

SECTION I DEFINITIONS

Homeowner means the person(s) who hold title to the Home, **Home** means the dwelling and does not include outbuildings nor any appurtenant structure or attachments to the dwelling, other than attached garages or carports (SECTION VIII Exclusions), and **Builder** means, U S Construction & Developments Consultants, LLC, d/b/a Swan Custom Builders, the Builder as listed on the Certificate of Warranty Coverage. **Effective Date of Warranty** is Homeowner's closing date, first title transfer, after final inspection approval on Homeowner's construction loan or the date Homeowner or anyone else first occupied the Home if that was before closing. For FHA/VA homes, the Effective Date of Warranty is the date of closing. **Certificate of Warranty Coverage** is the document which provides proof of warranty coverage for a certain address and the coverage provided by Homeowner's Builder. **Warranty Term** is the period during which a warranted Defect must first occur in order to be covered hereunder, and is that period which begins on the Effective Date of Warranty as defined above and ends one, two, four, or ten years thereafter. **Defect** is defined in each instance as a failure to meet the Construction Quality Standards for workmanship and systems as set forth in this Agreement. **Builder Application for Home Enrollment** means the Builder Application for Home Enrollment Form signed by Homeowner and Homeowner's Builder before the Home was enrolled in the Builder program. **Structural Defect** is defined as actual physical damage to the designated load-bearing elements of the Home caused by failure of such load-bearing elements which affects their load-bearing functions to the extent that Homeowner's Home becomes unsafe, un-sanitary, or otherwise unlivable. All four parts of this definition must be satisfied in order for a condition to qualify as a **Structural Defect**. This coverage is the same as that contained in regulations of the Department of Housing and Urban Development in effect at the time of the issuance of this Warranty. This is coverage for catastrophic failure of load-bearing elements of Homeowner's Home. The designated load-bearing elements that are covered under this structural warranty are:

1. Foundation systems and footings;
2. Beams;
3. Girders;
4. Lintels;
5. Columns;
6. Roof sheathing only if Homeowner's Home has original FHA/VA financing still in effect;
7. Walls and partitions;
8. Roof framing systems; and
9. Floor systems.

Examples of elements not covered by this structural warranty which are deemed NOT to have Structural Defect potential are:

1. Non-load-bearing partitions and walls;
2. Wall tile or paper, etc.;
3. Plaster, laths, or drywall;
4. Flooring and sub-flooring material;
5. Brick, stucco, stone or veneer;
6. Any type of exterior siding;
7. Roof shingles, roof tiles, sheathing, and tar paper;
8. Heating, cooling, ventilating, plumbing, electrical and mechanical systems;
9. Appliances, fixtures or items of equipment;
10. Doors, trim, cabinets, hardware, insulation, paint, stains; and
11. Basement and other interior floating, ground-supported concrete slabs.

SECTION II EXPRESS LIMITED WARRANTY: ONE AND TWO YEAR

If Homeowner's Certificate of Warranty Coverage indicates Builder is providing One and Two Year Coverage, for one year from the Effective Date of Warranty Builder warrants that Homeowner's Home will be free from Defects in materials and workmanship as defined in the Construction Quality Standards in Section IX; and for two years from the Effective Date of Warranty, Builder warrants that Homeowner Home will be free from Defects in the electrical, plumbing, and mechanical systems to the extent stated in the same Construction Quality Standards.

SECTION III REPORTING A ONE YEAR WORKMANSHIP OR TWO YEAR SYSTEMS DEFECT

If Homeowner believe Homeowner's Home has a Defect that is covered under Homeowner's Builder's One Year Workmanship or Two Year Systems Warranty, which occurred during the applicable Warranty Term, Homeowner must first write a letter to Homeowner's Builder listing the specific warranty Defect(s) and the date the Defect(s) occurred. Do this as soon as Homeowner notices a warranty problem and before Homeowner's Warranty Term expires. Builder should perform or pay for (at their option) these warranty repairs if a Defect occurs.

Once Homeowner have written to Builder, if repairs are not made within sixty (60) days, complete the following steps (unless Homeowner's Warranty Term will expire within those sixty (60) days, in which case, take these steps immediately:

1. Complete the Notice of complaint Form, which is found at the back of this Warranty Booklet.
2. Send one copy of the Form to Builder. We recommend Homeowner send it certified mail, *return receipt requested*.
3. Send one copy of the Form, a copy of Homeowner's Certificate of Warranty Coverage, and a copy of all correspondence between Homeowner and Builder about the warranty problem in question to:

U S Construction & Development Consultants, LLC, Claim Form
d/b/a Swan Custom Builders
6200 Savoy, Suite 500
Houston, Texas 77036

Builder recommends Homeowner send this information by certified mail, *return receipt requested*.

All three of these steps must be completed. Also, Builder cannot initiate work on Homeowner's warranty problem with a phone call; Builder must have written documentation. In addition, Builder must receive Homeowner's Notice of Complaint Form no later than 30 days after the expiration of Homeowner's warranty. Complaints filed after that date will be denied because Homeowner's warranty coverage will have expired.

If Builder and Homeowner are unable to resolve Homeowner's differences, Homeowner must arbitrate Homeowner's dispute (see SECTION VI ARBITRATION). Builder will provide a form to request arbitration after Homeowner have followed the above procedure.

In summary: The reporting procedures described above must be completed prior to the applicable warranty's expiration date, and all notices must be received by Builder Customer Service no later

than 30 days after Homeowner's warranty's expiration date. Warranty coverage for any Notice of Complaint received after this date will be denied, and Builder will have any obligation to Homeowner for the repair of these Defects. Delays caused by Homeowner that would make it impossible for Builder to collect reimbursements will void Homeowner's warranty coverage. The time limits are a material condition of Homeowner's Warranty.

WHAT TO IN THE CASE OF AN EMERGENCY: An emergency is a condition which if not immediately repaired may cause danger to the Home or its occupants. If Homeowner have a One or Two Year Warranty coverage emergency, Homeowner must contact Builder immediately. Homeowner must contact Builder Customer Service at **(713) 532-3020** in order to receive authorization to make any emergency repairs. If Homeowner have Ten Year Structural Warranty coverage emergency, Homeowner must contact Builder Customer Service in order to receive authorization for any emergency repairs. If Builder is not available for emergency authorization, 1) Homeowner must make minimal repairs until authorization for more extensive repairs has been approved, 2) Homeowner must take action in order that further damage can be mitigated, and 3) Homeowner must report the emergency to Builder Customer Service office on the next business day. Any unauthorized repairs will not be reimbursed unless Homeowner has followed the above procedures.

SECTION IV EXPRESS LIMITED WARRANTY: TEN YEAR

For ten years from the Effective Date of Warranty Builder warrants Homeowner's Home against a Structural Defect. A Structural Defect is defined in Section I.

SECTION V REPORTING A STRUCTURAL DEFECT

If Homeowner believe Homeowner's Home has a Structural Defect that is covered under Homeowner's Structural Warranty as defined in Section I:

1. Complete the Notice of Claim Form, which is found at the back of this Warranty Booklet. Fully describe the nature of the Structural Defect and the date Homeowner first noticed it on the Form.
2. For each claim, send a copy of Homeowner's completed Claim Form, a copy of Homeowner's Certificate of Warranty Coverage payable to the Builder stated on Homeowner's Certificate of Warranty Coverage to:

**U S Construction & Development Consultants, LLC
d/b/a Swan Custom Builders
6200 Savoy, Suite 500
Houston, Texas 77036**

We recommend Homeowner send this information by certified mail, *return receipt requested*.

Builder is entitled to assess claimed Structural Defects and decide upon appropriate repair plan. Builder is also entitled to choose to repair or replace, or to pay Homeowner the reasonable value of the repair or replacement of a covered Structural Defect.

Except for authorized emergency repairs as defined in Section III of this Warranty Booklet, do not repair (or cause the repair of) a claimed Structural Defect before Builder has an opportunity to inspect the Defect. Doing so will make it impossible for Builder to assess whether the Structural Defect was covered by Homeowner's warranty; whether the repair Homeowner performed or caused to be performed was cost-effective, necessary, and effective; and whether Builder would have been able to solve the problem in another way. As a result, the Builder will not accept, nor will the arbitrator be able to award to Homeowner, any claimed Structural Defect that Homeowner have had repaired or replaced. In addition,

Homeowner will not be reimbursed for any costs or expenses Homeowner undertake to investigate a Structural Defect such as, but not limited to, engineering and attorney's fees.

