limited to, inclement weather, acts of war or terrorism, changes in the Plans and Specifications agreed upon between the parties, requirements of any building officials or other governing authorities, work stoppages, delays in the delivery of materials, delays in the approval of Buyer's Loan, contingencies under this Agreement, the completion of the preoccupancy inspection and any additional work required as the result thereof, and any other matters which might delay the completion of construction of the Dwelling; or (c) as a result of any delay caused by the failure or interruption of systems used by Seller or systems used by third parties upon whom Seller relies or any other system where such failures or interruptions are caused, in whole or in part, directly or indirectly, by the inability of such systems to accurately calculate, compare, extract, sequence, display, accept, process, store, reserve, and provide date data in a manner that is consistently correct and accurate, regardless of the date data input, the functions requested, the date data output requested, or the date upon which the date data is input, processed, or output; or (d) as a result of any damage or destruction to all or any portion of the Property as the result of fire, storm, or other casualty. In the event of the delay of the Closing Date pursuant to the foregoing provisions, then the Closing Date shall be that date which has been established in a written notice from Seller to Buyer provided that such date is no more than ten (10) days after the date of such notice. At the Closing, Seller shall convey title to the Property to Buyer by statutory warranty deed (with survivorship if requested by Buyer) subject to current ad valorem taxes; all matters set forth in the title insurance commitment to be provided pursuant to paragraph 10 of this Agreement; any additional easements, restrictions, rights-of-way, or other such exceptions as Seller deems appropriate to impose upon the Property pending the closing of the subject purchase and sale; easements, restrictions, rights-of-way, covenants, building setback lines, reservations, and other matters of record; all matters which would be revealed by an accurate survey or inspection of the Property; applicable subdivision, zoning and other applicable governmental regulations and restrictions; and less and except any minerals and any mineral, mining or other subsurface rights previously conveyed or otherwise not owned by Seller. Possession of the Property shall be delivered to Buyer upon the Closing. The Closing shall be held at such time of day and at such location as shall be reasonably agreed upon between Seller and Buyer; provided, if the parties cannot agree, then the closing shall be held at such time of day as shall be established by Seller at either the office of Seller or the office of Seller's attorney. Buyer shall pay to Seller, at the Closing, the Purchase Price plus any additional consideration owing with respect to changes in the Plans and Specifications and allowance item overages, less any Earnest Money previously paid by Buyer and received by Seller.

10. Title Insurance. A commitment for the issuance of an owner's title insurance policy in the amount of the Purchase Price, subject to all of the matters set forth in this Agreement with respect to the status of title to the Property and subject to such other matters as are customarily included in such commitments, shall be furnished by Seller at the Closing.

11. Survey. Buyer does does not (check one) require a survey by a registered Alabama land surveyor of Buyer's choosing. Unless otherwise agreed herein, the survey shall be at Buyer's expense. (NOTE: Only a surveyor can verify the Property lines, and Buyer's lender may require a survey.)

12. Termite Contract/Termite Bond. Buyer shall be responsible for purchasing such termite or wood infestation reports, termite treatment contracts, or termite bonds as Buyer deems appropriate, if any, at the expense of Buyer. Any such report, contract, or bond, if any, which is provided by Seller shall be accepted by Buyer without representation, obligation, or warranty from Seller, and Buyer hereby acknowledges and agrees that Buyer shall determine whether any such report, contract, or bond provides sufficient protection of Buyer's interests, and Buyer shall look solely to the issuer of any such report, contract, or bond with respect to any representations, agreements, or obligations therein contained.

13. Closing Costs. At the Closing, Seller shall pay the cost of the preparation of the deed and the premium for the owner's title insurance policy, provided, however, in the event of the simultaneous issuance of a mortgagee's title insurance policy, the premium shall be divided evenly between Seller and Buyer, even if the mortgagee is Seller. Buyer shall pay all loan closing costs, discount points, mortgage insurance premiums, prepaid items and recording fees. Ad valorem taxes, any association dues, district

dues and the like shall be prorated as of the date of closing between Seller and Buyer. Unless otherwise agreed herein, all ad valorem taxes except municipal are presumed to be paid in arrears for purposes of proration, and municipal taxes, if any, are presumed to be paid in advance.

14. Utilities. Seller agrees that the utility meters when installed will be in Seller's name through the Closing Date, at which time Buyer is obligated to transfer such utility services to Buyer.

15. Selection of Attorney. Buyer and Seller hereby do do not agree to share the fees of a closing attorney. The parties hereto acknowledge and agree that, if they have agreed to share the fees of a closing attorney hereunder, such fee-sharing may involve a potential conflict of interest and they may be required to execute an affidavit at closing acknowledging their recognition and acceptance of same. The parties further acknowledge that they have a right to be represented at all times in connection with this Agreement and the closing by an attorney of their own choosing, at their own expense.

16. Time Is Of The Essence. TIME IS OF THE ESSENCE with respect to the obligation of Buyer to close the purchase of the Property and pay the Purchase Price within the time required pursuant to this Agreement.

17. Agency Disclosure/Disclaimer/Commissions. The listing company is _____.
The selling company is _____.

The LISTING COMPANY is: (Two blocks may be checked)

- An Agent of Seller
- An Agent of Buyer
- An Agent of both Seller and Buyer and is acting as a Limited Consensual Dual Agent
- Assisting _____ Buyer as a Transaction Broker
_____ Seller as a Transaction Broker

The SELLING COMPANY is: (Two blocks may be checked)

- An Agent of Seller
- An Agent of Buyer
- An Agent of both Seller and Buyer and is acting as a Limited Consensual Dual Agent
- Assisting _____ Buyer as a Transaction Broker
_____ Seller as a Transaction Broker

Seller: _____

Buyer: _____

Buyer acknowledges that the listing agent has undertaken no duty to Buyer, whether fiduciary or otherwise, and Buyer affirms that Buyer has not relied upon said listing company or any representation by it or its agents, servants, or employees in entering into this Agreement, and Seller shall not be bound or obligated pursuant to any such representation, nor by any representation made by the selling company or its agents, servants, or employees, unless same shall have been set forth fully in this Agreement.

Buyer further acknowledges that Buyer has not relied upon any advice or representations of Seller, any listing company, any selling company, or any sales person associated therewith relative to (i) the legal or tax consequences of this Agreement and the sale, purchase, or ownership of the Property; (ii) except as provided in the Limited Warranty Agreement (as defined herein), the structural condition of the Property; (iii) the character of the neighborhood; (iv) the investment or resale value of the Property; (v) the use or condition of adjoining or neighboring property; (vi) subsurface conditions, including radon and other potentially hazardous materials and/or gases; or (vii) any other matters affecting Buyer's willingness to purchase the Property on the terms and price herein set forth. Buyer acknowledges that if such matters are of concern to Buyer in the decision to purchase the Property, Buyer has sought and obtained independent advice relative thereto. Buyer further acknowledges that the promotional brochures and drawings, if any, with respect to the Property are not exact depictions of the Property, the Dwelling, or surrounding areas and have not been relied upon by Buyer in the determination to enter into this Agreement.

In the event of the closing and funding of this purchase and sale, Seller agrees to pay a commission in the amount of _____ percent (_____%) of the Purchase Price of \$ _____ payable as follows:
_____ percent (_____%) to the listing company and _____ percent (_____%) to the selling company.

