

# LARRY WALSH AND ASSOCIATES, INC.

## **One Year Builder's Limited Warranty**

Larry Walsh and Associates, Inc, a Florida limited liability company, hereafter referred to as the "Company", extends this Limited Warranty (hereafter "Warranty") to Laura McCullough, hereafter referred to as the "Owner", who has contracted with the Company for purchase of the home located at \_\_\_\_\_ in \_\_\_\_\_ County, State of Florida (hereafter "Home"), for the purchase price of \$ \_\_\_\_\_. The commencement date of this Warranty is the actual date of closing on the Home and shall extend for a period of **ONE YEAR**.

1. **COVERAGE ON HOME EXCEPT CONSUMER PRODUCTS:** The Company expressly warrants to the Owner that the Home will be free from defects in materials and workmanship due to noncompliance with the standards set forth in the Residential Construction Performance Guidelines for Professional Builders & Remodelers Fourth Edition.

2. **COVERAGE OF CONSUMER PRODUCTS:** For purposes of this Warranty, the term "consumer products" means all appliances, equipment and other items which are consumer products for the purposes of the Magnuson-Moss Warranty Act (15 USC, sections 2301-2312) and which are located in the home on the commencement date of the warranty. The Company expressly warrants that all consumer products will, for a period of one year after the commencement date of this warranty, be free from defects due to noncompliance with generally accepted standards in the state of Florida, which assure quality of materials and workmanship. ANY IMPLIED WARRANTIES FOR ANY SUCH CONSUMER PRODUCTS SHALL TERMINATE ON THE SAME DATE AS THE EXPRESS WARRANTY STATED ABOVE. Some states do not allow limitations on how long an implied warranty lasts, so this limitation may not apply to you. The Company hereby assigns to Owner all rights under manufacturers' warranties are excluded from coverage of this limited warranty, and Owner should follow the procedures in the manufacturers' warranties if defects appear in these items.

3. **COMPANY'S OBLIGATIONS:** If a covered defect occurs during the one year warranty period, the Company agrees to repair, replace, or, with proper notice and opportunity to repair or replace, may pay Owner the reasonable cost of repairing or replacing the defective item. The Company's total liability under this warranty is limited to the purchase price of the Home stated above. The choice among repair, replacement, or payment is the Company's. Any steps taken by the Company to correct defects shall not act to extend the term of this warranty. All repairs by the Company shall be at no charge to the Owner and shall be performed within a reasonable length of time.

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Owner

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Company

4. OWNER'S OBLIGATIONS: Owner must provide normal maintenance and proper care of the Home according to this Warranty, the warranties of manufacturers of consumer products generally accepted standards in the state of Florida. The Company must be notified in writing, by the Owner of the existence of any defect before the Company is responsible for the correction of that defect. Written notice of defect and no action at law or in equity may be brought by Owner against the Company for failure to remedy or repair any defect about which the Company has not received timely notice in writing. Owner must provide access to the Company during normal business hours to inspect the defect reported and, if necessary, to take corrective action.

5. INSURANCE: In the event the Company repairs or replaces or pays the cost of repairing or replacing any defect covered by this warranty for which the Owner is covered by insurance or a warranty provided by another party, Owner shall, upon request of the Company, assign the proceeds of such insurance or other warranty to the Company to extent of the cost to the Company of such repair or replacement.

6. CONSEQUENTIAL OR INCIDENTAL DAMAGES ARE NOT COVERED BY THIS WARRANTY.

7. EXCLUSIONS: THE FOLLOWING ITEMS ARE NOT COVERED BY THIS LIMITED WARRANTY.

- A. Cosmetic items. All Cosmetic items should have been done prior to closing and buyer does acknowledge that there will be no further discussing or demand for such items to be repaired, replaced or modified in any way. Items that could and might be included are as followed (Sheetrock flaws, Painting Flaws, Scratches in various materials, Concrete imperfections, Wood imperfections, Material variations, Chips Dents, and etc.
- B. Defects in any item which was not part of the Home as constructed by the Company.
- C. Any defect caused by or worsened by negligence, improper maintenance, lack of maintenance, improper action or inaction, willful or malicious acts by any party other than the Company, its employees, agents or subcontractors.
- D. Normal wear and tear of the home or consumer products in the Home.
- E. Loss or damage caused by acts of God, including but not limited to fire, explosion, smoke, water escape, changes which are not reasonably foreseeable in the level of underground water table, glass breakage, windstorm, hail, lightning, falling trees, aircraft, vehicles, flood, and earthquake.
- F. Any defect or damage caused by changes in the grading or drainage patterns or by excessive watering of the ground of the Owner's property or adjacent property by any party other than the Company, its employees, agents, or subcontractors.

- G. Any defect, which does not cause actual loss or damage.
- H. Any loss or damage, which arises while the Home is being used primarily for nonresidential purposes. Any damage to the extent it is caused or made worse by the failure of anyone other than the Company or its employees, agents, or subcontractors to comply with the requirements of this warranty or the requirements of warranties of manufacturers of Appliances, equipment, or fixtures.
- I. Any defect or damage to the extent it is caused or made worse by failure of anyone other than the Company, its employees, agents, or subcontractors to comply with the requirements of this warranty or the requirements of warranties of manufacturers of appliances, equipment, or fixtures.
- J. Failure of Owner to take timely action to minimize loss/damage and/or damage resulting from failure of Owner to give the Company proper timely notice.
- K. Bodily injury, damage to personal/real property which is not part of the Home and was not included in the purchase price stated above.
- O. Insect or animal damage.
- M. Any and all items purchased, placed, installed, or built into this property by the Owner or her agents shall be specifically excluded from warranty coverage. Any and all items which could or might be effected by changed or added items will not be included in warranty coverage.
- N. I understand that the Company has used diligence, all standard accepted building practices, all standard materials and has followed the existing codes as close as is humanly possible. I realize as the Owner that the Company is unable to protect or treat for unforeseen items such as attacks by molds, spores, mildews, vermin, funguses or the like. I also am aware that some items placed in this house by the very nature of being organic, natural, man-made or porous may contain molds, spores, mildew, vermin, funguses or the like that do not at present appear or show any signs of being present. I further state that I will hold the Company harmless and release them from any and all liability that such items or attacks may present and I will seek no further remedies. I further understand that many different conditions and possibilities may cause any or none of the items to form, grow or exist. These conditions do not exist as can be determined at the present time nor are they known by the Company or myself as the Owner at this time. I further realize that these conditions may or may not ever exist. The Company has used all diligence to use quality accepted materials, standards, practices and techniques. I do not expect any warranty nor will I expect this condition to be warranted. Company herein specifically states that these conditions will not be warranted nor covered in the one year warranty nor will I have any future remedies.

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*Owner*

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*Company*

- O. Wood will sometimes check, crack, or “spread apart” because of the drying out process. This condition is most often caused by the heat inside the house or the exposure to the sun on the outside of the house. This condition is considered normal, and the Owner is responsible for any maintenance or repairs resulting from it.
- P. Floor squeaks may appear and disappear over time with changes in the weather. Floor squeaks will not be warranted.
- Q. **Indoor Air Quality Disclaimer;**The United States Environmental Protection Agency (EPA) and the Tennessee Department of Health or Environmental Protection has expressed concern over the presence of radon gas in homes. Prolonged exposure to high levels of indoor radon or its progeny may affect the health of residents. Although such conditions may exist, the builder has made no investigation to determine whether radon gas or other environmental pollutants are present in the home or affecting the premises. The builder has made no analysis or verification of the extent of the environmental or health hazard, if any, that may affect the premises or residents. The builder makes no representation or warranty as to the presence or lack of radon or hazardous environmental condition, nor as to the effect of radon or any such condition on the premises or residents.
- R. **Differing site condition Disclaimer;** a differing site is a physical characteristic of the property that materially changes the construction techniques necessary to fulfill the terms of the contract and the building of this property. Examples of differing site conditions are subsurface or latent physical conditions at the site differing materially from standard conditions, they may have or may not have been known physical conditions of an unusual nature located on the building site such as sinkholes, artesian springs, rock out crops, or other natural occurring conditions or the like. All diligence has been used to seek remedies for these occurrences and conditions and proper expert diagnosis and opinions have been used to remedy such known conditions as is humanly possible but these items can’t be included in this warranty and it is strongly suggested that additional insurance be sought as a remedy for any such condition that now exist or might exist in the future. These conditions are not warranted and know coverage will be expected.
- S. **Appliances:** Please refer to the Manufacturer's Warranty Books for operation and care of each appliance in the Home. Appliances are not covered under this One-Year Warranty. However, they do carry a One-Year Manufacturer’s Warranty which is transferred to the Owner upon closing. Appliances may be repaired when malfunctioning, excluding damage from misuse, by the manufacturer.

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*Company*

8. EXCLUSIVE WARRANTY: The Company and Owner agree that this Warranty as applicable to the Home is in lieu of all warranties of habitability or workmanlike construction or any other warranties, express or implied, to which Owner might be entitled, except as to consumer products. No employee, subcontractor, or agent of the Company has the authority to change the terms of this Warranty.

9. NOT TRANSFERABLE: This Warranty is extended to the Owner only if the Owner is the first purchaser of the Home. When the Owner sells the Home or moves out of it, this Warranty automatically terminates. It is not transferable to subsequent purchasers of the home nor to the first purchaser's tenants.

10. DISPUTE: The Owner shall promptly contact the Company regarding any warranty issue and must follow the requirements of Chapter 558, Florida Statutes, before the Owner may bring any legal action for any alleged construction defect in the covered home. Sixty (60) days before the Owner brings any legal action, Owner must deliver written notice to the Company, referring to Chapter 558, Florida Statutes, that describes the alleged construction defects and provides the Company the opportunity to inspect the alleged construction defects and to consider making an offer to repair or pay for the alleged construction defects. Owner is not obligated to accept any offer which may be made by the Company. If the Owner does not accept Company's offer to repair or pay for the replacement of the alleged construction defect, then the Owner and Company agree that any dispute, controversy, claim or matter in question regarding the workmanship and materials warranty, the Owner and Company will attempt to resolve any disputes by mediation. Should mediation fail, the dispute shall be submitted to binding arbitration and not a court for determination by a judge or jury.

11. ARBITRATION: If discussions between the parties do not resolve the alleged construction defect dispute, then either party may, upon written notice to the other party, submit such dispute to arbitration. The arbitrators shall proceed under the construction industry rules of the American Arbitration Association. The award of the majority of the arbitrators shall be final, conclusive, and binding upon the parties hereto. The expenses of the arbitrators shall be shared equally, but each party shall bear its own fees and costs. The controlling standard for performance shall be the items and remedies as per policy or quality standards as supplied and ACCEPTED by the **Residential Construction Performance Guidelines For Professional Builders and Remodelers Fourth Edition per NAHB**. These two performance standards shall be the only standard by which warranty or correction and or arbitration shall be required. This arbitration shall take precedence over any other clause found and shall null and void other clauses. The arbitration panel shall award the arbitrators fees and costs to the prevailing party in its arbitration judgment.

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*Owner*

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*Company*

12. WARRANTY SERVICES ARE LIMITED TO REPAIR AND REPLACEMENT. UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES BASED ON A CLAIMED DECREASE IN THE VALUE OF THE HOME, EVEN IF MARONDA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE WARRANTY IS THE ONLY WARRANTY APPLICABLE TO THIS PURCHASE. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF FITNESS, MERCHANTABILITY OR HABITABILITY, ARE DISCLAIMED AND EXCLUDED.

13. WARRANTY SERVICE: Will be performed on Monday thru Friday between the hours of (9:00 AM thru 4:00 PM CST) all warranty work requested **MUST BE IN WRITING** to the Company. **NO REQUEST WILL BE TAKEN OVER THE PHONE except in the event of an Emergency.** This is for your protection as well as to allow us efficient and accurate operation of the service department. All correspondence should be addressed to Larry Walsh and Associates, Inc., 15284 Business Hwy 331, #3E, Freeport, FL 32439.

Please include daytime phone number so that repair scheduling may be set. **WARRANTY SERVICE** requests will only be considered on items that meet the items and remedies as per policy or quality standards as supplied and ACCEPTED by the **Residential Construction Performance Guidelines For Professional Builders and Remodelers per NAHB**. These two performance standard shall be the only standard by which warranty or correction shall be required.

Emergency situations should be reported to the Company via telephone and in writing. An emergency situation includes, but is not limited to, the following:

1. Total loss of heat due to mechanical failure
2. Total loss of electricity due to workmanship of house electrical
3. Plumbing leak caused by workmanship that requires the water supply be shut off
4. Any situation that endangers the occupants of the home

14. SEVERABILITY: In the event that any provision in this Warranty shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

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Owner

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Company

15. ENTIRE AGREEMENT: This Warranty represents the entire agreement between the parties relating to the subject matter hereof. This Warranty alone fully and completely expresses the agreement of the parties relating to the subject matter hereof. There are no other courses of dealing, understanding, agreements, representations or warranties, written or oral, except as set forth herein. This Warranty may not be amended or modified, except by a written agreement signed by all parties hereto.

Please read through this document before submitting a warranty service request. All non-emergent requests for service must be reported in writing. Please remember that “cosmetic repairs” such as, but not limited to, drywall, paint, doors, and wood trim, etc.(see Acceptance document signed during closing process) are not required repair items after the Owner has moved into the house. We prefer that the Owner wait thirty (30) days after moving in to submit a warranty service request form. This allows you sufficient time to become settled in your new home and thoroughly examine all components of your new home. We will not accept reports of non-emergency items over the phone.

ACCEPTED this \_\_\_\_\_ day of January, 2019.

**LARRY WALSH AND ASSOCIATES, INC.**

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By: \_\_\_\_\_

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By: \_\_\_\_\_