SECTION VI CONDITIONS

THIS IS AN EXPRESS LIMITED WARRANTY OFFERED BY Builder To the extent possible under the law of Homeowner's state, all other warranties, express or implied, including but not limited to any implied warranty of habit-ability, are hereby disclaimed and waived. No one can add to or vary the terms of this Warranty, orally or in writing. In the event any provision of this Limited Warranty is determined by a court of competent jurisdiction to be unenforceable, that determination will not affect the validity of the remaining provisions.

The Warranty obligations of Builder during the entire term of a warranty are limited to the original sales price of Homeowner's Home. When the limit has been paid, Homeowner's warranty rights are extinguished.

WARRANTY NOT INSURANCE This Warranty is not an insurance policy. Homeowner should have Homeowners insurance and this is not it. Homeowner's bank or other mortgage financier may insist on Homeowners' insurance coverage if Homeowner has a mortgage. This is also not Builder's CGL (commercial general liability) insurance policy. This Warranty is not a maintenance agreement or service contract.

REPAIR Builder shall repair, replace or pay the reasonable cost of repair of any covered Defect or Structural Defect. The design, method and manner of such repair shall be within the sole discretion of Builder, if Builder pays for the repair. Homeowner are responsible for any damage to any improvement, fixture or property not constructed by Builder which is damaged by, or during the repair of, a covered Defect or Structural Defect, and Homeowner shall pay for the cost of removal of such improvement, fixture or property necessitated by the repair of a covered Defect or Structural Defect. No repair shall extend the term of this Warranty as to any covered Defect or Structural Defect, including without limitation, the Defect or Structural Defect which was the subject of the repair. Before Builder repairs or pays for the repair of a claim, Homeowner must assign to Builder any rights Homeowner may have against any other person with respect to the claim. In the case of cash payments regarding homes with original FHA/VA-financing still in effect, Builder is required to make payment to Homeowner and Homeowner's mortgagee. Homeowner must provide the name and address of Homeowner's mortgagee, the FHA/VA case number and the loan number (Homeowner's HUD settlement statement will have this information) when Homeowner file a claim with respect to a Home with a FHA/VA-financed mortgage, in order for these obligations to be performed. The repair of a Structural Defect consists of, and is limited to: 1) repair of damage to the load-bearing portions of Homeowner Home which is necessary to restore their load-bearing function, 2) repair of those non load-bearing portions damaged by the Structural Defect and whose repair is necessary to make Homeowner Home once again safe, sanitary, or otherwise livable, and 3) repair and cosmetic correction of only those surfaces, finishes and covering, original with the Home, damaged by Structural Defect or which require removal and replacement to repair the Structural Defect or to repair other damage directly attributable to the Structural Defect, but not necessarily to a like-new condition. Builder's costs of designing, accomplishing, and monitoring repairs to Homeowner's Home (or payments to Homeowner or to another instead) are deducted from Homeowner's Home's Warranty Limit. Builder's costs of determining the existence and/or extent of a covered Defect or Structural Defect, are not deducted. In addition, any cost or expense Homeowner undertakes to investigate a Defect or Structural Defect such as, but not limited to, engineering and attorney's fees will not be reimbursed.

ACCESS TO HOMEOWNER'S HOME In order for Builder to carry out their responsibilities under this agreement, they will require access to Homeowner's Home from time to time. By signing the Builder Application For Home Enrollment or by using this Warranty Coverage, Homeowner hereby 1) agree to grant access to Builder and their agents and contractors during normal business hours to inspect, repair, and conduct tests in Homeowner's Home as in their judgement may be required, and 2) appoint Builder as Homeowner's attorney in fact for the purpose of applying or moving for an order to compel access to Homeowner's Home during normal business hours in order for them or their agents or contractors to inspect, repair, and conduct tests in it. Failure to allow access to Homeowner's Home will void the Warranty.

ARBITRATION Any and all claims, disputes and controversies arising under or relating to this Agreement, including without limitation, any claim of breach of contract, negligent or intentional misrepresentation or nondisclosure in the inducement, execution or performance of any contract, and breach of any alleged duty of good faith and fair dealing, shall be submitted to arbitration by and pursuant to the rules of Construction Arbitration Services, Inc. (hereinafter "CAS") in effect at the time of the request for arbitration. The decision of the arbitrator shall be final and binding and may be entered as a judgement in any State or Federal court of competent jurisdiction.

The initiation or participation by any party in any judicial proceeding shall not be deemed a waiver of the right to enforce this arbitration provision and notwithstanding any provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this arbitration provision. Any party shall be entitled to recover reasonable attorney's fees and costs incurred in enforcing this arbitration provision, and the arbitrator shall have sole authority to award such fees and costs.

The administrative fee charged by the arbitration service shall be borne equally between the Homeowner and Builder in the case of Builder's One Year Workmanship/Two Year Systems Warranty Coverage. The administrative fee charged by the arbitration service will be paid by Builder in the case of single-arbitrator structural claim arbitrators. The arbitrator's compensation fee shall be borne equally by the arbitrating parties for single-arbitrator arbitrations. Additional fee may be assessed in accordance with the arbitration rules and fees. Any party who shall commence a judicial proceeding concerning a dispute which is arbitrable hereunder shall also be deemed to be a party requesting arbitration within the meaning of this paragraph.

An arbitration is normally conducted by only one arbitrator; however, a panel of three arbitrators may conduct an arbitration proceeding with the consent of all parties thereto. The party requesting the panel of three arbitrators shall submit the fees required by the arbitrators and the arbitration service to Builder prior to the dispute being submitted to the arbitration service. Additional fees may be assessed in accordance with the arbitration rules and fees.

Builder shall have the right, in advance of the arbitration proceeding, to re-inspect any Home which is the subject of the arbitration proceeding if the request for arbitration was made more than 60 days following the last claim decision of Builder concerning such a Home. No arbitration proceeding shall involve more than one single family detached dwelling or, at the Builder's option, no more than one multifamily building.

The parties expressly agree that this arbitration provision involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act, (9 U.S.C. § 1, et seq.), now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local

law, ordinance or judicial rule; and to the extent that any state or local law, ordinance or judicial rule; shall be inconsistent with any provisions of the rules of the arbitral association under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.

If any provision of this arbitration agreement shall be determined to be unenforceable by the arbitrator or by the court, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

PREARBITRATION CONCILIATION (FHA/VA Financed Homes Only): If Homeowner's Home was originally FHA/VA-financed and still has this original FHA/VA financing in effect, Builder will offer prearbitration conciliation at no cost to Homeowner. If Homeowner is dissatisfied with the outcome of prearbitration conciliation or Homeowner elects not to use the prearbitration conciliation provision, then binding arbitration is available to Homeowner during entire term of this warranty.

WARRANTIES TRANSFERABLE All of Builder's rights and obligations hereunder shall fully transfer to each successor in title to the Home, including any mortgagee in possession, for the remainder of the Warranty Term and any such transfer during the Warranty Term, Homeowner agree to give this Warranty to Homeowner's buyer to inform Homeowner's buyer of warranty rights and to make it possible for the buyer to fulfill the obligations under the terms of this Warranty. If Homeowner are a successor owner of the Home (that is, an owner other than the original purchaser), Homeowner's Home will benefit from the coverage provided by this Express Limited Warranty. Likewise, Homeowner is also bound by all the terms and conditions of the Warranty including but not limited to claims procedures and participation in binding arbitration.

HOMEOWNER'S OBLIGATIONS The Warranty coverage pays for the cost of labor and materials to correct a covered Defect. Homeowner's obligations are to care for Homeowner's Home in such a way as to rule out or minimize damage to it, and to pay Homeowner's own expenses, should Homeowner elect to incur them, or pursuing claims against Builder, whether for professional services or for any other cost. Homeowner should be aware that all new homes go through a period of settlement and movement. During this period, Homeowner's Home may experience some minor material shrinkage, cracking and other events which are normal and customary. Remember that Homeowner are responsible for proper maintenance of Homeowner's Home including maintaining Builder-set grades around Home, planting trees and shrubs at the proper distance, and conforming to generally accepted landscape practices for Homeowner's region. Any damage caused or made worse by Homeowner negligence, improper maintenance or changes, alterations or additions performed by anyone other than Builder or his/her agents, is excluded from coverage under these warranties.

SECTION VII EXCLUSIONS

This Warranty does not apply to:

1. Defects in outbuildings, including detached garages and detached carports (except outbuildings which contain plumbing, electrical, heating, cooling and ventilation systems serving Homeowner's Home); swimming pools and other recreational facilities; driveways; walkways; patios, decks, stoops, steps and porches or any other appurtenant structure or attachment to the dwelling other than attached garages or carports; boundary walls, retaining walls and bulkheads (except where boundary walls, retaining walls and bulkheads are necessary for the structural stability of the Home); fences; landscaping (including sodding, seeding, shrubs, trees, and plantings); sprinkler systems; or other improvements not a part of Homeowner's Home;
2. Damage to real property which is not part of Homeowner's Home;

3. Damage to or Defects in concrete floors of attached garages that are built separate from foundation walls or other structural elements of Homeowner's Home;
4. Bodily or personal injury of any kind (including physical or mental pain and suffering and emotional distress), medical, hospital, rehabilitation or other incidental or consequential expenses, damage to personal property, or damage to any property of others;
5. Any loss or damage which Homeowner have not taken appropriate action to minimize as soon as practicable;
6. Any Defect in material or work supplied by anyone other than Builder or its employees, agents or subcontractors, and any covered Defect which was caused by Defective material or work supplied by anyone other than Builder or its employees, agents or subcontractors;
7. Any and all consequential loss or damages;
8. Any loss or damage not caused by Defect or deficiency in the construction of Homeowner's Home by Builder, or its employees, agents, or subcontractors;
9. Defects in any property which was not included in the original Home delivered for the original final sales price;
10. Any damage which is caused or made worse by:
 - a. Negligence, improper maintenance or improper operation by anyone other than Builder or its employees, agents or subcontractors;
 - b. Homeowner's failure to give prompt and proper notice to Builder of any Defects;
 - c. Changes of the grading of the ground that do not comply with accepted grading practices including Homeowner's failure to maintain the original grade;
 - d. Changes in the level of the underground water table which were not reasonably foreseeable at the time of construction of Homeowner's Home;
 - e. Subsidence or soil movement which was not reasonably predictable through reasonable soil testing or other geological investigation at the time of construction of Homeowner's Home (This exclusion does not apply to any Home with an original FHA/VA Loan still in effect);
 - f. Dampness or condensation due to Homeowner's failure to adequately maintain ventilation, caulking, flashing or gutters;
 - g. Failure by Homeowner, or anyone other than Builder or its employees, agents or subcontractors, to comply with the warranty requirements of manufacturers of appliances, equipment or fixtures;
 - h. Acts of God, riot or civil commotion, vandalism, hurricane, tornado or other windstorm, fire, drought, explosion, blasting, smoke, water, hail, lightning, ice storm, falling trees or other objects, aircraft, vehicles, flood, mud slides, avalanches, earthquakes, volcanic eruption, or by any other external cause, whether sudden or gradual;
 - i. Abuse or use of Homeowner's Home, or any part thereof, beyond the reasonable capacity of such a part for such use;
11. Loss, damage, Defect, cost or expense which is caused, in whole or in part, by any peril or occurrence for which compensation is provided by state legislation, or public funds;
12. Damage caused by microorganisms, insects, vermin, rodents, birds, wild or domestic animals;
13. Damage caused by dry rot, wet rot, soft rot, rotting of any kind and occurring from any cause, rust, corrosion, mold, mildew;
14. Any loss or damage which arises while Homeowner's Home is being used primarily for nonresidential purposes;
15. Any condition which does not result in actual physical damage to Homeowner's Home;
16. Inhabitability or health risk due to radon, formaldehyde, carcinogenic substances, radiation, hazardous materials, electromagnetic fields, pollution, any other solid, liquid, or gaseous contaminant or toxin;

17. Costs of shelter, transportation, food, moving, storage, or other incidental expenses related to relocation during repair, or any other costs due to loss of use, inconvenience or annoyance;
18. Normal wear and deterioration;
19. Quality and potability of water;
20. Sound transmission or sound proofing, whether originating from an outside source and transmitted to the inside, or between rooms or floor levels;
21. Failure of Builder to complete construction;
22. Glass breakage;
23. Failure of Builder to perform any washing, cleaning or cleanup of any kind;
24. Structural slab foundation systems that may have experienced some movement but are within the foundation's design performance criteria;
25. Violations of local or national building codes, ordinances or standards;
26. Any Defect Homeowner knew about prior to the Effective Date of Warranty, whether or not it appeared on "walk-through" inventory or punch-list;
27. Any complaint or claim received by Builder after an unreasonable delay (which includes Homeowner's failure to inform Builder of any complaints that remain unresolved for sixty (60) days or more and for claims that occur within the Warranty term that are reported later than thirty (30) days after the expiration of this warranty);
28. Outside sillcocks and other hose connections;
29. Leaks in and of themselves except as otherwise covered by Builder's One and Two Year Warranty;
30. Loss or damage resulting from any failure to comply with federal, state, local or other elevation requirements, including but not limited to:
 - a. Failure of the lowest floor elevation of the Home to meet or exceed the base flood elevation established by the Federal Emergency Management Agency and applicable community floodplain management ordinances; or,
 - b. Errors in connection with the collection and certification of elevation information, whether committed by Builder or agent of Builder, or by any person authorized by state or local law or ordinance to provide floodplain management information, or by any other person;
31. Claims made for damages to the Home occurring after it has been vacant for a period of ninety (90) days or more;
32. Diminished market value of Home; and
33. Failure of Builder to construct the Home in compliance with original dwelling plans and specifications.

This Warranty does not apply to any manufactured item such as appliances, fixtures, equipment (except as specifically defined in the Construction Quality Standards) or any other item which is covered by a manufacturer's warranty, nor does it cover systems Defects that are caused by failure of any such manufactured item. Appliances and items of equipment not covered by this limited warranty, include but are not limited to: air conditioning units, attic fans, boilers, burglar alarms, carbon monoxide detectors, ceiling fans, central vacuum systems, chimes, dishwashers, dryers, electric meters, electronic meters, electronic air cleaners, exhaust fans, fire alarms, fire protection sprinkler systems, freezers, furnaces, garage door openers, garbage disposals, gas meters, gas or electric grills, heat exchangers, heat pumps, humidifiers, intercoms, oil tanks, outside lights or motion lights not attached to the Home, range hoods, ranges, refrigerators, sewage pumps, smoke detectors, solar collectors, space heaters, sump pumps, thermostats, trash compactors, washers, water pumps, water softeners, water heaters, whirlpool baths, gas fireplace, tile roof, and whole-house fans.

SECTION VIII CONSTRUCTION QUALITY STANDARDS

The following Construction Quality Standards are standards that have been developed and accepted by the residential construction industry in general. They apply only to the One Year Workmanship and Two Year Systems Warranties. While it is virtually impossible to develop a Construction Quality Standard for each possible deficiency, the construction industry and Builder have attempted to isolate the most common actual physical damage deficiencies that occur and in so doing, list the extent of Builder's, and Homeowner's responsibility. Where a specific Construction Quality Standard has not been specified, the standard practice of the construction industry will apply.

The following Construction Quality Standards are expressed in terms of required standards that Builder's construction should meet. Noncompliance with these construction standards calls for corrective action by Builder.

Refer to other parts of this Booklet for specific terms, definitions, exclusions and conditions that apply to the first (1st), second (2nd) year of the warranty.

Please note: Per SECTION VII EXCLUSIONS, since this Warranty covers only those Defects which first occur during the Warranty Term, any Defect Homeowner knew about prior to the Effective Date of Warranty such as "walk-through" or "punch-list" items are not covered.

Builder will try to its best ability to match and replace with Homebuyer's original choice of colors and materials, except where Homebuyer custom-ordered the items. Builder cannot be responsible for discontinued items, changes in dye lots, colors or patterns, or items ordered outside of the original construction.