

NOTICE, DISCLOSURE and DISCLAIMER

MOLD, MILDEW, FUNGUS, SPORES AND CHEMICALS

THE HOME YOU ARE PURCHASING CONTAINS MATERIALS WHICH CONTAIN OR ARE AFFECTED BY MOLD, MILDEW, FUNGUS, SPORES AND CHEMICALS. THE WATER, POWDERS, SOLIDS AND INDUSTRIAL CHEMICALS IN THESE MATERIALS CAN AND DO CAUSE MOLD, MILDEW, FUNGUS AND SPORE FORMATION WHICH MAY CAUSE ALLERGIC AND OTHER ADVERSE BODILY REACTIONS IN CERTAIN INDIVIDUALS.

Mold is a type of fungus. It occurs naturally in the environments and it is necessary for the natural decomposition of plant and other organic material. It spreads by means of microscopic spores borne on the wind and is found everywhere life can be supported. Residential home construction is not and can not be designed to exclude mold spores. If growing conditions are right, mold can grow in your home.

In order to grow, mold requires a food source, a temperate climate, and moisture. We have all of these on the Gulf Coast. Food sources include many materials used in residential construction; such as carpet fiber, drywall, wood and insulation to name a few. The best growth occurs at temperatures between 10 and 100 degrees Fahrenheit, a range most homes will be in 100% of the time. Spills, leaks, overflows, condensation and high humidity are common source of moisture. While outside humidity cannot be controlled, moisture in the home is the only mold growth factor that can be controlled somewhat in a residential setting. Good housekeeping home maintenance practices can minimize moisture in the home, and are essential in the effort to prevent or eliminate mold growth. What can you do: Even though the complete elimination of mold and mildew in our climate is virtually impossible, there are steps that you can take to reduce the occurrence of mold growth in your home. These steps may include the following:

- Before bringing items into the home, check for signs of mold. Potted plants, furnishings, or stored clothing and bedding materials as well as many other household goods could already contain mold growth.
- Regular vacuuming and cleaning will help reduce mold levels.
- Try to keep the humidity in your home low. This is difficult if not impossible in our climate, but running the air conditioning will remove excess moisture in the air and facilitate evaporation of water from wet surfaces.
- Notify us **immediately** of any roof or plumbing leaks that wet the carpet or other building materials such as dry wall or insulation. Note: depending on the circumstances these leaks may be covered by your warranty, even though mold or mildew is excluded from the warranty.
- Inspect condensation pans (air conditioners and refrigerators) for signs of mold growth, and take notice of musty odors and any other visible signs of mold.
- Promptly clean visible mold and mildew; there are many products on the market specifically designed to clean and destroy mold and mildew.

Benchmark Homes responsibility as a home builder must be limited to things that we can control. As explained in our written warranty provided by separate instrument, Benchmark Homes will repair or replace defects in our construction (defects defined as a failure to comply with reasonable standards of residential construction) for the applicable number of years, Benchmark Homes; the homebuilder, will not responsible for any damage caused by mold, mildew, fungus, spores, or any other agent or chemical that might be present in any building material used in construction or that may become present or associated with any defects in our construction, to include but not limited to property damage, personal injury, adverse health effects or illnesses, loss of income, emotional distress, death, loss of use, loss of value, or any other effects. In regards to mold, mildew, fungus, spores or any other agent or chemical, any implied warranties, including implied warranty of workmanlike construction, an implied warranty of habitability, or an implied warranty of fitness for a particular use, are hereby waived and disclaimed.

This notice, disclosure and disclaimer agreement is hereby appended to and made part of the Construction/Purchase Agreement and adopts the Arbitration Agreement found

Benchmark Homes Inc.

Buyer: _____

Lot: _____

Subdivision: _____

Date: _____

Addendum to Residential Construction and Lot Purchase Agreement

1. CONSTRUCTION/DESCRIPTION OF IMPROVEMENTS. Seller and Buyer have agreed that Seller's stock plan # _____ is the basis for the improvements to be built, with certain modifications. Such plan and modifications will be submitted to a draftsman selected by Seller for the purpose of preparing blueprints. When the blueprints become available, if both parties approve them, such approval shall be evidenced by the initials of each party on Seller's copy of the blueprints. If both parties do not approve the blueprints and the parties do not agree to the modifications necessary to make the blueprints acceptable to both parties, then the Earnest Money Deposit, less the costs incurred by Seller to have the blueprints prepared and any other costs incurred by Seller, shall be returned to Buyer, and both parties shall be deemed released from this Agreement. If the blueprints are mutually approved, Seller agrees to build or cause to be built and delivered to Buyer at closing a residential structure substantially in accordance with such blueprints and the specifications as attached hereto and signed for identification by Buyer and Seller. Seller shall deliver to Buyer a 2/10 Home Buyer's Warranty at closing. Buyer's rights under this Limited Warranty are in place of any and all rights Buyer may have against Seller as a result of the construction, and Seller makes no express warranties as to such construction, and any implied warranties are disclaimed.

Seller has established a program for certain selections that Buyer may make for the improvements. Seller does not guarantee the availability of the selections and the program is subject to change without notice. Subject to those limitations, Buyer shall have and is hereby given the right to select from a list of choices prepared by Seller. The choices are as follows: Exterior brick and shingle color; interior paint colors (one color choice throughout home, one different color choice below chairrail where applicable) cabinet stain (handles are provided); counter tops (tops may differ from kitchens to bathrooms); exterior shutter color and floor coverings (floor covering selections shall consist of one carpet and one vinyl selection). All selections are to be submitted on Benchmark's selection form (i.e. color chart) no later than 30 days from the official start date of home. The color chart shall be signed and dated by the purchaser (s) at the time of selection.

Any change orders must be mutually agreed upon in writing and signed by the parties. After the blueprints have been ordered, Seller reserves the right to refuse to agree to any and all change orders, and Seller also reserves the right to charge Buyer an administrative fee of \$500.00 for any change order (which would be in addition to any increase in the purchase price).

All building materials are and remain the property of the company.

2. CLOSING, RISK OF LOSS AND POSSESSION. Closing of the sale and delivery of the substantially completed residence shall occur within two (2) years from the date of this Agreement. Though delays may occur due to storms, excessive rain, or other unusually inclement weather, fire or casualty loss, unavailability of materials or labor, etc., the target date for substantial completion is 180 days after all of the following have occurred: (a) the plans have been finalized; (b) Buyer has notified Seller in writing that Buyer has obtained financing, and (c) all construction permits have been obtained. Substantial completion shall be defined to mean that the residence is ready for occupancy subject to punchlist items. Issuance of a certificate of occupancy for the residence or issuance by an inspection agent of a third party compliance inspection report with no evidence of non-compliance observed shall be conclusive evidence of substantial completion. The exact day, time, and location of closing shall be designated by Seller.

NON-WARRANTY ITEMS DISCLOSURE

As stated in the terms of your purchase agreement at the time of closing, your new home will be enrolled in the 2-10 Home Buyer's Warranty program. The Warranty Booklet and Certificate of Warranty Coverage you receive is your builder's warranty for your new home, please refer to it for complete coverage. However, this is a limited warranty and there are certain items that are not covered under warranty after closing or move-in whichever occurs first. It is important to our company that all of our customers fully understand what is and what is not covered by the warranty, since both the buyer and builder will be strictly subject to the terms, conditions, and limitations of the 2-10 Home Buyer's Warranty. Please review the following list of items that are not covered under warranty, section VIII of the 2-10 Home Buyers Warranty booklet covers all exclusions in full detail.

NON-WARRANTY ITEMS

1. Cosmetic items: Chips, scratches, mars, tears, peeling in/on tile, vinyl, brickwork, woodwork, walls, windows, doors, porcelain, marble, counter tops, cabinets, mirrors, fiberglass, plumbing fixtures, wallpaper etc. are not covered after move-in or closing whichever occurs first. With regards to wall coverings, be sure to use exhaust fans in rooms with wall covering to avoid peeling. If peeling occurs, you may try to "re-tack" the paper with regular household glue. Also, broken door stops are not covered under warranty. This is considered a homeowner maintenance item and should be replaced by the homeowner. Over time, door knobs may become loose due to usage, this is considered to be a homeowner maintenance item as well. Simply tighten the door knob with a screw driver.

2. Sheetrock and wood cracks: Shrinkage can occur during the drying out process of your home. As your home settles and dries out hairline cracks, blisters and nail pops may occur on walls and ceilings (especially in corners). You may also see "cracking" in areas like the fireplace, mantle or at the "beam" in vaulted ceilings. This is normal and should be expected. Simply caulk and use your touch up paint to correct.

3. Wood: Stained wood such as cabinets all have variance in wood grain. These variances cannot be controlled. There is no warranty from the builder on fencing or decks.

4. Paint Items: Chips, cracks and peels are common items due to causes other than paint or its application. Any additional painting or touch up not specifically noted on the Pre-Occupancy Inspection List are not covered under warranty. Touch up paint has been left for any touch up that may need to be done after moving in. There is no warranty against mildew or rotting (exterior areas require caulk and touch up as homeowner maintenance).

5. Plumbing adjustments: Dripping faucets and toilet adjustments are covered for material or workmanship deficiencies only during the first 60 days. Leakage caused by worn or defective washers or seals are considered homeowner maintenance. Please note that the toilets installed are 1.6 gallon toilets. This is in accordance with the Federal mandated law passed in 1993, prohibiting the manufacturing of toilets that use more than 1.6 gallons of water per flush. Also, be aware that usage of bleach tablets in toilet tanks cause deterioration of the flush valve seal causing toilets to run continually. This is not covered under warranty. There is no warranty on water pressure.

6. Flooring: This is strictly a manufacturer's warranty item. Inspect all flooring carefully during the Pre-Occupancy Walk-Through. Be sure to inspect all flooring thoroughly at the Pre-Occupancy inspection. Any cuts, tears, stains, fading, chips, scratches, discoloration, etc. that are not noted on the Pre-Occupancy Inspection List are not covered under warranty. Some noise may be heard when walking on the second floor of a two-story home. This is a characteristic of multi-level homes. Carpet seams may be noticeable, especially in Berber carpets, this is not a defect.

7. Windows: Condensation or moisture on windows is not the fault of the windows. Condensation forms on windows when temperature of the frames and glass drop below the dew point temperature as it relates to the humidity in your home. Be sure to keep window stools free of any moisture. Excessive moisture can cause wood to rot. There is no warranty against glass breakage.

8. Heating and air conditioning systems: Condensation lines will clog under normal conditions. Continued operation of the drain lines require homeowner maintenance. Be sure to replace your filter every thirty days and pour a minimum of 1 pint of household bleach in to the "white" water discharge line at least every 6 months. This will prevent algae build up in the a/c condensate line. Also, be sure to keep the condenser coil outside free of leaves, grass or any other foreign matter. Clogged condensation lines are not covered under warranty.

9. Drainage and Landscaping: Maintenance of drainage pathways is a homeowner's responsibility. Alteration to grading or landscaping are not covered under warranty. Incomplete landscaping can wash out and cause erosion with one rainfall. Erosion is not covered under warranty. The only warranty for trees, shrubs, sod, plants, etc., is that they will be alive at the time of closing. It is a homeowner's responsibility to maintain landscaping. There is no warranty regarding the utility easements.

10. Concrete items: Concrete patios, walks, drives, decks, porches, stoops, steps, garage floors, foundations, etc. can develop cracks due to its character of expanding and contracting or that of the soil which it was laid. There is no known elimination of this condition. There is no warranty against color variations. There is absolutely no warranty on non-structural cracks in concrete.

11. Brick items: Expect bricks to have some mortar stain. Repeated cleaning of bricks may damage the intended finish. Cracks and chips are common to the product and not a defect. Cracks in mortar are also normal. There is no warranty against this occurring. Also, note that lighter colored bricks are more apt to stain and that stains are not covered under warranty.

12. Fences/decks: There is no warranty from the builder on defects in fences or decks.

13. Miscellaneous: Damage caused by external causes such as, acts of God and/or nature, vandalism, fire, flood, homeowner negligence, etc. are not covered by warranty. Please note there is no warranty against roof, windows, and door leaks, loss of siding or other damage caused by severe weather conditions, such as, hurricanes, snow and ice build-up, high winds, and driven rains. There is no warranty against any damaged caused by dry rot, wet rot, soft rot, rotting of any kind and occurring from any cause, rust, corrosion, mold, mildew, etc.

I (We) have read the above mentioned items thoroughly, they have been explained to me (us), and I (we) completely understand that they are not covered under warranty. I (We) understand and accept that I (We) are receiving a limited home warranty with specified 1, 2, and 10 year time limitations. I (We) also understand that negligence of routine maintenance can void applicable warranty coverage on all or part of the home.

HOME BUYER

DATE

HOME BUYER

DATE

Mailbox Restrictions

The Restrictive Covenants for this subdivision require a standardized mailbox that will be furnished by the builder, Benchmark Homes, Inc. In the event a mailbox is installed that is not the standard mailbox, the developer has the right, but not the obligation, to levy a \$250.00 fine, and to remove the non-compliant mailbox and replace it with the correct mailbox. This restriction is in the best interest of the property owner and is a designed to improve the image of the subdivision and enhance property values.

Thank you for your cooperation.

Benchmark Homes, Inc.

Purchaser

Easements

No fences or structures are permitted in easements that would in any way impede the flow of stormwater. Buyer also understands these easements may need to be accessed by utility companies, property owner's association representatives, ect. Buyer agrees to cooperate fully with all of the above.

Buyer

Buyer

Arbitration Addendum

Pre-Closing Disputes. Any and all disputes arising from or relating to this Agreement shall be resolved pursuant to the arbitration agreement contained in the most recent edition of the HBW Asset Protection Program Booklet as of the date of the execution of this agreement. That booklet has been made available to Purchaser (s), and the arbitration agreement therein is incorporated in and made a part of this agreement.

Arbitration of Disputes which arise after close of Escrow. “It is hereby agreed that all claims, disputes, and controversies between purchaser and seller arising from or related to the subject home, identified herein, or to any defect in or to the subject home or the real property on which the home is situated, or the sale of the subject home by seller, including but not limited to, any claim for breach of contract, negligence, or intentional misrepresentation, shall be submitted to binding arbitration by and pursuant to the arbitration provision contained in the most recent edition of the HBW Limited Warranty Booklet, as of the date of the execution of this agreement. That booklet has been made available to purchaser, and made a part of this agreement.”

Warranties. “Seller is hereby providing homebuyer with the warranty contained in the most recent edition of the Home Buyers Warranty Booklet, as of the date of the execution of this agreement. That booklet has been made available to homebuyer, and is incorporated by reference, and made a part of this purchase agreement. The warranty contained in the 2-10 Home Buyers Warranty Booklet is the sole warranty provided to homebuyer. Any other warranty or warranties, whether express or implied, are disclaimed by seller and waived by homebuyer, unless otherwise prohibited by particular state law.”

Exclusive Remedy Agreement. Effective one year from the Effective Date of Warranty, Homebuyer waives the right to seek damages or other legal or equitable remedies from Seller, his subcontractors, agents, vendors, suppliers, design professionals and materialmen, under any other common law or statutory theory of liability, including but not limited to negligence and strict liability. The agreement contained in the paragraph shall be enforceable to the maximum extent permitted by the law of the state which the Home is located, and shall be applicable to any claim thereafter made against Seller or any other person. ***Homebuyer’s only remedy in the event of a defect in or to the Home or in or to the real property on which the Home is situated is as provided to the Homebuyer under this express limited 2-10 Home Buyers Warranty. This paragraph shall not be applicable to any express written warranty provided by a manufacturer or vendor who was supplied any appliance or component for the home.

**This provision will not be effective in states that prohibit by statute, the waiver or statutory warranties.

(Date signed by Buyer)

Buyer: _____
Print

Signature

Witness:

Signature

(Date signed by Buyer)

Buyer: _____
Print

Signature

Witness:

Signature

(Date signed by Benchmark Homes, Inc.)

Seller: Benchmark Homes, Inc.

By: _____
Robert T. Cunningham III, President

Witness: _____



H O M E S Inc.
PLAN ORDER & CHANGE ORDER POLICY

BUYER: _____

PLAN ORDER:

I HEREBY REQUEST **BENCHMARK HOMES, INC.** TO ORDER **BLUEPRINTS BASED ON MY SIGNED PLAN ORDER.** I UNDERSTAND THAT MY EARNEST MONEY DEPOSIT OF \$ _____ IS NOT REFUNDABLE FOR ANY REASON AFTER I AUTHORIZE THE PLAN ORDER TO BE SUBMITTED.

CONTRACT HOMES:

1. No changes will be made that are not color charge items or options list items.
2. Benchmark Homes, Inc. representatives have complete authority as to whether changes are made or not made and are in no way obligated to make any changes whatsoever.
3. All change orders after the plans are ordered will require the buyer to pay a \$500 fee plus the cost of the change order item. No Exceptions.

SPEC HOMES:

1. No changes will be made that are not chart items or option list items.
2. Benchmark Homes, Inc. representatives have complete authority as to whether changes are made or not made and are in no way obligated to make any changes whatsoever.

I agree to all of the conditions set forth in this document.

Buyer

Date

Buyer

Witness

in the Construction Agreement and/or Arbitration Addendum. The consideration for the agreement shall be the same consideration stated in the Construction/Purchase Agreement. The Buyer(s) acknowledge receipt of the notice and disclaimer agreement, I(we) have carefully read and reviewed its terms, and agree to its provisions.

Date: _____

Witness

Buyer

Buyer

Benchmark Homes, Inc.
Seller

By: _____
General Manager

Witness

07/29/04