18. Insulation. Living area ceilings will be installed with blown fiberglass type insulation to a thickness of _____ (____) inches or batt fiberglass type insulation to a thickness of _____ (____) inches, which thickness, according to its manufacturer, will (in either case) result in an R-Value of _____ (____). Living area exterior walls will be insulated with batt fiberglass type insulation to a thickness of _____ (____) inches, which thickness, according to the manufacturer, will result in an R-Value of _____ (____). Buyer acknowledges and agrees that, in accordance with Federal Trade Commission Regulations, this information has been supplied by the installer of the insulation and has not been determined by Seller. Buyer acknowledges and agrees that Seller shall have no liability or obligation with respect to the accuracy of the information included in this paragraph.

19. Casualty Loss. In the event of any damage or destruction to all or any portion of the Property as the result of fire, storm, or other casualty, then Seller shall have the right, at the election of Seller, to either (a) extend the Closing Date as necessary to permit Seller to remedy any such damage and complete the construction of the Dwelling or (b) terminate this Agreement, whereupon the Earnest Money shall be refunded to Buyer and Seller shall be relieved of any obligation to complete the Dwelling or close the sale of the Property.

20. Arbitration. 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 applicable rules of **[Insert here an arbitration option of your choice, such as “The Construction Industry Rules of the American Arbitration Association” or “the Better Business Bureau of (Insert here the designation of your local Better Business Bureau)” or such other system as you might prefer]**. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

21. Notices. Any notices to be given pursuant to the provisions of this Agreement shall be in writing and shall be deemed received by the party to whom given when deposited in the United States Mail, by certified mail, with postage pre-paid, and addressed as follows:

When to Seller:

When to Buyer:

The address of a party may be changed by written notice to the other party in the manner described above.

22. Default.

(a) By Seller: If this transaction is not concluded because of the material default of Seller in the performance of the obligations of Seller pursuant to this Agreement, and if said default is not remedied within thirty (30) days after written notice from Buyer to Seller setting forth the details of the default and demanding that the default be remedied (or within such reasonable period of time as may be necessary to remedy the default in the event that thirty (30) days is not a sufficient time, provided that Seller is diligently pursuing the remedy of any such default), then the Earnest Money and any other sums received by Seller from Buyer with respect to changes in the Plans and Specifications or with respect to allowance overages, shall be refunded to Buyer, without interest, and thereupon this Agreement shall be deemed terminated and both Seller and Buyer shall be relieved of any further obligations hereunder. This shall be the sole remedy available to Buyer in the event of a default by Seller.

(b) By Buyer: In the event of default by Buyer in the performance of the obligations of Buyer under this Agreement, and should said default not be remedied within ten (10) days after written notice from Seller to Buyer setting forth the details of the default and demanding that the default be remedied, then, at the election of Seller, (i) Seller shall retain all sums paid to Seller by Buyer pursuant to this Agreement including, but not limited to, the Earnest Money, any sums with respect to changes in the Plans and Specifications, any sums with respect to allowance overages, and any other sums, as liquidated damages, whereupon this Agreement shall be deemed terminated and both Seller and Buyer shall be relieved of any further obligations hereunder; or (ii) Seller

shall have the right to retain all sums paid to Seller, as aforesaid, by Buyer, which sums shall be applied toward the actual damages of Seller, and Seller shall be entitled to recover from Buyer the balance of any damages incurred by Seller; or (iii) Seller shall have the right to retain all sums paid to Seller, as aforesaid, by Buyer, and Seller shall have the right to pursue, in addition to the retainage of said sums, equitable relief against Buyer, including the remedy of specific performance together with the recovery of Seller's attorney's fees and costs; or (iv) Seller shall have the right to pursue any one or more of the foregoing or any other remedies available to Seller under applicable law together with the recovery of Seller's attorney's fees and costs. The pursuit of any one or more of said remedies shall not be deemed a waiver of the right to pursue any other remedies.

23. General Provisions.

(a) If any provision of this 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 Agreement shall be binding upon Seller and Buyer, and their respective heirs, executors, administrators, successors and assigns.

(c) This 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) The rights of Buyer hereunder may not be assigned by Buyer without the written consent of Seller, which consent may be withheld in the sole discretion of Seller.

24. Limited Warranty/Preoccupancy Inspection. Buyer and Seller agree to the terms and conditions of the Limited Warranty Agreement attached hereto as Exhibit C and made a part of this Agreement. The terms and provisions of the Limited Warranty Agreement have been fully negotiated between Buyer and Seller as a part of the negotiation of the terms and provisions of this Agreement. The Limited Warranty Agreement has been fully executed, as of the date of this Agreement, and the terms and provisions thereof are an integral part of the terms and provisions of this Agreement. Buyer and Seller agree to re-execute the Limited Warranty Agreement and to deliver duplicate originals of same at the Closing. Buyer and Seller agree to be fully bound by the terms and provisions of the Limited Warranty Agreement and agree that the Limited Warranty Agreement shall survive the Closing and the conveyance of title to the Property. Pursuant to the Limited Warranty Agreement, Buyer and Seller shall make a preoccupancy inspection of the Dwelling and shall **[Insert here one, but only one, of either "complete and execute the Preoccupancy Inspection Agreement" or "execute, prior to the Closing, the Acknowledgment of Acceptance"]** which is attached as an exhibit to the Limited Warranty Agreement.

(a) Duration of Limited Warranty. Seller and Buyer have negotiated and agreed upon the Limited Warranty Period, as defined in paragraph 1 of the Limited Warranty Agreement, 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 set forth in this Agreement.

(b) Buyer's Acknowledgment. Buyer hereby acknowledges that Seller has offered to agree to a Limited Warranty Period of greater duration than that which is set forth in paragraph 1 of the Limited Warranty Agreement and that, rather than accepting the longer duration of the Limited Warranty Period, Buyer has preferred to reduce the amount of the Purchase Price, to the amount thereof which is set forth in this Agreement, and accept the Limited Warranty Period of the duration set forth in paragraph 1 of the Limited Warranty Agreement.

[If you want to offer different durations of the Limited Warranty Period based upon appropriate revisions to the Purchase Price, then this subparagraph (b) or a provision similar thereto might be included in your contract documents; otherwise, the foregoing subparagraph (b) should be deleted.]

25. WAIVER OF WARRANTIES AND CLAIMS. BUYER AGREES THAT THE 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 ALL SUCH OTHER WARRANTIES AND CLAIMS WITH RESPECT TO BOTH THE DWELLING AND THE PROPERTY.

Buyer acknowledges that Buyer has read, understood, and accepted the foregoing.	Buyer: _____ _____
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26. Entire Agreement. This Agreement and the Limited Warranty Agreement, together with all of the other exhibits and attachments to this Agreement and the Limited Warranty Agreement, constitute the entire agreement of the parties, and Buyer acknowledges that Buyer has not relied upon any oral or written statements, undertakings, or representations and that no prior agreement or understanding shall be valid or of any force or effect, unless the same have been fully set forth in this Agreement, the Limited Warranty Agreement, or the attachments and exhibits thereto. The covenants and agreements contained in this Agreement and the 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 Agreement or in the Limited Warranty Agreement), has induced Buyer to enter into this Agreement or shall be enforceable in any manner against Seller.

IN WITNESS WHEREOF, the undersigned parties have set their hands and seals to this Agreement on this the _____ day of _____, 20_____.

SELLER:

By: _____
Its: _____

Witness

BUYER:

Witness

Witness

The HBAA and its local chapters do not assume any liability for damages arising from the use of this document and give no opinion that any of the terms and conditions in this document should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated between the parties based upon the respective interests, objectives and bargaining positions of all interested parties. Seek specific legal advice from your lawyer. Copyright 2001 by the Home Builders Association of Alabama.

EXHIBIT A

Plans and Specifications

The Plans have been prepared by _____
dated the _____ day of _____, 20_____, include _____ pages, and have been signed and
dated by Seller and Buyer.

The Specifications have been prepared by _____
dated the _____ day of _____, 20_____, include _____ pages, and have been signed and
dated by Seller and Buyer.

EXHIBIT B

Decorating Allowance

Allowance Item

Allowance Amount

EXHIBIT C

Limited Warranty Agreement

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 _____ (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. 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, 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.** Steps taken by Seller to correct any Latent Defect under this Limited Warranty Agreement shall not extend the Limited Warranty Period.

3. Definition of Latent Defect. 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 the applicable Building Standard portion of the Building Quality Standards Section attached hereto as Exhibit I; 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 Responsibility portion of the Building Quality Standards Section. If a specific Latent Defect is not addressed in the Building Quality Standards Section, 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 Building Quality Standards Section. The Building Quality Standards Section lists specific defects that might occur within specified categories of the construction and the responsibilities of Seller and Buyer with respect thereto, pursuant to the following format:

- Possible Defect - a brief statement of problems that may be encountered.
- Building Standard - a building standard relating to a specific defect.
- Responsibility - a Statement of the corrective action required of Seller to repair the defect or a statement of Buyer's maintenance responsibilities.

[The following paragraph 3 may be used in lieu of the preceding paragraph 3 in the event that the parties desire to omit the Building Quality Standards section attached as Exhibit I and to replace that particular Building Standard with the Residential Construction Performance Guidelines for Professional Builders and Remodelers. If the following paragraph is used instead of the preceding paragraph, then the Building Quality Standards Section will not be attached as an exhibit and Exhibit I will be either the Preoccupancy Inspection Agreement or the Acknowledgment of Acceptance.]

3. Definition of Latent Defect. 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 *Residential Construction Performance Guidelines for Professional Builders and Remodelers*, latest edition, published by National Association of Homebuilders (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. 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 INDIRECT 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 **[Insert here one, but only one, of either "complete and execute the Preoccupancy Inspection Agreement" or "execute the Acknowledgment of Acceptance"]** in accordance with the form attached hereto as **[Insert Exhibit II if the Building Quality Standards Section is attached as Exhibit I; otherwise; insert Exhibit I]**, and any exceptions, omissions, or malfunctions agreed upon and noted thereon will be corrected promptly by Seller. 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.

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: _____ _____
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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: _____ _____
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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: _____ _____
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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. Any controversy, claim, or dispute arising out of or relating to any obligation of Seller to repair, replace, or pay to Buyer the reasonable cost of repairing or replacing any Latent Defect covered under this Limited Warranty Agreement 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 applicable rules of [Insert here an arbitration option of your choice, such as “the Construction Industry Rules of the American Arbitration Association” or “the Better Business Bureau of (Insert here the designation of your local Better Business Bureau)” or such other system as you might prefer]. Seller and Buyer acknowledge and agree that this Limited

Warranty Agreement substantially affects interstate commerce by virtue of the materials and components contained in the Dwelling. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

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.

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: _____ _____
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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: _____ _____
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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.

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

SELLER:

Witness

By: _____
Its: _____

BUYER:

Witness

Witness

The HBAA and its local chapters do not assume any liability for damages arising from the use of this document and give no opinion that any of the terms and conditions in this document should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated between the parties based upon the respective interests, objectives and bargaining positions of all interested parties. Seek specific legal advice from your lawyer. Copyright 2001 by the Home Builders Association of Alabama.

[This Exhibit should be used only if the parties elect to reference these standards in paragraph 3 of the Limited Warranty Agreement.]

Exhibit I to Limited Warranty Agreement

Building Quality Standards Section

I. Site Work

A. Site Grading

- (1) **Possible Defect** Settling of ground around foundation, utility trenches or other areas.
- Building Standard** Settling of ground around foundation walls, utility trenches or other filled areas shall not interfere with water drainage away from the Home.
- Responsibility** If the Seller has provided final grading: upon request by the Buyer, Seller shall fill settled areas affecting proper drainage, one time only, during the Limited Warranty Period. Buyer shall be responsible for removal and replacement of shrubs or other landscaping affected by placement of such fill.

B. Site Drainage

- (1) **Possible Defect** Improper drainage of the site.
- Building Standard** The necessary grades and swales shall have been established by the Seller to insure proper drainage away from the Home. Standing or ponding water shall not remain for extended periods in the immediate area after a rain (generally no more than 24 hours), except that in swales which drain other areas, or in areas where sump pumps discharge, a longer period can be anticipated (generally no more than 48 hours). The possibility of standing water after an unusually heavy rainfall should be anticipated. No grading determination shall be made while there is frost or snow on the ground, or while the ground is saturated.
- Responsibility** The Seller is responsible only for initially establishing the proper grades and swales. The Buyer is responsible for maintaining such grades and swales once they have been properly established.

II. Concrete

A. Expansion and Contraction Joints

- (1) **Possible Defect** Separation or movement of concrete slabs within the structure at expansion joints.
- Building Standard** Concrete slabs within the structure are designed to move at expansion and contraction joints.
- Responsibility** None

B. Cast-In-Place Concrete

- (1) **Possible Defect** Basement or foundation wall cracks.
- Building Standard** Shrinkage cracks are not unusual in concrete foundation walls. Such cracks greater than 1/8 inch in width shall be repaired.
- Responsibility** Seller will repair cracks in excess of 1/8 inch in width.

(1) Possible Defect	Cracking of basement floor.
Building Standard	Minor cracks in concrete basement floors are normal. Cracks exceeding 3/16 inch in width or 1/8 inch in vertical displacement shall be repaired.
Responsibility	Seller will repair cracks exceeding maximum tolerances by surface patching or other methods as required.
(2) Possible Defect	Cracking in slab attached garage.
Building Standard	Cracks in garage slabs in excess of 1/4 inch in width or 1/4 inch in vertical displacement shall be repaired.
Responsibility	Seller will repair cracks exceeding maximum tolerances by surface patching or other methods as required.
(3) Possible Defect	Uneven concrete floors/slabs
Building Standard	Except for basement floors or where a floor or portion of floor has been designed for specific drainage purposes, concrete floors in rooms designed for habitability shall not have pits, depressions or areas of unevenness exceeding 1/4 inch in 32 inches.
Responsibility	Seller will correct or repair to meet the Building Standard
(4) Possible Defect	Cracks in concrete slab-on-grade floors with finish flooring.
Building Standard	Cracks which rupture the finish flooring material shall be repaired.
Responsibility	Seller will repair cracks, as necessary, so as not to be readily apparent when the finish flooring material is in place. (See also Building Standard 7, "Finishes.")
(5) Possible Defect	Pitting, scaling or spalling of concrete work covered by this Limited Warranty.
Building Standard	Concrete surfaces shall not disintegrate to the extent that the aggregate is exposed and loosened under normal conditions of weathering and use.
Responsibility	Seller will take whatever corrective action necessary to repair or replace defective concrete surfaces. Seller is not responsible for deterioration caused by salt, chemicals, mechanical implements and other factors beyond its control. .")
(6) Possible Defect	Settling, heaving, or separating of stoops, steps, or garage floors.
Building Standard	Stoops, steps, or garage floors shall not settle, heave or separate in excess of 1 inch from the house structures.
Responsibility	Seller will take whatever corrective action is required to meet the Building Standard.

