

PROMULGATED BY THE TEXAS ASSOCIATION OF BUILDERS (TAB)  
**EXPRESS LIMITED HOME WARRANTY AND PERFORMANCE STANDARDS**

CONCERNING THE PROPERTY AT

\_\_\_\_\_  
(Street Address and City)

Builder's Name: \_\_\_\_\_  
Builder's Address: \_\_\_\_\_  
\_\_\_\_\_  
Builder's Phone: \_\_\_\_\_  
Builder's Fax No.: \_\_\_\_\_  
Builder's Email: \_\_\_\_\_

§ 1. General Provisions

- (a) Scope. This document describes the standards of performance for the various elements or components of a home as described. The Builder will repair or replace those elements or components of a home that do not meet these standards during the applicable Warranty Period based upon the expected level of performance described in these standards for residential construction to which the standards apply. If an element or component of a home is not described particularly herein, the element or component shall be constructed in accordance with the applicable written agreement or, if there is no agreement, in accordance with the usual and customary industry standards or practices for similar Improvements (defined below) in the geographic region shall govern and the element or component shall perform for the purpose for which it is intended for the period of the applicable warranty. This document does not replace homeowner's insurance or any third-party warranty.
- (b) Definitions. The following words and terms when used in this warranty shall have the following meanings, unless the context clearly indicates otherwise.
- (1) Adverse effect--A tangible condition that substantially impairs the functionality of the habitable areas of the home.
  - (2) ASCE Guidelines--"Guidelines for the Evaluation and Repair of Residential Foundations, Version 2", published by the Texas Section of the American Society of Civil Engineers (2009).
  - (3) Builder Responsibility--A statement of the corrective action required by the Builder to repair the construction defect and any other damage resulting from making the required repair. Parties may agree to an alternative remedy.
  - (4) Code--The International Residential Code or, if the context requires, the National Electrical Code.
  - (5) Construction Defect—a failure to meet the applicable performance standards as set forth herein of the home and subject to the provisions and procedures of the Residential Construction Liability Act, Chapter 27 of the Texas Property Code, except as modified by this Express Limited Home Warranty.
  - (6) Deflection--the distorted shape of a structural element due to bending. Deflection is characterized by the deflection ratio.

- (7) Deflection Ratio--the maximum deviation from a straight line between two points divided by the distance (L) between the two points.
- (8) Electrical Standard--for residential construction located in a municipality, a standard contained in the version of the National Electrical Code (NEC) applicable to electrical aspects of residential construction in the municipality under Local Government Code § 214.214 and that is effective on the date of commencement of construction of the home;
- (9) Excessive or Excessively--a quantity, amount or degree that exceeds that which is normal, usual or reasonable under the circumstance.
- (10) Exclusion--items, conditions or situations not warranted or not covered by a performance standard.
- (11) Extreme Weather Condition(s)--weather conditions in excess of or outside of the scope of the design criteria stated or assumed for the circumstance or locale in the Code.
- (12) Improvement(s)--any labor, materials, or other work supplied by Builder or its independent contractors or suppliers in performance of the contract documents or other written agreements, including, but not limited to, design plans or specifications.
- (13) The International Residential Code (IRC)--substantial compliance with the version of the IRC for One- and Two-Family Dwellings published by the International Code Council (ICC) as follows:
  - (A) for residential construction of the non-electrical standards of a One- and Two-Family Dwelling located in a municipality, the version of the IRC applicable to non-electrical aspects of residential construction in the municipality under Local Government Code § 214.212 and which is effective on the date of commencement of construction of the home;
  - (B) for residential construction of a One- and Two-Family Dwelling in the unincorporated area of a county, the version of the International Residential Code published as of May 1, 2008, or the version of the IRC that is applicable in the county seat of that county, including any other applicable Codes required by statute.
- (14) Major Structural Components--the load-bearing portions, and the integral connection between them, of the following elements of a home: footings and foundations; beams; headers; girders; lintels; columns; load-bearing portions of walls and partitions; roof framing systems, to include ceiling framing; structural floor systems; and structural masonry arches. Major Structural Components do not include components and/or component parts such as, including but not limited to: non-load-bearing walls, non-load-bearing columns, wall tiles or wallpaper, drywall, plaster, flooring, subfloors and associated material, stucco of any kind or application, brick, stone, exterior siding, cladding, roof shingles, roof tiles, roof membranes, sheathing even if rated for structural support, tar paper, mechanical systems and its component parts, manufactured equipment, doors, trim, cabinets, hardware, insulation.
- (15) Manufactured Product--a component of the home that was manufactured away from the site of the home and that was installed in the home without significant modifications to the product as manufactured. Manufactured products commonly installed in residential construction include but are not limited to dishwashers, cook tops, ovens, refrigerators, trash compactors, microwave ovens, kitchen vent fans, central air conditioning coils and compressors, furnace heat exchangers, water heaters, carpet, windows, doors, light fixtures, fireplace inserts, pipes and electrical wires. For purposes of this warranty, a manufactured product includes any component of a home for which the manufacturer provides a warranty, provided that the manufacturer permits transfer of the warranty to the homeowner, any such transfer shall be without recourse against the Builder.
- (16) Original Construction Elevations--actual elevations of the foundation taken before, on or about the Effective Date of Warranty of the residential construction project. Such actual elevations shall include elevations of porches

and garages if those structures are part of a monolithic foundation. To establish original construction elevations, elevations shall be taken at a rate of at least one elevation per 100 square feet showing a reference point and shall be taken at a rate of at least one elevation per 10 linear feet along the perimeter of the foundation, subject to obstructions. Each elevation shall be taken on the surface of the foundation or on the surface of the floor covering on the foundation, if any. The type of floor finish or floor covering shall be identified for each elevation location or elevation grouping as applicable. For elevations surveyed on floor coverings, adjustments shall be made for the differential thickness between adjacent floor coverings such that all elevations reference a common plane. All intentional, as-built elevation changes, including but not limited to step-ups, step-downs, tire stops, sunken rooms, weather drops, and areas with drainage slopes shall be identified in location and magnitude. Original Construction Elevations shall be recorded with an accuracy of at least 1/8 of an inch (0.125 inch) on a to-scale plan view drawing of the home with interior and exterior walls to provide sufficient reference of each elevation location. If no such actual elevations are taken, the foundation for the habitable areas of the home are presumed to be level +/- 0.75 inch (three-quarters of an inch) over the entire area of the foundation.

- (17) Performance Standard(s)--the standard(s) to which a home or an element or component of a home constructed as a part of new home construction or a material improvement or interior renovation must perform.
- (18) Raised-Floor Foundation--a foundation comprised of a structural floor system that is elevated above the underlying ground surface by footings, piers, piles, or other localized foundation support elements. The foundation exhibits a void space or a crawlspace between the structural floor system and the underlying ground surface. Examples of raised floor foundations include, but are not limited to traditional wood floor systems, concrete slabs on metal formwork, and concrete slabs on temporary carton forms.
- (19) Slab-on-Ground Foundation--a foundation comprised of a concrete slab, either reinforced or post-tension, that is continuously supported by the underlying ground surface. The foundation may be a concrete slab of uniform thickness, or it may incorporate monolithic stiffening beams that are deeper than the slab sections. The foundation may be supplemented with piers; however, it is placed on, and directly supported by, the ground.
- (20) Span (L)--the distance between two supports for structural elements supported at both ends. For calculating overall deflection and/or tilt of foundations, L shall be defined as the edge-to-edge distance across the entire length of the foundation cross-section for which deflection or tilt is to be calculated. For calculating overall deflection and/or tilt of foundations, the minimum L shall be not less than 25 feet. Localized and/or shortened spans may not be used for calculations. For cantilevered framing elements, L shall be determined as twice the distance from the last support to the unsupported end of the element.
- (21) Substantial Completion--achieved when:
- (A) the stage of construction when a new home, addition, improvement, or alteration to an existing home is sufficiently complete that the home, addition, improvement or alteration can be occupied or used for its intended purpose; or
  - (B) if required, the issuance of a final certificate of inspection or occupancy by the applicable governmental authority; or
  - (C) if no final inspection or certificate of occupancy is required, when all electrical, mechanical, and plumbing final inspections, or all other required inspections, if any, have been approved or all approvals for occupancy have been received from any applicable governmental authority; or
  - (D) provided, however, that if Owner moves into, occupies and/or places personal property in the home or Improvements (or any portion of the property that is the subject of the contract), the home or Improvements shall be deemed to be for all purposes substantially completed.

(22) Tilt --the planar rotation from a level condition to a slope across the entire foundation, edge-to-edge. Tilt is the mathematical difference in elevation of two points from opposing edges of a foundation divided by the distance (L) between the two points, expressed as a percent.

(c) Additional Terms and Conditions

- (1) Foreclosure. Notwithstanding any other term or condition herein, this Express Limited Home Warranty does not apply to Property and/or Improvements that have been subject to a foreclosure under Texas law, such Property and Improvements are taken "AS IS, with all faults."
- (2) Commercial Purpose. Notwithstanding any other term or condition herein, this Express Limited Home Warranty does not apply to Property and/or Improvements that have been used at any time for a commercial, for profit, rental (short or long term), leasing or occupancy by any person other than the named owners on the deed recorded in the public records, such Property and Improvements are taken "AS IS, with all faults" and/or this Express Limited Home Warranty is cancelled upon the first or any use in violation of this provision.
- (3) Green Building Compliance. Any and all green building requirements, standards, certifications or otherwise are controlled by those written standards applicable to and agreed upon between the Builder and the initial owner(s), if any, after which there is no warranty or guarantee related to or concerning any such green building requirements, standards, certifications or otherwise to any subsequent owner of the Property and/or Improvements. There is no guarantee or warranty for the energy efficiency, energy usage or otherwise of the home or Improvements in the Express Limited Home Warranty.
- (4) Residential Construction Liability Act (RCLA) and Contractual Requirements. The contract associated with this Express Limited Home Warranty along with the terms and conditions therein are incorporated into this Express Limited Home Warranty, including but not limited to the dispute resolution provisions. As a condition precedent to the applicability of this Express Limited Home Warranty, the owner must follow each term and condition in the contract associated with this Express Limited Home Warranty, the requirements of the RCLA, all other legal requirements, and any and all other requirements in any instrument related to the Property and/or the Improvements, including but not limited to any third-party warranty. Any and all claims with the applicable third-party warranty company, insurance carrier or other responsible party is to be made before a claim under this Express Limited Home Warranty is presented to Builder, and there is no Builder Responsibility until same is fully completed in all respects unless Builder, at Builder's sole and exclusive discretion, agrees to participate concurrently.
- (5) Approved Variations. Any variations in any element of construction, the Property and/or the Improvements that are not in compliance with the Performance Standard(s) or applicable Code(s) that are approved by an engineer associated with the project, included in the Construction Documents, provided for in the plans and specifications or approved by the local building official, governing authority, city inspector, third-party inspector or third-party warranty company are not warranted hereunder, are deemed within the Performance Standard(s) and are an Exclusion.
- (6) Other Insurance or Warranty. This document does not replace homeowner's insurance or any third-party warranty. As a condition precedent to the applicability of this Express Limited Home Warranty, the owner must make a claim with the owner's homeowner's insurance carrier and third-party warranty company, as applicable. There is no Builder Responsibility for any loss paid, covered claim, repair or the like if same is available through any insurance or third-party warranty. Any insurance or third-party warranty is primary and non-contributory to this Express Limited Home Warranty.
- (7) Access. In order to carry out the Builder Responsibilities, the Builder will require access to the home, the Property and Improvements. Builder and Builder designees shall be allowed full access in Builder's normal

- business operations for testing, inspection and repairs. Refusal or delay of more than ten calendar days upon verbal or written request of the Builder will waive and void any Builder Responsibility, unless mutually agreed upon in writing by the parties.
- (8) Non-Builder Repairs. Any and all repairs performed by any party without full compliance with this Express Limited Home Warranty waives any Builder Responsibility and any claim or cause of action against Builder related to same.
  - (9) Resolving conflicts among construction standards. During the construction of the home, when an inconsistency exists between the Code, manufacturer's instructions and specifications, the standard required by the United States Department of Housing and Urban Development for Federal Housing Administration or Veterans Administration programs, or ANSI/ASHRAE Standard (62.2-2003), the most restrictive requirement shall apply if reasonable under the circumstances.
  - (10) This Express Limited Home Warranty is fully transferable to subsequent homeowners without any additional paperwork or assignment. The subsequent homeowner's name must appear on the title filed in the deed records of the county for the subject property.
  - (11) This Express Limited Home Warranty runs with the land and is a condition to any sale, transfer or otherwise related thereto. The terms and conditions of this Express Limited Home Warranty are incorporated by reference in and subsequent sale, transfer or otherwise regardless of any reference in the any such written instrument or document. Any and all subsequent homeowner is bound by the terms and conditions of this Express Limited Home Warranty. Any and all homeowners, now or in the future, accept this Express Limited Home Warranty by acceptance of title. To the extent that a subsequent homeowner has no knowledge of this instrument, actual or constructive, any assertion of a claim or cause of action against any person or entity that implicates the terms and conditions hereunder, the entirety of this document is applicable. This Express Limited Home Warranty cannot be changed or modified by any person or party whatsoever save and except for mutual written agreement between Builder and current homeowner.
  - (12) Any claim or cause of action related to this Express Limited Home Warranty must be filed on or before the second anniversary plus one day of the date of discovery of the alleged construction defect; the statute of limitations for any such claim or cause of action is the second anniversary plus one day of the date of the discovery of the alleged construction defect; this provision does not extend the time period of any warranty.
  - (13) HOMEOWNER AGREES AND UNDERSTANDS THAT OTHER THAN THE WARRANTIES PROVIDED IN THIS EXPRESS LIMITED HOME WARRANTY, ALL OTHER WARRANTIES ARE DISCLAIMED AND HOMEOWNER IS WAIVING ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF GOOD AND WORKMANLIKE REPAIR OR MODIFICATION OF EXISTING TANGIBLE GOODS OR PROPERTY, THE IMPLIED WARRANTY OF GOOD AND WORKMANLIKE CONSTRUCTION, PERFORMANCE, WORKMANSHIP, REPAIR, MODIFICATION, MERCHANTABILITY, SUITABILITY AND FITNESS. THE IMPLIED WARRANTY OF HABITABILITY IS WAIVED TO THE FULLEST EXTENT ALLOWED UNDER LAW, AS THE HOMEOWNER UNDERSTANDS AND AGREES THAT THE REPAIR OBLIGATIONS HEREUNDER ARE SUFFICIENT TO REPLACE ANY SUCH IMPLIED WARRANTY AND UNDERSTANDS THAT THE IMPROVEMENTS MAY BECOME UNSAFE FOR HABITATION BUT THAT THE OBLIGATIONS HEREUNDER ARE SUFFICIENT FOR THE REPLACEMENT OF ANY SUCH IMPLIED HABITABILITY WARRANTY; HOWEVER, TO THE EXTENT THAT IT IS FINALLY DETERMINED UNDER THE DISPUTE RESOLUTION PROVISIONS HEREIN THAT THE IMPROVEMENTS ARE NOT HABITABLE DIRECTLY BECAUSE OF A CONSTRUCTION DEFECT, THE WARRANTY OBLIGATIONS HEREIN ARE SUFFICIENT TO CURE ANY SUCH CONSTRUCTION DEFECT TO BRING THE CONSTRUCTION DEFECT INTO COMPLIANCE WITH THE APPLICABLE STANDARD, NOTWITHSTANDING, THE BUILDER IS NOT

LIABLE FOR ANY RESULTING DAMAGES, CONSEQUENTIAL DAMAGES, CONDITIONS, INJURIES, DEATH OR OTHERWISE. THE PARTIES AGREE THAT THE LIMITED WARRANTY ADEQUATELY SET FORTH THE MANNER, PERFORMANCE, AND QUALITY OF THE CONSTRUCTION OF THE IMPROVEMENTS. Homeowner acknowledges, understands, and agrees that the terms of this Express Limited Home Warranty are clear, specific, and sufficiently detailed to establish the only standards of construction performance. The Parties agree that this Express Limited Home Warranty will control any warranty, workmanship, material, or any other defect claims regarding the Improvements.

- (14) The maximum warranty limit or warranty obligation hereunder is deemed the maximum obligation under any circumstance, including multiple claims, against this Express Limited Home Warranty and made in any manner against the Builder is the original, total purchase price in the original sales contract. Any obligation herein shall be deemed excess of any other insurance available, regardless of collectability and including any and all primary, umbrella or excess policies or coverages. Any other insurance available to any person or entity, including but not limited to the owner, third-party beneficiary, Builder, subcontractor or otherwise is primary and non-contributory to this Express Limited Home Warranty.
- (15) DISPUTE RESOLUTION; MEDIATION-BINDING ARBITRATION. Builder and Homeowner shall attempt in good faith to resolve promptly by negotiation any and all claims, controversies, and Disputes (as defined herein) arising under, out of, or relating to this Express Limited Home Warranty. If such negotiation is unsuccessful, any party by written demand on the other party may request that the Dispute be mediated, and all parties agree to participate in good faith in such mediation. Mediation is a condition precedent to any further dispute resolution between the parties, including arbitration or any litigation, proceedings or otherwise; and failure to mediate is a breach. The mediation shall take place in the subject property unless otherwise agreed, and the mediator shall be an attorney licensed to practice law in Texas. If the parties are unable to jointly select a mediator, one shall be appointed pursuant to the American Arbitration Association ("AAA") applicable rules. The parties shall share equally any mediation fees and expenses. If such mediation does not result in a full resolution of the Dispute, the Dispute shall be submitted to binding arbitration by an arbitrator in accordance with the procedures and conditions of the AAA then applicable AAA rules, procedures, and protocols determined by the arbitrator to be most applicable to the nature of the Dispute, as herein defined, including, where applicable. The term "Dispute" includes, but is not limited to, claims, disputes and/or causes of action arising in connection with: (i) this Express Limited Home Warranty, (ii) the Contract, including but not limited to the negotiation, formation, subject matter, breach, modification, cancellation, or termination thereof; (iii) development, design, construction, preparation, maintenance, or repair of the Improvements; (iv) any representations, omissions, promises, or warranties, express or implied, alleged to have been made by Builder or Builder's representatives; (v) violations of any statute, including without limitation any claim under the Texas Deceptive Trade Practices Act, Insurance Code and/or similar statutes or regulations; (vi) personal injury or damage; (vii) claims of fraud or misrepresentation; and/or (viii) any other agreement, transaction, occurrence or event giving rise to a disagreement over breach of legal duties, rights, or obligations which involve Builder, Homeowner and/or their respective affiliates, agents, representatives and/or assigns. The following shall apply to all mediation/arbitration proceedings:
- (A) A request for warranty performance is not to be construed as a notice of construction defect under the Texas Residential Construction Liability Act and that any notice under said action shall be separately sent as required herein and under law.
- (B) Each party shall pay its own attorney's fees and expenses related to mediation and arbitration including, without limitation, expert fees and costs of production of materials, unless otherwise mandated as expressly non-waivable by law, otherwise same is waived. Fees and expenses of the mediator and arbitrator will be borne by the party initiating the mediation/arbitration, provided that if such party prevails by the arbitrator's award, the other party shall be responsible for fees and expenses of the mediator and/or

arbitrator, unless prescribed by law. If the award recognizes validity to both parties' actions, responsibility for fees and expenses of the mediator and/or arbitrator shall be apportioned by the arbitrator. In as much as this Express Limited Home Warranty and the original sales contract provides for mandatory mediation/arbitration of disputes, if any party commences litigation in violation of these provisions, such party shall reimburse the other parties to the litigation for their costs and expenses, including but not limited to attorney's fees, incurred in seeking abatement of such litigation and enforcement of arbitration.

- (C) The arbitration shall in all things be confidential and private, the parties hereto agreeing that no court proceedings or lawsuit is necessary for the resolution of a dispute hereunder, and that the breach of this confidentiality and privacy provision is a material term. The arbitration award or decision is final and may be confirmed, entered, and enforced as a judgment in a court having jurisdiction, subject to appeal only in the event of the arbitrator's manifest disregard of the law, no evidence to support the award, or other such grounds for appeal of arbitration awards that exist by statute, common law, or the applicable rules of the administrative agency; however, no arbitration award will be allowed to be confirmed or filled for confirmation in any court of law, regardless of the applicable rules of the arbitration, before the expiration of 90 days after the award is issued and/or signed by the arbitrator and all rules related to the modification, clarification or otherwise in the arbitration proceeding are expired, and breach of this provision is a material term.
- (D) Any Dispute, claim and/or cause of action must be filed for arbitration no later than two years and one day after the date of accrual and the statute of limitations is shortened to this time period unless any such Dispute, claim and/or cause of action already has a shorter limitations period as a matter of law. It being a breach of contract and violation of this Express Limited Home Warranty, the filing of a lawsuit in a court of law does not toll the limitations periods.
- (E) Under no circumstances shall a party be liable for any special, indirect, or consequential damages, including claims of mental anguish.
- (F) This Express Limited Home Warranty is not governed by the Texas Real Estate Commission.
- (G) THE PARTIES HERETO HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY DISPUTE, CLAIM OR CAUSE OF ACTION.

## § 2. General Provisions for New Homes, Material Improvements and Interior Renovations

### (a) Builder Responsibilities for Compliance with Performance Standards and Repair Obligations.

- (1) Builder's Work. The Builder is responsible for all work performed under the direction of the Builder for the period of the applicable warranty. The Builder is only responsible for construction defects about which the Builder receives written notice in compliance with Sec. 1(c)(4) no later than thirty (30) days following the expiration of the applicable warranty period:
  - (A) the date of the initial transfer of title from the Builder to the initial owner of the affected home or improvement; or
  - (B) if the transaction that is the subject of the dispute did not involve a title transfer, the date that the construction was substantially complete unless otherwise expressly stated herein.
- (2) Repair Obligations. Unless otherwise stated under the various performance standards herein, if any such performance standard is not met, the Builder shall take such action as is necessary to bring the variance within the standard, subject to the terms and conditions herein. The method and manner of any repair is within the sole discretion of Builder. The Builder shall have the option in its sole and exclusive discretion to repair, replace or

pay for the reasonable cost of repair of any construction defect or exercise any remedy available to it under law or contract, or any combination of any of the preceding. As a condition precedent to any obligation herein, the homeowner must make a written, unconditional assignment to the Builder or its designee any and all rights, remedies or otherwise that the homeowner has or may have against any other entity, person or third-party of or relating to the subject property, Improvements or otherwise. If the homeowner or any of homeowner's agents, representatives or affiliates have assigned or otherwise prejudiced any rights related this Express Limited Home Warranty or the subject property or Improvements, the obligations hereunder are waived to any such extent of said assignment or prejudice. The Builder retains all rights of subrogation, which shall not be assigned or waived by the homeowner. Builder has the unrestricted right to subrogation against any and all third-parties, including but not limited to any person or entity constructing, modifying, supplying materials, labor or otherwise to the Improvements, insuring the Improvements, or in any way causing Builder to incur or accept liability, damages or the like hereunder. Upon selection by Builder of the one or more options herein, the homeowner shall execute a recordable release of all claims and causes of action related to the construction defects, any condition and/or damages related to the construction defect, and this Express Limited Home Warranty to the extent of the construction defects, save and except that any remaining Warranty Period or express obligation hereunder shall not be released. No repairs performed by or on behalf of Builder shall extend the Warranty Period or any other obligation hereunder.

- (3) Repair Condition. In connection with a repair of a construction defect, any repairs performed by the Builder will include those components of the home that have to be removed or altered in order to repair the construction defect. Repair shall be made so that the condition is returned to its condition as it existed at the time immediately preceding the construction defect. Any repair will be finished or touched up to match the surrounding area as closely as practical but not necessarily to a like-new condition. Imperfections and variations may exist and should be expected. A repair or action bringing a variance within the standard under this warranty shall not cause the period of the applicable warranty to be extended.
- (4) Finish. Surfaces altered incident to any repair will be finished or touched up to match the surrounding area as closely as practical but not necessarily to a like-new condition. Imperfections and variations may exist and should be expected. In connection with the repair of finish or surface material, such as paint, wallpaper, flooring or a hard surface, the Builder will match the standard and grade as closely as reasonably possible. Builder will attempt to match the finish but will not be responsible for discontinued patterns or materials, color variations or shade variations. When the surface finish material must be replaced and the original material has been discontinued, the Builder is responsible for installing replacement material substantially similar in appearance to the original material.
- (5) Manufactured Products. The Builder shall install all manufactured products in accordance with the manufacturer's instructions and specifications.
  - (A) The Builder shall use only new manufactured products and parts unless otherwise agreed in writing by the parties. If the Builder did not install a manufactured product in accordance with the manufacturer's specifications or use newly manufactured parts as required, the Builder shall take such action as is necessary to bring the variance within the standard.
  - (B) The homeowner shall notify the Builder in writing of a known construction defect not later than the second anniversary of the date of discovery of the construction defect or not later than thirty days following the applicable warranty period. In no event shall there be Builder Responsibility for any Manufactured Product that was installed in accordance with the manufacturer's instructions and specifications. In no event shall there be Builder Responsibility for any denial of warranty claim or otherwise by the manufacturer.



(6) Specialty Feature. Notwithstanding a performance standard stated in this Express Home Warranty, a specialty feature, which is work performed or material supplied incident to certain design elements shown on the construction plans and specifications and agreed to in writing by the Builder and the homeowner, shall be deemed to be compliant with the performance standards stated herein so long as all items are compliant with the Code.

(b) Exceptions and Exclusions from Builder's Responsibilities.

(1) The Builder is not responsible for repair, loss or damage to a component or that part of a component of a home caused by or made worse by any of the following:

- (A) Work performed or material supplied incident to construction, modification or repair to the home performed by anyone other than the Builder or persons providing work or material at the direction of the Builder.
- (B) The negligence, improper maintenance, misuse, abuse, failure to follow manufacturer's recommendations, failure to take reasonable action to mitigate damage, failure to take reasonable action to maintain the residence or other action or inaction of anyone other than the Builder or persons providing work or material at the direction of the Builder.
- (C) Failure of the homeowner to comply with the homeowner's responsibilities as set forth in subsection (c) of this section or as may be stated separately elsewhere in this warranty.
- (D) Alterations to, or the failure to maintain, the grade of the soil that are not in compliance with the Code, applicable governmental regulations or in compliance with an applicable drainage plan.
- (E) Normal wear and tear or normal deterioration to any component of the home.
- (F) Extreme weather conditions.
- (G) Riot, civil commotion, war, terrorism, vandalism, aircraft, vehicle or boat.
- (H) Fire, smoke or water damage unless such loss or damage is a direct result of a construction defect.
- (I) Change in the underground water table that exerts pressure on, seeps, or leaks under the home, sidewalk, driveway, foundation or other structure or causes subsidence or sinkholes.
- (J) Erosion or accretion of soils unless such loss or damage is a direct result of a construction defect.
- (K) Insects, birds, rodents, vermin or other wild or domestic animals unless such loss or damage is a direct result of a construction defect.
- (L) The quality and potability of water unless caused by a construction defect.
- (M) While the home is being used primarily for nonresidential purposes.
- (N) Use for which the home or the component of the home was not designed.
- (O) Use that exceeds the normal design loads prescribed by the Code or the engineer of record.
- (P) Homeowner delay in reporting a known construction defect or failing to take reasonable action necessary to prevent further damage to the home.
- (Q) For remodeling projects, improvements, alterations or additions to an existing residence where the performance standard cannot be achieved due to an existing condition.
- (R) Abuse or misuse of a home component or manufactured product by anyone other than the Builder or persons providing work or material at the direction of the Builder.

(S) Failure and/or violation to meet applicable Code by itself for any element of construction or construction technique for the Property and/or Improvements is not negligence per se, breach of contract or breach of warranty and does not create a cause of action or Builder Responsibility. A claim or allegation that there is a failure to meet or violation of Code must be accompanied by both (1) actual physical resulting damage from that failure or violation of Code to the Property or Improvements and (2) an immediate threat to the health and safety for the occupants or invitees. There is no Builder Responsibility to repair any failure to meet Code or violation of Code that would result in economic waste.

(T) Under no circumstance is any landscaping, whether currently existing trees, plants, or grass on the subject property, or any of those installed by Builder, warranted by this Express Limited Warranty.

(2) No Actual Physical Damage. The Builder shall not be responsible for any condition that does not result in actual physical damage to the home, including, but not limited to the presence of radon gas, formaldehyde or other pollutants or contaminants, or the presence or effect of mold, mildew, toxic material, or volatile organic compound, unless such condition is a direct result of a construction defect.

(c) Homeowner's Responsibilities.

(1) Home Maintenance. Maintenance of the home and the lot on which the home is located are essential to the proper functioning of the home. The homeowner is responsible for maintenance of the home and the lot on which it is located and any contiguous property owned or controlled by the homeowner. The homeowner is responsible for maintenance items described in this paragraph and those maintenance items identified separately in the performance standards set forth in this warranty. Additionally, the homeowner is responsible for ongoing maintenance responsibilities that affect the performance of the home but that may not be expressly stated in this warranty. Such ongoing maintenance responsibilities include, but are not limited to, periodic repainting and resealing of finished surfaces as necessary, caulking for the life of the home, regular maintenance of mechanical systems, regular replacement of HVAC filters, cleaning and proper preservation of grading around the home and drainage systems to allow for the proper drainage of water away from the home.

(2) Manufactured Products. The homeowner shall use and perform periodic maintenance on all manufactured products according to the manufacturer's instructions and specifications. The misuse, abuse, neglect or other failure to follow manufacturer's specifications with regard to manufactured products may void the manufacturer's warranty. The Builder has no Builder Responsibility for Manufactured Products.

(3) Landscape Planting. The homeowner shall take measures to prevent landscaping materials or plants from contacting the exterior surface of the home and from interfering with the proper drainage of water away from the foundation. The homeowner should not improperly alter the proper drainage pattern or grade of the soil within ten feet of the foundation so that it negatively impacts the home's performance or fails to comply with the Code, governmental regulations or an applicable grading and drainage plan. There is no warranty for landscaping, plants, trees, grass or other plant materials.

(4) Subsequent Improvements. The homeowner shall take measures to prevent subsequent improvements, including but not limited to additions, patios, arbors, pools, and retaining walls from interfering with the proper drainage of water away from the foundation. The homeowner should not alter the proper drainage pattern or grade of the soil within ten feet of the foundation so that it negatively impacts the home's performance or fails to comply with the Code, governmental regulations or an applicable grading and drainage plan.

(5) Humidity or Dryness in the Home. The homeowner should take the following actions to prevent excessive moisture accumulation by:

(A) properly using ventilation equipment;

- (B) preventing excessive temperature fluctuation; and
  - (C) taking any other action reasonably necessary to avoid excessive moisture, dampness, humidity or condensation in the home that may lead to damage due to excessive moisture or dryness.
- (6) Proper Maintenance and Care of Home Components. The homeowner shall properly maintain each component of the home including proper cleaning, care and upkeep of the home. The homeowner shall use home components for the purposes for which they are intended and shall not damage, misuse or abuse home components.
- (7) Self-Help. Upon observation of a circumstance that may cause further damage to the home or a component of the home, the homeowner shall take reasonable action necessary to prevent further damage.

### § 3. Express Limited Home Warranty

- (a) Warranty periods. The warranty periods for residential construction and residential improvements are:
- (1) one year for workmanship and materials;
  - (2) two years for plumbing, electrical, heating, and air-conditioning delivery systems; and
  - (3) ten years for major structural components of the home.
- (b) Manufactured Product Warranties. The Builder will assign to the homeowner, without recourse, the manufacturer's warranty for all manufactured products that are covered by a manufacturer's warranty. Any rights that inure to the homeowner provided under a manufacturer's warranty are the obligation of the manufacturer. The Builder does not assume any of the obligations of the manufacturer resulting from a manufacturer's warranty, but shall coordinate with the manufacturer, suppliers or agents to achieve compliance with the performance standard. If the manufacturer does not comply with the manufacturer's warranty within a reasonable period of time, the Builder will make the affected condition comply with the performance standard and seek redress from the manufacturer.
- (c) Cosmetics, Workmanship and Materials Warranty and Performance Standards. Workmanship and materials in residential construction or residential improvements are warranted to perform to the performance standards that are set forth in this warranty for the minimum period established in subsection (a) paragraph (1) of this section, unless a greater period of warranty is agreed to by the parties.
- (d) Delivery Systems Warranty and Performance Standards. Plumbing, electrical, heating and air-conditioning delivery systems in residential construction and residential improvements shall be warranted to perform to the performance standards that are set forth in this warranty for the minimum period established in subsection (a) paragraph (2) of this section, unless a greater period of warranty is agreed to by the parties.
- (e) Structural Components Warranty and Performance Standards. Major structural components in residential construction and residential improvements shall be warranted to perform to the performance standards set forth herein for the minimum period established in subsection (a) paragraph (3) of this section, unless a greater period of warranty is agreed to by the parties.
- (f) Effective Date of Warranties.
- (1) Unless otherwise provided by a written agreement between the Builder and the initial homeowner or by a manufacturer, a warranty period as described in this section for a new home begins on the earlier of the date of occupancy or transfer of title from the Builder to the initial homeowner.
  - (2) A warranty period as described in this section for an improvement other than a new home or for a partially built home, which by agreement between the homeowner and the Builder, someone other than the Builder will

complete, begins on the date the improvement is substantially completed or the terms of the construction contract are substantially fulfilled.

### **ONE YEAR WARRANTY PERIOD**

#### § 4. Performance Standards for Yard Grading

- (a) Yards shall have grades, swales and/or other measures that provide for proper drainage in accordance with the Code, governmental regulations or otherwise in accordance with an applicable drainage and grading plan, if any, and/or approved variations. The homeowner shall maintain the drainage pattern and protect the grading contours from erosion, blockage, over-saturation or any other changes. The possibility of standing water, not immediately adjacent to the foundation but in the yard, after prolonged or an unusually heavy rainfall event should be anticipated by the homeowner.
- (b) Settling or sinking of soil shall not interfere with the drainage patterns of the lot or have a vertical depth of six inches or more.

#### § 5. Performance Standards for Foundations and Slabs

- (a) Performance Standards for Raised Floor Foundations or Crawl Spaces.
  - (1) A crawl space shall be graded and drained properly to prevent surface run-off from accumulating deeper than two inches in areas 36 inches or larger in diameter. Exterior drainage around perimeter of a crawl space shall not allow water to accumulate within ten feet of the foundation for more than 24 hours after a rain except in a sump that drains other areas. Water shall not enter into the basement or crawl space or seep through the basement floor. The homeowner shall not modify improperly the existing grade or allow water from an irrigation system to cause water to accumulate excessively under the foundation. The homeowner shall not allow landscape plantings to interfere with proper drainage away from the foundation. The homeowner shall not use the crawl space for storage of any kind.
  - (2) Water shall not enter through the basement or crawl space wall or seep through the basement floor. The homeowner shall not modify improperly the existing grade or allow water from an irrigation system to cause water to accumulate excessively near the foundation. The homeowner shall not allow landscape plantings to interfere with proper drainage away from the foundation.
- (b) Performance Standards for Concrete Slab Foundations, excluding Finished Concrete Floors.
  - (1) Concrete floor slabs in living spaces that are not otherwise designed with a slope for drainage, such as a laundry room, shall not have excessive pits, depressions or unevenness equal to or exceeding 3/8 of an inch in any 32 inches and shall not have separations or cracks that equal or exceed 1/8 of an inch in width or 1/16 of an inch in vertical displacement.
  - (2) Concrete slabs shall not have protruding objects, such as a nail, rebar or wire mesh.
  - (3) Concrete portions of a raised-floor foundation should not have separations or cracks that equal or exceed 1/8 of an inch in width or 1/16 of an inch in vertical displacement.
  - (4) A separation in an expansion joint in a concrete slab of a raised-floor foundation shall not equal or exceed 1/4 of an inch vertically or one inch horizontally from an adjoining section.

- (5) Slab-on-ground foundations should not have separations or cracks that equal or exceed 1/8 of an inch in width or 1/16 of an inch in vertical displacement.
  - (6) A separation in an expansion joint in a concrete slab shall not equal or exceed 1/4 of an inch vertically or one inch horizontally from an adjoining section.
- (c) Performance Standards for Exterior Concrete including Patios, Stem Walls, Driveways, Stairs or Walkways.
- (1) Concrete corners or edges shall not be damaged excessively due to construction activities.
  - (2) Exterior concrete shall not contain a protruding object, such as a nail, rebar or wire mesh.
  - (3) The finish on exterior concrete shall not be excessively smooth, so that the surface becomes slippery. A concrete surface that has been designed to be smooth is excepted from this performance standard.
  - (4) A driveway will not have a negative slope unless due to site conditions, it has swales or drains properly installed to prevent water from entering into a garage. If a driveway is sloped such that it allows water to enter a garage in normal weather conditions, the Builder shall take such action as is necessary to prevent water from entering the garage due to driveway slope.
  - (5) Concrete floor slabs in detached garages, carports or porte-cocheres shall not have excessive pits, depressions, deterioration or unevenness equal to or exceeding 3/8 of an inch in any 32 inches. Separations or cracks in these slabs shall not equal or exceed 3/16 of an inch in width, except at expansion joints, or 1/8 of an inch in vertical displacement.
  - (6) A crack in exterior concrete shall not cause vertical displacement equal to or in excess of 1/4 inch of an inch or horizontal separation equal to or excess of 1/4 of an inch. The homeowner shall not over-water surrounding soil or allow the surrounding soil to become excessively dry. The homeowner shall not allow heavy equipment to be placed on the concrete.
  - (7) A separation in an expansion joint in an exterior concrete shall not equal or exceed 1/2 of an inch vertically from an adjoining section or one inch horizontally, including joint material.
  - (8) A separation in a control joint shall not equal or exceed 1/4 of an inch vertically or 1/2 of an inch horizontally from an adjoining section.
  - (9) Concrete stair steepness and dimensions, such as tread width, riser height, landing size and stairway width shall comply with the Code such that they perform their intended function without posing a safety risk.
  - (10) Concrete stairs or stoops shall not settle or heave in an amount such that they cannot perform their intended function without posing a safety risk. Concrete stairs or stoops shall not separate from the home in an amount equal to or exceeding one inch, including joint material.
  - (11) Handrails shall remain securely attached to concrete stairs.
  - (12) Plaster over concrete shall not flake off more than one square foot in one spot within 36 square inches or more than 3 feet over the entire surface of the home.

## § 6. Performance Standards for Framing

### (a) Building and Performance Standard for Walls.

- (1) Walls shall not bow or have depressions that equal or exceed 1/4 of an inch out of line within any 32-inch horizontal measurement as measured from the center of the bow or depression or 1/2 of an inch within any eight-foot vertical measurement.

- (2) Walls shall be level, plumb and square to all adjoining openings or other walls within 3/8 of an inch in any 32-inch measurement.
  - (3) A crack in a beam or a post shall not equal or exceed 1/2 of an inch in width at any point along the length of the crack.
  - (4) A non-structural post or beam shall not have a warp or twist equal or exceeding one inch in eight-feet of length. Warping or twisting shall not damage beam pocket.
  - (5) Exterior sheathing shall not delaminate or swell. The homeowner shall not make penetrations in the exterior finish of a wall that allow moisture to come in contact with the exterior sheathing.
  - (6) An exterior moisture barrier shall not allow an accumulation of moisture inside the barrier. The homeowner shall not make penetrations through the exterior moisture barrier that permit the introduction of moisture inside the barrier.
- (b) Performance Standards for Ceilings. A ceiling shall not bow or have depressions that equal or exceed 1/2 of an inch out of line within a 32-inch measurement as measured from the center of the bow or depression running parallel with a ceiling joist.
- (c) Performance Standards for Sub-floors.
- (1) Under normal residential use, the floor shall not make excessive squeaking or popping sounds.
  - (2) Sub-floors shall not delaminate or swell to the extent that it causes observable physical damage to the floor covering or visually affects the appearance of the floor covering. Exposed structural flooring, where the structural flooring is used as the finished flooring, is excluded from the standard stated in this paragraph.
  - (3) Sub-flooring shall not have excessive humps, ridges, depressions or slope within any room that equals or exceeds 3/8 of an inch in any 32-inch direction.
- (d) Performance Standards for Stairs.
- (1) Stair steepness and dimensions such as tread width, riser height, landing size and stairway width shall be constructed in general compliance with the Code such that they perform their intended function without posing a safety risk.
  - (2) Under normal residential use, stairs shall not make excessive squeaking or popping sounds.

#### § 7. Performance Standards for Drywall

- (a) A drywall surface shall not have a bow or depression that equals or exceeds 1/4 of an inch out of line within any 32-inch horizontal measurement as measured from the center of the bow or depression or 1/2 of an inch within any eight-foot vertical measurement; such measurement to be made utilizing a straight-edge which is held reasonably parallel to the plane of the wall or ceiling surface.
- (b) A ceiling made of drywall shall not have bows or depressions that equal or exceed 1/2 of an inch out of line within a 32-inch measurement as measured from the center of the bow or depression running parallel with a ceiling joist or within 1/2 of an inch deviation from the plane of the ceiling within any eight-foot measurement; such measurement to be made utilizing a straight-edge which is held reasonably parallel to the plane of the wall or ceiling surface.
- (c) A drywall surface shall not have a crack such that any crack equals or exceeds 1/32 of an inch in width at any point along the length of the crack.

- (d) Crowning at a drywall joint shall not equal or exceed 1/4 of an inch within a twelve-inch measurement centered over the drywall joint. Crowning occurs when a drywall joint is higher than the plane of the drywall board on each side.
- (e) A drywall surface shall not have surface imperfections such as blisters, cracked corner beads, seam lines, excess joint compound or trowel marks that are visible from a distance of six feet or more in normal light. Minor variations in the 'splatter' or 'drag' appearance of texture which are the result of the original installation or subsequent repair work, visible from any distance, are not considered to be warrantable defects under this warranty.
- (f) A drywall surface shall not be out of level (horizontal), plumb (vertical) or square (perpendicular at a 90-degree angle) such that there are variations in those measurements to wall or surface edges at any opening, corner, sill, shelf, etc. shall not equal or exceed 3/8 of an inch in any 32-inch measurement along the wall or surface. This standard shall not apply to remodeling projects where existing conditions do not permit the Builder to achieve the performance standard. At or about the time of discovery of such a preexisting condition, a remodeler shall notify the homeowner, in writing, of any existing condition that prevents achievement of the standard. Accumulations of drywall compound in wall corners, at wallboard joints or outside corners, and at door, window or built-in cabinet openings, may not be the sole determinant that a wall or ceiling section is out of plumb or square.
- (g) Nails or screws shall not be visible in a drywall surface from a distance of 6 feet under normal lighting conditions.

#### § 8. Performance Standards for Insulation

- (a) Insulation shall be installed in the walls, ceilings and floors of a home in accordance with the building plan and specifications and the Code.
- (b) Blown insulation in the attic shall not displace or settle so that it reduces the R-value below manufacturer's specifications, the building plans and the Code.
- (c) A gap equal to or in excess of 1/4 of an inch between insulation batts or a gap between insulation batts and framing members is not permitted.
- (d) Insulation shall not cover or block a soffit vent to the extent that it blocks the free flow of air.

#### § 9. Performance Standards for Exterior Siding and Trim

- (a) Performance Standards for Exterior Siding.
  - (1) Exterior siding shall be equally spaced and properly aligned. Horizontal siding shall not equal or exceed 1/2 of an inch off parallel with the bottom course or 1/4 of an inch off parallel with the adjacent course from corner to corner.
  - (2) Siding shall not gap or bow. A siding end joint shall not have a gap that leaks or that equals or exceeds 1/4 of an inch in width. Siding end joint gaps shall be caulked. A bow in siding shall not equal or exceed 3/8 of an inch out of line in a 32-inch measurement.
  - (3) Nails shall not protrude from the finished surface of siding but nail heads may be visible on some products where allowed by the manufacturer's specifications.
  - (4) Siding shall not have a nail stain.
  - (5) Siding and siding knots shall not become loose or fall off.
  - (6) Siding shall not delaminate.
  - (7) Siding shall not cup in an amount equal to or exceeding 1/4 of an inch in a six-foot run.
  - (8) Siding shall not have cracks or splits that equal or exceed 1/8 of an inch in width.

(b) Performance Standards for Exterior Trim.

- (1) A joint between two trim pieces or between a trim piece and the adjoining material shall not have a separation that is equal to or exceeding 1/4 of an inch in width. All trim joints shall be caulked and shall not leak.
- (2) Exterior trim and eave block shall not warp in an amount equal to or exceeding 1/2 of an inch in an eight-foot run.
- (3) Exterior trim and eave block shall not cup in an amount equal to or in excess of a 1/4 of an inch in a six-foot run.
- (4) Exterior trim and eave block shall not have cracks or splits equal to or in excess of 1/8 of an inch in average width.
- (5) Trim shall not have nails that completely protrude through the finished surface of the trim but nail heads may be visible on some products. Some products specify that the nails be flush with the trim surface. When these products are used, visible nail heads are not considered protruding nails as long as they are painted over.
- (6) Trim shall not have a nail stain.

§ 10. Performance Standards for Masonry including Brick, Block and Stone

- (a) A masonry wall shall not bow in an amount equal to or in excess of one inch when measured from the base to the top of the wall. The standard set forth in this subsection does not apply to natural stone products.
- (b) A masonry unit or mortar shall not be broken or loose.
- (c) A masonry mortar crack shall not equal or exceed 1/8 of an inch in width.
- (d) A masonry unit or mortar shall not deteriorate.
- (e) Masonry shall not have dirt, stain or debris on the surface due to construction activities.
- (f) A gap between masonry and adjacent material shall not equal or exceed 1/4 of an inch in average width and all such gaps shall be caulked.
- (g) Mortar shall not obstruct a functional opening, such as a vent, weep hole or plumbing cleanout. The homeowner shall not put any material into weep holes. Weep holes are an integral part of the wall drainage system and must remain unobstructed.

§ 11. Performance Standards for Stucco

- (a) Stucco surfaces shall not be excessively bowed, uneven, or wavy. This standard shall not apply to decorative finishes.
- (b) Stucco shall not be broken or loose.
- (c) Stucco shall not have cracks that equal or exceed 1/8 of an inch in width at any point along the length of the crack. The Builder shall not be responsible for repairing cracks in stucco caused by the homeowner's actions, including but not limited to periodic maintenance, caulking, painting, diversion of water onto the surface of the stucco, attachment of devices to the stucco surface, such as, but not limited to, patio covers, plant holders, awnings and hose racks.
- (d) The homeowner shall not allow water from irrigation systems to contact stucco finishes.
- (e) Stucco shall not have dirt, stain or debris on surface due to construction activities.



- (f) Stucco surfaces shall not have imperfections that are visible from a distance of six feet under normal lighting conditions that disrupt the overall uniformity of the finished pattern.
- (g) The lath shall not be exposed.
- (h) A separation between the stucco joints shall not equal or exceed 1/16 of an inch in width.
- (i) A separation between a stucco surface and adjacent material shall not equal or exceed 1/4 of an inch in width and all separations shall be caulked.
- (j) Stucco shall not obstruct a functional opening, such as a vent, weep hole or plumbing cleanout.
- (k) Stucco screed shall have a minimum clearance of at least 4 inches above the soil or landscape surface and at least 2 inches above any paved surface.
- (l) Exterior Insulation Finish Systems (EIFS) stucco screed shall clear any paved or unpaved surface by 6 inches.

§ 12. Performance Standards for Roofs

- (a) Flashing shall prevent water penetration. The Builder shall not be responsible for leaks caused by extreme weather.
- (b) The roof shall not leak.
  - (1) The Builder shall not be responsible for leaks caused by extreme weather, persistent or unusual weather.
  - (2) The homeowner shall perform periodic maintenance to prevent leaks due to build-up of debris, snow or ice. The homeowner shall take such action as is necessary to prevent downspouts and gutters from becoming clogged.
- (c) A vent, louver or other installed attic opening shall not leak. The Builder shall not be responsible for leaks caused by extreme weather.
- (d) A gutter or downspout shall not leak or retain standing water. After cessation of rainfall, standing water in an unobstructed gutter shall not equal or exceed 1/2 of an inch in depth.
  - (1) The Builder shall not be responsible for leaks caused by extreme weather, persistent or unusual weather.
  - (2) The homeowner shall maintain and clean gutters and downspouts to prevent buildup of debris or other obstructions.
- (e) Shingles, tiles, metal or other roofing materials shall not become loose or fall off in wind speeds less than those set forth in the manufacturer's specifications.
- (f) A skylight shall not leak.
- (g) Water shall drain from a built-up roof within two hours after cessation of rainfall. The standard does not require that the roof dry completely within the time period.
- (h) A roof tile shall not be cracked or broken. No shingle shall be broken so that it detracts from the overall appearance of the home.
- (i) A pipe, vent, fireplace or other object designed to penetrate the roof shall not be located within the area of roof valley centerline without proper "cricketing" or other Code-approved water diversion methods.
- (j) The exterior moisture barrier of the roof shall not allow moisture penetration. The homeowner shall not make penetrations through exterior moisture barrier of the roof.

§ 13. Performance Standards for Doors and Windows

(a) Performance Standards for Both Doors and Windows.

- (1) When closed, a door or window shall not allow excessive infiltration of air or dust.
- (2) When closed, a door or window shall not allow excessive accumulation of moisture inside the door or window.
  - (A) The homeowner shall keep weep holes on windows and doors free of dirt buildup and debris, thereby allowing water to drain properly.
  - (B) Most door and window assemblies are designed to open, close and weep moisture--allow condensation or minor penetration by the elements to drain outside.
- (3) Glass in doors and windows shall not be broken due to improper installation or construction activities.
- (4) A screen in a door or window shall fit properly and shall not be torn or damaged due to construction activities. A screen shall not have a gap equal to or exceeding 1/4 of an inch between the screen frame and the window frame.
- (5) There shall be no condensation between window and door panes in a sealed insulated glass unit. The homeowner shall not apply a tinted window film or coating to window or door panes in sealed insulated glass units.
- (6) A door or window latch or lock shall close securely and shall not be loose or rattle.
- (7) A door or window shall operate easily and smoothly and shall not require excessive pressure when opening or closing.
- (8) A door or window shall be painted or stained according to the manufacturers' specifications.

(b) Performance Standards for Windows. A double hung window shall not move more than two inches when put in an open position.

(c) Performance Standards for Doors.

- (1) A sliding door and door screen shall stay on track. The homeowner shall clean and lubricate sliding door or door screen hardware as necessary.
- (2) The spacing between an interior door bottom and original floor covering, except closet doors, shall not exceed 1.5 inches and shall be at least 1/2 of an inch. The spacing between an interior closet door bottom and original floor covering shall not exceed two inches and shall be at least 1/2 of an inch.
- (3) A door shall not delaminate.
- (4) A door panel shall not split so that light from the other side is visible.
- (5) A door shall open and close without binding.
- (6) A door shall not warp to the extent that it becomes inoperable. A warp in a door panel shall not equal or exceed 1/4 of an inch from original dimension measured vertically, horizontally or diagonally from corner to corner.
- (7) A storm door shall open and close properly and shall fit properly.
- (8) When a door is placed in an open position, it shall remain in the position it was placed, unless the movement is caused by airflow.
- (9) A metal door shall not be dented or scratched due to construction activities.

(d) Performance Standards for Garage Doors.

- (1) A metal garage door shall not be dented or scratched due to construction activities.
- (2) A garage door opener, if provided, shall operate properly in accordance with manufacturer's specifications. A homeowner shall maintain tracks, rollers and chains and shall not block or bump sensors to electric garage door openers.
- (3) A garage door shall not allow excessive water to enter the garage and the gap around the garage door shall not equal or exceed 1/2 of an inch in width.
- (4) A garage door spring shall operate properly and shall not lose appreciable tension, break or be undersized.
- (5) A garage door shall remain in place at any open position, operate smoothly and not be off track.

§ 14. Performance Standards for Interior Flooring

(a) Performance Standards for Carpet, Vinyl Flooring and Wood Flooring. Performance standards for ceramic tile, flagstone, marble, granite, slate, quarry tile, other hard surface floors, and finished concrete floors, are located in this section.

(b) Performance Standards for Carpet.

- (1) Carpet shall not wrinkle and shall remain tight, lay flat and be securely fastened.
- (2) Carpet seams may be visible but shall be smooth without a gap or overlap.
- (3) Carpet shall not be stained or spotted due to construction activities.

(c) Performance Standards for Finished Concrete Floor.

- (1) A finished slab, located in a living space that is not otherwise designed for drainage, shall not have pits, depressions or unevenness that equals or exceeds 3/8 of an inch in any 32 inches. Finished concrete slabs in living spaces that are designed for drainage, such as a laundry room, are excepted from the standards stated in paragraph (1) of this subsection.
- (2) Finished concrete slabs in living spaces shall not have separations, including joints, and cracks that equal or exceed 1/8 of an inch in width or 1/16 of an inch in vertical displacement.

(d) Performance Standards for Wood Flooring.

- (1) Wood flooring shall not have excessive humps, depressions or unevenness that equals or exceeds 3/8 of an inch in any 32-inch direction within any room.
- (2) Wood flooring shall remain securely attached to the foundation or sub-floor unless the wood flooring is designed to be installed without nails, glue, adhesives or fasteners.
- (3) Wood flooring shall not have open joints and separations that equal or exceed 1/8 of an inch. These standards do not apply to non-hardwood species that contain greater moisture and may shrink after installation or structural floors that are designed to serve as the finished floor. If the floor is designed as a structural finish floor, the Builder must provide a written explanation of the characteristics of that floor to the homeowner prior to the execution of the contract or installation of the product, whichever occurs later.
- (4) Strips of floorboards shall not cup in an amount that equals or exceeds 1/16 of an inch in height in a three-inch distance when measured perpendicular to the length of the board. This standard does not apply to non-hardwood species that typically shrink after installation or structural floors that are designed to serve as the

finished floor. If the floor is designed as a structural finish floor, the Builder must provide a written explanation of the characteristics of that floor to the homeowner.

- (5) Unless installed as a specialty feature, wood flooring shall not have excessive shade changes or discoloration due to the construction activities of the Builder.
- (6) Unless installed as a specialty feature, wood flooring shall not be stained, spotted or scratched due to construction activities of the Builder.

(e) Performance Standards for Vinyl Flooring.

- (1) Vinyl flooring shall be installed square to the most visible wall and shall not vary by 1/4 of an inch in any six-foot run.
- (2) The seam alignment in vinyl flooring shall not vary such that the pattern is out of alignment in an amount that equals or exceeds 1/8 of an inch.
- (3) Vinyl flooring shall remain securely attached to the foundation or sub-floor.
- (4) A vinyl floor shall not have a depression that equals or exceeds 1/2 of an inch in any six-foot run. If a vinyl floor has a depression that exceeds the standard stated in this paragraph and the depression is due to construction activities, the Builder shall take such action as is necessary to bring the variance within the standard.
- (5) A vinyl floor shall not have a ridge that equals or exceeds 1/2 of an inch when measured as provided in this paragraph. The ridge measurement shall be made by measuring the gap created when a six-foot straight edge is placed tightly three inches on each side of the defect and the gap is measured between the floor and the straight edge at the other end. If a vinyl floor has a ridge that fails to comply with the standard stated in this paragraph and the ridge is due to construction activities, the Builder shall take such action as is necessary to bring the variance within the standard.
- (6) Vinyl floor shall not be discolored, stained or spotted due to the construction activities of the Builder.
- (7) Vinyl flooring shall not be scratched, gouged, cut or torn due to construction activities.
- (8) Debris, sub-floor seams, nails and/or screws shall not be detectable under the vinyl floor from a distance of three feet or more in normal light.
- (9) Sub-flooring shall not cause vinyl flooring to rupture.
- (10) A seam in vinyl flooring shall not have a separation that equals or exceeds 1/16 of an inch in width. Where dissimilar materials abut, there shall not be a gap equal to or greater than 1/8 of an inch.

§ 15. Performance Standards for Hard Surfaces, including Ceramic Tile, Flagstone, Marble, Granite, Slate, Quarry Tile, Finished Concrete or Other Hard Surfaces

(a) Performance Standards for Hard Surfaces Generally.

- (1) A hard surface shall not break or crack due to construction activities.
- (2) A hard surface shall remain secured to the substrate.
- (3) A surface imperfection in floor hard surface shall not be visible from a distance of three feet or more in normal light. A surface imperfection in non-floor hard surface shall not be visible from a distance of two feet or more in normal light. If a hard surface fails to meet the standards stated in this paragraph due to construction activities, the Builder shall take such action as is necessary to bring the variance within the standard.

- (4) Color variations between field hard surfaces and trim hard surfaces should not vary excessively due to construction activities. Natural products such as flagstone, marble, granite, slate and other quarry tile will have color variation.
- (5) Hard surface areas shall not leak.
- (6) The surfaces of two adjacent hard surfaces shall not vary in an amount equal to or exceeding 1/16 of an inch displacement at a joint (lippage) in addition to the actual manufacturing variations of the hard surface, such as warpage or dimensional differences in the hard surfaces, including thickness. If a joint between two hard surfaces fails to meet the performance standard stated in this paragraph (excluding trim pieces), the Builder shall take such action as is necessary to bring the variance within the standard.
- (7) Hard surface layout or grout line shall not be excessively irregular. Natural products such as flagstone, marble, granite, slate, and other quarry tile will have size variations that may create irregular layouts or grout lines.
- (8) Hard surface countertops shall be level to within 1/4 of an inch in any six-foot measurement.
- (9) Hard surface floors located in a living space that is not otherwise designed for drainage, shall not have pits, depressions, or unevenness that equals or exceeds 3/8 of an inch in any 32 inches. Finished hard surface floors located in living spaces that are designed for drainage, such as a laundry room, are excepted from the standards stated in paragraph (1) of this subsection.

(b) Performance Standards for Grout.

- (1) Grout shall not deteriorate.
- (2) Cracks in grout shall not exceed 1/16 of an inch in width.
- (3) Grout shall not change shade or discolor excessively due to construction activities.

(c) Performance Standards for Concrete Countertops.

- (1) A concrete countertop shall not have excessive pits, depressions, or unevenness that equal or exceed 1/8 of an inch in any 32-inch measurement.
- (2) A concrete countertop shall not have separations or cracks equal to or exceeding 1/16 of an inch in width or 1/64 of an inch in vertical displacement.
- (3) A finished concrete countertop shall not be stained, spotted or scratched due to construction activities.
- (4) A concrete countertop shall not have a chipped edge that extends beyond 1/16 of an inch from the edge of the countertop due to construction activities.
- (5) A concrete countertop shall not change shade or discolor excessively due to construction activities.

§ 16. Performance Standards for Countertops and Backsplashes

(a) Performance Standards for Countertops and Backsplashes Generally.

- (1) A countertop or backsplash shall be secured to substrate in accordance with manufacturer's specifications.
- (2) For non-laminate countertops and backsplashes, the joints between countertop surfaces, between the countertop surface and the backsplash or side-splash and between adjoining backsplash panels may be visible but shall not separate.
- (3) Countertops shall be level to within 1/4 of an inch in any six-foot measurement.

- (4) A countertop surface or edge shall not be damaged, broken, chipped or cracked due to construction activities.
- (5) A countertop shall not bow or warp in an amount equal to or exceeding 1/16 of an inch per lineal foot.
- (6) Counter and vanity top material should not delaminate.

(b) Performance Standards for Laminate Countertops and Backsplashes.

- (1) Laminate countertops and backsplashes shall not delaminate and shall remain securely attached to the substrate. Delamination is the separation of the finish surface veneer from the substrate material.
- (2) A seam in a laminate countertop or backsplash may be visible but shall not be separated or displaced.
- (3) A surface imperfection in a laminate countertop or a backsplash shall not be visible from a distance of three feet or more when viewed in normal light due to construction activities.

§ 17. Performance Standards for Painting, Stain and Wall Coverings

(a) Performance Standards for Caulking. Interior caulking shall not deteriorate or crack excessively.

(b) Performance Standards for Painting and Stain.

- (1) Paint or stain shall not have excessive color, shade or sheen variation. This standard shall not apply to stained woodwork.
- (2) Paint shall cover all intended surfaces so that unpainted areas shall not show through paint when viewed from a distance of six feet in normal light.
- (3) Interior paint or stain shall not deteriorate.
- (4) Exterior paint or stain shall not deteriorate excessively.
- (5) Paint over-spray shall not exist on any surface for which it was not intended.
- (6) Interior varnish, polyurethane or lacquer finish shall not deteriorate.
- (7) Exterior varnish, polyurethane or lacquer finishes shall not deteriorate excessively. Exterior varnish, polyurethane or lacquer finishes that are subject to direct sunlight are excluded from this standard.
- (8) Interior painted, varnished or finished surface shall not be scratched, dented, nicked or gouged due to construction activities.
- (9) A paint product shall perform as represented by the manufacturer to meet manufacturer's specifications for washability and/or scrubability.

(c) Performance Standards for Wall Coverings.

- (1) A wall covering shall be properly secured to the wall surface and shall not peel or bubble.
- (2) Pattern repeats in wall coverings shall match. Wall coverings shall be installed square to the most visible wall. Pattern repeats shall not vary in an amount equal to or exceeding 1/4 of an inch in any six-foot run.
- (3) A wall covering seam shall not separate or gap.
- (4) Lumps or ridges in a wall covering shall not be detectable from a distance of six feet or more in normal light.
- (5) Wall coverings shall not be discolored, stained or spotted due to construction activities.
- (6) Wall coverings shall not be scratched, gouged, cut or torn due to construction activities.

- (7) Wall coverings shall perform as represented by the manufacturer to meet manufacturer's specifications for washability and/or scrubability.

#### § 18. Performance Standards for Interior Trim

##### (a) Performance Standards for Trim.

- (1) An interior trim joint separation shall not equal or exceed 1/8 of an inch in width or shall not separate from adjacent surfaces equal to or in excess of 1/8 inch and all joints shall be caulked or puttied.
- (2) The interior trim shall not have surface damage, such as scratches, chips, dents, gouges, splits, cracks, warping or cupping that is visible from a distance of six feet or more in normal light due to construction activities.
- (3) A hammer mark on trim shall not be visible from a distance of six feet or more when viewed in normal light.
- (4) A nail or nail hole in interior trim shall not be visible from a distance of six feet or more when viewed in normal light.

##### (b) Performance Standards for Shelving. Shelving, rods and end supports shall be installed in accordance with the measurements stated in this subsection. The length of a closet rod shall not be shorter than the actual distance between the end supports in an amount equal to or exceeding 1/4 of an inch. The length of a shelf shall not be shorter than the actual distance between the supporting walls by an amount equal to or exceeding 1/4 of an inch. End supports shall be securely mounted.

##### (c) Performance Standard for Cabinet Doors. Cabinet doors shall open and close with reasonable ease. Cabinet doors shall be even and shall not warp more than 1/4 inch when measured from the face to the point of the furthest point of the door or drawer front when closed. Some warping, cupping, bowing or twisting is normally caused by surface temperature and humidity changes.

#### § 19. Performance Standards for Mirrors, Interior Glass and Shower Doors

- (a) A mirror, interior glass or shower door shall not be loose and shall be securely mounted or attached to the supporting surface. Fixtures, such as towel bars or door handles, shall be securely mounted.
- (b) A mirror, interior glass or shower door shall not be damaged due to construction activities.
- (c) A shower door shall not leak due to Builder fault or construction activities.
- (d) Imperfections in a mirror or shower door shall not be visible from a distance of two feet or more when viewed in normal light.
- (e) When opening and closing, a shower door shall operate easily and smoothly without requiring excessive pressure.

#### § 20. Performance Standards for Hardware and Ironwork

##### (a) Performance Standards for Hardware.

- (1) Hardware finishes shall not be tarnished, blemished, corroded or stained due to construction activities, unless the finish is installed as a specialty feature. The Builder is not responsible for tarnished, blemished, or stained hardware finishes that have been damaged by factors that are beyond the manufacturer's or the Builder's control such as the homeowner's use of abrasive pads or cleaners, harsh chemicals, alcohol, organic solvents or deterioration caused by exposure to outdoor elements such as salt air or humidity.

- (2) Hardware shall function properly, without catching binding or requiring excessive force to operate.
- (3) Hardware shall not be scratched, chipped, cracked or dented due to construction activities.
- (4) Hardware shall be installed securely and shall not be loose. The homeowner shall not exert excessive force on hardware.

(b) Performance Standards for Interior Ironwork.

- (1) Interior ironwork shall not rust.
- (2) The Builder is not responsible for ironwork finishes that rust due to factors that are beyond the manufacturer's or the Builder's control such as the homeowner's use of abrasive pads or cleaners, harsh chemicals, alcohol, organic solvents or deterioration caused by exposure to humidity.

§ 21. Performance Standards for Fireplaces

- (a) A refractory panel shall not crack or separate. The homeowner shall not use synthetic logs or other materials if not approved by the manufacturer.
- (b) A fireplace door shall operate properly. Fireplace doors shall meet evenly and shall not be out of alignment from one another in an amount equal to or exceeding 1/8 of an inch in any direction.
- (c) A fireplace shall not have a gas leak.
- (d) Gas logs shall be positioned in accordance with the manufacturer's specifications. The homeowner shall not incorrectly reposition or relocate the logs after the original placement. The homeowner shall not place the logs in a manner that does not allow the flame to flow through the logs according to the manufacturer's specifications.
- (e) A crack in masonry hearth or facing shall not be equal to or exceed 1/4 of an inch in width.
- (f) A fireplace or chimney shall draw properly.
- (g) A firebox shall not have excessive water infiltration under normal weather conditions.
- (h) A fireplace fan shall not exceed the noise level established by the manufacturer's specifications.

§ 22. Performance Standards for Irrigation Systems

- (a) An irrigation system shall not leak, break or clog due to construction activities or due to soil settlement.
- (b) An irrigation system shall be installed such that sprinkler coverage shall be complete and water shall not spray an unintended area due to construction activities.
- (c) The irrigation system control shall operate in accordance with manufacturer's specifications. The Builder shall provide the homeowner with instructions on the operation of the irrigation system at closing.

§ 23. Performance Standards for Fencing

- (a) A fence shall not fall over and shall not lean in excess of two inches out of plumb due to construction activities.
- (b) A wood fence board shall not be broken due to construction activities. Wood fence board shall not become detached from the fence due to construction activities of the Builder.
- (c) A masonry unit or mortar in a fence shall not be broken or loose. A crack in a masonry unit shall not occur. A crack in the mortar shall not equal or exceed 1/8 of an inch in width.



- (d) A masonry wall shall have adequate weep holes in the lowest course as required by the Code to allow seepage to pass through the wall.

§ 24. Performance Standards for Pest Control.

- (a) Eave returns, truss blocks, attic vents and roof vent openings shall not allow rodents, birds, and other similar pests into the home or attic space.

§ 25. Performance Standards for Plumbing

(a) Performance Standards for Plumbing Accessories.

- (1) A fixture surface shall not have a chip, crack, dent or scratch due to construction activities.
- (2) A fixture shall not have tarnish, blemishes or stains unless installed as a specialty feature. Fixture finishes that are tarnished, blemished or stained due to high iron, manganese or other mineral content in water are excluded from this standard.
- (3) A fixture or fixture fastener shall not corrode. A Builder is not responsible for corrosion caused by factors beyond the manufacturer's or the Builder's control, including the homeowner's use of corrosive chemicals or cleaners or corrosion caused by water content.
- (4) A decorative gas appliance shall be installed in accordance with manufacturer's specifications and when so installed shall function in accordance with manufacturer's representations.
- (5) Fixtures shall be secure and not loose. The homeowner shall not exert excessive force on a fixture.
- (6) A fixture stopper shall operate properly and shall retain water in accordance with the manufacturer's specifications.
- (7) The toilet equipment shall not allow water to run continuously. If toilet equipment allows water to run continuously, the homeowner shall shut off the water supply or take such action as is necessary to avoid resulting damage.
- (8) A toilet shall be installed and perform in accordance with the manufacturer's specifications. In the event of water spillage, the homeowner shall shut off the water supply and take such action as is necessary to avoid resulting damage.
- (9) A tub or shower pan shall not crack.
- (10) A tub or shower pan shall not squeak excessively.
- (11) A water heater shall be installed and secured according to the manufacturer's specifications and the Code.
- (12) A waste disposal unit shall be installed and operate according to the manufacturer's specifications.
- (13) A faucet or fixture shall not drip or leak. This standard does not include drips or leaks due to debris or minerals from the water source, unless it is due to construction activities.
- (14) A sump pump shall be installed in accordance with the manufacturer's specifications and shall operate properly when so installed.

(b) Performance Standards for Pipes and Vents.

- (1) A sewer gas odor originating from the plumbing system shall not be detectable inside the home under conditions of normal residential use. The homeowner shall keep plumbing traps filled with water.

- (2) A vent stack shall be free from blockage and shall allow odor to exit the home.
- (3) A water pipe shall not make excessive noise such as banging or hammering repeatedly. A water pipe subject to expansion or contraction of the pipe as warm or cool water flows through the pipe may cause a "ticking" sound temporarily. The standard stated in this subsection does not require a Builder to remove all noise attributable to water flow and pipe expansion.

§ 26. Performance Standards for Heating, Cooling and Ventilation

(a) Performance Standards for Heating and Cooling.

- (1) A condensation line shall not be obstructed due to construction activities. The homeowner shall periodically check for the free flow of condensate (water) from the line and clear the line when necessary.
- (2) A drip pan and drain line shall be installed under a horizontal air handler as per the Code. The homeowner shall periodically check for the free flow of condensate (water) from the line and clear the line when necessary.
- (3) Insulation shall completely encase the refrigerant line according to Code. The homeowner shall ensure that insulation on the refrigerant line is not damaged or cut due to home maintenance or landscape work.
- (4) An exterior compressor unit shall be installed in accordance with the manufacturer's instructions and specifications. The bottom of the exterior compressor unit support shall not be below ground level. The homeowner shall ensure that settlement of the exterior compressor unit pad does not occur due to home maintenance, landscape work or excessive water from irrigation.

(b) Performance Standards for Venting.

- (1) An appliance shall be vented according to the manufacturer's specifications.
- (2) Back draft dampers shall be installed and function according to the manufacturer's specifications.

(c) Performance Standards for Ductwork. Ductwork shall not make excessive noise.

- (1) The flow of air, including its velocity, or the expansion of ductwork from heating and cooling may cause common "ticking" or "crackling" sounds. The Builder shall have no responsibility for correction in such cases.
- (2) The homeowner shall not place any object on the ductwork.

§ 27. Performance Standards for Electrical Systems and Fixtures

- (a) Excessive air infiltration shall not occur around electrical system components or fixtures.
- (b) A fixture or trim plate shall not be chipped, cracked, dented or scratched due to construction activities.
- (c) A fixture or trim plate finish shall not be tarnished, blemished or stained due to construction activities.
- (d) A fixture, electrical box or trim plate shall be installed in accordance with the Code and shall be plumb and level.
- (e) Fixtures, such as lights, fans and appliances shall operate properly when installed in accordance with the manufacturer's specifications.
- (f) A smoke detector shall operate according to the manufacturer's specifications and shall be installed in accordance with the Code.
- (g) An exhaust fan shall operate within the manufacturer's specified noise level.

- (h) A carbon monoxide detector shall operate according to the manufacturer's specifications and shall be installed in accordance with the Code.

### TWO YEAR WARRANTY PERIOD

#### § 28. Performance Standards for Plumbing Delivery Systems

- (a) Performance Standards for Pipes including Water and Gas Pipes, Sewer and Drain Lines, Fittings and Valves but not including pipes included in a Landscape Irrigation System.
- (1) Pipes shall be installed and insulated in accordance with the Code and manufacturer's specifications.
    - (A) If a water pipe bursts, the Builder shall take such action as is necessary to bring the variance within the standard stated in paragraph (1) of this subsection.
    - (B) The homeowner is responsible for insulating and protecting exterior pipes and hose bibs from freezing weather and for maintaining a reasonable temperature in the home during periods of extremely cold weather. The homeowner is responsible for maintaining a reasonable internal temperature in a home regardless of whether the home is occupied or unoccupied and for periodically checking to ensure that a reasonable internal temperature is maintained.
  - (2) A water pipe shall not leak. The homeowner shall shut off water supply immediately if such is required to prevent further damage to the home.
  - (3) A gas pipe shall not leak, including natural gas, propane or butane gas. If a gas pipe is leaking, the homeowner shall shut off the source of the gas if the homeowner can do so safely.
  - (4) Water pressure shall not exceed 80 pounds per square inch in any part of the water supply system located inside the home. Minimum static pressure at the building entrance for either public or private water service shall be 40 pounds per square inch in any part of the water supply system. This standard assumes the public or community water supply reaches the home side of the meter at 40 pounds per square inch. The Builder is not responsible for water pressure variations originating from the water supply source.
  - (5) A sewer, drain, or waste pipe shall not become clogged or stopped up due to construction activities.
    - (A) The Builder shall take such action as is necessary to unclog a sewer, drain or waste pipe that is clogged or stopped up due to construction activities.
    - (B) The homeowner shall shut off water supply immediately if such is required to prevent damage to the home.
- (b) Performance Standards for Individual Wastewater Treatment Systems. A wastewater treatment system should be capable of properly handling normal flow of household effluent in accordance with the Texas Commission on Environmental Quality requirements.
- (1) The Builder shall take such action as is necessary for the wastewater treatment system to perform within the standard stated in this subsection.
  - (2) The Builder is not responsible for:
    - (A) system malfunctions or damage due to the addition of a fixture, equipment, appliance or other source of waste or water into the septic system by a person other than the Builder or a person working at the Builder's direction; or

- (B) malfunctions or limitations in the operation of the system attributed to a design restriction imposed by state, county or local governing agencies; or
- (C) malfunctions caused by freezing, soil saturation, soil conditions, changes in ground water table or any other acts of nature.

§ 29. Performance Standards for Heating, Air Conditioning and Ventilation Delivery Systems

(a) A refrigerant line shall not leak. Condensation on a refrigerant line is not a leak.

(b) Performance Standards for Heating and Cooling Functions.

- (1) A heating system shall produce an inside temperature of at least 68-degrees Fahrenheit as measured two feet from the outside wall of a room at a height of three feet above the floor under local outdoor winter design conditions as specified in the Code. Temperatures may vary up to 4-degrees Fahrenheit between rooms but no less than the standard set forth above in paragraph (1) of this subsection. If the homeowner modifies or changes the size or configuration of the system or the square footage associated property or dwelling, the heating system or the ductwork shall negate the Builder's responsibility to take measures to meet this performance standard.
- (2) An air-conditioner system shall produce an inside temperature of at most 78-degrees Fahrenheit as measured in the center of a room at height of five feet above the floor, under local outdoor summer design conditions as specified in the Code. (In the case of outside temperatures exceeding 98 degrees Fahrenheit, the system shall keep the inside temperature 20 degrees cooler than the outside temperature.) This standard does not apply to evaporative or other alternative cooling systems or if the homeowner makes changes to the size or configuration of the home, the air-conditioning system or the ductwork. Internal temperatures may vary up to 4-degrees Fahrenheit between rooms but no more than the standard set forth above in paragraph (2) of this subsection. If the homeowner modifies or changes the size or configuration of the system or the square footage associated property or dwelling, the cooling system or the ductwork shall negate the Builder's responsibility to take measures to meet this performance standard.
- (3) A thermostat reading shall not differ by more than 4-degrees Fahrenheit from the actual room temperature taken at a height of five feet above the floor in the center of the room where the thermostat is located. The stated performance standard is related to the accuracy of the thermostat and not to the performance standard of the room temperature.
- (4) Heating and cooling equipment shall be installed and secured according to the manufacturer's instructions and specification and shall not move excessively.

(c) Performance Standards for Vents, Grills or Registers.

- (1) A vent, grill or register shall operate easily and smoothly when applying normal operating pressure. If a vent, grill or register does not operate easily and smoothly when applying normal pressure when adjusting, the Builder shall repair the vent, grill or register so that it operates with ease of use when applying normal operating pressure.
- (2) A vent, grill or register shall be installed in accordance with the Code and manufacturer's instructions and specifications and shall be secured to the underlying surface.

(d) Performance Standards for Ductwork.

- (1) Ductwork shall be insulated in unconditioned areas according to Code.

- (2) Ductwork shall be secured according to the manufacturer's instructions and specifications and it shall not move excessively.
- (3) Ductwork shall be sealed and shall not separate or leak in excess of the standards set by the Code.

§ 30. Performance Standards for Electrical Delivery Systems

(a) Performance Standards for Electrical Wiring.

- (1) Electrical wiring installed inside the home shall be installed in accordance with the Code and any other applicable electrical standards and shall function properly from the point of demarcation, as determined by the respective utility. The Builder shall not be responsible for utility improvements from the meter/demarcation point to the utility poles or the transformer.
- (2) Electrical wiring shall be capable of carrying the designated load as set forth in the Code. All electrical equipment shall be used for the purposes and/or capacities for which it was designed and in accordance with manufacturer's specifications.

(b) Performance Standards for the Electrical Panel, Breakers and Fuses.

- (1) The electrical panel and breakers shall have sufficient capacity to provide electrical service to the home during normal residential usage. The Builder is not responsible for electrical service interruptions caused by external conditions such as power surges, circuit overloads and electrical shorts.
- (2) The electrical panel and breakers shall have sufficient capacity to provide electrical service to the home during normal residential usage such that a circuit breaker shall not trip and fuses shall not blow repeatedly under normal residential electric usage. The Builder is not responsible for circuit breaker trips or blown fuses that have functioned as designed to protect the home from external conditions such as power surges, circuit overloads and shorts.

(c) Performance Standards for Electric Outlets with Ground Fault Interrupters.

- (1) Electrical outlets with ground fault interrupters shall be installed and operate in accordance with the Code and manufacturer's specifications. If ground fault interrupters trip repeatedly under normal residential usage, the Builder shall take such action as is necessary to ensure that the electrical outlets with ground fault interrupters are installed in accordance with the Code and manufacturer's instructions and specifications and that they operate properly during normal residential electrical usage.
- (2) The homeowner shall not plug appliances that require constant electrical flow, such as refrigerators and freezers, into an outlet with a ground fault interrupter.

(d) Performance Standards for Fixtures, Outlets, Doorbells and Switches.

- (1) An outlet, doorbell or switch shall be installed in accordance with the manufacturer's specifications and the Code and shall operate properly when installed in accordance with the manufacturer's specifications and the Code.
- (2) A fixture, electrical box or trim plate shall be installed in accordance with the Code and manufacturer's specifications and shall be properly secured to the supporting surface.
- (3) A light shall not dim, flicker or burn out repeatedly under normal circumstances. A lighting circuit shall meet the Code.

(e) Performance Standards for Wiring or Outlets for Cable Television, Telephone, Ethernet or Other Services.

- (1) Wiring or outlets for cable television, telephone, ethernet or other services shall be installed in accordance with the Code and any applicable manufacturer's specifications. A Builder is not responsible for the failure of wiring or other utility service connectors or conduits that begin before the point at which the service enters the home.
- (2) Wiring or outlets for cable television, telephone, ethernet or other services inside the home or on the home side of the meter/demarcation point shall function properly when installed in accordance with the performance standard in paragraph (1) of this subsection. A Builder is not responsible for the failure of wiring or other utility service connectors or conduits that begin before the point at which the service enters the home.

### **TEN YEAR WARRANTY PERIOD**

#### § 31. Performance Standards for Major Structural Components

##### (a) Performance Standards for Slab-on-Ground Foundations.

- (1) Slab-on-ground foundations should not move differentially after they are constructed, such that a tilt or deflection in the slab in excess of the standards defined below arises from actual post-construction movement. The protocol and standards for evaluating slab-on-ground foundations shall follow the ASCE Guidelines with the following modifications:
  - (A) Overall deflection from original construction shall be no greater than the overall length over which the deflection occurs divided by 360 ( $L/360$ ) and must not have more than one associated symptom of distress resulting from said overall deflection, as described in Section 5 of the ASCE Guidelines, and that results in actual observable physical damage to the home. L shall be defined as the edge-to-edge distance across any slab cross-section for which overall deflection is calculated, but the minimum L shall be not less than 25 feet. Calculations of overall deflection shall be based upon the change in elevation at each point for which an Original Construction Elevation was taken. A deflection analysis must be based upon a minimum of three co-planar relative elevation data points – two end points that form a straight reference line along the evaluated section and a third point anywhere along the deformed surface that reflects a deviation of the foundation surface from the reference line. The distance from the deformed surface to the reference line shall be measured perpendicular to the reference line.
  - (B) The slab shall not tilt after construction in excess of one percent across any edge-to-edge dimension of the home or cause structural component(s) or masonry veneer to rotate into a structurally unstable position such that the weight vector of the component part falls outside the middle third of its bearing area. Calculations of overall tilt shall be based upon the change in elevation at the respective edge points for which an Original Construction Elevation was taken.
- (2) If measurements and associated symptoms of distress show that a slab-on-ground foundation does not meet the deflection or tilt standards stated in paragraph (1) of this subsection, the Builder shall implement the recommendations of a Texas licensed professional engineer, which shall be based on the appropriate remedial measures as described in Section 7 of the ASCE Guidelines. Localized measurements of deflection that are claimed to be outside of performance standards, Code or tolerances are not warranted and there is no Builder Responsibility for correction or otherwise. By definition, tilt is a global mechanism of planar rotation across the entire foundation, edge-to-edge; therefore, local tilt does not exist and cannot be analyzed.

## (b) Performance Standards for Raised-Floor Foundations (i.e. Pier-and-Beam, Elevated Concrete Slabs on Forms, etc.).

- (1) Raised-floor foundations should not move differentially after they are constructed, such that a tilt or deflection in the floor surface in excess of the standards defined below arises from actual post-construction movement. The protocol and standards for evaluating raised-floor foundations shall follow the ASCE Guidelines with the following modifications:
  - (A) A raised-floor foundation shall not deflect more than  $L/360$  from original construction and have that movement create actual observable physical damage to the components of the home identifiable in Section 5.3 of the ASCE Guidelines.  $L$  shall be defined as the edge-to-edge distance across any foundation cross-section for which overall deflection is calculated. Calculations of overall deflection shall be based upon the change in elevation at each point for which an Original Construction Elevation was taken. A deflection analysis must be based upon a minimum of three co-planar relative elevation data points – two end points that form a straight reference line along the evaluated section and a third point anywhere along the deformed surface that reflects a deviation of the floor surface from the reference line. The distance from the deformed surface to the reference line shall be measured perpendicular to the reference line.
  - (B) A raised-floor foundation shall not tilt after construction in excess of one percent across any edge-to-edge dimension of the Improvements or cause structural component(s) or masonry veneer to rotate into a structurally unstable position such that the weight vector of the component part falls outside the middle third of its bearing area. Calculations of overall tilt shall be based upon the change in elevation at the respective perimeter points for which an Original Construction Elevation was taken.
  - (C) If a raised-floor foundation deflects more than  $L/360$  from its original construction elevation and the movement has created actual observable physical damage to the components of a home identifiable in Section 5.3 of the ASCE Guidelines, the Builder shall implement the recommendations of a Texas licensed Professional Engineer, which shall be based on applicable remedial measures as described in Section 7 of the ASCE Guidelines.
- (2) If measurements and associated symptoms of distress show that a raised floor foundation does not meet the deflection or tilt standards stated in paragraph (1) of this subsection, the Builder shall implement the recommendations of a Texas licensed professional engineer, which shall be based on the appropriate remedial measures as described in Section 7 of the ASCE Guidelines. Localized measurements of deflection that are claimed to be outside of performance standards, Code or tolerances are not warranted and there is no Builder Responsibility for correction or otherwise. Attempted measurements of tilt in which  $L$  is not an edge-to-edge distance across the foundation cross-section are actually measurements of localized slopes, not tilt, which are not warranted, and there is no Builder Responsibility for correction or otherwise.

## (c) Major Structural Components other than Slab-on-Ground Foundations and Raised Floor Foundations.

- (1) A defined structural component, other than the concrete elements of a slab-on-ground foundation or a raised floor foundation, shall not crack, bow, become distorted or deteriorate, such that it compromises the structural integrity of a home or the performance of a structural system of the home resulting in actual observable physical damage to a component of the home.
- (2) If a structural component of a home, other than the concrete elements of a slab-on-ground foundation or a raised floor foundation, cracks, bows, is distorted or deteriorates such that it results in actual observable physical damage to a component of the home, the Builder shall take such action as is necessary to repair, reinforce or replace such structural component to restore the structural integrity of the home or the performance of the affected structural system.

- (3) Deflected structural components.
  - (A) A structural component, other than the foundation, shall not deflect more than the ratios allowed by the Code.
  - (B) If a structural component of the home, other than the foundation, is deflected more than the ratios allowed by the Code, the Builder shall repair, reinforce or replace such structural component to restore the structural integrity of the home or the performance of the affected structural system.
- (4) Damaged structural components.
  - (A) A structural component, other than the foundation, shall not be so damaged that it compromises the structural integrity or performance of the affected structural system.
  - (B) If a structural component, other than the foundation, is so damaged that it compromises the structural integrity or performance of a structural system of the home, the Builder shall take such action as is necessary to repair, reinforce or replace such structural component to restore the structural integrity of the home or the performance of the affected structural system.
- (5) Separated structural components.
  - (A) A structural component, other than the foundation, shall not separate from a supporting member more than 3/4 of an inch or such that it compromises the structural integrity or performance of the system.
  - (B) If a structural component, other than the foundation, is separated from a supporting member more than 3/4 of an inch or separated such that it compromises the structural integrity or performance of a structural system of the home, the Builder shall take such action as necessary to repair, reinforce or replace such structural component to re-establish the connection between the structural component and the supporting member, to restore the structural integrity of the home and the performance of the affected structural system.