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ONE YEAR LIMITED FIT & FINISH WARRANTY

INTRODUCTION

This One Year Limited Fit & Finish Warranty (“Limited Fit & Finish Warranty”) is provided to you the Homeowner as a part of the purchase of your new Cresleigh home. It describes the rights and obligations of you and the Homebuilder in connection with the quality of the specific materials and workmanship used in the construction of your home. As the purchase of a home is often the largest purchase a person may make, it is important that you read and understand this Limited Fit & Finish Warranty. *It is not an unconditional warranty.* The Builder's obligation to correct defective materials and workmanship is limited to the terms described in this Limited Fit & Finish Warranty. During and after the warranty period, you will need to perform basic maintenance to ensure the proper functioning of various systems and components in your home. There are procedures that must be followed to file a claim under this Limited Fit & Finish Warranty. Failure to follow these procedures may result in a forfeiture of your protection.

Like any warranty, this Limited Fit & Finish Warranty specifies limits for responsibility and conditions under which it is valid or applicable. Some components or parts of the home are specifically excluded from coverage under this Limited Fit & Finish Warranty. **AS THE HOMEOWNER YOU ARE STRONGLY URGED TO READ THIS LIMITED FIT & FINISH WARRANTY SINCE IT IS THE ONLY WARRANTY, EXPRESS OR IMPLIED THAT THE HOMEBUILDER MAKES TO YOU THE HOMEOWNER.**

No employee, salesman or other agent of Homebuilder is authorized to make any warranty except as contained herein. The period covered by this Limited Fit & Finish Warranty can be extended only by a statement in writing signed by an authorized officer of the Homebuilder. No other action on the part of Homebuilder or its employees or agents, including any steps taken to correct defects, will extend the warranty period.

This is not an insurance policy or maintenance agreement but a definition of what is covered in this Limited Fit & Finish Warranty. Nothing contained in this Limited Fit & Finish Warranty makes Homebuilder an insurer of the personal property of the Homeowner or of any third party. Homeowner should have independent homeowner's insurance coverage. Any insurance obtained by Homebuilder is not intended as, nor shall it be construed as, homeowner's insurance coverage.

The Homebuilder also reserves the right to choose materials, methods and personnel used to respond to claims under this Limited Fit & Finish Warranty.

Unless otherwise defined herein, the capitalized words in this Limited Fit & Finish Warranty have the same meaning given to such words in the in the Master Declaration for Title 7 & Dispute Resolution (the "Master Declaration").

DEFINITIONS

Homebuilder: The terms “Homebuilder/homebuilder” “Us/us” or “We/we” shall have the same definition as the term “Declarant” in the Master Declaration.

Homebuilder's Customer Care Department:

Cresleigh Homes Customer Care Office
3005 Douglas Blvd., Suite 110
Roseville, CA 95661
Phone: (800) 978-8945 Fax: (800) 978-8948

Homeowner: The terms “Homeowner/homeowner” or “You/you” or “Your/your” shall have the same definition as the term “Owner” in the Master Declaration.

Home: The terms “Home/home” or “Property/property” shall have the same definition as the term “Property” in the Master Declaration.

WHO IS COVERED BY THIS LIMITED FIT & FINISH WARRANTY

This limited warranty is given to you the Homeowner by the Homebuilder and protects the Homeowner while the Homeowner owns the Property you purchased from the Homebuilder for the warranty period specified below in "How Long You Are Covered."

HOW LONG YOU ARE COVERED BY THIS LIMITED FIT & FINISH WARRANTY

The coverage for the items mentioned in this limited warranty begins on the first Close of Escrow or the date of initial occupancy of the Property, whichever occurs first, and continues for one (1) year thereafter, unless Title 7 of Part 2 of Division 2 of the California Civil Code (“Title 7”) specifies that a longer warranty period, in which case, the duration of this limited warranty shall extend so as to satisfy the requirements of Title 7. This Limited Fit & Finish Warranty also contains additional coverages that last for less than one (1) year, in which case, the duration of this limited warranty shall be limited to those shorter periods.

The warranties will terminate automatically when each warranty period expires. If Homebuilder corrects some defect, or performs any repair, this does not extend the coverage beyond the specified warranty period.

WHAT YOU ARE COVERED FOR BY THIS LIMITED FIT & FINISH WARRANTY

A. Fit & Finish.

Except as limited herein, Homebuilder warrants that the following items shall be free of “Fit” and “Finish” deficiencies in original materials or workmanship as of the date of the Close of Escrow:

1. Cabinets;
2. Mirrors;
3. Flooring;
4. Interior and exterior walls;
5. Countertops;
6. Paint finishes, and
7. Trim.

Finish deficiencies include visible scuffed, scratched, smudged, chipped, stained surfaces or finishes, but does not include minor imperfections of finishes (natural or synthetic) that do not materially detract from the appearance of the finish as a whole or whose existence remains a matter of subjective judgment only.

Fit deficiencies include defects in materials or workmanship that are recognized under generally accepted standards of the building industry in California and that materially affect the functionality of a feature, product, or component of a dwelling, and/or the market value (future or present) of the same, in whole or in part.

B. Walk Through Orientation Claims.

Before the original close of escrow on the new home, Homeowner will conduct one or more walk-throughs of the new home. These walk-throughs are conducted for the purpose of orientating Homeowner to the new home as well as identifying certain deficiencies that should be corrected either before or immediately after the close of escrow. Since some items are easily damaged during the move-in process, there are certain items (listed below) that if not noted at the time of the walk through orientation, will be presumed to have been caused by Homeowner and will only be covered by this Limited Fit & Finish Warranty if Homeowner can establish otherwise.

1. Defects in the appearance of interior and exterior finished surfaces
2. Chipping of porcelain, tile, vitreous china, counter and vanity tops
3. Torn, gouged, defective or missing window/door screens and/or storm windows
4. Broken, scratched, chipped, cracked glass and mirrors
5. Defects in siding, trim or lighting fixtures
6. Defects in appliance finishes
7. Loose screws, nuts and bolts
8. Missing items
9. Bathtubs and showers - scratched or chipped
10. Dirty Carpets
11. Broken or chipped ceramic tiles on counter tops and floors
12. Marred scratched, cracked or chipped countertops and cabinet panels
13. Damaged or gouged drywall
14. Damage to fencing and gates from movers and from irrigation systems
15. Marred or scratched paint on walls, trim and doorways
16. Marred, scratched or dented vinyl flooring

C. Minor Repairs And Adjustments After Occupancy

In addition to the coverages described above, Homebuilder will make minor repairs and adjustments that are reported by Homeowner in writing within 30 days after the close of escrow for the following items:

1. Adjustment of toilets and other plumbing fixtures
2. Adjustment of swinging or sliding doors
3. Adjustment of operable windows
4. Adjustment of garage door and/or opener
5. Adjustment of cabinet drawers and doors

WHAT IS NOT COVERED (EXCLUSIONS)

This Limited Fit & Finish Warranty does not cover the following:

- A. Fit and Finish deficiencies that are caused by Homeowner, or Homeowner's family, guests and agents (such as movers, contractors, etc.)
- B. Damage to cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes and trim caused by defects or deficiencies in other components of the home that are covered under Title 7.
- C. Minor cracks in stucco, tile, wall materials (a "minor crack" is any crack 1/8 of an inch or less in width).
- D. Minor cracks in concrete and masonry (a "minor crack" is any crack 1/4 of an inch or less in width).
- E. Minor openings of wooden joints caused by normal shrinkage of the wood.
- F. Minor separations of grouting in ceramic tile, synthetic marble, masonry or other similar materials.
- G. Normal checking and peeling of paint from causes other than the quality of the paint or application, variations in paint and stain colors from manufactures' samples and within any one area versus another area of the home, and variations in ceramic tile color and texture from manufacturers' samples and among other tiles.
- H. Natural variations of color, texture, thickness, grain and shade on wood cabinets, flooring, countertops, and trim.
- I. Imperfections and inconsistency on texture and waviness of stucco which is a hand-applied cement product.
- J. Color or texture variations between existing and repaired surfaces. Discontinued items, materials, styles or patterns or changes in dye lots, colors or patterns.
- K. "Manufactured products", appliances or "consumer products" installed in or around the property. Warranties for such products are issued by the manufacturer of such products, and not by Homebuilder. For purposes of this Limited Fit & Finish Warranty, a "manufactured product" means a product that is completely manufactured off site, and a "consumer product" means an appliance, air conditioning unit, furnace, water heater, or other product that is considered a "consumer product" by the Federal Trade Commission for the purposes of the Magnuson Moss Act (15 u.s.c. 2301 et seq.). Homeowner should take time to read the literature provided by the manufacturers of those products, and Homeowner should activate specific manufacturer's warranties by completing and mailing any registration cards included with the manufacturer's materials. For warranty issues associated with such items, Homeowner must contact the manufacturer.
- L. Any incidental, consequential or secondary damages or losses of any kind whatsoever that may arise from or out of any defects warranted by this Limited Fit & Finish Warranty, including, but not limited to, personal injury, damage to personal property, loss of use, storage expenses, move out costs or inconveniences.

- M Any labor or material furnished by Homeowner, or at Homeowner's request, either express or implied (other than when provided by Homebuilder).
- N Any warrantable condition adversely affected by any addition, alteration, remodeling, or repair performed by Homeowner or under Homeowner's supervision.
- O Costs incurred to perform repairs not authorized by Homebuilder.
- P Damages caused by, arising out of, resulting from, or connected to:
1. Ordinary wear and tear;
 2. Exposure to the elements, for example, fading from sunlight, swelling or staining from irrigation or rainwater;
 3. Casualties due to the elements, acts of God, terrorists, riot, insurrection, war, catastrophe, acts of public enemy, or other causes beyond Homebuilder's reasonable control;
 4. Lack of homeowner maintenance or misuse by Homeowner or Homeowner's family or guests;
 5. Animals, including pets and wild animals, insects, pests or vermin;
 6. Any improvement or any work performed by or at Homeowner's request following the Close of Escrow and any Fit & Finish defects caused thereby;
 7. Defects covered by manufacturers' or other warranties;
 8. Any defect or damage caused by changes in the grading or drainage patterns or by excessive watering of the ground of the Property or adjacent property by any party other than Homebuilder or its employees, agents or subcontractors. Homeowner should engage a Civil Engineer or other licensed technician to advise and comment upon intended changes in the grading or drainage patterns. This includes but is not limited to landscaping, pool, walkways, patios, deck, walls, fences, and decorative structures;
 9. Settlement, twisting, shrinkage or expansion to parts of the home (e.g., lumber). This occasionally causes cracks to drywall, partitions, and exterior trim, etc. Also, shrinkage, twisting, fading and brittleness may apply to molding, finish trim, cabinets, hardwood floors, exterior wood and trim. These conditions are normal in a new home. They are not a deficiency in the quality of construction or selection of materials;
 10. Homeowner's failure to give prompt and proper notice to Homebuilder after Homeowner becomes aware or should have become aware of the defective condition causing the damage;
 11. Homeowner or anyone employed by Homeowner moving in/out of the home;
 12. Violations of newly adopted or changed current local or national building codes, ordinances or standards that were not in effect at the time of construction;
 13. Dampness or condensation due to Homeowner's failure to maintain adequate ventilation;
 14. Inverse condemnation or other action by any local, state or federal government or agency;
 15. Any action by any bank, lender or mortgage company (including but not limited to foreclosures);

- 16 The creation, budgeting, funding, or operation of any homeowners association or common interest development;
17. Any act, failure to act, event or condition that is included among the affirmative defenses specified within Section 945.5 of Title 7.
- Q. Damages or costs arising from or connected to, in whole or part, the actual, alleged or threatened proximity, discharge, dispersal, release, escape, clean up, removal, treatment, containment or monitoring of pollutants, solid, liquid or gaseous irritants, contaminants or hazardous materials including but not limited to petroleum products, radiation, electromagnetic fields (EMF's), smoke, vapors, soot, fumes, acids, alkalides, toxic chemicals, radon gas, mold, mildew, fungi, and waste materials, including materials to be recycled.
- R. Any items altered by any person other than the Homebuilder its employees or agents.
- S. The normal effects of settlement, expansion, contraction or warping of materials that may occur in walls, floors, ceilings, doors, windows, etc. Nail pops and cracks in the drywall will occur as the result of natural shrinkage and drying out of the framing materials. Structural wood members will shrink during the drying out process of the home, and it is a natural characteristic of wood to continue to expand and contract with the changing humidity. The joints of paneled doors, mitered casing, hardwood flooring and solid paneling may open up. This is normal and will not affect the house structurally. Restoration is a function of homeowner maintenance.
- T. The natural inherent characteristics of exterior siding of all types such as checking, cracking, color variance and knot holes.
- U. Finished surfaces of exterior hardware and fixtures such as lights, door handles, etc..
- V. Drywall cracks, nail pops or seams because of drying out and normal expansion and contraction of the wood or masonry to which it has been secured.
- W. Floor Squeaks. Extensive studies on the subject of floor squeaks, conclude that much has been accomplished in eliminating floor squeaks, but complete avoidance is impossible. Generally these will appear and disappear with changes in weather conditions.
- X. Small cracks, visible nailheads, expansion or contraction of materials in walls, floors, ceilings, doors, windows caused by normal settlement. We would like to clear up an issue that causes many new homeowners needless alarm and irritation: A new home goes through a settling process. While setting, a home may develop small cracks, visible nailheads, expansion or contraction of materials in walls, floors, ceilings, doors, windows, and other locations which is to be expected. While we realize these items might cause momentary concern, they are easily remedied when the homeowner does the first repainting. The Homebuilder is not responsible for correcting normal settlement deviation nor for making a perfect color match when touch-up repairs are made on painted surfaces.

DISCLAIMER OF OTHER WARRANTIES

EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY FIT AND FINISH DEFICIENCIES ASSOCIATED WITH ANY CABINETS, MIRRORS, FLOORING, INTERIOR AND EXTERIOR WALLS, COUNTERTOPS, PAINT FINISHES OR TRIM THAT EXTEND BEYOND THIS LIMITED FIT & FINISH WARRANTY. EXCEPT FOR THE LIMITED FIT AND FINISH WARRANTY SPECIFIED HEREIN, HOMEBUILDER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS REGARDING FIT AND FINISH DEFICIENCIES IN ANY CABINETS, MIRRORS, FLOORING, INTERIOR AND EXTERIOR WALLS, COUNTERTOPS, PAINT FINISHES, OR TRIM, EITHER LATENT OR PATENT, OR AS TO THE MERCHANTABILITY, FITNESS, HABITABILITY, OR QUALITY THEREOF, AND HOMEBUILDER DISCLAIMS ANY SUCH WARRANTIES AND REPRESENTATIONS. TO THE FULLEST EXTENT ALLOWED BY LAW, HOMEOWNER WAIVES ITS RIGHT TO SEEK DAMAGES OR OTHER LEGAL OR EQUITABLE REMEDIES UNDER ANY OTHER COMMON LAW OR STATUTORY THEORY OF LIABILITY FOR SUCH FIT AND FINISH DEFICIENCIES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, STRICT LIABILITY AND ANY ALLEGATION THAT SUCH CABINETS, MIRRORS, FLOORING, INTERIOR AND EXTERIOR WALLS, COUNTERTOPS, PAINT FINISHES OR TRIM VIOLATE THE STANDARDS SET FORTH IN CHAPTER 2 OF TITLE 7 OR THE ENHANCED PROTECTION AGREEMENT SPECIFIED IN THE MASTER DECLARATION. HOMEOWNER HEREBY AGREES THAT, TO THE FULLEST EXTENT ALLOWED BY LAW, THIS EXPRESS WRITTEN WARRANTY WITH RESPECT TO FIT & FINISH DEFICIENCIES IN CABINETS, MIRRORS, FLOORING, INTERIOR AND EXTERIOR WALLS, COUNTERTOPS, PAINT FINISHES AND TRIM ONLY APPLIES TO THOSE DEFECTS THAT ARISE DURING THE LIMITED FIT & FINISH WARRANTY PERIOD, AND NOT TO THOSE DEFECTS FOR WHICH THERE IS ONLY A SUBSTANTIAL LIKELIHOOD OF A MALFUNCTION DURING THE LIMITED FIT & FINISH WARRANTY PERIOD OR THEREAFTER.

This Limited Fit & Finish Warranty shall in no event extend to any consumer products included in the Property that may be included in this transaction. The manufacturers of some products used in the construction of the house/property may provide a manufacturer's warranty. Homebuilder has no obligation or responsibility for the manufacturer's performance, and Homebuilder does not warranty the fitness, use, workmanship, or quality of such items.

If the description of warranties contained in this Limited Fit & Finish Warranty conflicts with any sample or model home shown to Homeowner, the description of the warranties contained herein will displace any warranty arising from Homeowner's inspection of the sample or model home. Use of any sample or model during the negotiations leading to this Limited Fit & Finish Warranty serves merely to indicate the type of goods which will be tendered to Homeowner. Such samples or models create no warranty that the goods shall conform to the samples or models.

HOW TO MAKE A WARRANTY CLAIM (Homeowner's Obligations)

This section outlines the procedures that Homeowner must follow in order to obtain the benefits of this Limited Fit & Finish Warranty. Homeowner must follow the procedures described below. Under no circumstances shall Homeowner file an action under the Binding Dispute Resolution process specified in the Master Declaration before complying with the procedures specified in this Limited Fit & Finish Warranty.

A. Notice Of Deficiency.

When Homeowner discovers a Fit and Finish deficiency that Homeowner believes is covered under this Limited Fit & Finish Warranty, Homeowner must give Homebuilder's Customer Care Department written notice of the deficiency using "Homebuilder's Customer Care Request" form, by completing and delivering said form to Homebuilder's Customer Care Department (at the address identified on page 2 of this Fit & Finish Warranty). Unless it is an emergency situation Homeowner is recommend to list all items discovered within the first 30 days after close of escrow on one Customer Care request form and send in the form at the end of the 30-day period. After the initial 30-day period, if Homeowner discovers any warranted items, please list those items on a Customer Care request form and send the form in eleven months after close of escrow (just prior to Homeowner's one-year anniversary date). In case of emergency or water leak such notice should be provided immediately upon discovery. An emergency is any situation that may endanger lives, health or property unless corrected immediately. Examples are water leaks that require the main water service to be shut off, total loss of electrical service, total stoppage of the sewer system and complete loss of heat. In the event of an emergency, please contact the appropriate subcontractor listed on the Useful Phone Numbers List included in the orientation documentation, or contact Homebuilder's Customer Care Department.

If Homeowner does not have Homebuilder's Customer Care Request form, Homeowner may request a copy of the form from Homebuilder's Customer Care Department. Homeowner's notice should describe the problem in detail, should state that Homeowner is making a Customer Care claim, and should include the time of day Homeowner can be at home so Homebuilder's Customer Care Department can schedule service calls. In order to protect Homeowner's rights under this Limited Fit & Finish Warranty, all repair requests must be submitted to Homebuilder's Customer Care Department in writing during the warranty periods set forth in the Limited Fit & Finish Warranty; verbally advising Homebuilder's Customer Care Department or Homebuilder's field or office personnel will not protect Homeowner's rights, nor will it guarantee the item in question will be inspected and/or repaired.

B. Repair Procedures.

All repair work to be covered by this Limited Fit & Finish Warranty must be authorized by Homebuilder. Any work performed by a contractor without Homebuilder's knowledge and approval will be at Homeowner's expense, and any repair/replacement work performed by Homeowner or any third party hired by Homeowner without Homebuilder's knowledge and approval will be at Homeowner's expense. To avoid any possible confusion, Homeowner should not schedule any repair/replacement work to be done if Homeowner intends to assert a Fit & Finish claim or action under this Limited Fit & Finish Warranty. Homeowner should contact Homebuilder's Customer Care Department for all work to be covered by this Limited Fit & Finish Warranty. Homeowner must allow the Homebuilder an opportunity to inspect the reported deficiency and to repair or replace the deficiency if Homebuilder agrees it is covered by this Limited Fit & Finish Warranty. Homebuilder cannot guarantee a perfect match to original materials, colors or finish, but will use best efforts to match repairs to original materials, colors or finishes as close as reasonably possible. By submitting a claim under this Limited Fit & Finish Warranty, Homeowner agrees to assign any rights or causes of action that Homeowner may have against any other person, third party or insurer with respect to the subject matter of the warranty action to Homebuilder, and Homeowner agrees to sign any documents necessary for Homebuilder to seek recoveries of any costs or expenses incurred or associated with repairing, replacing or paying for such warranty action.

C. Homeowner's Obligation To Cooperate With Homebuilder.

Homeowner shall cooperate with Homebuilder in making the Property available during normal business hours for inspections, repairs, replacement and testing by Homebuilder or by contractors chosen by Homebuilder as in Homebuilder's judgment may be required. Please note that Homebuilder's normal customer care hours are 9 a.m. to 4:30 p.m. Monday through Friday, excluding holidays. Homeowner shall be responsible for all damages to any components or parts of the Property, as well as for all consequential damages suffered by the Homeowner, resulting from Homeowner's failure to give Homebuilder and Homebuilder's contractors and subcontractors, reasonable and timely access to the Property for purposes of inspecting, repairing, replacing and testing the alleged Deficiencies. Homeowner also agrees to allow Homebuilder or its authorized agents to use reasonable amounts of electricity, natural gas, water and other utilities necessary and to store building materials within or around the Property for the purpose of completing covered repairs or replacements, in such a manner that will not unreasonably interfere with Homeowner's use of the Property.

HOW TO RESOLVE DISPUTES.

In the event a dispute should arise between Homebuilder and the Homeowner with respect to a warranty claim, or with respect to any action conducted pursuant to this Limited Fit & Finish Warranty, the parties shall have the right to submit the dispute to, and such dispute shall be governed by, the Binding Dispute Resolution Procedures specified in the Master Declaration. However, if such a dispute is also subject to the Alternative Non-Adversarial Procedures specified in the Master Declaration, those Alternative Non-Adversarial Procedures shall be complied with before submitting the dispute to the Binding Dispute Resolution Procedures.

INTEGRATION.

Unless modified in a writing signed by Homeowner and Homebuilder, this Limited Fit & Finish Warranty is understood to be the complete and exclusive agreement between the parties, superseding all oral and written prior agreements and all other communications between Homeowner and Homebuilder relating to the subject matter herein, including statements made by salespersons. This Limited Fit & Finish Warranty shall not be extended by repairs that are performed or promised. Neither Homebuilder's employees nor any other party is authorized to make any warranty in addition to those made in this Limited Fit & Finish Warranty. Homeowner is warned, therefore, to check this Limited Fit & Finish Warranty carefully to see that it correctly reflects those terms that are important to Homeowner.

SEVERABILITY.

Should a final determination be made in a legal proceeding that any provision of this Limited Fit & Finish Warranty is invalid, the validity of any other provision shall not be affected, and any provision so determined to be invalid shall, to the extent possible, be construed to accomplish its intended effect.

TIME IS OF THE ESSENCE.

Time is of the essence of this Limited Fit & Finish Warranty. Homeowner must comply with all requirements of this Limited Fit & Finish Warranty or this Limited Fit & Finish Warranty may be voided at Homebuilder's option. Nothing in this Limited Fit & Finish Warranty waives or extends any California statute limiting the period that Homeowner has to bring a legal action against Homebuilder. Any repair performed by Homebuilder shall not extend the term of this Limited Fit & Finish Warranty.

CUSTOMER CARE PROCEDURES

Homebuilder: The terms “Homebuilder/homebuilder” “Us/us” or “We/we” shall have the same definition as the term “Declarant” in the Master Declaration for Title 7 and Dispute Resolution (“Master Declaration”).

Homebuilder's Customer Care Department

Cresleigh Homes Customer Care Office
3005 Douglas Blvd., Suite 110
Roseville, CA 95661
Phone: (800) 978-8945 Fax: (800) 978-8948

Homeowner: The terms “Homeowner/homeowner”, or “You/you” or “Your/your” shall have the same definition as the term “Owner” in the Master Declaration.

Home: The terms “Home/home” or “Property/property” shall have the same definition as the term “Property” in the Master Declaration.

This section outlines the procedures that Homeowner is to follow in order to make a Customer Care claim. These procedures maybe periodically updated by Homebuilder. You can contact the Homebuilder’s Customer Care Department for the most current version of the Customer Care Procedures. Homeowner is strongly encouraged to submit claims and complaints pursuant to the Customer Care Procedures, and to provide Homeowner with at least one (1) opportunity, pursuant to the Customer Care Procedures, to resolve the claim or complaint. Under no circumstances shall Homeowner file an action under the Binding Dispute Resolution Procedures specified in the Master Declaration before complying with the Customer Care Procedures. Unless otherwise specified herein, capitalized words in this document have the same meaning given to such words in the Master Declaration.

1. NOTICE OF CLAIM. When Homeowner discovers a condition Homeowner believes is covered by these Customer Service Procedures, Homeowner must give Homebuilder’s Customer Care Department written notice of the claim using “Homebuilder’s Customer Care Request” form, by completing and delivering said form to Homebuilder’s Customer Care Department (at the address above). Unless it is an emergency situation Homeowner is recommended to list all items discovered within the first 30 days after close of escrow on one Customer Care request form and send in the form at the end of the 30-day period. After the initial 30-day period, if Homeowner discovers any warranted items, please list those items on a Customer Care request form and send the form in eleven months after close of escrow (just prior to Homeowner’s one-year anniversary date). Customer Service items after the first year should be submitted to Homebuilder on the Customer Service request form within 30 days of Homeowner’s discovery of the condition requiring attention. In case of emergency or water leak such notice should be provided immediately upon discovery. An emergency is any situation that may endanger lives, health or property unless corrected immediately. Examples are water leaks that require the main water service to be shut off, total loss of electrical service, total stoppage of the sewer system and complete loss of heat. In the event of an emergency, please contact the appropriate subcontractor listed on the Useful Phone Numbers List included in the orientation documentation, or contact Homebuilder’s Customer Care Department. If Homeowner does not have Homebuilder’s Customer Care Request form, Homeowner may request a copy of the form from Homebuilder’s Customer Care Department. Homeowner’s notice should describe the problem in detail, should state that Homeowner is making a Customer Care claim, and should include the time of day Homeowner can be at home so Homebuilder’s Customer Care Department can schedule service calls. In order to protect Homeowner’s rights under this Limited Fit & Finish Warranty, all repair requests must be submitted to Homebuilder’s Customer Care Department in writing during the warranty periods set forth in the Limited Fit & Finish Warranty; verbally advising Homebuilder’s Customer Care Department or Homebuilder’s field or office personnel will not protect Homeowner’s rights, nor will it guarantee the item in question will be inspected and/or repaired.

2. REPAIR PROCEDURES. All repair work must be authorized by Homebuilder's Customer Care Department. Any work performed by a contractor without Homebuilder's knowledge and approval will be at Homeowner's expense, and any repair/replacement work performed by Homeowner or any third party hired by Homeowner without Homebuilder's knowledge and approval will be at Homeowner's expense. To avoid any possible confusion, Homeowner should not schedule any repair/replacement work to be done if Homeowner intends to assert a Customer Care claim hereunder. After Homeowner submits a claim or reports a Deficiency, Homeowner is strongly encouraged to give Homebuilder an opportunity, at Homebuilder's request, to inspect the reported Deficiency and to repair or replace the Deficiency.

Homebuilder has the sole discretion to determine the necessary means, methods, material and personnel to investigate, repair or respond to a Customer Care claim. Homebuilder cannot guarantee a perfect match to original materials, colors or finish, but will use best efforts to match repairs to original materials, colors or finishes as close as reasonably possible. By submitting a Customer Care claim, Homeowner agrees to assign any rights or claims that Homeowner may have against any other person, third party or insurer with respect to the subject matter of any Customer Care claim to Homebuilder, and Homeowner agrees to sign any documents necessary for Homebuilder to seek recoveries of any costs or expenses incurred or associated with repairing, replacing or paying for such claim.

3. HOMEOWNER'S OBLIGATION TO COOPERATE WITH HOMEBUILDER. Homeowner shall cooperate with Homebuilder in making the Homeowner's Property available during normal business hours for inspections, repairs, replacement and testing by Homebuilder or by contractors chosen by Homebuilder as in Homebuilder's judgment may be required. Please note that Homebuilder's normal customer care hours are 9 a.m. to 4:30 p.m. Monday through Friday, excluding holidays. Homeowner shall be responsible for all damages to any components of the home, as well as for all consequential damages suffered by Homeowner, resulting from Homeowner's failure to give Homebuilder and Homebuilder's contractors and subcontractors, reasonable and timely access to the Property for purposes of inspecting, repairing, replacing and testing the alleged Deficiencies. Homeowner also agrees to allow Homebuilder or its authorized agents to use reasonable amounts of electricity, natural gas, water and other utilities necessary and to store building materials in Homeowner's home for the purpose of completing covered repairs or replacements, in such a manner that will not unreasonably interfere with Homeowner's use of the home.

By submitting a Customer Care claim, Homeowner is not waiving its right to assert a claim under the Alternative Non-Adversarial Procedures specified in the Master Declaration. Claims subject to the Alternative Non-Adversarial Procedures may be submitted to such procedures prior to completion of these Customer Care Procedures in which case, the parties shall be bound by the procedures specified therein, and not by these Customer Care Procedures.

4. DISPUTES. In the event a dispute should arise between Homebuilder and Homeowner with respect to a Customer Care claim, or with respect to any action conducted pursuant to these Customer Care Procedures, Homeowner shall have the right to submit the dispute to, and such dispute shall be governed by, the Binding Dispute Resolution Procedures specified in the Master Declaration. However, if such a dispute is also subject to the Alternative Non-Adversarial Procedures specified in the Master Declaration, those Alternative Non-Adversarial Procedures shall be fully complied with before the dispute can be submitted to the Binding Dispute Resolution Procedures.

SERVICE REQUEST FORM

Community: _____ Date: _____

Address: _____ Lot: _____ Plan: _____

Homeowner Name: _____

Home Phone: _____ Work Phone: _____

Best time to contact? _____

Permission to enter in my absence: Yes No

Warranty Request type: 30-day 11-month Other

Description of work requested (please print; if more than 7 items, attached separate sheet):

ITEM	LOCATION	DESCRIPTION
1.		
2.		
3.		
4.		
5.		
6.		
7.		

Homeowner's Signature

Date

MAIL OR FAX TO: Cresleigh Homes Corporation, Customer Care Department
 3005 Douglas Blvd., Suite 110
 Roseville, CA 95661
 Phone: (800) 978-8945 Fax: (800) 978-8948

ALTERNATIVE NON-ADVERSARIAL PROCEDURES

Homeowner: The terms “Homeowner/homeowner”, “You/you”, or “Your/your” herein shall have the same definition as the term “Owner” in the Master Declaration for Title 7 & Dispute Resolution (“Master Declaration”).

Property: The terms “Home/home” or “Property/property” herein shall have the same definition as the term “Property” in the Master Declaration.

Homebuilder: The terms “Homebuilder/homebuilder”, “Us/us”, or “We/we” herein shall have the same definition as the term “Declarant” in the Master Declaration.

HOMEBUILDER’S DESIGNATED AGENT FOR NOTICE:

Title: **Director of Sales & Marketing**
Address: **Cresleigh Homes**
433 California Street, Suite 700
San Francisco, CA 94104-2011
Facsimile: **(415) 982-7781**

1. Customer Care Procedures:

Before Homeowner commences these Alternative Non-Adversarial Procedures, Homeowner is strongly encouraged to submit any claims and complaints to Homebuilders Customer Care Department pursuant to the Customer Care Procedures, and to provide Homeowner with at least one (1) opportunity, pursuant to the Customer Care Procedures, to resolve the claim or complaint.

2. Introduction:

Before Homeowner (“hereinafter referred to as Claimant”) files a lawsuit, alternative dispute resolution proceeding, arbitration, judicial reference or other action (“Action”) against Homebuilder, or any other party for violation of the standards set forth in the Enhanced Protection Agreement specified in the Master Declaration or in Chapter 2 of Title 7 of Part 2 of Division 2 of the California Civil Code (collectively, the “Standards”), Claimant and Homebuilder shall first submit the dispute to and shall comply with these Alternative Non-Adversarial Procedures. If the alleged violation of the Standards (collectively, the “Alleged Violation”) is not resolved after satisfying the requirements of these Alternative Non-Adversarial Procedures, and the parties desire to proceed further, they shall proceed in accordance with the Binding Dispute Resolution Provisions specified in the Master Declaration.

At the time a claim is made pursuant to these Alternative Non-Adversarial Procedures or anytime thereafter, Homeowner and Homebuyer can mutually agree in writing to waive these Alternative Non-Adversarial Procedures, and proceed in accordance with the Binding Dispute Resolution Provisions specified in the Master Declaration. Such agreement must be mutual and documented in writing.

3. Notice of Alleged Violation Pursuant to the Non-Adversarial Procedures:

A. Claimant (or their legal representative) must initiate an action for an Alleged Violation by serving written notice of the Alleged Violation (“Notice of Action”) on Homebuilder’s designated agent for notice as identified above. The Notice of Action shall be served by certified mail, overnight mail, or by personal delivery. If the Notice of Action is served by certified mail it shall be deemed received three (3) business days after its deposit in the U.S. Mail. If the Notice of Action is served by overnight mail it shall be deemed received on the day after it is deposited with the service providing the overnight mail service or if by personal delivery it shall be deemed received on the date of such delivery.

B. The Notice of Action shall include:

- (1) Claimant’s name, address and telephone number and the preferred method of contact;
- (2) A Statement that Claimant submits the Notice of Action pursuant to the Alternative Non-Adversarial Procedures; and
- (3) A description of each Alleged Violation in sufficient detail to enable Homebuilder to determine the location, nature and extent of each Alleged Violation.

C. If a Claimant seeks to challenge a particular standard within the Enhanced Protection Agreement (attached as an exhibit to the Master Declaration) as not being equal to or greater than a particular functionality standard set forth in Chapter 2 of Title 7, the Claimant shall give Homebuilder a written notice of intent to challenge in the Notice of Action. This notice of intent to challenge shall specify the specific standard within the Enhanced Protection Agreement that Claimant challenges. Should Claimant fail to give Homebuilder such written notice of intent to challenge an Enhanced Protection Agreement standard in the Notice of Action, Claimant shall be deemed to have waived its right to contest the Enhanced Protection Agreement standard as the Alleged Violation(s) set forth in the Notice of Action.

D. A properly completed and served Notice of Action shall have the same force and effect as a notice of the commencement of a legal proceeding as defined in California Civil Code Section 910(a).

4. Homebuilder’s Acknowledgement of Action:

A. Homebuilder shall provide Claimant (or their legal representative, if any) with written acknowledgment of the Notice of Action within fourteen (14) business days of receipt of the Notice of Action by Homebuilder’s Designated Agent for Notice. If the Notice of Action is served by Claimant’s legal representative or if Homebuilder subsequently receives written notice of such legal representation, Homebuilder shall also send a copy of its acknowledgement of the Notice of Action to such legal representative and shall thereafter include such legal representative in all substantive communications with Claimant.

5. Documents:

A. Within thirty (30) business days of a written request by a Claimant or his or her legal representative, at the expense of Claimant, Homebuilder shall provide copies of:

- (1) All relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations, that pertain directly to a Claimant's Property specifically or as part of a larger development tract, to the extent the same are connected with, or related to, the Alleged Violation, or at Homebuilder's sole discretion, Homebuilder may produce all such documents that are related to or connected with the Property. The request shall be honored if it states that it is made relative to the Alleged Violation set forth in the Notice of Action for structural, fire safety or soil issues;
- (2) All maintenance and preventative maintenance recommendations that are connected with, or related to, the Alleged Violation, or at Homebuilder's sole discretion, Homebuilder may produce all such documents that are related to or connected with the Property;
- (3) All manufactured products maintenance, preventive maintenance, and limited warranty information that are connected with, or related to, the Alleged Violation, or at Homebuilder's sole discretion, Homebuilder may produce all such documents that are related to or connected with the Property; and
- (4) Homebuilder's limited contractual warranties that are connected with, or related to, the Alleged Violation, or at Homebuilder's sole discretion, Homebuilder may produce all such documents that are related to or connected with the Property.

Homebuilder is not obligated to provide a copying service, and reasonable copying costs shall be borne by the requesting party. Homebuilder may require that the documents be copied onsite by the requesting party, except that Claimant may, at his or her option, use his or her own copying service, which may include an offsite copy facility that is bonded and insured. If Homebuilder can show that it maintained the documents, but that they later became unavailable due to loss or destruction that was not Homebuilder's fault, Homebuilder may be excused from the requirements of this Section 7, in which case Homebuilder shall act with reasonable diligence to assist Claimant in obtaining those documents from any applicable government authority or from the source that generated the document. However, in that case, the time limits specified in this Section 7 do not apply.

Notwithstanding the foregoing, instead of copying the documents, Homebuilder may comply with the copying requirements of this Section 7 by delivering to the requesting party a computer disc that has the applicable documents saved therein.

6. Inspections:

A. Homebuilder shall have the right to perform an initial inspection or testing of the Alleged Violation within thirty (30) business days after Claimant's receipt of Homebuilder's written acknowledgment of the Notice of Action.

B. Homebuilder shall have the right to perform a second inspection and/or testing of the Alleged Violation within forty (40) business days after completion of the initial inspection and/or testing. If Homebuilder desires to exercise its right to perform a second inspection and/or testing Homebuilder must first notify Claimant of its desire to perform a second inspection in writing within ten (10) business days after the completion of the initial inspection and/or testing.

C. Homebuilder and Claimant shall schedule a mutually convenient date and time during normal business hours for all inspections within the time frames specified above. If Homebuilder has received written notice that Claimant has retained legal representation, the inspections shall be scheduled with the legal representative's office at a mutually convenient date and time within the time frames specified above, unless the legal representative is unavailable during those time frames, in which case, Homebuilder shall schedule the inspections with Claimant.

D. Homebuilder and Claimant (or Claimant's legal representative) may agree in writing to extend the time frames within which to perform the inspections. If the inspections do not occur within the time frames specified above due to written agreement of the parties or conditions beyond Homebuilder's control, Homebuilder shall not be responsible for any damages resulting from Homebuilder's failure to perform the inspections as originally scheduled. If the inspections do not occur within the time frames specified above due to the unavailability of Claimant or Claimant's legal representative, or the failure to provide Homebuilder with reasonable access to complete such inspections and testing, Claimant shall be responsible for the resulting damages.

E. All inspections and/or testing shall be conducted during normal working hours, Monday through Friday unless otherwise mutually agreed to by Claimant and Homebuilder. Homebuilder shall have the right to invite other parties, including subcontractors, material suppliers, design professionals, individual product manufacturers, warranty companies, service companies, or insurance carriers to observe or participate in any of the inspections and/or testing.

F. Claimant shall provide access to all areas of the Property deemed necessary by Homebuilder to perform and complete the inspections and testing. Claimant shall permit Homebuilder to use reasonable amounts of electricity, natural gas, water and other utilities as Homebuilder may deem reasonably necessary to conduct the inspections and testing.

G. Claimant shall not be responsible for any costs incurred by Homebuilder to perform the inspection and/or testing. Homebuilder shall be responsible any damage caused by the inspection or testing. Homebuilder shall restore the Property to its pre-testing condition within ten (10) business days after completion of the final inspection and/or testing unless repairs are to be performed or unless otherwise agreed to between Claimant and Homebuilder.

H. At Claimants request, Homebuilder shall provide Claimant with evidence that Homebuilder has liability insurance to cover damages and injuries occurring during any such inspections and testing.

I. Such inspections or testing can be observed and electronically recorded, videotaped, or photographed by either party or their legal representative. Nothing that occurs during the inspection or testing (or any inspection or testing by Claimant) may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent Action.

J. If Claimant performs its own inspections or testing, Claimant shall give Homebuilder at least three (3) business days advance notice of any such inspection or testing. Homebuilder has the right to observe and record such inspections and testing.

7. Homebuilder's Response to Claimant's Notice of Action:

A. Within thirty (30) business days after the final inspection, or if Homebuilder elects not to perform any inspection, within forty five (45) business days after Claimant's receipt of Homebuilders written acknowledgment of the Notice of Action, Homebuilder shall respond in writing to Claimant's Notice of Action. In response to Claimant's Notice of Action Homebuilder may offer to repair, offer to provide cash settlement, or decline to make repairs or a cash settlement (a "Declination).

B. Homebuilder's Offer to Repair

- (1) An offer to repair shall include the following:
 - a) A statement identifying the Alleged Violation that is being repaired, explaining the scope, of the repair, and setting a reasonable completion date.
 - b) The names, addresses, telephone numbers, and license numbers of the contractors whom Homebuilder intends to have perform the repair.
 - c) Notice of Claimant's right to request mediation pursuant to Section 9 of these Alternative Non-Adversarial Procedures.
 - d) Notification of Claimant's right to object to Homebuilder's choice of Contractor for the following reasons:
 - i. The contractor identified by Homebuilder in the offer to repair lacks insurance to cover damages or injuries that they may cause to occur during the repair.
 - ii. The contractor identified by Homebuilder in the offer to repair cannot reasonably complete the repairs by the completion date set forth in Homebuilder's offer.
 - iii. The contractor identified by Homebuilder in the offer to repair performed repairs to the Alleged Violation during Homebuilder's customer service process, and such repairs did not correct the Alleged Violation.
 - iv. Claimant has had prior direct dealings with the contractor identified by Homebuilder in the offer to repair, (other than those dealings associated with Homebuilder's construction or repair of the Alleged Violation itself), and based on those prior dealings, Buyer does not desire to use said contractor.
- (2) If Homebuilder elects to repair some, but not all of, the Alleged Violations, Homebuilder shall, at the same time it makes its offer to repair, set forth with particularity, in writing, the reasons for not repairing all Alleged Violations.

C. Homebuilder's Cash Offer

- (1) A cash offer shall include:
 - a) A cash amount that Homebuilder believes compensates Claimant for applicable damages recoverable under California Civil Code Section 944 (except that investigation costs shall only be allowed to the extent such costs were reasonable and necessary), and any other amounts Homebuilder wishes to offer.
 - b) Notice of Claimant's right to request mediation pursuant to Section 9 of these Alternative Non-Adversarial Procedures.
- (2) A cash offer may include a request from Homebuilder for a release from Claimant. Homebuilder can condition payment of the cash upon acceptance of such a release. The terms and conditions of the release shall be in relation to the scope and consideration of the cash offer contained in Homebuilder's offer.

D. Homebuilder's Declination

- (1) A declination shall include:
 - a) A statement of why Homebuilder rejects Claimant's Alleged Violation.
 - b) Notice of Claimant's right to request mediation pursuant to Section 9 of these Alternative Non-Adversarial Procedures.

8. Claimant's Response To Homebuilder's Offer

A. Upon receipt of Homebuilder's response to Claimant's Notice of Action, Claimant shall have twenty (20) business days to provide a written response to Homebuilder. In its response, Claimant shall address each of Homebuilder's responses to each Alleged Violation.

B. Claimant's Response to Homebuilder's Offer to Repair

- (1) In response to Homebuilder's offer to repair an Alleged Violation, Claimant may:
 - a) Accept Homebuilder's offer to repair the Alleged Violation.
 - b) Accept Homebuilder's offer to repair the Alleged Violation, but object to Homebuilder's choice of contractor for the reasons in paragraph 7B(1)(d).
 - i. If Claimant provides reasonable and timely written objection to the contractor identified by Homebuilder in the offer to repair for one or more of the reasons set forth in paragraph 7B(1)(d), and such objection is valid and cannot be corrected, Homebuilder shall identify another contractor, in the same trade as the objected to contractor, to perform the work. Such substitute contractor shall not be owned or financially controlled by Homebuilder, shall regularly conduct business in the county where the Property is located. Homebuilder shall notify Claimant, in writing, of the name, address, telephone number, and license number of such contractor within thirty-five (35) business days after receiving Claimant's notice of objection.

- ii. Claimant shall allow Homebuilder to perform additional noninvasive inspection, to occur at a mutually convenient date and time, within twenty (20) business days after Claimant asserts the first objection to the contractor identified by Homebuilder in the offer to repair, so as to permit the other proposed contractor to review the proposed site of the repair.
 - iii. Unless Claimant also requested mediation at the time it provided the written objection to the original contractor identified by Homebuilder in the offer to repair, Claimant shall allow, during normal business hours on consecutive days, if requested by Homebuilder, the repair to be performed by the substitute contractor selected in accordance with these selection procedures on a commercially reasonable schedule.
 - c) Request mediation pursuant to Section 9
 - i. If the mediation fails to resolve the dispute, Claimant shall allow the repair to be performed by the contractor identified by Homebuilder in the offer to repair, unless Claimant has timely objected to such contractor, in which case, Claimant shall allow the repair to be performed by the substitute contractor selected by Homebuilder in accordance with paragraph 8 B(1)(b)(i).
 - d) If Homebuilder made a request for a release, Claimant is entitled to accept, reject or negotiate the terms of such a release. Claimant's rejection of a request for release cannot be used by Homebuilder to refuse to perform an accepted repair.
 - (2) If Claimant fails to respond to Homebuilder's offer to repair, within the thirty (30) day period, Claimant shall be deemed to have approved of Homebuilder's contractors and to have authorized Homebuilder to proceed with the repair.
 - C. Claimant's Response to Homebuilder's Cash Offer.
 - (1) In response to Homebuilder's cash offer, Claimant may:
 - a) Accept or reject Homebuilder's cash offer.
 - i. If Claimant rejects Homebuilder's cash offer, Claimant is permitted to proceed in accordance with the Binding Dispute Resolution provisions of the Master Declaration.
 - b) If Homebuilder made a request for a release, Claimant is entitled to accept, reject or negotiate the terms of such a release.
 - i. If Claimant rejects Homebuilder's release, and Homebuilder's release was a condition to acceptance of Homebuilder's cash offer, Claimant shall be deemed to have rejected Homebuilder's cash offer. Claimant will then be permitted to proceed in accordance with the Binding Dispute Resolution provisions of the Master Declaration.
 - c) Request mediation pursuant to Section 9.

D. Claimant's Response to Homebuilder's Declination.

(1) In response to Homebuilder's declination, Claimant may:

a) Accept or reject Homebuilder's Declination.

i. If Claimant rejects Homebuilder's Declination, Claimant is permitted to proceed in accordance with the Binding Dispute Resolution provisions of the Master Declaration recorded on the Property.

b) Request mediation pursuant to Section 9.

9. Mediation

A. Any mediation requested pursuant to the terms of these Alternative Non-Adversarial Procedures shall proceed pursuant to the provisions of this Section 9.

B. The mediation shall occur within thirty (30) business days of receipt of the written request for mediation, unless otherwise mutually agreed to in writing by the participants to the mediation. If Claimant requests both mediation and objects to the contractor identified by Homebuilder, the mediation shall occur within thirty (30) business days after the identity of the contractor is finally determined, in accordance with paragraph 8B(1)(b)(i), unless otherwise mutually agreed to in writing by the participants to the mediation.

C. Unless otherwise mutually agreed to in writing by the participants to the mediation the mediator shall be from Judicial Arbitration and Mediation Services ("JAMS"), or its successor. The costs of the mediator will be paid for by Homebuilder for the first four hours of the mediation. After four hours the costs of the mediator will be split equally by the parties to the mediation. The mediator shall be selected by Homebuilder unless another participant to the mediation, at its sole option agrees to split all costs of the mediator, at which point the mediator shall be selected jointly between those parties.

D. The mediator shall not be affiliated with any of the participants and shall have sufficient availability such that the mediation can occur within thirty (30) business days of receipt of the written request for mediation, or other time frame mutually agreed to in writing by the participants to the mediation. The mediation shall occur at a mutually convenient location within the county where the Property is located.

E. The expenses or fees of any witnesses, or the cost of any proofs or expert advice, shall be borne by the party calling the witness. Each party shall bear the costs and fees of their attorneys.

F. The content of the mediation shall be confidential and covered by California Evidence Code sections 1115 et seq, or pursuant to any similar successor statute, and shall exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to, court proceedings, reference proceedings or arbitration hearings.

10. Performance of Repair

A. Repairs to be performed pursuant to these Alternative Non-Adversarial Procedures are to commence on a mutually convenient date within fourteen (14) business days of the following, whichever occurs last:

(1) The date Claimant accepts Homebuilder's offer to repair the Alleged Violation.

(2) The date Claimant gives, or is deemed to have given, Homebuilder authorization to commence the repair.

- (3) The date the identity of the contractor who is to perform the repairs is finally determined, after Claimant accepts Homebuilder's offer to repair the Alleged Violation but objects to the repair contractor, in accordance with paragraph 8B(1)(b).
- (4) The date Homebuilder obtains a permit for the repair, if a permit for the repairs is necessary, in the event that any of the events listed in (1), (2) or (3) above occurs.
- (5) The date the mediation proceedings are concluded, if Claimant timely requests mediation pursuant to Article 9 above.

B. The commencement date will be scheduled within the fourteen (14) business day time frame by Homebuilder and Claimant. If Homebuilder has received written notice that Claimant has retained legal representation, the repairs shall be scheduled with the legal representative's office at a mutually convenient date and time within the time frames specified above, unless the legal representative is unavailable during those time frames, in which case, Homebuilder shall schedule the repairs with Claimant. Notwithstanding the foregoing, the time frame within which Homebuilder has to commence the repairs shall be extended for adverse weather conditions and other delays beyond the reasonable control of Homebuilder.

C. Homebuilder shall act with reasonable diligence in completing the repairs and in obtaining any applicable permits associated with such work, and shall ensure that the repair work is done within the time limits set forth in the offer, unless extended by the parties by mutual written agreement, or unless the work is delayed due to events beyond Homebuilder's or the repair contractors reasonable control.

D. Upon request by either party the repairs may be observed and electronically recorded, videotaped, or photographed by the parties or their legal representatives. Nothing that occurs during the repair process may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation. If either party does not observe or electronically record, videotape, or photograph the repairs, then upon the request and at the expense of the party failing to do so, the party performing such recording, videotaping or photographing shall provide copies of all photographs or electronic recordings pertaining or relating in any manner to the repairs, if any exist.

E. At the conclusion of the repair, Claimant may proceed with an action against Homebuilder based on an allegation that the repair is inadequate and/or violates the applicable Standards, or based on an allegation that Claimant has not been sufficiently compensated for the applicable damages pursuant to California Civil Code Section 944 (except that investigation costs shall only be allowed to the extent such costs are reasonable and necessary). Such an action shall proceed in accordance with the Binding Dispute Resolution provisions of the Master Declaration.

11. Subsequent Alleged Violations

A. Subsequently discovered Alleged Violations shall be administered separately, unless otherwise agreed to by the parties. However, if a subsequently discovered Alleged Violation is for a violation of the same Standard or the same breach of the One Year Limited Fit & Finish Warranty as that which has already been initiated by the same claimant and the subject of a currently pending Alternative Non-Adversarial Proceeding, the claimant need not re-initiate the process as to the same Standard. In the case of an attached project, if the subsequently discovered Alleged Violation is for a violation of the same Standard or the same breach of the One Year Limited Fit & Finish Warranty for a connected component system in the same building as has already been initiated by the same claimant, and the subject of a currently pending Alternative Non-Adversarial Proceeding, the claimant need not reinitiate this process as to that Standard.

12. Time Is Of The Essence

A. The time periods and all other requirements set forth herein are of the essence, and unless extended by the mutual agreement of the parties, shall govern the rights and obligations under these Alternative Non-Adversarial Procedures.

B. If Homebuilder fails to substantially comply with the timeframes set forth in these Alternative Non-Adversarial Procedures, unless extended by the mutual agreement of the parties as evidenced by a written confirmation by the affected Claimant, Claimant is permitted to proceed in accordance with the Binding Dispute Resolution provisions of the Master Declaration recorded on the Property.

C. If Claimant does not substantially conform with the requirements of these Alternative Non-Adversarial Procedures, unless extended by the mutual written agreement of the parties, Homebuilder shall be relieved from proceeding any further under these Alternative Non-Adversarial Procedures, and Homebuilder may bring a motion to stay any subsequent Binding Dispute Resolution proceedings until Claimant has complied with the requirements of these Alternative Non-Adversarial Procedures. The court, arbitrator or referee (as applicable) in its discretion, may award the prevailing party on such a motion, his or her attorneys' fee and costs in bringing or opposing the motion. Further, Claimant shall be responsible for all damages that may occur to the residence due to the delay or failure of Claimant to follow these Alternative Non-Adversarial Procedures.

13. Further Proceedings

A. If the Alleged Violation is not resolved after satisfying the requirements of these Alternative Non-Adversarial Procedures, and the parties desire to proceed further they shall proceed in accordance with any Binding Dispute Resolution provisions of the Master Declaration.

B. The determination of any Alleged Violation in a further Binding Dispute Resolution proceeding shall be governed by the applicable Standards or One Year Limited Fit & Finish Warranty provision.

C. The statute of limitations and tolling periods established in California Civil Code Sections, 927 and 941 shall apply to these Alternative Non-Adversarial Procedures.

D. If there has been no previous mediation between Homebuilder and Claimant, and if Claimant has complied with the requirements of these Alternative Non-Adversarial Procedures, then prior to proceeding with a further Binding Dispute Resolution proceeding or other Action, Claimant or his or her legal representative shall request mediation in writing. Said mediation shall proceed in accordance with Section 9 of these Alternative Non-Adversarial Procedures. In the event that a mediation is used at this point, any applicable statutes of limitations shall be tolled from the date of the request to mediate until the next court day after the mediation is completed.

E. If an action combines causes of action or damages not covered by these Alternative Non-Adversarial Procedures, the Alleged Violations shall be administered according to these Alternative Non-Adversarial Procedures, while the other actions shall be administered pursuant to and in accordance with the Binding Dispute Resolution provisions of the Master Declaration.

F. In a further Binding Dispute Resolution proceeding or other action Homebuilder may introduce the fact that a repair effort was made. However, Claimant may use the condition of the Property prior to the repair as the basis for contending that the repair work was inappropriate, inadequate or incomplete, or that the violation still exists. The claimant need not show that the repair work resulted in further damage nor that the damage has continued to occur as a result of the violation.

G. Evidence of both parties' conduct during these Alternative Non-Adversarial Procedures may be introduced during a further Binding Dispute Resolution proceeding, if any, with the exception of any conduct, statements, documents or information provided during a mediation pursuant to the Alternative Non-Adversarial Procedures, or for any other conduct, statements, documents or information covered by a mutual written agreement between the parties pursuant to California Evidence Code sections 1115 et seq, or pursuant to any similar successor statute. The parties are hereby permitted to include any conduct, statements, documents or information created, provided, or occurring during these Alternative Non-Adversarial Procedures in such an agreement.

H. To the extent that the provisions of these Alternative Non-Adversarial Procedure are substantially similar to provisions in Section 1375 of the Civil Code, but an action is subsequently commenced under Section 1375 of the Civil Code, the parties are excused from performing the substantially similar requirements under Section 1375 of the Civil Code.

14. Disputes

A. In the event a dispute should arise between Homebuilder and Homeowner with respect to the subject matter of these Alternative Non-Adversarial Procedures, the parties shall have the right to submit the dispute to, and such dispute shall be governed by, the Binding Dispute Resolution Procedures specified in the Master Declaration.

15. Interpretation/Application

A. These Alternative Non-Adversarial Procedures shall be construed in accordance with the laws of the State of California, except to the extent these provisions conflict with California Civil Code Sections 910-938, the provisions of these Alternative Non-Adversarial Procedures shall govern.

B. If any provision or any part of a provisions of these Alternative Non-Adversarial Procedures is for any reason held to be invalid, unenforceable or contrary to public policy, law, statute and/or ordinance, then the remainder of these Alternative Non-Adversarial Procedures shall not be affected thereby and shall remain valid and fully enforceable.

BINDING DISPUTE RESOLUTION PROCEDURES

CUSTOMER SERVICE PROCEDURES

Prior to commencement of any action under the Binding Dispute Resolution Procedures set forth herein, Homeowner is strongly encouraged and advised by Homebuilder to submit each action to the Customer Service Procedures attached as an exhibit to the Master Declaration for Title 7 & Dispute Resolution recorded on the Property, and provide Homebuilder with at least one opportunity pursuant to such Customer Service Procedures to resolve the matter.

I. CLAIMS SUBJECT TO BINDING DISPUTE RESOLUTION PROCEDURES

- A. Disputes: The provisions of these Binding Dispute Resolution Procedures shall apply to disputes which include but are not limited to the following:
1. Any and all claims, controversies, complaints or disputes, whether contract, tort or statutory, by, between or among Homeowner, Homebuilder, or their respective partners, officers, agents, employees, affiliated parent and subsidiary companies, successors and each of them, or any contractor, subcontractor, design professional, engineer, inspector or supplier who provided labor, services or materials relating to or arising out of the design, development, construction, marketing, sale, purchase, ownership, modification, repair, or condition of the Property including common elements delivered by Homebuilder and owned by Homeowner.
 2. Those matters defined as “Title 7 Disputes” below.
 3. Those matters defined as “Disputes” in the Master Declaration for Title 7 & Dispute Resolution (“Master Declaration”) recorded on the Property.
 4. Any and all claims, controversies, complaints or disputes regarding the relationship between Homeowner and Homebuilder.
 5. Any allegation of negligence, fraud, breach of contract, and/or breach of duty of good faith and any other alleged claims arising in equity or from common law, to the extent such claims are not otherwise precluded or waived by law or contract.
 6. Any dispute involving the declaration of covenants, conditions and restrictions or other governing documents (if any).
 7. Any dispute regarding, directly or indirectly, the Property, the sale of the Property, any document or contract associated with the Property (or the breach thereof), and the performance of any party pursuant to such document or contract.
 8. Any dispute regarding, directly or indirectly, the Master Declaration, the Declaration of Notice to Subsequent Purchasers along with exhibits attached.

B. "Title 7 Disputes"

1. The following Disputes between Homeowner and Homebuilder or their respective partners, officers, agents, employees, affiliated parent and subsidiary companies, successors, subcontractors and each of them which are subject to these Binding Dispute Resolution Procedures shall also be defined as "Title 7 Disputes."
 - a) Those matters defined as "Claimed Title 7 Violations" in the Master Declaration;
 - b) Any claim arising out of or relating to the standards set forth in (1) the Enhanced Protection Agreement ("EPA") attached as an exhibit to the Master Declaration or (2) the One Year Limited Fit & Finish Warranty attached as an exhibit to the Master Declaration (collectively, the "Standards");
 - c) Any claim arising out of or relating to a repair of an alleged violation of the Standards;
 - d) Any claim arising out of or relating to the value of repairing a violation of the Standards;
 - e) Any claim arising out of or relating to the alleged failure of a structure to meet the Standards;
 - f) Any claim arising out of or relating to alleged relocation expenses or storage expenses associated with a violation of the Standards or a repair of an alleged violation of the Standards;
 - g) Any claim arising out of or relating to alleged lost business income associated with a violation of the Standards or a repair of an alleged violation of the Standards;
 - h) Any claim arising out of or relating to alleged investigation costs associated with a violation of the Standards or a repair of an alleged violation of the Standards;
 - i) Any claim arising out of or relating to alleged fees and costs recoverable by contract or statute as a result of the violation of the Standards;
 - j) Any claim arising out of or relating to the Alternative Non-Adversarial Procedures attached as an exhibit to the Master Declaration;
 - k) Any claim arising out of or relating to Title 7 of Part 2 of Division 2 of the California Civil Code;
 - l) Any claim under the Home Buyers Warranty Asset Protection Program (HBW).
2. Before Homeowner can commence a Title 7 Dispute through these Binding Dispute Resolution Procedures, Homeowner must first comply with all applicable provisions of the Alternative Non-Adversarial Procedures attached as an exhibit to the Master Declaration.

3. The potential recoveries for any and all Title 7 Disputes commenced through these Binding Dispute Resolution Procedures shall be limited to the following:
- a) A determination as to whether Homeowner or Homebuilder have complied with these Binding Dispute Resolution Procedures;
 - b) A determination of the enforceability of these Binding Dispute Resolution Procedures;
 - c) A determination as to whether Homeowner or Homebuilder have complied with the Alternative Non-Adversarial Procedures;
 - d) A determination of the enforceability of the Alternative Non-Adversarial Procedures;
 - e) A determination of the enforceability of the EPA;
 - f) A determination of which Standard applies to an alleged violation;
 - g) A determination of whether the applicable Standard has been violated and who is responsible for such violation;
 - h) A determination of the reasonable scope of repair for a violation of the applicable Standard;
 - i) A determination of the reasonable value of repairing a violation of the applicable Standard. The reasonable value of repairing any nonconformity shall be limited to the repair costs, or the diminution in current value of the Property caused by the nonconformity, whichever is less, subject to the personal use exception as developed under the common law;
 - j) Awarding damages for the reasonable value of repairing a violation of the applicable Standards as set forth above;
 - k) Awarding damages for the reasonable cost of addressing any damages caused by the repair of a violation of the applicable Standard;
 - l) Awarding damages for the failure of the property to meet the applicable Standard;
 - m) Awarding damages for the reasonable cost of removing and replacing any improper repair by Homebuilder;
 - n) Awarding damages for reasonable relocation and storage expenses;
 - o) Awarding damages for lost business income if the Property was used as a principal place of business licensed to be operated from the Property;
 - p) Awarding damages for reasonable and necessary investigative costs;
 - q) Awarding damages for all other costs or fees recoverable by contract or statute.

4. The potential recoveries for any and all SB 800 Disputes shall not include compensation for loss of use, emotional distress or inconvenience.
5. If any of the damages permitted under a Title 7 Dispute are awarded to Homeowner in any non Title 7 Dispute, the damages awarded in such non Title 7 Dispute shall be reduced by the amounts such damages are recovered through a Title 7 Dispute.
6. Homebuilder shall be excused, in whole or in part, from any obligation, damage, loss or liability arising from or relating to a Title 7 Dispute to the extent the Homebuilder can assert any of the affirmative defenses set forth in California Civil Code Section 945.5.

II. PARTIES SUBJECT TO BINDING DISPUTE RESOLUTION PROCEDURES

- A. The provisions, standards, rights and obligations set forth in these Dispute Resolution Procedures are binding upon Homeowner, Homebuilder and their successors in interest.
- B. The terms “Homebuilder” “Us” or “We” in these Binding Dispute Resolution Procedures shall have the same definition as the term “Declarant” in the Master Declaration.
- C. The terms “Homeowner” or “You” or “Your” in these Binding Dispute Resolution Procedures shall have the same definition as the term “Owner” in the Master Declaration.
- D. The term “Property” in these Binding Dispute Resolution Procedures shall have the same definition as the term “Property” in the Master Declaration.
- E. It is specifically intended and agreed that any person or entity not a party to the Binding Dispute Resolution Procedures specified herein shall, at Homebuilder’s sole and absolute discretion, be joined or consolidated into these Binding Dispute Resolution Procedures if the presence of such person or entity is required or necessary for complete relief to be accorded in the Binding Dispute Resolution Procedures, or the interest or responsibility of such person or entity in the Dispute is not insubstantial.
- F. All parties involved in the Binding Dispute Resolution Procedures shall each have the right to be represented by counsel in these procedures.

III. MEDIATION:

- A. If the parties to these Binding Dispute Resolution Procedures have not attempted formal mediation of the Dispute prior to commencing these Binding Dispute Resolution Procedures then the Dispute shall be submitted to mediation pursuant to the rules of the Judicial Arbitration and Mediation Services (“JAMS”), its successor; or to any other entity offering mediation services agreed to by the parties. The mediation shall be limited to four hours, except as otherwise mutually agreed by the parties, before a nonaffiliated mediator selected and paid for by Homebuilder. At its sole option, Homeowner may agree to split the cost of the mediator and if he or she does so, the mediator shall be selected jointly. No person with any financial or personal interest in the mediation’s result shall serve as a mediator, except by the written consent of the parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption or bias or prevent a prompt commencement of the mediation process.

- B. The mediation shall be held in the county where the Property is located or such place as is agreed to by the parties. Prior to the commencement of the mediation proceedings, the mediator and all parties to the mediation shall execute an agreement pursuant to California Evidence Code sections 1115 et seq, or pursuant to any similar successor statute, in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to, court proceedings, reference proceedings or arbitration hearings.
- C. Pursuant to California Evidence Code section 1119(a), “No evidence of anything said or of any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled in any arbitration, administrative adjudication, civil action or other non-criminal proceeding in which, pursuant to law, testimony can be compelled to be given.”
- D. Except as set forth in paragraph III A above, all expenses of the mediation, including but not limited to the traveling and other expenses of the mediator, shall be paid by Homebuilder. The expenses or fees of any witnesses, or the cost of any proofs or expert advice, shall be borne by the party calling the witness. Each party shall bear the costs and fees of their attorneys. However, it is not necessary for either party to have an attorney present during the mediation.

IV ARBITRATION OF DISPUTES.

- A. TO THE EXTENT THAT THE DISPUTE IS NOT RESOLVED DURING MEDIATION, THE ENTIRE MATTER SHALL PROCEED AS ONE OF ARBITRATION GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §1-16). TO THE EXTENT THE RULES OF PROCEDURE SET FORTH IN SECTION VI BELOW DO NOT CONFLICT WITH THE FEDERAL ARBITRATION ACT, SUCH RULES OF PROCEDURE SHALL BE THE RULES OF PROCEDURE FOR THE ARBITRATION PROCEEDING. AT THE SOLE ELECTION OF HOMEBUILDER EITHER JAMS, OR CONSTRUCTION ARBITRATION SERVICES, INC., OR THEIR SUCCESSORS, (COLLECTIVELY REFERRED TO THE “DESIGNATED ARBITRATION SERVICE”) SHALL HEAR, TRY AND DECIDE ALL ISSUES OF BOTH FACT AND LAW AND MAKE ANY REQUIRED FINDINGS OF FACTS AND, IF APPLICABLE, CONCLUSIONS OF LAW. IF HOMEBUILDER FAILS TO SELECT A DESIGNATED ARBITRATION SERVICE THE ARBITRATION SHALL BE PERFORMED BY ANY ENTITY OFFERING ARBITRATION SERVICES AGREED TO BY THE PARTIES. CLAIMS INVOLVING ONLY THE HBW SHALL BE ARBITRATED BY CONSTRUCTION ARBITRATION SERVICES, INC. UNDER ITS RULES**
- B. THE PROCEDURES SPECIFIED IN THIS AGREEMENT PERTAINING TO ARBITRATION ARE TO BE INTERPRETED AND ENFORCED AS AUTHORIZED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §1-16), WHICH IS DESIGNED TO ENCOURAGE USE OF ALTERNATIVE METHODS OF DISPUTE RESOLUTION THAT AVOID COSTLY AND POTENTIALLY LENGTHY COURT PROCEEDINGS. INTERPRETATION AND APPLICATION OF THOSE PROCEDURES SHALL CONFORM TO FEDERAL COURT RULES INTERPRETING AND APPLYING THE FEDERAL ARBITRATION ACT. THE PROPERTY IS CONSTRUCTED OF OR USES MATERIALS AND PRODUCTS MANUFACTURED THROUGHOUT THE UNITED STATES WHICH ARE THEN SHIPPED TO THE PROPERTY FOR INSTALLATION AT THE PROPERTY. THE SHIPMENT OF THESE MATERIALS AND PRODUCTS ACROSS STATE LINES**

TO THE PROPERTY CAUSE THE PRODUCTS AND MATERIALS TO ENTER INTO THE STREAM OF INTERSTATE COMMERCE AND BECOME SUBJECT TO THE INTERSTATE COMMERCE CLAUSE (ARTICLE I, SECTION VIII OF THE UNITED STATES CONSTITUTION) AND ENSUING FEDERAL LAWS. REFERENCES TO CALIFORNIA PROCEDURAL LAW SHALL NOT BE CONSTRUED AS A WAIVER OF ANY RIGHTS OF THE PARTIES UNDER THE FEDERAL ARBITRATION ACT OR THE RIGHT OF THE PARTIES TO HAVE THE PROCEDURES SET FORTH IN THIS AGREEMENT INTERPRETED AND ENFORCED UNDER THE FEDERAL ARBITRATION ACT.

- C. THE PROVISIONS OF THIS SECTION SHALL NOT BE AMENDED NOR SHALL OTHER PROVISIONS BE ADOPTED THAT PURPORT TO SUPERCEDE IT WITHOUT HOMEBUILDER'S PRIOR WRITTEN CONSENT. THE PARTIES SHALL COOPERATE IN GOOD FAITH AND SHALL DILIGENTLY PERFORM SUCH ACTS AS MAY BE NECESSARY TO CARRY OUT THE PURPOSES OF THIS SECTION.**

NOTICE: BY TRANSFERRING TITLE TO AND BY TAKING TITLE TO PROPERTY, HOMEOWNER IS AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THESE BINDING DISPUTE RESOLUTION PROCEDURES DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY THE FEDERAL ARBITRATION ACT AND HOMEOWNER IS GIVING UP ANY RIGHTS HOMEOWNER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. HOMEOWNER IS GIVING UP ITS JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THESE BINDING DISPUTE RESOLUTION PROCEDURES PROVISION. IF HOMEOWNER REFUSES TO SUBMIT TO BINDING ARBITRATION AFTER AGREEING TO THIS PROVISION, HOMEOWNER MAY BE COMPELLED TO ARBITRATE BY A COURT OF LAW. HOMEOWNER AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

V. JUDICIAL REFERENCE:

- A. To the extent that a court of competent jurisdiction determines that the Arbitration of Disputes provision in Section IV above is void or unenforceable, the entire matter shall proceed as one of General Judicial Reference pursuant to California Code of Civil Procedure sections 638 and 641-645.1, or any successor statutes, except as the procedures and rules shall be otherwise modified by the provisions of this section V. The rules of procedure set forth in Section VI below shall be the rules of procedure for the reference proceeding, unless expressly precluded by law.**
- B. The provisions of this Section shall not be amended nor shall other provisions be adopted that purport to supercede it without Homebuilder's prior written consent. The parties shall cooperate in good faith and shall diligently perform such acts as may be necessary to carry out the purposes of this Section.**

VI. RULES OF PROCEDURE:

- A. The following rules of procedure shall apply to the arbitration and judicial reference as applicable.**
- (1) Initiation of Claim.** Any party wishing to initiate a proceeding pursuant to these Binding Dispute Resolution Procedures shall serve a demand for mediation or arbitration/judicial reference upon the responding party. A demand for mediation shall also be served upon JAMS, its successor, or to any other entity offering mediation services agreed to by the parties. If the a demand for arbitration/judicial reference is served, Homebuilder shall notify all parties of the Designated Arbitration Service within five (5) days of service of the demand for arbitration/judicial reference. If Homebuilder fails to identify the Designated Arbitration Service within the five (5) days, the arbitration/judicial reference shall be performed by any entity offering arbitration/judicial reference services agreed to by the parties. All claims or disputes pertaining to the HBW shall be arbitrated by Construction Arbitration Services, Inc. The demand for arbitration/judicial reference shall also be served upon the Designated Arbitration Service identified by Homebuilder or the entity offering arbitration/judicial reference services agreed to by the parties. Except as otherwise set forth herein, the proceedings shall be conducted by and in accordance with the rules of the Designated Arbitration Service its successor, or to any other entity offering arbitration/judicial reference services agreed to by the parties.
 - (2) Arbitrator/Referee.** The arbitrator/referee to be appointed shall be employed by the Designated Arbitration Service, its successor, or by any other entity offering arbitration/judicial reference services agreed to by the parties. Except as otherwise set forth herein, the arbitration/judicial reference proceedings shall be conducted by and in accordance with the rules of the Designated Arbitration Service or any successor thereto. Except for procedural issues, the arbitration/reference proceedings, the ultimate decisions of the arbitrator/referee, and the arbitrator/referee himself/herself shall be subject to and bound by existing California case and statutory law including, but not limited to, Title 7 of Part 2 of Division 2 of the California Civil Code and the Enhanced Protection Agreement. Should the Designated Arbitration Service cease to exist, as such, then all arbitration/references herein to the Designated Arbitration Service shall be deemed to refer to its successor or to any other entity offering mediation/ arbitration/judicial reference services agreed to by the parties. If none exists, then to the American Arbitration Association (in which case its commercial arbitration rules shall be used). The parties shall cooperate in good faith and shall diligently perform such acts as may be necessary to ensure that all necessary and appropriate parties are included in the arbitration/reference proceeding. Homebuilder shall not be required to participate in the arbitration/reference proceeding if all parties against whom Homebuilder would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the arbitration/reference proceeding.

- (3) **Selection.** The proceeding shall be conducted by one (1) qualified arbitrator/referee selected in accordance with the rules of the Designated Arbitration Service. The term "qualified" shall mean a retired judge who has experience with the laws governing residential real estate development and construction or an attorney who has actively practiced law in California for at least fifteen (15) years and who has experience with the laws governing residential real estate development and construction.
- (4) **Motions and Remedies.** The arbitrator/referee shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. In addition, the arbitrator/referee shall have the power to summarily adjudicate issues of fact or law, including but not limited to the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. The arbitrator/referee shall have the limited power to grant provisional remedies including preliminary injunctive relief. Prior to the selection of the arbitrator/referee any party shall have the right to petition the Superior Court of the county where the Property is located for any necessary provisional remedies.
- (5) **Discovery.** Except as limited herein, the Parties shall be entitled to limited discovery consisting of: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections, including but not limited to, destructive or invasive testing; (vi) arbitration/reference briefs; and (vii) the deposition, under oath, of any designated experts and two other depositions of their choosing without obtaining the consent of the arbitrator/referee. All other discovery shall be permitted by the arbitrator/referee at his discretion upon a showing of good cause or based on the agreement of the parties. The arbitrator/referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.
- (6) **Full Disclosure.** Each party shall, in good faith, make a full disclosure of all issues and evidence to the other parties prior to the hearing. Any evidence or information that the arbitrator/referee determines was unreasonably withheld shall be inadmissible by the party that withheld it. The party initiating the arbitration/reference proceeding shall be the first to disclose all of the following, in writing, to the other party and to the arbitrator/referee: an outline of the issues and its position on each such issue; a list of all witnesses it intends to call; and copies of all written reports and other documentary evidence whether or not written or contributed to by its retained experts (collectively "outline"). The initiating party shall submit its outline to the other parties and to the arbitrator/referee within thirty (30) days of the final selection of the arbitrator/referee. Each responding party shall submit its written response as directed by the arbitrator/referee. If the dispute involves alleged violations of the Standards, or repairs to the alleged violation of the Standards, then Homeowner shall be the first party to submit a written outline, list of witness, and reports/documents and shall include a detailed description of the nature and scope of the alleged defect(s), Homeowner's proposal for repair or restoration, any repairs made to date, and an estimate of the cost of repair/restoration together with the calculations used to derive the estimate.

- (7) **Hearing.** The hearing shall be held in the county where the Property is located. The arbitrator/referee shall promptly commence the hearing giving due consideration to the complexity of the issues, the number of parties and necessary discovery and other relevant matters. The hearing shall be conducted as informally as possible. Evidence Code Section 1152 et seq., shall be applicable for the purpose of excluding from evidence offers, compromises, and settlement proposals, unless both parties consent to their admission. The arbitrator/referee shall be the sole judge of the admissibility of, and the probative value of, all evidence offered and is authorized to provide all available legal (but not equitable) remedies, except as otherwise specified herein, or by the EPA or in Title 7 of Part 2 of Division 2 of the California Civil Code (or in any prelitigation procedures binding Homeowner). Attorneys are not required and either party may elect to be represented by someone other than a licensed attorney. Cost of an interpreter shall be born by the party requiring the services of the interpreter in order to be understood by the arbitrator/referee and the expenses of witnesses shall be born by the party or parties producing such witnesses.
- (8) **Decision.** The decision of the arbitrator/referee shall be binding on the parties and shall be entered as a judgment in the court of the State of California where the complaint was filed.
- (9) **Statement of Decision.** The provisions of this paragraph 9 only apply to the judicial reference proceeding and not to the arbitration proceedings. The referee shall cause a complete record of all proceedings to be prepared similar to those kept in the Superior Court; shall try all issues of both fact and law; and shall issue a written statement of decision, such as that described in Code of Civil Procedure Section 643 (or its successor), which shall specify the facts and law relied upon in reaching his/her decision within twenty (20) days after the close of testimony. A stenographic record of the hearing may be made which shall remain confidential except as may be necessary for post-hearing motions and appeals. The cost of the record shall be borne by all parties to the reference proceeding on a pro-rata basis. Should any party refuse or fail to pay its pro-rata share, the remaining parties may pay such share, and the party or parties which pay such extra share shall be awarded such extra cost by the referee in its decision. In the case of a judicial reference only, the decision of the referee shall be subject to appeal in the same manner as if the dispute had been tried by the Court.
- (10) **Fees and Costs.** Homebuilder shall advance the fees required by the Designated Arbitration Service to initiate the proceedings. The total cost of the proceedings, including the advanced initiation fees and other fees of the Designated Arbitration Service and any related costs and fees incurred by the Designated Arbitration Service (such as experts and consultants retained by it) shall be split equally by the parties unless otherwise required by the Federal Arbitration Act and supporting case law. The arbitrator/referee shall not award attorneys' fees to either party, each party shall bear its own attorneys fees. The arbitrator/referee may award recoverable costs pursuant to California law. Nothing herein shall be construed to modify or abrogate any duty to defend and/or indemnify another party pursuant to the terms of a contract between any such parties.

ENHANCED PROTECTION AGREEMENT

I. Introduction

Homebuilder hereby notifies Homeowner that it has elected to provide Homeowner with an Enhanced Protection Agreement (an “EPA”) pursuant to Chapter 3 of Title 7 of Part 2 of Division 2 of the California Civil Code (“Title 7”), which sets forth standards for the installation, construction, design, specifications, surveying, planning, supervision, testing, or observation of construction at Homeowner’s residence (“Standards”).

The terms “Homebuilder/homebuilder” “Us/us” or “We/we” shall have the same definition as the term “Declarant” in the *Master Declaration for Title 7 & Dispute Resolution* recorded on the Property (“*Master Declaration*”). The term “Homeowner/homeowner” or “You/you” or “Your/your” shall have the same definition as the term “Owner” in the *Master Declaration*. The terms “Home/home” or “Property/property” shall have the same definition as the term “Property” in the *Master Declaration*.

By this introduction Homebuilder hereby notifies Homeowner that Homebuilder has elected to be subject to this Enhanced Protection Agreement in lieu of the standards set forth in Chapter 2 of Title 7. In any lawsuit, alternative dispute proceeding, arbitration, judicial reference or other action (“Action”) seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, except for an Action associated with a breach of the Fit & Finish Warranty, the liability of Homebuilder, and its subcontractors, material suppliers, individual product manufacturers, or design professionals, shall, be limited to violation of, the Standards set forth in this Enhanced Protection Agreement.

As provided in Section 941(a) of Chapter 5 of Title 7 of the California Civil Code and as agreed to between Homebuilder and Homeowner, no action may be brought for violation of one of these Standards more than ten (10) years after substantial completion of the residence. The date of substantial completion shall be no later than the date a valid notice of completion is recorded. This EPA in accordance with Title 7 of the Civil Code, contains time periods for the application of some of these Standards which may be less than ten years. Where stated those shorter periods shall control. Homebuilder and Homeowner specifically agree that in no case will an action for breach of the Enhanced Protection Agreement be brought after expiration of this ten (10) year period or the shorter periods established for individual Standards.

This Enhanced Protection Agreement is not a warranty and shall not be deemed or considered to create an express or implied warranty. Homebuilder has provided Homeowner with a separate written warranty for fit and finish that is in lieu of all other warranties express or implied, including any implied warranty of merchantability or fitness.

II. Enhanced Protection Standards

As identified in the following chart, there are forty-six different Standards that are intended to address every aspect of your home. Each of these Standards follows the chart.

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Each of these forty-six Enhanced Protection Standards is detailed below with reference to building industry standards, legal requirements, and maintenance requirements for the Owner's home. Homebuilder, under the principles of comparative fault, may be excused, in whole or in part, from any obligation, damage, loss, or liability if the Homebuilder can demonstrate any of the following affirmative defenses in response to a claimed violation:

(a) To the extent it is caused by an unforeseen act of nature which caused the structure not to meet the standard. For purposes of this section an "unforeseen act of nature" means a weather condition, earthquake, or manmade event such as war, terrorism, or vandalism, in excess of the design criteria expressed by the applicable building codes, regulations, and ordinances in effect at the time of original construction;

(b) To the extent it is caused by an Homeowner's unreasonable failure to minimize or prevent those damages in a timely manner, including the failure of the Homeowner to allow reasonable and timely access for inspections and repairs under this title. This includes the failure to give timely notice to the Homebuilder after discovery of a violation, but does not include damages due to the untimely or inadequate response of Homebuilder to the Homeowner's claim;

(c) To the extent it is caused by the Homeowner or his or her agent, employee, subcontractor, independent contractor, or consultant by virtue of their failure to follow the Homebuilder's or manufacturer's recommendations, or commonly accepted Homeowner maintenance obligations (in order to rely upon this defense as it relates to a Homebuilder's recommended maintenance schedule, the Homebuilder shall show that the Homeowner had written notice of these schedules and recommendations and that the recommendations and schedules were reasonable at the time they were issued);

(d) To the extent it is caused by the Homeowner or his or her agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the structure's use for something other than its intended purpose;

(e) To the extent that the time period for filing actions bars the claimed violation;

(f) To the extent the Homebuilder has obtained a valid lawful release for a particular violation;

(g) To the extent that the Homebuilder's repair was successful in correcting the particular violation of the applicable standard;

(h) To the extent any other affirmative defense recognized by California statute or case law is applicable.

1. Water Past Doors

A door shall not allow unintended water to pass beyond, around, or through the door or its designed or actual moisture barriers, if any.

When closed, the doors of your home are intended to provide a barrier to water. An example of "unintended water" is rainwater that comes through your front door when it rains.

Your home has been built so that uncontrolled water should not pass beyond the secondary moisture barrier of the door or the door assembly. The door assembly installation shall integrate building systems and components to provide primary and secondary moisture barriers to control unintended water as defined above. Water is intended to be collected by door thresholds and subsequently drain away.

Doors shall meet the wind/rain door ratings appropriate to the location and conditions of the site. Doors must be fully closed and latched in order not to leak in your area's normal weather conditions. However, it should be anticipated that some water might pass beyond a door in a storm event that produces excessive wind-driven rain or flooding. It is not considered a violation of this standard when water passes the moisture barriers due to weather conditions greater than the original construction design criteria applicable to your home.

In addition, it is anticipated that water may enter at the sill of a pedestrian garage door, as the side door to your garage was not intended to prevent water from entering your garage in all circumstances. A sill was not installed at the base of the door. It is also anticipated that rainwater may also enter your garage through the garage doors during stormy weather. Your garage area is not intended as living space. We recommend that you store belongings in the garage on shelves or otherwise off the floor, keeping in mind that water may enter the floor of the garage. We also recommend that you sweep water back out of the garage when rainy weather causes water to enter the garage area.

Proper maintenance includes monitoring and restoring caulking and weather stripping. Protected areas include the door and door frames. Some caulking and weather stripping may deteriorate over time. Periodically, check your caulking to insure that it has not dried and cracked or fallen out. The rate of deterioration depends on the amount of exposure to the elements. Likewise, check the weather stripping around your doors and windows. Reattach the weather stripping if it becomes loose and replace it if it becomes torn or no longer makes an effective seal.

2. Water Past Windows, Etc

Windows, patio doors, deck doors, and their systems shall not allow water to pass beyond, around, or through the window, patio door, or deck door or its designed or actual moisture barriers, including, without limitation, internal barriers within the systems themselves. For purposes of this paragraph, "systems" include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.

When closed, your windows and doors are intended to provide a barrier to water. Uncontrolled water should not pass the secondary moisture barrier of the window and/or door assembly.

However, you should anticipate that water might be controlled and collected in the window and door tracks. The secondary moisture barrier of sliding windows and sliding patio doors include interior sill or threshold tracks. When water fills these tracks without overflowing to the interior, these components are performing as intended to control water. As the system has been designed to perform, water allowed to pass the primary barrier should drain from the system so as not to cause damage to another building component. Weep holes are provided to allow excess water to escape to the outside. Proper maintenance includes regular monitoring of the window tracks and cleaning the bottom window channels and weep holes to keep them free of dirt and debris for proper operation.

Windows and doors are intended to meet wind and rain ratings appropriate to the design criteria that apply to the location of your home. However, you should anticipate the possibility of severe weather events where some water will pass into your home. Windows and other building components that satisfy government building criteria for weather anticipated at your home have not been designed to withstand excessive wind-driven rain or flooding unusual for your area. Excessive wind-driven rain is rain driven by basic wind speed faster than identified in the California Building Code that provides the design criteria for your home.

In caring for your windows, review all product information for recommendations. When cleaning aluminum surfaces, use warm, clear water. Do not use powdered cleaner. After each cleaning, apply a silicone lubricant. Clean glass as needed with vinegar and water, a commercial glass cleaner, or the product recommended by the window manufacturer.

Window sills in your home are made of wood, wood product, man-made marble, or marble. The most common maintenance activity is dusting. At least twice each year, check caulking and touch-up to maintain water seals. Protect wood and wood product sills from moisture. If you choose to arrange house plants on a sill, carefully protect the sill from water. It is recommended that these steps include placing a plastic tray under the pot.

Proper maintenance includes monitoring and restoring caulking and weather stripping. Protected areas include the window and window frames. Some caulking and weather stripping may deteriorate over time. Periodically, check your caulking to insure that it has not dried and cracked or fallen out. The rate of deterioration depends on the amount of exposure to the elements. Likewise, check the weather stripping around your windows and doors. Reattach the weather stripping if it becomes loose and replace it if it becomes torn or no longer makes an effective seal.

3. Condensation Past Windows Etc.

Windows, patio doors, deck doors, and their systems shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.

Condensation is a natural occurrence that should not cause you problems in your home as long as you use your home properly. Condensation on interior surfaces of the window and frame should be anticipated where high humidity is introduced within the home and low outside temperatures are present.

You should be careful in the use of your home where you introduce moisture through use of hot water and during cooking. Condensation may result from improper use of window coverings and from interior environmental conditions such as excessive moisture introduced in the air from showers, cooking, humidifiers and other means. You should make sure to open windows and create ventilation to allow moisture to escape enclosed spaces, particularly bathrooms and kitchen areas and other areas where moisture is introduced into the interior environment.

Homes today are built more tightly than ever. This saves energy dollars but creates a potential concern. Condensation, cooking odors, indoor pollutants, radon, and carbon monoxide may all accumulate. We provide mechanical and passive methods for ventilating homes. Your attention to ventilation is important to health and safety. Building codes require attic and crawl space vents to minimize accumulation of moisture. Your daily habits can help keep your home well ventilated. Proper use and maintenance includes not covering or interfering with the fresh air supply to your furnace; running the hood fan when you are cooking; operating the bath fans when bathrooms are in use; and opening windows to air out your house. Proper ventilation will prevent excessive moisture from forming on the inside of the windows. This helps reduce cleaning chores considerably, as well as help to avoid mildew and mold.

Condensation that appears within the panes of dual glazed or insulated windows is not considered to be a violation of this standard for which Homebuilder is responsible. However, the individual window and other components of your home may come with a manufacturer's warranty, which you should consult for the terms and time limits of the warranty. If you add tinting to dual-glazed windows, your product warranty may be voided, and damage can result from condensation or excessive heat build-up between the panes of glass.

4. Water Through Roofs, Etc.

Roofs, roofing systems, chimney caps, and ventilation components shall not allow water to enter the structure or to pass beyond, around, or through the designed or actual moisture barriers, including, without limitation, internal barriers located within the systems themselves. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, and sheathing, if any.

Under normal weather conditions, you should not experience water intrusion caused by the original construction of your roofing system. However, it should be anticipated that some water might pass moisture barriers in a storm event that produces excessive wind-driven rain. It is not considered a violation of this standard when water passes the moisture barriers due to weather conditions greater than the original construction design criteria applicable to your home. In unusually heavy or prolonged precipitation, especially when accompanied by high winds, some water can enter the home through the chimney. Where due to an unusually severe weather condition, this is not considered a violation of this Performance Standard.

Allow only licensed professionals on your roof and require them to take responsibility not to cause damage or leaks. It is important not to walk on your roof to avoid damaging the tiles or otherwise damage the roofing system and create water leaks. Your weight and movement can loosen the roofing material and in turn result in leaks.

So that these systems operate properly to carry water away, maintain the rain gutters and downspouts free of debris so that they quickly drain precipitation from the roof. Materials that accumulate in gutters can slow water drainage from the roof, cause overflows, and clog the downspouts. Use caution when leaning ladders against gutters, as this may damage the gutters and prevent their proper performance..

If a joint between sections of gutter drips, caulk the inside joint using a commercial gutter caulking compound available at hardware stores, to preserve the flow of water and the performance of the gutter.

Gutters may overflow during periods of excessively heavy rain. This is expected and requires no repair.

Small amounts of water (up to one inch) will stand for short periods of time in gutters immediately after rain. No correction is required for these conditions.

Should a leak occur, immediately place a container under dripping water to avoid or minimize damage to your home. If a ceiling is involved, holding water that has entered through a leak, use a screwdriver to poke a small hole in the drywall to release the water, capturing it with a container.

5. Water Through Decks, Etc. Into Structures.

Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow water to pass into the adjacent structure. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashing, and sheathing, if any

Your home, including any decks, balconies, stairs and related systems, are designed and constructed with the understanding that they are exposed to weather and other sources of water, and these components of your home should be properly maintained and properly used.

Under this Performance Standard, water is to be controlled to keep it out of the structure or home. Under normal use and weather conditions, you should not experience water inside your home because of the original construction of the decks, balconies and/or stairs. However, it is important to use judgment in introducing water through use of a hose for washing down surfaces. Water should not be directed with hose pressure at areas near the home, as this may cause water intrusion and damage to your home.

Decks, balconies and stairs have been given surface waterproofing protection. This surface waterproofing protection should be maintained and protected on a regular basis. This maintenance includes promptly repairing any physical damage observed where these components connect to the structure of your home, and recoating waterproof membranes on the timetable in the manufacturer's recommendations. Proper use and maintenance includes cleaning away any standing water that collects on horizontal surfaces.

In addition, decks, balconies and stairs are built with what might be described as obvious openings, including gaps between adjacent deck boards. It is intended that water will pass through these openings and drain. The internal systems are built with materials that can accommodate some moisture, with the top or horizontal surface treated as protection against damage from water intrusion.

6. Water Within Decks, Etc.

Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow unintended water to pass within the systems themselves and cause damage to the systems. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashing, and sheathing, if any.

See the above discussion of Performance Standard 5. Performance Standard 6 addresses the related question of how water is intended to be controlled.

It should be noted that exposed wood decks are built to meet structural and functional design. With regard to water from rain, decks, balconies and stairs have been designed and built with the intention that rainwater will be controlled and drained away so that the water does not cause damage to your home. However, decks, balconies and stairs have been designed and installed to allow water to wet the surfaces and also drain freely from and through the horizontal surfaces. The design and construction is intended to control the water and prevent excessive quantities from being trapped in concealed spaces where it could ultimately cause damage. Water that passes through these systems should dry out before structural damage is caused to the system. It is anticipated that some water staining will occur as water penetrates these systems and dries out.

With weather exposure and over time, wood decks are subject to shrinkage, cracking, splitting, cupping, and twisting. Nails or screws may work loose and will need routine maintenance. Plan to inspect your decks regularly, a minimum of once each year, and provide needed attention promptly to maintain an attractive appearance and forestall costly repairs. Homebuilder recommends that you treat or restain your decks annually to keep them looking their best.

To prolong the life and beauty of your deck, treat it periodically with a water repellent or wood preservative. Follow manufacturer directions carefully.

Exposed wood decks have been stained with a semi-transparent oil stain to protect and beautify the wood. Each board takes the same stain differently and variations in color will be readily noticeable. Over time, with exposure to weather and use, further variations in color will occur. This is not considered a violation of this Performance Standard.

7. **Water Through Foundations, Slabs, Etc.**

Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to cause damage to another building component.

The foundation system and/or foundation slab of your home has been designed and constructed to provide structural support for the home. This Performance Standard addresses the importance that any water or vapors entering the structure in the foundation area not cause damage to another building component.

Concrete slabs contain moisture as part of the mixing of the concrete that is intended to cure after installation of the foundation slab. Some moisture content should be anticipated to exist within the concrete slab.

In addition, the soils beneath your home contain moisture. Your home has been constructed to prevent that moisture in the soil underneath it from penetrating into the home so as to cause damage. The moisture resisting systems installed in your home should continue to perform unless they are modified or damaged.

The specific system for minimizing moisture penetration depends on the type of floor construction. If you have a crawlspace below the floor where the floor is supported above the ground, the covering on the ground, the physical space between the ground and the floor support members (joists and beams), the insulation and the crawlspace ventilation to the exterior are elements of the moisture resisting system. These elements need to be maintained. If observed, standing water should be drained from the foundation space. In addition, it is important to maintain positive drainage conditions at all sides of your home to avoid introduction of water into the foundation area where it can cause problems. Landscape irrigation should be maintained to direct water away from the house, to avoid water being introduced into the slab / foundation area. Roof gutter systems, which direct water away from the house foundation, should be maintained, including the removal of leaves and debris from gutters that causes water to overflow and penetrate the soils adjacent to your foundation.

8. Water Through Foundation Affecting Flooring

Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to limit the installation of the type of flooring materials typically used for the particular application.

This Performance Standard addresses the importance placed on preparing the foundation systems and the home generally for the type of flooring materials to be used in particular areas of the home.

Your home has been constructed so that the foundation system will accommodate the type of flooring materials shown in the model home or that we offer to include as part of the original construction of your home. Some flooring materials require additional preparation of the foundation or sub floor, and we will not offer to install such materials in areas that are not prepared to receive such materials. We consider such materials inappropriate for such areas of your home because additional preparation would be needed to accommodate them. Specific information on flooring materials will be provided to you at the time you purchase your home, as well as when you consider flooring material options.

This issue may come up in the future, when you might consider changing the flooring material in a given area of your home. Should you desire to change the flooring material, for example from carpet to wood, in a ground floor or other area, you should consult with your installer and direct that provisions are made to address the potential for moisture migration from below the floor. These are the sorts of preparations that we have made in those areas where we offer to install wood flooring as an upgrade, but which preparation we may not have completed in all areas of your home.

Where these preparations have not been made to accommodate wood flooring, moisture penetration could adversely affect the performance of certain flooring materials. Please note that there are many floor materials that are more moisture sensitive than carpet.

You should expect the concrete slab on grade and foundation under your home have been constructed in a manner that prevents moisture and water vapor from passing through the concrete and affecting the flooring originally installed in the home. Should you wish to change the type of flooring in the future, your installer should investigate and verify that the intended installation method is compatible with the construction of the home. This is especially true for flooring systems that are sensitive to moisture such as solid wood and wood composites. The builder has built the home with care in selecting floor finishes that are compatible with the construction of the home. The intent is to offer you flexibility for future changes. Your flooring installer is the best source for determination of the requirements for the products they are installing.

9. Site Water Damage To Building

Hardscape, including paths and patios, irrigation systems, landscaping systems, and drainage systems, that are installed as part of the original construction, shall not be installed in such a way as to cause water or soil erosion to enter into or come in contact with the structure so as to cause damage to another building component.

This Performance Standard provides that originally installed hardscape, including concrete paths and patios, as well as originally installed irrigation, landscaping and drainage systems, should not cause water or soil erosion to cause damage to another building component of your home.

Hardscape that we install as part of the original construction of your property is installed in a manner to direct surface water away from the home. Similarly, the irrigation, landscaping and drainage systems are installed to minimize or prevent water from affecting the building.

For the proper use and maintenance of your property, including the originally installed irrigation, landscaping and drainage systems, it is important that you periodically observe conditions to minimize or prevent water from reaching the building. For example, the irrigation systems around your home should not spray water towards the home. The site drainage systems installed as part of the original construction collect surface and below grade water and carry it away from the buildings. You need to periodically observe area around the perimeter of the home looking for water accumulating and the surface drainage elements and confirm that the system continues to function to take water away. Any blockages should be addressed immediately so that these systems function as they are intended.

10. Water Past Exterior Walls, Etc.

Stucco, exterior siding, exterior walls, including, without limitation, exterior framing, and other exterior wall finishes and fixtures and the systems of those components and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall be installed in such a way so as not to allow unintended water to pass into the structure or to pass beyond, around, or through the designed or actual moisture barriers of the system, including any internal barriers located within the system itself. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any

This Performance Standard provides that various exterior components are to be installed to control the flow of water and prevent the introduction of what is described as "unintended water" into the home. With proper use and proper maintenance of these components of your home, you should expect good performance consistent with this standard.

The exterior walls and components of your home are intended to respond to weather conditions, including handling of water that falls or runs on their surfaces. It is the expectation of the design and construction industry that water will be controlled but some of that water will enter the system without causing unanticipated problems. As such water is anticipated to pass the primary moisture barriers, such as an exterior stucco wall system, only to reach a secondary barrier, such as building paper or other systems, it is not considered "unintended water" which would be a violation of this Performance Standard. It is anticipated that water will pass the exterior or primary weather barrier and wet the internal or secondary barrier for a period of time, and then either flow away or dry up within the system.

It is also anticipated that significant weather and storm systems may bring heavy downpours and/or wind-driven water, which could overwhelm the water resistant systems associated with these exterior components. As explained elsewhere in these Performance Standards, Homebuilder is not responsible for violations of these standards caused by a weather condition which is in excess of the design criteria expressed by the applicable building codes, regulations and ordinances in effect at the time of the original construction of your home.

For the proper use of your home, it is also important that you avoid the use of hoses or otherwise introduce water under pressure to the exterior components, as this could cause water damage to components of your home.

11. Condensation Past Exterior Walls, Etc

Stucco, exterior siding, and exterior walls shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

This Performance Standard provides that various exterior components shall not allow excessive condensation to enter the structure so as to cause damage to another building component. With proper use and proper maintenance of these components of your home, you should expect good performance consistent with this standard.

Excessive Condensation is considered a problem when an inordinate amount of migrating water vapor falling below the dew point temperature and becoming liquid water is trapped within the exterior wall assembly and does not readily evaporate or dry out. Excessive condensation in concealed spaces, like within a wall cavity, is that amount of liquid water that degrades the performance of the concealed material and causes damage.

12. Water Past Retaining Walls

Retaining and site walls and their associated drainage systems shall not allow unintended water to pass beyond, around, or through its designed or actual moisture barriers including, without limitation, any internal barriers, so as to cause damage. This standard does not apply to those portions of any wall or drainage system that are designed to have water flow beyond, around, or through them.

As described by this Performance Standard, retaining and site walls and their associated drainage systems are intended to control water to protect against damage. It is anticipated that some water will pass beyond the walls, but in a controlled manner.

Landscape walls are typically designed without moisture barriers and it is intended that water will pass these walls. This is not unintended water.

You can expect that some water will leak or migrate through retaining and site walls so that some wetness and/or efflorescence will be observed. Efflorescence is a form of chemical deposit of salts that travel with moisture. This condition is not an example of unintended water.

You should also anticipate that retaining walls are designed to retain soils that include moisture within them. Some of these walls are designed without pipes or other means to remove the water, which is a reflection of the primary purpose of these walls to retain the soil. Some deterioration of the retaining wall itself should be anticipated, and these walls will need to be replaced from time to time as their useful life is reached. For those walls with drainage systems behind them, it is important that you monitor and keep soil or other materials from blocking the outflows for the pipes, etc, which collect water from behind landscape retaining walls. You should also anticipate that some walls would have water leaking or migrating through the wall at intended locations, including weep holes, which control the flow of water through the wall.

13. Water Flow Around Retaining Walls

Retaining walls and site walls, and their associated drainage systems, shall only allow water to flow beyond, around, or through the areas designated by design.

See the above discussion of Performance Standard 12. Performance Standard 13 addresses the related question that water should be controlled by retaining and site walls, so that water flows where intended by the design.

With regard to any retaining and site walls included in the construction of your property, the design anticipates that some water will leak or migrate through and so some wetness and/or efflorescence will be observed. In other cases, the design incorporates drainage pipes and/or systems that carry water around and/or over the wall. Some walls will have water leaking or migrating through weep holes designed to control at least some of the flow of water through the wall.

14. Plumbing, Sewer and Utility System Leaks

The lines and components of the plumbing system, sewer system, and utility systems shall not leak.

This Performance Standard addresses the expectation that the plumbing, sewer and other utility systems intended to carry water, human waste and other materials should not leak. With proper use and proper maintenance of these systems, you should expect good performance consistent with this standard.

However, it should be anticipated that some leaks might occur in extreme conditions. Leaks would not be considered a violation of this standard if it is caused by freezing or other weather or manmade conditions greater than the original construction design criteria applicable to your home.

Faucet drips are not leaks addressed by this Performance Standard, but you should take steps to maintain your plumbing system to address this issue. Minerals may enter the line. Aerators on the faucets strain much of this from your water. Minerals caught in these aerators may cause the faucets to drip because washers wear more rapidly when they come in contact with foreign matter, and should be regularly cleaned and replaced. You can repair a dripping faucet by shutting off the water at the valve directly under the sink, then removing the faucet stem, changing the washer, and reinstalling the faucet stem. The shower head is repaired the same way. Replace the washer with another of the same type and size. You can minimize the frequency of this repair by remembering not to turn faucets off with excessive force. (Please note that some manufacturers do not use rubber washers.)

Toilet, sink or other plumbing clogs can be the source of leaks, and should be prevented through your proper use and maintenance of these systems.

The main causes of toilet clogs are the improper flushing of household items such as disposable diapers, excessive amounts of toilet paper, sanitary supplies, Q-tips, dental floss, and children's toys.

Improper garbage disposal use causes many plumbing clogs. Review information from the disposal manufacturer to use it properly. Always use plenty of cold water when running the disposal. This recommendation also applies to grease; supplied with a steady flow of cold water, the grease congeals and is cut up by the blades. If you use hot water, the grease remains a liquid, then cools and solidifies in the sewer line. Allow the water to run 10 to 15 seconds after shutting off the disposal.

You can usually clear clogged traps with a plumber's helper (plunger). If you use chemical agents, follow directions carefully to avoid personal injury or damage to the fixtures.

Clean a plunger drain stopper—usually found in bathroom sinks—by loosening the nut under the sink at the back, pulling out the rod attached to the plunger, and lifting the stopper. Clean and return the mechanism to its original position.

If you plan to be away for an extended period, you should drain your water supply lines. To do this, shut off the main supply line and open the faucets to relieve pressure in the lines. You may also wish to shut off the water heater. Do this by turning off the cold water supply valve on top and the gas control at the bottom. Drain the tank by running a hose from the spigot on the bottom to the basement floor drain. If you leave the tank full, keep the pilot on and set the temperature to its lowest or "vacation" setting. Check manufacturer's directions for additional hints and instructions.

In unusually frigid weather or if you will be gone more than a day or two, open cabinet doors to allow warm air to circulate around pipes. Use an ordinary hair dryer to thaw pipes that are frozen. Never use an open flame. Cover exterior pipes in extremely cold weather.

If a major plumbing leak occurs, the first step is to turn off the supply of water to the area involved. This may mean shutting off the water to the entire home. Then contact the appropriate contractor. All water leaks should be attended, along with water damage, within 24 to 48 hours to minimize damage and other consequences including potential mold growth.

We want to draw your attention to a water-saving regulation that went into effect in 1993, which prohibits the manufacture of toilets that use more than 1.6 gallons of water per flush. In the search for a balance among comfort, convenience, and sensible use of natural resources, the government conducted several studies. The 1.6-gallon toilet turned out to be the size that overall consistently saves water.

As a result of implementing this standard, flushing twice is occasionally necessary to completely empty the toilet bowl. Even though you flush twice on occasion, rest assured that overall you are saving water and we have complied with the law. Similarly, flow restrictors are manufactured into most faucets and all shower heads and cannot be removed.

Occasional cleaning of the aerators on your faucets (normally every three to four months) will allow proper flow of water. The water department controls the overall water pressure.

15. Plumbing, Sewer and Utility Line Corrosion

Plumbing lines, sewer lines, and utility lines shall not corrode so as to impede the useful life of the systems.

See the above discussion of Performance Standard 14. Performance Standard 15 addresses the related question that these systems should not corrode so as to impede the useful life of the system. This refers to the problem of blockage or breach of the lines by chemical reaction such that the lines cannot substantially perform their intended function. With proper use and proper maintenance of these systems, your home's systems should perform consistent with this standard. However, it should be expressly noted that corrosion or other damage caused by the disposal of chemical and/or toxic substances is not considered a violation of this standard. Similarly, corrosion caused by utility company unregulated additives is not considered a violation of this standard.

16. Sewer System

Sewer systems shall be installed in such a way as to allow the designated amount of sewage to flow through the system.

See the above discussion of Performance Standards 14 and 15. Performance Standard 16 addresses the related requirement that your sewer system should be installed to allow sewage to flow through the system as intended. With proper use and proper maintenance of this system, your home's system should perform consistent with this standard. However, it should be expressly noted that blockages of flow could be caused by the disposal of household or other items that the sewer system was not designed to carry through the system. Where flow is blocked or disrupted after original construction is completed, including by misuse, overuse, or uses other than as intended, such as by something improperly introduced into the system, it is not considered a violation of this standard.

17. Shower and Bath Enclosure Leaks.

Shower and bath enclosures shall not leak water into the interior of walls, flooring systems, or the interior of other components.

This Performance Standard addresses the matter of water that can cause damage when it leaks out of a shower or bath enclosure, where the water is not promptly cleaned up. With proper use and proper maintenance of your bath and/or shower enclosures, you should enjoy performance consistent with this standard.

However, you should be aware that experience teaches that leaks can result from the lack of proper maintenance and from misuse, such as the spilling of water during and following baths and showers, especially when used by young children. The shower and tub surrounds and enclosures are intended to keep water within the system to be carried out the drain, but it is essential that you dry all surface areas outside the surround by cleaning up water which travels over the top of the surround or through the enclosure.

Avoid hanging wet towels on corners of doors; as the weight can pull the door out of alignment and cause it to leak. To protect the floors, be sure that water from swinging doors and your body are captured on a rug or bath mat that you dry after each use.

For plastic enclosures and shower/tub surrounds, the moisture barrier consists of the visible surface and the sealant joints at the various changes in plane between wall planes and at the tub/shower pan or shower floor surface. These sealant joints must be maintained. This is also true of molded (one-piece) and panelized plastic assemblies. These assemblies can leak at uncaulked plumbing penetrations and perimeter joints. Panelized assemblies can also leak at panel-to-panel joints. It is important to maintain these caulking and sealant joints to protect against leaks.

For tile surface shower/tub surrounds, each wall plane is made up of many small pieces and/or tiles, usually with a hard grout in the joints between the individual pieces and/or tiles. The designed moisture barrier for tile systems with a mortar setting bed beneath the tile includes the tile and grout (which is sealed) and a waterproof membrane below the mortar bed. The tile and membrane is intended to divert water to an exit drain. Where tile enclosures include integral shower pans, membranes behind tile coverings can shed water into shower drains. More commonly, walls are tiled above separate shower pans or bathtubs. In this case, tile coverings, whatever the setting system, are the critical moisture barriers and must shed water into pans or tubs. Tile-to-fixture joints are not drainage joints and must be sealed. These seals must be maintained on a regular basis to perform as they are intended to resist water leaks.

The designed moisture barrier for tile systems without a mortar setting bed beneath the tile is the visible tile surface and all the grout joints, including at the various changes in plane between wall planes and the sealant joints at the tub/shower pan or shower floor surface. Joints in the changes of plane should be caulked in both mortar and non-mortar applications. This condition must be regularly checked and restored through maintenance consistent with information provided to you at the time of purchase of your home and as described in manufacturer's information.

You should expect that the shower and bath enclosures have been constructed such that water that hits the walls, floor and enclosure will be contained there and find its way down the open drain. Exceptions must obviously be made for the water that escapes past an improperly closed shower door or curtain or that drips off an open shower door or your foot as you step out of the shower or tub. These enclosures should continue to contain the water within them as long as the drains are open and the sealant joints are regularly and properly maintained. Sealant joint maintenance includes regular (annually or whenever sealant failure is apparent) removal of the existing sealant and replacement according to the sealant manufacturer's recommendations. Of particular importance is the requirement for clean and dry surfaces for proper sealant adhesion and the minimum curing time (minimum of 24 hours) before the shower or tub is used. Sealant and grout joint fillers should be repaired when splits, cracks, or holes are noted. Similar sealant maintenance is required with metal-framed and frameless glass enclosures.

18. Water through Ceramic Tile, Etc.

Ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components so as to cause damage.

Ceramic tile and tile countertops are functional and attractive components of your home, but it is important to understand their anticipated performance when they come into contact with water.

All of these non-membrane systems are water-resistant primarily as a result of the mass of the grout and/or mortar bed that will absorb a small amount of water and hold it until it can evaporate. Cracks in the grout joints are the primary concern for maintaining water resistance.

For example, kitchen and bathroom tile countertops have been grouted to resist the passage of moisture into underlying construction, and this should be your experience as long as the tiles and the grout joints are not cracked. Cracks in the grout joints are the primary concern for maintaining water resistance. This is in contrast to a tile shower that is expected to be waterproof. The counters and floors have been constructed to resist cracking but it is essential that you monitor these finishes, particularly around sinks and floor areas near exterior doors where moisture may be present.

It should be noted that these tile surfaces are not intended to carry standing water, and that condition should never be permitted. Tile surfaces have not been made to be waterproof and damage may occur to the underlying construction as a result. Tile countertops should be maintained reasonably dry.

You should expect that the ceramic tile or stone tile floors and countertops would resist the passage of moisture into underlying construction as long as the tiles and the grout joints are not cracked. The counters and floors have been constructed to resist cracking but it is the obligation of the homeowner to monitor these finishes, particularly in counter areas around sinks and floor areas near exterior doors where moisture may be present. Cracks will allow for water intrusion and should be resealed immediately as part of regular monitoring and maintenance of these components of your home.

19. Foundation and Slab Cracks

Foundations, load bearing components, and slabs, shall not contain significant cracks or significant vertical displacement.

This Performance Standard addresses the question of cracks in foundations, load bearing components and slabs. Some cracks will occur, and only significant cracks or significant vertical displacement is considered a violation of this standard. The term "significant vertical displacement" refers to what would create an unsafe tripping hazard condition.

It is important to understand that concrete is a commonly used, essential, building component suitable to meet a wide variety of purposes. We have used it in the construction of your home. You should anticipate that cracks occur in concrete, as a natural result of the curing process. In your home, you should expect the foundation and concrete slab on grade to have some cracks.

Our experience has taught us that significant cracks in concrete slab on grade construction are those that exceed **1/4 inch in width**.

For concrete slabs used as sub-flooring for floor finishes, significant cracks and displacement are those that are visible in the finished floor at a distance of six feet under normal daylight conditions.

In most cases where cracks occur, we will repair the condition by sealing of the crack rather than replacing the section.

20. Structural Safety of Foundations

Foundations, load bearing components, and slabs shall not cause the structure, in whole or in part, to be structurally unsafe.

See the above discussion of Performance Standard 19. Performance Standard 20 addresses the related requirement that your foundations, load bearing components and slabs should not be the cause of your home becoming structurally unsafe.

Foundations and load-bearing components, slabs, and structural systems supporting the structure of your home are intended to be sufficient to support the structure from collapse or other damage that renders the structure unsafe as determined by the government entity having responsibility. You should expect the foundation, load-bearing components and slabs to be constructed sufficiently to maintain the structure in a safe condition.

21. Soils/Chemical Deterioration of Foundations and Slabs

Foundations, load bearing components, and slabs, and underlying soils shall be constructed so as to materially comply with the design criteria set by applicable government building codes, regulations, and ordinances for chemical deterioration or corrosion resistance in effect at the time of original construction.

This Performance Standard addresses the requirement that your foundation, load-bearing components, slabs and underlying soils should be constructed so as to materially comply with the design criteria established by the government at the time your house is built. Where the local government establishes design criteria, your home has been designed and constructed so as to comply with these criteria.

22. Earthquake and Wind Load Resistance

A structure shall be constructed so as to materially comply with the design criteria for earthquake and wind load resistance, as set forth in the applicable government building codes, regulations, and ordinances in effect at the time of original construction.

Your home has been designed and constructed to materially comply with the design criteria for earthquake and wind load resistance, as set forth in the applicable locally adopted building code.

However, you should understand that notwithstanding material compliance with such design criteria, experience in California and elsewhere in the world has been that some damage may still occur in earthquakes and in major wind events. Drywall cracks and spalling of small areas of drywall compound are common as a result of earthquakes and major wind events. Such damages would not amount to a violation of this standard.

23. *Soils Damage to Structure*

Soils and engineered retaining walls shall not cause, in whole or in part, damage to the structure built upon the soil or engineered retaining wall.

This standard applies to soil conditions on your property and walls that have been engineered with the intention to retain soils and support the structure of your home. Neither soils nor engineered retaining walls shall cause damage to your home or components of its construction.

This standard applies only to those soils and engineered retaining walls upon which the structure is directly bearing. This standard does not apply to soils and retaining walls which do not support the structure; such as those used in landscapes including hillside areas.

It should be noted that this standard is not violated when damage results from an unforeseen act of nature including a weather condition, earthquake or manmade event which is in excess of the design criteria established for your home at the time of its original construction. For example, damage caused by a major earthquake, an area-wide landslide or a flood is not a violation of this standard.

24. Soils/Structural Safety

Soils and engineered retaining walls shall not cause, in whole or in part, the structure to be structurally unsafe.

This standard applies to soil conditions on your property and walls that have been engineered with the intention to retain soils on your property. This standard does not apply to load bearing walls that may also serve to retain soils as part of your foundation, but it is substantially similar to Standard Twenty, which applies to foundations, and load bearing walls.

Neither soils nor engineered retaining walls shall cause your home to become structurally unsafe. In plain English, to be "structurally unsafe" would be when occupancy in or around the building can cause injury or death to people as determined by the responsible local building official.

It should be noted that this standard is not violated when the problem results from an unforeseen act of nature including a weather condition, earthquake or manmade event which is in excess of the design criteria established for your home at the time of its original construction. For example, damage caused by a major earthquake, an area-wide landslide or a flood is not a violation of this standard.

25. Soils and Land Usable For Represented Purpose

Soils shall not cause, in whole or in part, the land upon which no structure is built to become unusable for the purpose represented at the time of original sale by the builder or for the purpose for which that land is commonly used.

It is important for you to understand the proper uses for the remainder of your property outside of the "footprint" of your home. It is also important to understand what we have done in the development of your property to prepare it for construction of your home and for your use and occupancy of your home.

As part of the disclosures prepared for the sale of your home, you will be provided information regarding the property.

It may or may not be appropriate to consider your property as a future location for adding a swimming pool or other improvement, and we make no representations to you regarding whether or not the property may accommodate a pool or other improvement without substantial additional engineering and preparation of the site, soils and property for that use.

It is also important to note that we make no representation about the future use of any adjacent hillside, creeks or other natural areas for purposes other than in the original unimproved condition at the time of sale.

Proper maintenance of your front, side and rear yard areas including the installation of appropriate landscaping. If you leave ground unlandscaped, it may erode with the passage of time and changing weather seasons. Correcting erosion that occurs after closing is a matter of homeowner responsibility.

26. Fire Protection Generally

A structure shall be constructed so as to materially comply with the design criteria of the applicable government building codes, regulations, and ordinances for fire protection of the occupants in effect at the time of the original construction.

Your home has been constructed to materially comply with the applicable fire protection design criteria in effect at the time your home was built.

You should make sure to properly maintain and use your home to avoid compromising the fire protection systems, including your smoke alarms which require regular checking and replacement of batteries and/or other parts. Read the manufacturer's manual for detailed information on the care of your smoke detectors.

If a smoke detector makes a chirping sound that is a sign that the battery needs to be replaced. Follow manufacturer instructions for installing a new battery. Most smoke detectors use a 9 volt battery.

For your safety, clean each smoke detector monthly to prevent a false alarm or lack of response in a fire. After cleaning, push the test button to confirm the alarm is working.

Smoke detectors are installed in accordance with building codes, which dictate locations. Homebuilder cannot omit any smoke detector and you should not remove or disable any smoke detector.

Homebuilder does not represent that the smoke detectors will provide the protection for which they are installed or intended. We will test smoke detectors during the orientation to confirm that they are working and to familiarize you with the alarm. You are responsible for obtaining fire insurance.

27. **Fireplaces, Chimneys and Fire Safety**

Fireplaces, chimneys, chimney structures, and chimney termination caps shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire outside the fireplace enclosure or chimney.

Your fireplaces and chimneys have been installed to materially comply with applicable codes intended to minimize the risk of fire. With proper use and proper maintenance of these components of your home, you should expect good performance consistent with this standard.

Creosote and other wood-burning by-products accumulate inside the flue over a period of time. This build-up can be a fire hazard. The way you use your fireplace and the type of wood you burn determine the frequency of your chimney cleanings. For instance, burning soft woods or improperly seasoned woods necessitates more frequent cleaning. Hire a qualified chimney sweep for this cleaning.

If the spark arrester becomes clogged, the diminished air flow will affect the performance of the fireplace and may be a fire hazard. Have the arrester cleaned professionally when needed.

To avoid unreasonable fire danger, it is essential that you pay close attention to proper use and maintenance of your fireplaces and chimneys. You should familiarize yourself with all information provided to you regarding specific maintenance requirements and steps that you should take for your home. The maintenance materials provided to you in the sale of your home provides information to get the most out of your home.

28. Electrical/Mechanical Systems and Fire Safety

Electrical and mechanical systems shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire.

Under normal operation the mechanical and electrical systems as installed by the Builder and if properly maintained and operated by you should not cause a fire.

29. Plumbing and Sewer Systems

Plumbing and sewer systems shall be installed to operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action may be brought for a violation of this subdivision more than four years after close of escrow.

This Performance Standard addresses the requirement that upon the completion of original installation, your plumbing and sewer systems should operate properly for their intended use. With proper use and proper maintenance of these components of your home, you should expect good performance consistent with this standard. See discussion of Performance Standards 14 and 15 above.

30. Electrical Systems

Electrical systems shall operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action shall be brought pursuant to this subdivision more than four years from close of escrow.

The electrical system in your home shall operate at all times for intended use. However, any problems with the system related to overloading or misuse of the system are not a violation of this standard. In addition, it is not a violation of this standard where an outside independent cause results in a power system interruption in electrical supply by your power provider. Power surges are the result of local conditions beyond the control of Homebuilder and problems caused by surges are not considered a violation of this Performance Standard. These can result in burned-out bulbs or damage to sensitive electronic equipment such as TVs, alarm systems, and computers. Damage resulting from lightning strikes is also not considered a violation of this Performance Standard.

Breakers trip because of overloads caused by plugging too many appliances into the circuit, a worn cord or defective appliance, or operating an appliance with too high a voltage requirement for the circuit. If any circuit trips repeatedly, unplug all items connected to it and reset. If it trips when nothing is connected to it, you need an electrician. If the circuit remains on, one of the items you unplugged is defective and will require repair or replacement.

31. Cracks in Sidewalks, Etc

Exterior pathways, driveways, hardscape, sidewalls, sidewalks, and patios installed by the original builder shall not contain cracks that display significant vertical displacement or that is excessive. However, no action shall be brought upon a violation of this paragraph more than four years from close of escrow.

This Performance Standard addresses the matter of cracks in originally installed hardscape. It is important to understand that concrete is a commonly used, even essential, building component for a wide variety of purposes, and we have used it in the construction of your home. You should anticipate that cracks occur in concrete, as a natural result of the curing process. Cracks occur in other building materials, and should be anticipated.

This standard addresses the question of "significant" cracks and "significant" vertical displacement. The term "vertical displacement" refers to an offset that what would create an unsafe tripping hazard.

On your property, you should expect the pathways, driveways, hardscape, sidewalks and patios to have some cracks. Hairline cracks are very typical and not considered significant unless a noticeable area of concrete hardscape is affected and leads to further deterioration of the surface or integrity of the slab.

Experience has taught us that cracks in exterior pathways, driveways, hardscape sidewalls, sidewalks and patios are significant when they produce vertical displacement of more than 1/4 inch and/or a crack wider than 1/4 inch.

As lesser cracks occur, you should seal them with a waterproof concrete caulk (available at hardware or home improvement stores) to prevent moisture from penetrating to the soil beneath.

For cracks with a vertical displacement more than 1/4" but less than 1/2", the repair will entail filling the crack with concrete and feathering out the patch to achieve a surface slope of 1% or less. For cracks with over 1/2" vertical displacement the concrete section will be removed and replaced to the nearest joint line with the finish to approximately match the existing original areas. The repair will be made in an effort to provide matching color and texture to the extent possible without removing other sections beyond the crack.

Protection of your driveway requires that you prohibit commercial or other extremely heavy vehicles such as moving vans and other large delivery trucks from pulling onto your driveway. Driveways are appropriate for the normal weight of conventional residential vehicle use only.

32. **Cracks and Separations in Stucco, Siding, Walls, Etc.**

Stucco, exterior siding, and other exterior wall finishes and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall not contain significant cracks or separations.

The finish of all exterior walls act as primary barriers to water intrusion into the exterior walls and building structure. As such, cracks and separations in the exterior wall finish can cause water to enter the wall and building.

In our experience, "significant" cracks and separations in exterior walls are those that allow enough water/vapor to penetrate to the secondary barrier such that the secondary barrier (e.g. house wrap, building paper, flashing) cannot perform its intended function. A proper repair to such conditions will be to seal the crack and cosmetically repair the appearance of the immediate area. However, paint touch up with the originally applied paint cannot be guaranteed to match existing paint in undamaged areas, given normal wear and tear affecting the color of paint.

With stucco surfaces, surface expansion and contraction should be anticipated, along with cracks which develop in the stucco. This is normal and does not reduce the function of the stucco in any way.

In normal performance, some rain water will be absorbed in the stucco system and the system is intended to drain excess moisture through the weep screed. To allow this system to perform as intended, proper maintenance of your home includes taking steps to keep dirt and concrete flatwork below the screed. Do not pour concrete or masonry over the stucco screed or right up to the foundation.

In addition, you should not spray water on to stucco surfaces with hoses, irrigation systems or other watering systems. Check the spray from the irrigation system frequently to make certain that water is not spraying or accumulating on stucco surfaces. If these proper use and maintenance steps are not followed, water leaks or other damage can occur.

33. Installation of Manufactured Products

To the extent not otherwise covered by these standards, manufactured products, including, but not limited to, windows, doors, roofs, plumbing products and fixtures, fireplaces, electrical fixtures, HVAC units, countertops, cabinets, paint, and appliances shall be installed so as not to interfere with the products' useful life, if any.

For purposes of this Performance Standard, "useful life" means a representation of how long a product is warranted or represented, through its limited product warranty or any written representations, to last by its manufacturer, including recommended or required maintenance. If there is no representation by a manufacturer, a builder shall install manufactured products so as not to interfere with the product's utility.

You should expect that Homebuilder's installation of manufactured products in your home will not interfere with such products' useful life, consistent with this standard. However, any problems that you experience with the product itself, unrelated to installation, will not be Homebuilder's responsibility. Please consult all applicable manufacturers' warranties and product information and bring any concerns to the manufacturer's attention.

You should also note that it is important for you to perform all recommended and required maintenance in order for a product to last its "useful life" and to benefit from applicable warranties.

34. Heating System Performance

Heating, if any, shall be installed so as to be capable of maintaining a room temperature of 70 degrees Fahrenheit at a point three feet above the floor in any living space.

This Performance Standard addresses the operation of the heating system originally installed in your home. You should expect that your home has been constructed with the government building code-mandated combination of heat retention systems (e.g. insulation) and heat generating capacity to maintain each of the occupiable/finished rooms at a minimum temperature of 70 degrees Fahrenheit measured three feet above the floor.

Exterior openings must be closed for the heating system to perform properly. The heating apparatus must be maintained according to the system manufacturer's instructions, including cleaning/replacing furnace filters regularly.

A clean filter will help to keep your home clean and reduce dusting chores. Remember to change or clean the filter monthly during the heating season (year-round if you also have air conditioning). A clogged filter can slow airflow and cause cold spots in your home. Although it takes less than one minute to change the filter, this is one of the most frequently overlooked details of normal furnace care. If you have a permanent, washable, removable filter, you need to clean this monthly. Use water only to clean the filter, tap to dry or air dry, and leave unit off for a brief period. Do not use soaps or detergents on the filter.

The heating system was designed with a furnished home in mind. If you move in during the cooler part of the year and have not yet acquired all of your draperies and furnishings, the home may seem cooler than you would expect.

Heat register covers are removable and adjustable. You are responsible for adjusting the dampers in these covers to regulate the heat flow within the home. Registers in the rooms farther away from the furnace will usually need to be opened wider. Avoid closing the registers to unused rooms. It is better to leave registers and doors open to heat and cool your home as an entire envelope.

For maximum comfort and efficient energy use, arrange furniture and draperies to allow unobstructed airflow from registers and to cold air returns.

35. Air Conditioning And Title 24

Living space air-conditioning, if any, shall be provided in a manner consistent with the size and efficiency design criteria specified in Title 24 of the California Code of Regulations.

This Performance Standard requires that originally installed air conditioning be provided for the living areas of your home in a manner consistent with the design criteria specified in Title 24 of the California Code. Your home has been designed and constructed to meet this Standard.

Air conditioning can greatly enhance the comfort of your home, but if it is used improperly or inefficiently, wasted energy and frustration will result. Your air conditioning system is a whole-house system. The air conditioning unit is the mechanism that produces cooler air. The air conditioning system involves everything inside your home including, for example, drapes, blinds, and windows.

Your home air conditioning is a closed system, which means that the interior air is continually recycled and cooled until the desired air temperature is reached. Warm outside air disrupts the system and makes cooling impossible. Therefore, you should keep all windows closed. The heat from the sun shining through windows with open drapes is intense enough to overcome the cooling effect of the air conditioning unit. For best results, close the drapes on these windows.

Time is very important in your expectations of an air conditioning system. Unlike a light bulb, which reacts instantly when you turn on a switch, the air conditioning unit only begins a process when you set the thermostat.

If evening cooling is your primary goal, set the thermostat at a moderate temperature in the morning while the house is cooler, allowing the system to maintain the cooler temperature. The temperature setting may then be lowered slightly when you arrive home, with better results. Once the system is operating, setting the thermostat at 60 degrees will *not* cool the home any faster and can result in the unit freezing up and not performing at all. Extended use under these conditions can damage the unit.

Maintain the air conditioning compressor in a level position to prevent inefficient operation and damage to the equipment.

If a humidifier is installed on the furnace system, turn it off when you use the air conditioning; otherwise, the additional moisture can cause a freeze-up of the cooling system.

The manufacturer's manual specifies maintenance for the condenser. Review and follow these points carefully. Since the air conditioning system is combined with the heating system, follow the maintenance instructions for your furnace as part of maintaining your air conditioning system.

Temperatures may vary from room to room by several degrees Fahrenheit. This is due to such variables as floor plan, orientation of the home on the lot, type and use of window coverings, and traffic through the home.

36. Noise Transmission

Attached structures shall be constructed to comply with inter-unit noise transmission standards set by the applicable government building codes, ordinances, or regulations in effect at the time of the original construction. If there is no applicable code, ordinance, or regulation, this paragraph does not apply. However, no action shall be brought pursuant to this paragraph more than one year from the original occupancy of the adjacent unit.

This Performance Standard addresses the existence of noise transmission standards which may or may not have been established by the local government to apply to your home at the time of original construction.

37. Irrigation Systems And Drainage

Irrigation systems and drainage shall operate properly so as not to damage landscaping or other external improvements. However, no action shall be brought pursuant to this paragraph more than one year from close of escrow.

This Performance Standard addresses operation of the irrigation and drainage systems on your property. With proper use and proper maintenance of these systems, you should expect good performance consistent with this standard. See discussion above of Performance Standards 7, 9, 12 and 13.

With regard to landscaping, experience teaches that irrigation systems can cause damage through improper watering settings. Any irrigation system installed as part of the original construction of your home and property has been established for the particular landscaping materials installed as part of original construction. Further, the amounts of watering have been set with reference to weather conditions at time of close of escrow or such other time as the system is completed and turned over to you for operation. It is important for you to familiarize yourself with the operation of the irrigation system, to properly monitor and revise the settings of the irrigation system. Before adding additional landscaping, closely consult with professionals regarding what plant materials can be grown in particular locations in your yard given existing irrigation system conditions. Be careful not to add plant materials to areas of your yard that do not have compatible watering needs with other plant materials in the same watering or drainage zones.

With regard to other external improvements, irrigation systems that supply too much water or that spray water on to improvements such as wood decks or building siding material can damage the improvements. Such damage would be directly attributable to improper use of the irrigation system and/or improper maintenance of the system, and such damage would not be the responsibility of Homebuilder. Similar to steps you need to take to monitor and maintain your irrigation system for landscape materials, you should monitor, adjust and maintain your irrigation systems to provide the proper watering levels and prevent water spray onto external improvements.

Generally, proper use of the irrigation system (watering) consists of supplying the proper amount of water to sustain the plant materials without over watering and not spraying onto the house itself, wood decks, fences or fixed outdoor furniture. Water from the irrigation system should not collect in low areas or cause surface flow across planted areas sufficient to displace soil or mulch materials.

You should observe and adjust the spray patterns of the irrigation system at least monthly, particularly as weather or property conditions change. At such times, you need to adjust irrigation system settings and sprinklers for proper watering levels and so the sprinklers do not spray on improvements or the hardscape.

Your lot has been graded to drain, based on standards established by the local government for drainage of rain and irrigation water. Failure to maintain drainage may cause serious structural failures in your home, water damage to interiors, or even financial liability to neighboring property. These drainage conditions are intended to avoid soil problems and move water away from the foundation of your house. You should be aware, however, that your lot may have expansive soil which expands and contracts with changes in moisture content. While this condition is relatively common in California, the expansiveness of the soil must be considered when you install your landscaping and outdoor improvements or otherwise change your lot. To enjoy good performance consistent with this Performance Standard, it is important to maintain original grading and drainage contours. If you install landscaping, patios, walls, walkways or any other improvements, it is important to maintain good drainage away from your home. Before installing improvements, consult professionals such as a licensed architect and/or engineers.

Typical finish grading includes swales at the back and sides of the home. These are depressions in the soil that allow surface water to flow off the lot (typically the water flows from around the back and sides

to the front and to the street). So that surface water is diverted away from your foundation, it is important that there be slope (or pitch) away from the foundation towards the swale. Drains and/or sloped concrete patios and walkways need to be incorporated in your improvements, as needed, to maintain good drainage away from the foundation. Remember – do not block or level out the swales (depressions in the soil) unless you make an acceptable provision for the proper drainage of surface water off your lot in such a way that it doesn't cause damage to neighboring property.

Some lots may include a system of underground drainage with grates/inlets that allow water to flow into a piped drainage system. Make sure that the grates and inlets are maintained and kept free of debris.

Some lots may include a “closed roof drainage system.” These are intended to carry rain water from the roof downspouts out to the street gutter. Three or four times a year (especially prior to rainy weather) all roof gutters and downspouts should be cleaned. The drain lines should be flushed with a strong, steady flow of water to ensure that the drain lines are not clogged with debris that would impede water flow. Homebuilder cannot assume responsibility for the cleaning, inspection, or maintenance of the system. Your routine maintenance should commence when you close escrow or move in (whichever occurs first).

38. Untreated Wood Posts

Untreated wood posts shall not be installed in contact with soil so as to cause unreasonable decay to the wood based upon the finish grade at the time of original construction. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

This Performance Standard addresses the importance of minimizing and avoiding contact between moist soils and untreated wood posts, so that unreasonable decay does not occur due to original construction or through changes caused by your use and/or maintenance of your property. The reference to "unreasonable decay" is an acknowledgement that wood will decay as part of normal performance, especially out in the elements. In the construction industry, steps are taken to avoid unnecessarily rapid deterioration of wood where it may come in contact with moisture from soils. In our experience, "unreasonable decay" to untreated wood posts in contact with the soil means decay that reduces the ability of a post to perform its structural function within the first two years of installation.

With proper use and proper maintenance of your home, you should expect good performance consistent with this standard. As part of original construction, we have taken steps to avoid this condition. Wood posts should either be cedar, redwood, pressure treated, or otherwise treated with water repellants to help prevent decay of wood posts in contact with the soil or separated from such contact.

Where we have installed wood posts, please note the separation of the posts from contact with the soils. This separation should be preserved as part of regular monitoring and maintenance of your home. When landscaping work is done on your property, as well as following stormy weather, please make sure to check that this separation is preserved to avoid problems with wood posts decaying from the moisture in soils.

Should original construction conditions lead to a violation of this standard, Homebuilder will repair the condition by cutting out any rotted or unreasonably decayed portion of the post and replace it.

39. Steel Fences

Untreated steel fences and adjacent components shall be installed so as to prevent unreasonable corrosion. However, no action shall be brought pursuant to this paragraph more than four years from close of escrow.

This Performance Standard addresses the original installation of untreated steel fences and associated components so as to prevent unreasonable corrosion that affects the performance of these components. The reference to "unreasonable corrosion" is an acknowledgement that some corrosion should be anticipated in the course of normal performance. Such anticipated corrosion is not a violation of this Standard.

Untreated steel fences are those that are neither galvanized nor painted to resist corrosion. Visible rusting is to be expected on such fences. You should expect that any such fences have been installed to minimize contact with moist soils and other conditions to prevent unreasonable corrosion. In our experience, unreasonable corrosion would be that which would weaken the fence so that it cannot perform its intended function of separating one area of property from another.

With proper use and proper maintenance of your home, you should expect good performance consistent with this standard. As part of original construction, we have taken steps to avoid this condition. In our construction, we use either corrosive resistant steel, install the steel in a minimum of two inches of concrete between the steel and moist soils, and/or have corrosion-resistant coating applied to resist corrosive effects.

Wrought iron is subject to rusting, if it is not maintained. Use touch-up paint on any scratches or chips. Inspect the fence twice a year and touch-up as needed, then plan to repaint the entire fence every one to two years to keep it looking its best. Prevent sprinklers from spraying your wrought iron fence or rails. Check monthly to confirm that water does not stand around the fence posts. Make corrections to drainage as needed to prevent this, as it can cause damage which would not be considered a violation of this Performance Standard.

Should there be an original construction-related violation of this Performance Standard, Homebuilder shall replace those posts or sections of the fence to restore the needed strength of the fence.

40. Painting Building Surfaces

Paint and stains shall be applied in such a manner so as not to cause deterioration of the building surfaces for the length of time specified by the paint or stain manufacturers' representations, if any. However, no action shall be brought pursuant to this paragraph more than five years from close of escrow

This Performance Standard addresses the original application of paint and stains in a manner that does not cause premature deterioration of the building surfaces for the time represented by the product manufacturer. If the product manufacturer has established any time periods, this information should be found in the product manufacturer's materials.

Paints and stains have a limited life. For this reason, regular and appropriate maintenance and proper use is essential to the lasting performance of paints and stains. Normal deterioration and wear and tear of paints and stains is anticipated and will not be considered a violation of this Standard.

Because of changes in the formula for paint (such as the elimination of lead to make paints safer), painted surfaces must be washed gently using as little water as possible. Avoid abrasive cleaners, scouring pads, or scrub brushes. Flat paints show washing marks more easily than gloss paints do. Often better results come from touching up rather than washing the paint.

Regular attention will preserve the beauty and value of your home. Check the painted and stained surfaces of your home's exterior annually. Repaint before much chipping or wearing away of the original finish occurs; this will save the cost of extensive surface preparation.

Plan on refinishing the exterior surface of your home approximately every two to three years or as often as your paint manufacturer suggests for your area and climate. Climatic conditions control the chemical structure of the paint used on the exterior. Over time, this finish will fade and dull a bit. Depending on the exposure to weather of each surface, the paint on some parts of your home may begin to show signs of deterioration sooner than others.

When you repaint the exterior of your home, begin by resetting popped nails and removing blistered or peeling portions of paint with a wire brush or putty knife. Sand, spot with primer, and then paint the entire area. Use a quality exterior paint formulated for local climate conditions.

Avoid having sprinklers spray water on the exterior walls of your home. This will cause blistering, peeling, splintering, and other damage to the home. However, you should expect normal fading of exterior paint or stain caused by the effects of sun and weather, which is not a violation of this Performance Standard.

Should it be necessary to repair an area of your home due to a violation of this Performance Standard, the repair will be limited to the limited surface area which is directly affected. Paint touch-up will be visible under certain lighting conditions.

Because of wood characteristics, color variations will result when stain is applied to wood. This is natural and requires no repair. Today's water-base paints often make wood grain visible on painted trim.

With proper use and proper maintenance of your home, you should expect good performance consistent with this standard. Should original application of paint and stains result in a violation of this Performance Standard, Homebuilder will repair the specific area by preparation and repainting or re-staining to restore the surface to meet the product manufacturer's representations regarding the time period the surface should last without repainting or resealing. The time period shall be calculated from the date of original

installation, not from the date of the repair.

41. Falling Roofing Materials

Roofing materials shall be installed so as to avoid materials falling from the roof.

This Performance Standard addresses the original installation of roofing materials to prevent such materials from falling from the roof. With proper use and proper maintenance of your home, you should expect good performance consistent with this standard.

Should original installation of roofing materials cause such materials to fall, Homebuilder will repair or replace such materials.

42. Landscaping

The landscaping systems shall be installed in such a manner so as to survive for not less than one year. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

This Performance Standard addresses the installation of landscaping systems so that landscaping will survive for not less than one year after installation. With proper use and proper maintenance of these systems, you should expect good performance consistent with this standard. See the discussion above of Performance Standards 7, 9, and 37.

Plant materials are divided into Annual and Perennial types. Annual plants are those that go through their entire life cycle in one year or less. Perennials are those that have a life cycle of more than one year. You can expect the perennial landscape material installed with the original construction to have been installed so that with proper care by you, it will survive for a minimum of one year. In the original installation of landscape systems and landscape material, we have considered an appropriate match between conditions, the irrigation system and plant materials. Before adding new landscape materials or making changes in the irrigation system, please make sure to consult professionals to verify that changes won't cause problems for either originally installed landscape materials or the system itself.

You should also anticipate that "annual" plant materials would only last for one year's growing season before naturally reaching the end of the annual growing or life cycle. This is a natural process and it is not considered a violation of this Performance Standard.

Proper care of all plant materials includes applying fertilizer at the recommended rates and frequencies, keeping weeds and invasive plants from overwhelming the installed plant materials and operating installed irrigation systems to provide the intended water amounts. You will need to seasonally adjust the amount of water applied to the plant materials with relatively more water required in warm, dry periods compared to cooler, damper ones.

Should any plant materials that have been properly maintained by you fail to survive for one year, Homebuilder will replace them with new materials of approximately the same size or larger than that which was originally installed.

Do not allow edging around decorative rock or bark beds to dam the free flow of water away from the home. You can use a non-woven landscape fabric between the soil and rock or bark to restrict weed growth while still permitting normal evaporation of ground moisture.

Erosion is of special concern in drainage swales. If swales become filled with soil runoff, they may not drain the rest of the yard, causing further problems. Correcting erosion is your responsibility. You may need to protect newly planted seed with erosion matting or reseed to establish grass in swales. It can take several years to fully establish your lawn in such challenging areas.

Place no plants of any type or sprinkler heads within 5 feet of your home.

You are responsible for changes to the drainage pattern made by any landscape, concrete, deck, or pool contractor. Discuss drainage with any company you hire to do an installation in your yard. Do not permit them to tie into existing drainage pipes without approval from Homebuilder.

If lawn seeding is part of your home purchase, consider this just the first step in establishing your yard. Remember that the forces of nature are far stronger than grass seed. You will need to overseed at some point, perhaps more than once. Heavy storms can cause washouts and erosion that you will need to correct. It generally takes at least three growing seasons to establish a good lawn, longer if weather conditions are difficult or if you do not have the time to devote to lawn care. Before over-seeding, remember to fill any slight depressions with a light layer of topsoil. Minimize traffic of all kinds on newly seeded areas and avoid weed killer for at least 120 days. Keep the seed moist, not wet.

Newly placed sod requires extra water for several weeks. Water in the cool part of the day (ideally just before sunrise) at regular intervals for the first three weeks. Be aware that new sod and the extra watering it requires can sometimes create drainage concerns (in your yard or your neighbor's) that will disappear when the yard is established and requires normal watering.

You are responsible for routine cleaning and adjusting of sprinkler heads as well as shutting the system down in the fall. Failure to drain the system before freezing temperatures occur can result in broken lines, which will be your responsibility to repair.

If pre-existing mature trees have been preserved on your property, these trees are not covered by this Performance Standard. Further, it should be understood that mature trees located on construction sites can suffer damage from construction activities, which manifest months after the completion of construction. Your maintenance of these mature trees should include maintaining mulch around their root base and avoiding tilling or planting flower beds around them. This is especially important while trees are recovering from the construction process.

43. **Ceramic Tile**

Ceramic tile and tile backing shall be installed in such a manner that the tile does not detach.

This Performance Standard addresses the installation of ceramic tile and tile backing so that the tile does not detach. With proper use and proper maintenance, you should expect good performance consistent with this standard. See the discussion above of Performance Standards 17 and 18.

Should tile become loose and pull away from its application as a result of original installation, Homebuilder will re-attach the individual tile or tiles. Proper maintenance of the grout between the tiles is the responsibility of the homeowner, and this should be regularly monitored and addressed to maintain grout between tiles.

44. Dryer Ducts

Dryer ducts shall be installed and terminated pursuant to manufacturer installation requirements. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow

This Performance Standard addresses the installation of dryer ducts for use in your laundry area identified for use of your clothes dryer. With proper use and proper maintenance, you should expect good performance consistent with this standard. See the discussion above of Performance Standards 17 and 18.

Appliances vary widely in capacity and operating requirements. Homebuilder has constructed your home so that it should accommodate the needs of modern dryers sold by the major manufacturers. The 2001 California Mechanical Code, Section 504, regulates exhaust ducting for residential clothes dryers. It requires 4-inch minimum diameter ducts, requires smooth-interior metal ducts within construction, and limits total duct length to 14 feet maximum with no more than two 90-degree elbows.

However, you should consult your appliance supplier before assuming that it is appropriate for use in your home. In addition, dryer ducts are specified by the appliance manufacturer and should be installed by the homeowner according to the manufacturer's requirements.

45. **Health Hazards**

Structures shall be constructed in such a manner so as not to impair the occupants' safety because they contain public health hazards as determined by a duly authorized public health official, health agency, or governmental entity having jurisdiction. This paragraph does not limit recovery for any damages caused by a violation of any other paragraph of this section on the grounds that the damages do not constitute a health hazard.

This Performance Standard addresses public health hazards. Any health hazards created by causes other than the original construction of your home are not considered violations of this Performance Standard.

46. **Other Building Functions and Components**

The standards set forth in this chapter are intended to address every function or component of a structure. To the extent that a function or component of a structure is not addressed by these standards, it shall be fall below these standards if it causes damage to your home.

This final Performance Standard relates only to functions or components of your home that are not addressed in the above Performance Standards. For any such items, this Performance Standard requires that such function or component related to the original construction of your home not cause damage to your home.