(7) Possible Defect	Standing water on stoops.
Building Standard	Water should drain from outdoor stoops and steps. The possibility of minor water standing on stoops for a short period after rain can be anticipated.
Responsibility	Seller shall take corrective action to assure drainage of steps and stoops.

III. Masonry

A. Unit Masonry

(1) Possible Defect	Basement or foundation wall cracks.
Building Standard	Small cracks not affecting structural stability are not unusual in mortar joints of masonry foundation walls. Cracks greater than 1/8 inch in width shall be repaired.
Responsibility	Seller will repair cracks in excess of 1/8 inch by pointing or patching. These deficiencies shall be reported and repairs made during the Limited Warranty Period.

(1) Possible Defect	Cracks in masonry walls or veneer.
Building Standard	Small hairline cracks due to shrinkage are common in mortar joints in masonry construction. Cracks greater than 3/8 inch in width are considered excessive.
Responsibility	Seller will repair cracks in excess of Building Standard by pointing or patching. These repairs shall be made during the Limited Warranty Period. Seller will not be responsible for color variation between old and new mortar.

IV. Wood and Plastic

A. Rough Carpentry

(1) Possible Defect	Floors squeak or subfloor appears loose.
Building Standard	Floor squeaks and loose subfloor are often temporary conditions common to new construction, and a squeak-proof floor cannot be guaranteed.
Responsibility	Seller will correct or repair to meet Building Standard.

(2) Possible Defect	Uneven wood floors.
Building Standard	Floors shall not have more than 1/4 inch ridge or depression within any 32 inch measurement when measured parallel to the joists. Allowable floor and ceiling joist deflections are governed by the applicable building code.
Responsibility	Seller will correct or repair to meet Building Standard.

(3) Possible Defect	Bowed walls.
Building Standard	All interior and exterior walls have slight variances on their finished surfaces. Bowing of walls should not detract from or blemish the wall's finished surface. Walls should not bow more than 1/4 inch out of line within any 32 inch horizontal or vertical measurement.
Responsibility	Seller will repair to meet Building Standard.

(4) Possible Defect	Out-of-plumb walls.
Building Standard	Walls should not be more than 1/4 inch out of plumb for any 32 inch vertical measurement.
Responsibility	Seller will repair to meet the Building Standard.

B. Finish Carpentry (Interior)

(1) Possible Defect	Poor quality of interior trim workmanship.
Building Standard	Joints in moldings or joint between moldings and adjacent surface shall not result in open joints exceeding 1/8 inch in width.
Responsibility	Seller will repair defective joints, as defined. Caulking is acceptable.

C. Finish Carpentry (Exterior)

(1) Possible Defect	Poor quality of exterior trim workmanship.
Building Standard	Joints between exterior trim elements, including siding and masonry, shall not result in open joints in excess of 3/8 inch. In all cases the exterior trim, masonry and siding shall be capable of performing its function to exclude the elements.
Responsibility	Seller will repair open joints, as defined. Caulking is acceptable.

V. Thermal and Moisture Protection

A. Waterproofing

(1) Possible Defect	Leaks in basement.
Building Standard	Leaks resulting in actual trickling of water shall be repaired. Leaks caused by improper landscaping or failure to maintain proper grades are not covered by this Limited Warranty. Dampness of the walls or floors may occur in new construction and is not considered a deficiency.
Responsibility	Seller will take such action as necessary to correct basement leaks except where the cause is determined to result from Buyer action or negligence.

B. Insulation

(1) Possible Defect	Insufficient insulation.
Building Standard	Insulation shall be installed in accordance with applicable energy and building code requirements.
Responsibility	Seller will install insulation in sufficient amounts to meet Building Standard.

C. Louvers and Vents

(1) Possible Defect	Leaks due to snow or rain driven into the attic through louvers or vents.
Building Standard	Attic vents and/or louvers must be provided for proper ventilation of the attic space of the structure.
Responsibility	None.

D. Roofing and Siding

(1) Possible Defect	Ice build-up on roof.
Building Standard	During prolonged cold spells, ice build-up is likely to occur at the eaves of a roof. This condition occurs when snow and ice accumulate and gutters and down spouts freeze up.
Responsibility	Prevention of ice build-up on the roof is a Buyer maintenance item.

(2) Possible Defect	Roof or flashing leaks.
Building Standard	Roofs or flashing shall not leak under normally anticipated conditions, except where cause is determined to result from ice build-up or Buyer action or negligence.
Responsibility	Seller will repair any verified roof or flashing leaks not caused by ice build-up or Buyer action or negligence.

(3) Possible Defect	Standing water on flat roof.
Building Standard	Water shall drain from flat roof except for minor ponding immediately following rainfall or when the roof is specifically designed for water retention.
Responsibility	Seller will take corrective action to assure proper drainage of roof.

(4) Possible Defect	Delamination of veneer siding or joint separation.
Building Standard	All siding shall be installed according to the manufacturer's and industry's accepted standards. Separations and delaminations shall be repaired or replaced.
Responsibility	Seller will repair or replace siding as needed unless caused by Buyer neglect to maintain siding properly. Repaired area may not match in color and/or texture. For surfaces requiring paint, Seller will paint only the new materials. The Buyer can expect that the newly painted surface may not match original surface in color.

E. Sheet Metal

(1) Possible Defect	Gutter and/or down spouts leak.
Building Standard	Gutters and down spouts shall not leak but gutters may overflow during heavy rain.
Responsibility	Seller will repair leaks. It is a Buyer responsibility to keep gutters and down spouts free of leaves and debris which could cause overflow.

(2) Possible Defect	Water standing in gutters.
Building Standard	When gutter is unobstructed by debris, the water level shall not exceed one (1) inch in depth. Industry practice is to install gutters approximately level. Consequently, it is entirely possible that small amounts of water will stand in certain sections of gutter immediately after a rain.
Responsibility	Seller will correct to meet Building Standard.

F. Sealants

(1) Possible Defect	Leaks in exterior walls due to inadequate caulking.
Building Standard	Joints and cracks in exterior wall surfaces and around openings shall be properly caulked to exclude the entry of water.
Responsibility	Seller will repair and/or caulk joints or cracks in exterior wall surfaces as requires to correct deficiencies once, during the Limited Warranty Period. Even properly installed caulking will shrink and must be maintained during the life of the Home.

VI. Doors and Windows

A. Wood and Plastic Doors

(1) Possible Defect	Warping of exterior doors.
Building Standard	Exterior doors will warp to some degree due to the temperature differential on inside and outside surfaces. However, they shall not warp to the extent that they become inoperable or cease to be weather resistant or exceed National Woodwork Manufacturers Association Standards (1/4 inch, measured diagonally from corner to corner)
Responsibility	Seller will correct or replace and refinish defective doors, during the Limited Warranty Period.

(2) Possible Defect	Warping of interior passage and closet doors.
Building Standard	Interior doors (full opening) shall not warp in excess of National Woodwork Manufacturers Association Standards (1/4 inch, measured diagonally from corner to corner).
Responsibility	Seller will correct or replace and refinish defective doors to match existing doors as nearly as possible, during the Limited Warranty Period.

(3) Possible Defect	Shrinkage of insert panels show raw wood edges.
Building Standard	Panels will shrink and expand and may expose unpainted surface.
Responsibility	None.

(4) Possible Defect	Split in door panel.
Building Standard	Split panels shall not allow light to be visible through the door.
Responsibility	Seller will, if light is visible, fill split and match paint or stain as closely as possible, one time during the Limited Warranty Period.

B. Glass

(1) Possible Defect	Broken glass.
Building Standard	None.
Responsibility	Broken glass not reported to Seller prior to closing is the Buyer responsibility.

C. Garage Doors on Attached Garages

(1) Possible Defect	Garage doors fail to operate properly, under normal use.
Building Standard	Garage doors shall operate properly.
Responsibility	Seller will correct or adjust garage doors as required, except where the cause is determined to result from Buyer action or negligence.

(2) Possible Defect	Garage doors allow entrance of snow or water.
Building Standard	Garage doors shall be installed as recommended by the manufacturer. Some entrance of the elements can be expected under abnormal conditions.
Responsibility	Seller will adjust or correct garage doors to meet manufacturer's recommendations.

D. Wood, Plastic and Metal Windows

(1) Possible Defect	Malfunction of windows.
Building Standard	Windows shall operate with reasonable ease, as designed.
Responsibility	Seller will correct or repair as required.

(2) Possible Defect	Condensation and/or frost on windows.
Building Standard	Windows will collect condensation on interior surfaces when extreme temperature differences and high humidity levels are present. Condensation is usually the result of climatic/humidity conditions, created by the Buyer.
Responsibility	Unless directly attributed to faulty installation, window condensation is a result of conditions beyond the Seller's control. No corrective action required.

E. Weather-stripping and Seals

(1) Possible Defect	Air infiltration around doors and windows.
Building Standard	Some infiltration is normally noticeable around doors and windows, especially during high winds. Poorly fitted weather-stripping shall be adjusted or replaced. It may be necessary for the Buyer to have storm doors and windows installed to provide satisfactory solutions in high wind areas.
Responsibility	Seller will adjust or correct poorly fitted doors, windows and poorly fitted weather stripping.

VII. Finishes

A. Lath and Plaster

(1) Possible Defect	Cracks in interior wall and ceiling surfaces.
Building Standard	Hairline cracks are not unusual in interior wall and ceiling surfaces. Cracks greater than 1/8 inch in width shall be repaired.
Responsibility	Seller will repair cracks exceeding 1/8 inch in width as required one time only, during the Limited Warranty Period. (See also Building Standard 7.F., "Painting.")

B. Gypsum Wallboard

(1) Possible Defect	Defects which appear during the Limited Warranty such as nail pops, blisters in tape, or other blemishes.
Building Standard	Slight "imperfections" such as nail pops, seam lines and cracks not exceeding 1/8 inch in width are common in gypsum wallboard installations and are considered acceptable.
Responsibility	Seller will repair only cracks exceeding 1/8 inch in width, one time only, during the Limited Warranty Period. (See also Building Standard 7.F., "Painting.")

C. Ceramic Tile

(1) Possible Defect	Ceramic tile cracks or becomes loose.
Building Standard	Ceramic tile shall not crack or become loose.
Responsibility	Seller will replace cracked tiles and re-secure loose tiles unless the defects were caused by the Buyer action or negligence. Seller will not be responsible for discontinued patterns or color variations in ceramic tile.

(2) Possible Defect	Cracks appear in grouting of ceramic tile joints or at junctions with other materials such as a bathtub.
Building Standard	Cracks in grouting of ceramic tile joints are commonly due to normal shrinkage conditions.
Responsibility	Seller will repair grouting if necessary one time only, during the Limited Warranty Period. Seller will not be responsible for color variations or discontinued colored grout. Regrouting of these cracks is a maintenance responsibility of the Buyer within the life of the Home.

D. Finished Wood Flooring

(1) Possible Defect	Cracks developing between floor boards.
Building Standard	Cracks in excess of 1/8 inch in width shall be corrected.
Responsibility	Seller will repair cracks in excess of 1/8 inch during the Limited Warranty Period, by filling or replacing, at Seller's option.

E. Resilient Flooring

(1) Possible Defect	Nail pops appear on the surface of resilient flooring.
Building Standard	Readily apparent nail pops shall be repaired.
Responsibility	Seller will correct nail pops which have broken the surface. Seller will repair or replace, at Seller's sole option, resilient floor covering in the affected area with similar material. Seller will not be responsible for discontinued patterns or color variations in the floor covering.

(2) Possible Defect	Depression or ridges appear in the resilient flooring due to subtle irregularities.
Building Standard	Readily apparent depressions or ridges exceeding 1/8 inch shall be repaired. The ridge or depression measurement is taken as the gap created at one end of a six- inch straightedge placed over the depression or ridge with three inches of the straightedge on one side of the defect, held tightly to the floor.,
Responsibility	Seller will take corrective action as necessary, to bring the defect within acceptable tolerance so that the affected area is not readily visible. Seller will not be responsible for discontinued patterns or color variations in floor covering.

(3) Possible Defect	Resilient flooring loses adhesion.
Building Standard	Resilient flooring shall not lift, bubble or become unglued.
Responsibility	Seller will repair or replace, at Seller's sole option, the affected resilient flooring as required. Seller will not be responsible for discontinued patterns or color variation of floor covering, or for problems caused by Buyer neglect or abuse.

(4) Possible Defect	Seams or shrinkage gaps at resilient flooring joints.
Building Standard	Gaps shall not exceed 1/16 inch in width in resilient floor covering joints. Where dissimilar materials abut, a gap not to exceed 1/8 inch is permissible.
Responsibility	Seller will repair or replace, at Seller's sole option, the affected resilient flooring as required. Seller will not be responsible for discontinued patterns or color variation of floor covering, or for problems caused by Buyer neglect or abuse.

F. Painting

(1) Possible Defect	Exterior paint or stain peels, deteriorates or fades.
Building Standard	Exterior paint or stains should not fail during the Limited Warranty Period. However, fading is normal and the degree is dependent on climatic conditions.
Responsibility	If paint or stain is defective, Seller will properly prepare and refinish affected areas, matching color as close as possible. Where finish deterioration affects the majority of the wall area, the whole area will be refinished.

(2) Possible Defect	Painting required as corollary repair because of other work.
Building Standard	Repairs required under this Limited Warranty shall be finished to match surrounding areas as closely as practicable.
Responsibility	Seller will finish repair area as indicated.

(3) Possible Defect	Deterioration of varnish or lacquer finishes.
Building Standard	Natural finishes on interior woodwork shall not deteriorate during the Limited Warranty Period. However, varnish type finishes used on the exterior will deteriorate rapidly and are not covered by the Limited Warranty.
Responsibility	Seller will retouch affected areas of natural finish interior woodwork, matching the color as clearly as possible.

(4) Possible Defect	Mildew or fungus on painted surfaces.
Building Standard	Mildew or fungus will form on a painted surface if the structure is subject to abnormal exposures (i.e., rainfall, ocean, lake, or river front).
Responsibility	Mildew or fungus formation is a condition the Seller cannot control and is a Buyer maintenance item unless it is a result of noncompliance with other sections of the Building Standard.

G. Wall Covering

(1) Possible Defect	Peeling of wall covering.
Building Standard	Peeling of wall covering shall not occur.
Responsibility	Seller will repair or replace defective wall covering applications.

(2) Possible Defect	Edge mismatching in pattern of wall covering.
Building Standard	None.
Responsibility	None.

H. Carpeting

(1) Possible Defect	Open carpet seams.
Building Standard	Carpet seams will show. However, no visible gap is acceptable.
Responsibility	Seller will correct.

(2) Possible Defect	Carpeting becomes loose, seams separate or stretching occurs.
Building Standard	Wall to wall carpeting, installed as the primary floor covering, when stretched and secured properly shall not come up, become loose, or separate from its point of attachment.
Responsibility	Seller will re-stretch or re-secure carpeting as needed, if original installation was performed by Seller.

(3) Possible Defect	Spots on carpet, minor fading.
Building Standard	Exposure to light may cause spots on carpet and/or minor fading.
Responsibility	None.

I. Special Coatings

(1) Possible Defect	Cracks in exterior stucco wall surfaces.
Building Standard	Cracks are not unusual in exterior stucco wall surfaces. Cracks greater than 1/8 inch in width shall be repaired.
Responsibility	Seller will repair cracks exceeding 1/8 inch in width, one time only, during the Limited Warranty Period.

VIII. Specialties

A. Louvers and Vents

(1) Possible Defect	Inadequate ventilation of attics and crawl spaces.
Building Standard	Attic and crawl spaces shall be ventilated as required by the approved building code.
Responsibility	The Seller shall provide for adequate ventilation. Seller will not be responsible for alterations to the original system.

B. Fireplace

(1) Possible Defect	Fireplace or chimney does not draw properly.
Building Standard	A properly designed and constructed fireplace and chimney shall function properly. It is normal to expect that high winds can cause temporary negative draft situations. Similar negative draft situations can also be caused by obstructions such as large branches of trees too close to the chimney. Some homes may need to have a window opened slightly to create an effective draft, if they have been insulated and weatherproofed to meet high energy conservation criteria.
Responsibility	Seller will determine the cause of malfunction and correct, if the problem is one of design or construction of the fireplace.

(2) Possible Defect	Chimney separates from structure to which it is attached.
Building Standard	Newly built fireplaces will often incur slight amounts of separation. Separation shall not exceed ½ inch from the main structure in any 10 foot vertical measurement.
Responsibility	Seller will determine the cause of separation and correct if standard is not met. Caulking is acceptable.

(3) Possible Defect	Firebox paint changed by fire.
Building Standard	None.
Responsibility	None. Heat from fires will alter finish.

(4) Possible Defect	Cracked firebrick and mortar joints.
Building Standard	None.
Responsibility	None. Heat and flames from “roaring” fires will cause cracking.

IX. Equipment

A. Residential Equipment

(1) Possible Defect	Surface cracks, joint delaminations and chips in high pressure laminates on vanity and kitchen cabinet countertops.
Building Standard	Countertops fabricated with high pressure laminate coverings shall not delaminate.
Responsibility	Seller will replace delaminated coverings to meet specified criteria. Seller will not be responsible for chips and cracks noted following first occupancy.

(2) Possible Defect	Kitchen cabinet malfunctions.
Building Standard	Warpage not to exceed 1/4 inch as measured from face from to point of furthestmost warpage with door or drawer front in closed position.
Responsibility	Seller will correct or replace doors or drawer fronts.

X. Plumbing

A. Water Supply System

- (1) **Possible Defect** Plumbing pipes freeze and burst.
- Building Standard** Drain, waste and vent, and water pipes shall be adequately protected as required by applicable code, during normally anticipated cold weather, and as defined in accordance with American Society of Heating, Refrigerating and Air Conditioning Engineers (“ASHRAE”) design temperatures, to prevent freezing.
- Responsibility** Seller will correct situations not meeting the code. It is the Buyer’s responsibility to drain or otherwise protect lines and exterior faucets exposed to freezing temperatures.
-

B. Plumbing System

- (1) **Possible Defect** Faucet or valve leak.
- Building Standard** No valve or faucet shall leak due to defects in workmanship and materials.
- Responsibility** Seller will repair or replace the leaking faucet or valve.
-

- (2) **Possible Defect** Defective plumbing fixtures, appliances or trim fittings.
- Building Standard** Fixtures, appliances or fittings shall comply with their manufacturer’s standards.
- Responsibility** Seller will replace any defective fixture or fitting which does not meet acceptable standards, as defined by the manufacturer.
-

- (3) **Possible Defect** Noisy water pipes.
- Building Standard** There will be some noise emitting from the water pipe system, due to the flow of water. However, water hammer shall be eliminated.
- Responsibility** Seller cannot remove all noises due to water flow and pipe expansion. Seller will correct to eliminate “water hammer.”
-

- (4) **Possible Defect** Cracking or chipping of porcelain or fiberglass surfaces.
- Building Standard** Chips and cracks on surfaces of bathtubs and kitchen sinks can occur when surface is hit with a sharp or heavy object.
- Responsibility** Seller will not be responsible for repairs unless damage has been reported to Seller prior to first occupancy.
-

XI. Heating and Cooling

A. Heating

(1) **Possible Defect** Inadequate heating.

Building Standard Heating system shall be capable of producing an inside temperature of 70 degrees F, as measured in the center of each room at a height of 5 feet above the floor, under local outdoor winter design conditions as specified in ASHRAE handbook. Federal, state or local energy codes shall supersede this standard where such codes have been locally adopted.

Responsibility Seller will correct heating system to provide the required temperatures. However, the Buyer shall be responsible for balancing dampers, registers and other minor adjustments.

B. Refrigeration

(1) **Possible Defect** Inadequate cooling.

Building Standard Where air-conditioning is provided, the cooling system shall be capable of maintaining a temperature of 78 degrees F, as measured in the center of each room at a height of 5 feet above the floor, under local outdoor summer design conditions as specified in ASHRAE handbook. In the case of outside temperatures exceeding 95 degrees F, a differential of 15 degrees F from the outside temperature will be maintained. Federal, state, or local energy codes shall supersede this standard where such codes have been locally adopted.

Responsibility Seller will correct cooling system to meet temperature conditions, in accordance with specifications.

C. Condensation Lines

(1) **Possible Defect** Condensation lines clog up.

Building Standard None.

Responsibility Condensation lines will clog eventually under normal use. This is a Buyer maintenance item. Seller shall provide unobstructed condensation lines at time of first occupancy.

D. Evaporative Cooling

(1) **Possible Defect** Improper mechanical operation.

Building Standard Equipment shall function properly at temperature standard set.

Responsibility Seller will correct and adjust so that blower and water system operate as designed.

XII. Ventilation

A. Air Distribution

(1) Possible Defect	Noisy ductwork.
Building Standard	When metal is heated it expands and when cooled it contracts. The result is “ticking” or “crackling” which is generally to be expected.
Responsibility	None.

(2) Possible Defect	Oil canning.
Building Standard	The stiffening of the ductwork and the gauge of the metal used shall be such that ducts do not “oilcan.” The booming noise caused by “oil canning” is not acceptable.
Responsibility	Seller will correct to eliminate this sound.

XIII. Electrical

A. Electrical Conductors, Fuses and Circuit Breakers

(1) Possible Defect	Fuses blow or circuit breakers (excluding ground fault interrupters) “kick out.”
Building Standard	Fuses and circuit breakers shall not activate under normal usage.
Responsibility	Seller will check wiring circuits for conformity with local, state, or approved national electrical code requirements. Seller will correct circuitry not conforming to code specifications.

B. Outlets, Switches and Fixtures

(1) Possible Defect	Drafts from electrical outlets.
Building Standard	Electrical junction boxes on exterior walls may produce air flow whereby the cold air can be drawn through the outlet into a room. The problem is normal in new home construction.
Responsibility	None.

(2) Possible Defect	Malfunction of electrical outlets, switched or fixtures.
Building Standard	All switches, fixtures and outlets shall operate as intended.
Responsibility	Seller will repair or replace defective switches, fixtures and outlets.

C. Service and Distribution

(1) Possible Defect	Ground fault interrupter trips frequently.
Building Standard	Ground fault interrupters are sensitive safety devices installed into the electrical system to provide protection against electrical shock. These sensitive devices can be tripped very easily.
Responsibility	Seller shall install ground fault interrupter in accordance with approved electrical code. Tripping is to be expected and is not covered, unless due to a construction defect.

XIV. Plumbing

A. Water Supply

- (1) Possible Defect** Water supply system fails to deliver water.
- Building Standard** All on-site service connections to municipal water main and private water supply shall be the Seller's responsibility. Private systems shall be designed and installed in accordance with approved building, plumbing and health codes.
- Responsibility** Seller will repair if failure is result of defective workmanship or materials. If conditions beyond Seller's control disrupt or eliminate the source of the supply, the Seller has no responsibility.
-

B. Septic Tank System

- (1) Possible Defect** Septic system fails to operate properly.
- Building Standard** Septic system shall function adequately during all seasons, under climatic conditions normal or reasonably anticipated (based on local records) for the location of the home. Septic system shall be designed and installed to comply with applicable governmental codes, if any.
- Responsibility** Seller will repair, or otherwise correct, a malfunctioning or non operating system, if failure is caused by inadequate design, faulty installation, or other cause relating to actions of the Seller or contractors or subcontractors under the Seller's control. Seller will not be responsible for system malfunction or damage which is caused by Buyer negligence, lack of system maintenance, or other causes attributable to actions of the Buyer or Buyer's contractors, not under the control of the Seller, including, but not necessarily limited to, the addition of fixtures, items of equipment, appliances or other sources of waste or water to the plumbing system served by the septic system, and damage, or changes to the septic system installation or surrounding soil conditions critical to the system's functioning.
-

C. Piping

- (1) Possible Defect** Leakage from any piping.
- Building Standard** No leaks of any kind shall exist in any soil, waste, vent or water pipe. Condensation on piping does not constitute leakage, and is not covered.
- Responsibility** Seller will make repairs to eliminate leakage.
-
- (2) Possible Defect** Stopped up sewers, fixtures and drains.
- Building Standard** Sewers, fixtures and drains shall operate properly.
- Responsibility** Seller will not be responsible for sewers, fixtures and drains which are clogged through Buyer negligence. If a problem occurs, the Buyer should consult Seller for a proper course of action. Where defective construction is shown to be the cause, Seller will assume the cost of the repair; where Buyer negligence is shown to be the cause, the Buyer shall assume all repair costs.
-

- (3) Possible Defect** Refrigerant lines leak.
- Building Standard** Refrigerant lines shall not develop leaks during normal operation.
- Responsibility** Seller will repair leaking refrigerant lines and re-charge unit, unless damage was caused by the Buyer.

XV. Ventilation System

A. Air Distribution

- (1) Possible Defect** Ductwork separates or becomes unattached.
- Building Standard** Ductwork shall remain intact and securely fastened.
- Responsibility** Seller will re-attach and re-secure all separated or unattached ductwork.

XVI. Electrical System

A. Wiring

- (1) Possible Defect** Failure of wiring to carry its designed load.
- Building Standard** Wiring should be capable of carrying the designed load for normal residential use.
- Responsibility** Seller will check wiring for conformity with local, state, or approved national electrical code requirements. Seller will repair wiring not conforming to code specifications
-

[Use as Exhibit either the Preoccupancy Inspection Agreement or the Acknowledgment of Acceptance]

Exhibit II to Limited Warranty Agreement

PREOCCUPANCY INSPECTION AGREEMENT

DATE: _____ TIME: _____

BUYERS: _____

ADDRESS: _____ CITY: _____

We the Buyers have inspected the Dwelling, including the items listed below, and find it to be in good physical condition, free from damage such as holes, chips, cracks, exceptions, omissions, malfunctions or other defects of materials or workmanship, except as noted in the applicable "comments" sections below. A check mark or other similar notation in the space beside an item indicates acknowledgment by the Buyers that the item is in good physical condition and free from damage.

If an item is not applicable, please mark through it.

I. GENERAL

Foyer	_____	Living Room	_____	Hall Bath	_____	Full Bath	_____
Dining Room	_____	Kitchen	_____	Bed Rooms	_____	Utility Room	_____
Breakfast Rm.	_____	Laundry Rm.	_____	Closets	_____	Porch	_____
Patio	_____	Deck	_____	Garage	_____	Other Areas	_____
Drives	_____	Walks	_____	Yard	_____	Exterior of Home	_____

Comments: _____

II. DOORS

Verify that the weather-stripping, locking mechanism, thresholds and stops are correctly installed and function smoothly and properly.

Foyer	_____	Living Room	_____	Hall Bath	_____	Full Bath	_____
Dining Room	_____	Kitchen	_____	Bed Rooms	_____	Utility Room	_____
Breakfast Rm.	_____	Laundry Rm.	_____	Closets	_____	Porch	_____
Patio	_____	Deck	_____	Garage	_____	Other Areas	_____

Comments: _____

III. WINDOWS/SCREENS

Verify that the weather-stripping and locking mechanisms are correctly installed and function smoothly and properly.

Foyer	_____	Living Room	_____	Hall Bath	_____	Full Bath	_____
Dining Room	_____	Kitchen	_____	Bed Rooms	_____	Utility Room	_____
Breakfast Rm.	_____	Laundry Rm.	_____	Closets	_____	Porch	_____
Patio	_____	Deck	_____	Garage	_____	Other Areas	_____

Comments: _____

IV. ELECTRICAL SWITCHES/OUTLETS/SAFETY SWITCHES

Verify that switches and outlets are tested for electric current (hot), proper grounding and proper polarity.

Foyer	_____	Living Room	_____	Hall Bath	_____	Full Bath	_____
Dining Room	_____	Kitchen	_____	Bed Rooms	_____	Utility Room	_____
Breakfast Rm.	_____	Laundry Rm.	_____	Closets	_____	Porch	_____
Patio	_____	Deck	_____	Garage	_____	Other Areas	_____

Comments: _____

V. SMOKE DETECTOR

Verify that the smoke detectors are functioning properly. _____

Comments: _____

VI. LIGHT FIXTURES

Verify that fixtures are hung straight and level and that bulbs are installed and burn.

Foyer	_____	Living Room	_____	Hall Bath	_____	Full Bath	_____
Dining Room	_____	Kitchen	_____	Bed Rooms	_____	Utility Room	_____
Breakfast Rm.	_____	Laundry Rm.	_____	Closets	_____	Porch	_____
Patio	_____	Deck	_____	Garage	_____	Other Areas	_____

Comments: _____

VII. HVAC UNIT

Verify that heating and cooling systems, including thermostat, insulation, and filter are correctly installed and operating properly. Verify that unit turns on. Verify that air flow is at each vent and that vent opens and closes. _____

Comments: _____

VIII. HOT WATER HEATER

Check the pop-off valve and drain to make sure they are functioning properly. Verify that hot water flows out of all faucets. _____

Comments: _____

IX. BREAKER BOX

Check to make sure door opens and closes properly, all circuits are labeled properly, and the breakers are functioning properly. _____

Comments: _____

X. BASEBOARDS/TRIM

Inspect baseboards and trim for proper installation and appearance. _____

Comments: _____

XI. WALLS/CEILINGS

Check all walls and ceilings to verify that appearance is acceptable. _____

Comments: _____

XII. CLOSETS

Inspect shelves and rods for proper installation and appearance.

Hall Bath	_____	Full Bath	_____	Other Areas	_____
Bed Rooms	_____	Utility Room	_____		
Laundry Room	_____	Closets	_____		

Comments: _____

XIII. FLOOR COVERING

Inspect all carpet for proper installation and appearance. Inspect all vinyl, ceramic tile and wood flooring for proper installation and appearance. _____

Comments: _____

XIV. COUNTERTOPS

Inspect all countertops for proper caulking, level and anchors, and check for the presence of scratches, nicks, and burns.

Comments: _____

XV. CABINETS

Inspect doors, drawers, shelves and hardware for proper installation and operation. Check that all drawers and doors open properly. _____

Comments: _____

XVI. PLUMBING

Inspect for proper fittings, water draining freely, hot and cold water, proper washer/dryer hook ups and the presence of any leaks. Check and record water pressure.

Hall Bath	_____	Full Bath	_____	Kitchen	_____	Utility Room	_____
Laundry Room	_____	Other Areas	_____				

Comments: _____

XVII. KITCHEN PLUMBING FIXTURES

Inspect for proper installation and operation of sink, sprayer, stopper and dishwasher. Check for leaks under sink. Check dishwasher door for correct closing. Run dishwasher through cycle and check for leaks around door and under sink.

Comments: _____

XVIII. BATHROOM FIXTURES

Inspect for the correct installation and operation of bathroom fixtures. Check for leaks and presence of any damage to fixtures. Place a double hand full of toilet tissue in commode and test flush. _____

Comments: _____

XIX. TOWEL BARS/PAPER HOLDERS/SOAP DISH/TOOTHBRUSH HOLDERS/TUMBLER

Inspect for proper installation and location. _____

Comments: _____

XX. MIRRORS

Verify that mirrors are plumb and square and there are no factory defects in the silvering and no cracks or chips on glass edges. _____

Comments: _____

XXI. VENT FANS

Check for proper installation and operation. _____

Comments: _____

XXII. APPLIANCES

Check for proper installation and operation of:

Range		Hood		Refrigerator	
turn on	_____	light	_____	gasket	_____
temperature control	_____	fan	_____	ice maker	_____
oven light	_____			light	_____
broiler pan	_____	Garbage Disposal	_____	shelves	_____
oven elements	_____	turn on and run	_____	temperature control	_____
burner eyes	_____	reset button	_____		
oven racks	_____	seal	_____	Dishwasher	_____
stopper	_____	arm	_____	basket	_____
Microwave	_____	proper drainage	_____	controls	_____
light	_____			drainage system	_____
fan	_____			door	_____
				run full cycle	_____

Comments: _____

XXIII. FIREPLACE

Inspect for proper installation, operation and appearance.

Hearth	_____	Surround	_____	Unit	_____	Screens	_____
Glass	_____	Damper	_____				
Doors	_____						

Comments: _____

XXIV. CLEANLINESS

Inspect for thoroughness of cleaning. _____

Comments: _____

XXV. EXTERIOR OF HOME

Painting _____	Roof _____	Trim _____
full coverage _____	all shingles in place _____	matched in place _____
caulking at joints _____	valleys appear normal _____	fitting properly _____
	ridge shingles in place _____	soffit vent open _____
Gutters _____	Brick _____	Patio/Walk/Drive _____
Heating & A/C Unit _____		level (no bird baths) _____
installed level in _____		drains _____
workman like manner _____		no cracks or _____
		separations _____

Comments: _____

XXVI. YARD

Bushes _____	Sod _____	Lawn _____
alive & healthy _____	in place _____	level _____
	rolled _____	raked _____
		seeded _____

Comments: _____

ADDITIONAL COMMENTS _____

This Preoccupancy Inspection Agreement is part of the Limited Warranty Agreement which is to be resigned at closing and attached hereto. This Preoccupancy Inspection Agreement shall survive closing and remain in full force and effect.

We the Buyers have inspected each item contained in this Preoccupancy Inspection Agreement as well as an inspection of our own and we find the Dwelling to be in good condition except as specifically described above. We the Buyers do hereby agree that the construction of the Dwelling is complete and do hereby accept all workmanship and material in this Dwelling as being free from defect except as specifically described above and except any Latent Defect (as defined in the Limited Warranty Agreement) not apparent at this time.

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

WITNESS _____

BUYER _____

WITNESS _____

BUYER _____

WITNESS _____

SELLER _____

WITNESS _____

SELLER _____

Please have utilities changed to your name.

[Use as Exhibit either the Preoccupancy Inspection Agreement or the Acknowledgment of Acceptance]

Exhibit II to Limited Warranty Agreement

STATE OF ALABAMA)
 :
COUNTY OF _____)

ACKNOWLEDGMENT OF ACCEPTANCE

We, the undersigned Buyers, are consummating the purchase from _____ (“Seller”) of _____

(the “Land”).

We hereby acknowledge that we have inspected the Land and the Dwelling, driveway, and other improvements located thereon (collectively, the “Property”) and that, without any reservations, we accept the Property as to the condition thereof. Specifically, we accept the Property as to the condition of the (i) wall finish, paint, and decoration, (ii) finished floors, (iii) bath tile and fixtures, (iv) kitchen tile, sink, and cabinets, (v) woodwork, trim, and paneling, (vi) doors and windows, (vii) caulking and weatherstripping, (viii) lighting fixtures, (ix) brick and paneling on exterior walls, (x) concrete, stucco, plaster, bricks, mortar, and masonry, (xi) garages, storage buildings, or other outbuildings not attached to the Dwelling, (xii) swimming pools and other recreational facilities, (xiii) concrete work of driveway, walks, porches, and carports, (xiv) roofing, (xv) drainage around Dwelling and ditches within easements, (xvi) basement or crawl space under Dwelling, and (xvii) driveways, walkways, retaining walls, fences, and landscaping (including sodding, seeding, shrubs, trees, and plantings).

We hereby acknowledge receipt of the Limited Warranty Agreement for a period of _____ executed by Seller and us and understand the responsibilities of Seller thereunder.

By closing the purchase of the Property, we acknowledge that Seller has performed its contract with us, the improvements upon the Property have been completed according to the plans and specifications agreed upon, and the improvements upon the Property have been completed according to the decoration plans made part of the contract.

Dated the _____ day of _____, 20_____.

BUYERS:

