

BUILDER'S LIMITED WARRANTY

BUILDER:		DATE:	
OWNER(S):			
JOB ADDRESS: (the "Residence")		JOB NO.:	

Note to Owner: All residential construction goes through a period of settlement. As the seasons change, periods of expansion or contraction will occur. As a result, your Residence will experience minor material changes that are unavoidable and considered normal. You should also be aware that you are responsible for proper home maintenance. To make your maintenance program easier, you should keep a color chart of the different materials used in or on the construction and a small supply of correspondingly colored paint, stain, or grout for easy touch-up. This Limited Warranty excludes damage caused by Owner negligence, improper maintenance or changes, alterations, or additions performed by anyone other than Builder. Owner's maintenance obligations include those set forth in the publication: *Your New Home & How to Take Care of It* (National Association of Home Builders, 2001).

1. **WARRANTY.** This Limited Warranty excludes any injury to persons or damages to personal or real property, in whole or part, that may be a consequence of, or incident to, or result from any defects in materials or performance of the work. (Some jurisdictions do not allow the exclusion or limitation of consequential or incidental damages, so this exclusion or limitation may not apply.)

a. Builder warrants that its construction of the Residence conforms to the Construction Standards (defined below).

b. This Limited Warranty is provided to the above-named Owner or Owners (referred to collectively as Owner), while occupying the dwelling as a primary residence during the coverage period. This warranty is provided to the original Owner only and is not transferable to subsequent owners. The warranty obligations of Builder are limited to the total payments paid by Owner to Builder for the Residence.

2. **TERM.** The term of this Limited Warranty shall begin on the earliest of the following dates (the "Commencement Date"): The settlement date, otherwise known as the date of closing; the initial date of occupancy, otherwise known as the date of commencement of use; the date the Certificate of Occupancy is issued for the Residence; or the date of the notice of completion.

THIS LIMITED WARRANTY SHALL TERMINATE 12 MONTHS AFTER THE COMMENCEMENT DATE.

3. **MANUFACTURER'S WARRANTY.** Builder assigns and passes through to Owner all manufacturer's warranties on all consumer products as defined in the Magnuson-Moss Warranty Act (15 U.S.C. Sec. 2301-2311). The Act applies to written warranties on tangible personal property that is normally used for personal, family, or household purposes. Merchantability, fitness, and all other implied warranties, with respect to such goods, shall be governed by the Magnuson-Moss Act and other applicable state statutes. Under the Magnuson-Moss Warranty Act, the following are examples of items classified as consumer products when sold as part of a house:

a. Heating, Air-Conditioning, and Ventilation (HVAC) - Furnace, air-conditioning coils and compressor, thermostat, humidifier, electronic air cleaner, exhaust fan, and heat pump;

b. Mechanical and/or Electrical - Intercom, central vacuum system, security system, fire and smoke alarm, fire extinguisher, garage door opener, door chimes, electric meter, gas meter, barbecue grill, light bulbs;

c. Plumbing - Water heater, water pump, water meter, sump pumps, water softener, whirlpool; and

d. Appliances - Oven, surface cooking unit, range, trash compactor, freezer, refrigerator, dishwasher, oven hood, disposal, ice maker, food center, clothes washer, clothes dryer, hot water dispensers.

4. **EXCLUSIONS.** This Warranty does not cover the following items: /

a. Defects in outbuildings, including detached garages and detached carports (except outbuildings that contain the plumbing, electrical, or HVAC systems serving the Residence or except as otherwise noted); swimming pools and other recreational facilities; driveways; walkways; patios or decks; boundary walls; retaining walls and bulkheads (except where the boundary walls or bulkheads are necessary for the structural stability of the Residence); fences; landscaping (including seeding, sod, shrubs, trees, and plantings except as otherwise noted); sprinkler systems; or any other improvement that is not part of the Residence.

b. Damage or defects in concrete floors in attached garages that are built separately from the foundation walls or other structural elements of the Residence.

c. Any appliance, equipment, or other item within the Residence that is classified by the Magnuson-Moss Warranty Act as a consumer product when sold as part of a house.

d. Loss or damage resulting from abnormal loading on floors by Owner that exceeds the design criteria as mandated by applicable building codes.

e. Warpage or shrinking of materials; and normal wear and tear, normal deterioration, or normal changes that are the result of characteristics common to materials.

f. Exterior hardware or fixtures, and outside sillcocks or other hose connections.

g. Loss of or damage to any items of personal property or injury resulting from defective workmanship or materials including without limitations, any cracks, chips, dents, stains, or marks on cabinets, plumbing fixtures, electrical fixtures, mirrors, glass, appliances, micas, vinyl, ceramics, painted or stained surfaces, doors, wood, or carpeting.

h. Glass breakage.

i. Structural slab foundation systems that have experienced movement or cracking, but are within the design criteria, including cracks in any flooring that is attached to such slab foundation systems.

j. Presence of (or any damage from) insects, birds, rodents, mold, mildew, and fungus.

k. Cosmetic discrepancies.

l. Damage to real or personal property that was not included in the original delivery of the Residence for the original contract price.

m. Loss of use, loss of opportunity, loss of market value, loss of rental value or any other similar consequential loss.

n. Defects in materials or workmanship supplied or selected by anyone other than Builder or Builder's employees, agents, or trade contractors, and any covered defect that was caused by defective material or workmanship supplied or selected by anyone other than Builder or Builder's employees, agents, or trade contractors.

o. Any defect or condition that does not result in actual physical damage to the Residence.

p. Loss or damage resulting from failure of Builder to complete the construction, or to complete the construction in a timely manner.

q. Damage resulting from the abuse or neglect of Owner or from Owner's failure to provide for proper maintenance.

r. Cost of shelter, transportation, food, moving, storage, or other expenses associated with or related to any defect, or the repair or replacement of any defects in workmanship, materials, or design.

s. Loss or damage that arises while the Residence is being used primarily for nonresidential purposes or loss or damage caused by the Residence being used for nonresidential purposes.

t. Personal or bodily injury of any kind (including physical or mental pain and suffering and emotional distress), medical, hospital, rehabilitation, or other incidental or consequential expenses or damage to personal property.

u. Loss or damage that Owner has not taken appropriate action to minimize as soon as practical.

v. Loss or damage that is covered by Owner's insurance or other warranty.

w. Violations of local, state, or national building codes, ordinances, standards.

x. Any damage to the extent it is caused or made worse by: (i) Changes in the level of the underground water table that were not reasonably foreseeable at the time of the construction; (ii) Damage or condensation caused by the failure of Owner to maintain adequate ventilation; (iii) Subsidence or soil movement that was not reasonably predictable through soil testing at the time of construction; (iv) Any damage or defects caused by soil movement for which compensation is provided by legislation or that is covered by

insurance or public funds to the extent that such compensation is paid for by other such providers; and (v) Loss or damage externally caused including (but not limited to) acts of God, riot, or civil commotion; smoke, fire, or explosion; windstorm or falling trees or other objects; snow, ice, rainwater, lightning, hail, or flood; sinkholes, mud slides, earthquakes or volcanic eruption; natural or introduced gases; aircraft or other vehicles; use, misuse, or abuse of the Residence or any part thereof beyond the reasonable use of such part.

5. CLAIMS PROCEDURES.

a. In order to make a claim under this Warranty, you must send a written claim to Builder stating the date you found the covered defect, giving a detailed description of the defect, and stating that you are making a claim under this Warranty. Except for an emergency, do not repair or replace the claimed defect, as this will make it impossible for Builder to determine whether the defect was covered by the Warranty, whether your repairs were reasonable, and whether Builder would have been able to correct the defect in another manner. In the event of an emergency involving the defect, make the minimal repairs that will mitigate further damages and immediately report the defect to Builder.

b. OWNER'S WRITTEN CLAIM MUST BE RECEIVED BY BUILDER NO LATER THAN 30 DAYS AFTER THE EXPIRATION OF THE WARRANTY TERM. THERE IS NO WARRANTY COVERAGE FOR ANY CLAIM RECEIVED AFTER THIS DATE, AND BUILDER HAS NO OBLIGATION TO CORRECT, REPAIR, OR REPLACE ANY DEFECT REPORTED AFTER THIS DATE. THESE TIME LIMITS ARE AN IMPORTANT PART OF THIS WARRANTY AND SHALL BE STRICTLY OBSERVED.

c. If the defect is covered under a manufacturer's warranty, Owner should follow the instructions provided with such warranty. In the absence of a written manufacturer's warranty, Owner should contact Builder's office in writing to obtain information and assistance in filing a claim.

6. **BUILDER PERFORMANCE.** Builder shall repair, replace, or pay reasonable sums in order to remedy covered deficiencies, based on the Construction Standards. The Construction Standards are contained in *Residential Construction Performance Guidelines* (National Association of Home Builders, latest edition); if an item is not covered in this publication, the Construction Standards for the item shall be the standard industry practice in the county in which the Residence is located. The choice among repair, replacement, or payment is solely that of Builder. Actions taken by Builder to correct the defect shall not extend any term of this warranty. Corrective work shall be performed by Builder during normal working hours only, 8 a.m. to 5 p.m., on Monday through Friday. No corrective work shall be performed on Saturday, Sunday, or company holidays. Builder shall not be required to begin corrective work until Owner provides Builder with written permission to enter onto the Residence. Owner (or Owner's agent) must be present during the corrective work and must sign an acceptance upon completion of the work. Owner is responsible for removing or repairing any improvements added after Builder's original construction work was finished.

7. **MEDIATION; ATTORNEYS FEES.** Mediation is a condition precedent to the institution of legal or equitable proceedings by any party for claims arising out of or related to this Warranty. If any dispute under this Warranty results in litigation, and mediation has not already been conducted for that dispute, the parties hereto consent to a court order referring the dispute to mediation. Upon the filing by any party hereto of a motion for mediation, the litigation shall be stayed (for a period not to exceed 60 days) pending completion of the mediation. The parties shall share equally the mediator's fee and any filing fees. The mediation shall be held in the county where the Residence is located, unless another location is mutually agreed upon. In the event of any dispute arising out of the subject matter of this Warranty, the prevailing party shall recover as costs its reasonable attorney's fees and other costs and expenses incurred in litigating, defending, or resolving the dispute.

8. **OTHER TERMS.** This Warranty shall be governed in its enforcement, construction, and interpretation by the laws of the State of Florida, without giving effect to the principles of conflict of laws. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Warranty must be filed in the courts of the county in which the Property is located and each of the parties waives any objection to venue laid therein. The parties waive all rights to a trial by jury in the event of any dispute or court action arising from or related to this Warranty. This Warranty shall not be assigned without the written consent of all parties, and any attempt to do so shall be void and constitute a material breach of this Warranty. This Warranty contains the entire agreement between Owners and Builder respecting the matters set forth herein and supersedes all prior agreements between Owners and Builder respecting such matters. In the event that any provision of this Warranty is held or determined invalid or

unenforceable, for any reason, the remainder of this Warranty shall remain in full force and effect and unaffected by such holding or determination.

This Limited Warranty is the only express warranty extended to Owner by Builder. Any items and conditions not specifically covered by this warranty are excluded from coverage and are the responsibility of Owner. This Limited Warranty is in lieu of any and all other warranties, expressed or implied, including but not limited to any warranty of merchantability, fitness for a particular purpose, and habitability. In no event shall Builder be liable for any damages (consequential or otherwise) arising from any defect in any item covered hereunder. This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

BUILDER:

Dalton Brothers Inc.

Witness:

Name:

By:
Its:

OWNERS:

Witnesses:

Name:

Name: