

AMWARD HOMES OF NC, INC. RESIDENTIAL LIMITED WARRANTY

Buyer: _____

Property Address 317 Black Caviar Way, Raleigh NC, 27603

The Buyer should also be aware that he/she is responsible for proper home maintenance. Damage caused by Buyer's negligence, improper maintenance or changes, alterations or additions performed by anyone other than this Builder, its employees, or subcontractors is excluded from this Warranty. Buyer is not permitted to hire Builder's subcontractors directly for any work on the property during the period of this Warranty without the Builder's prior written permission. Work performed by the Builder's subcontractor(s) that is not overseen by the Builder is excluded from this Warranty. **Note to Buyer:** All new residential construction goes through a period of stabilization; and, as the seasons change, periods of expansion and/or contraction will occur. As a result, the home will experience minor material changes that are unavoidable and considered normal.

Builder hereby grants a one-year limited Warranty to the above Buyer for the residential construction project at the above property address, under the following terms and conditions:

1. Term — The term of this Warranty is limited to twelve (12) months from the "Date Of Completion" of the building. The "Date Of Completion" is defined as the earlier of: (a) the date the Buyer takes occupancy of said home; or, (b) the date on which Buyer and Builder conduct Builder's closing for said home. The term of this Warranty may be affected by circumstances related to construction delays or work stoppage.

2. Coverage — Subject to the exclusions set forth below, the Builder warrants that the building will be free from defects in workmanship and materials, consistent with applicable building codes and the guidelines found in the publication *Residential Construction Performance Guidelines Consumer Reference, Sixth Edition*, National Association of Home Builders, 2015. If an item is not covered in that publication, standard industry practice shall govern. This may include the dispute resolution process. This Warranty is limited to corrections of structural errors and material failures and is not to be construed as a maintenance warranty.

There shall be no money withheld by Buyer for items covered by this Warranty. This Warranty, including the assignment of manufacturer's warranty in Paragraph 9 below, is void and unenforceable unless payment in full is made to Builder on or before the "Date of Completion".

3. Exclusions – The following items are not covered by this Warranty:

(a) Homeowner Maintenance & Use Responsibilities:

- (1) Damage due to the abuse or neglect of the Buyer or the Buyer's failure to provide for proper maintenance.
- (2) Loss or damage caused by the Buyer's failure to take appropriate action to minimize any damage as soon as practical.
- (3) Dampness or condensation due to the failure of the Buyer to maintain adequate ventilation and humidity levels.
- (4) Loss or damage resulting from abnormal loading on floors by the Buyer that exceeds the design criteria as mandated by State building codes.
- (5) Insect or rodent damage or costs to exterminate insects or rodents.
- (6) Any loss or damage that arises while the building is being used primarily for nonresidential purposes.
- (7) Failure of outside hose bibs when cause of the failure is due to Buyer's neglect. A common cause is Buyer's failure to disconnect a hose in freezing temperatures.
- (8) Damage or defects in concrete floors of attached garages, stoops, steps and exterior concrete flatwork caused by improper use of chemicals by the Buyers or Buyers agent, including the use of salt to remove ice.

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(b) Construction Related Exclusions:

- (1) Normal wear and tear, normal deterioration, or normal changes that are a result of characteristics common to materials.
- (2) Warp or shrinkage of materials within permitted tolerances in the industry.
- (3) Surface damage to the building; including but not limited to damage to walls, ceilings, trim, cabinets, counters, plumbing fixtures, light fixtures, tile, flooring, glass, windows, doors, overhead doors, mirrors, and screens. Builder and Buyer shall perform a walk-through inspection of the home prior to or at the time of closing to inspect the above items. All items are assumed to be in good condition unless documented in writing to the contrary at said inspection. Buyers therefore release the Builder from responsibility for any surface damage that is not specifically documented at said inspection.
- (4) Damage or defects in concrete floors of attached garages, stoops, steps and exterior concrete flatwork caused by weather changes, chemicals or moisture after installation.
- (5) All landscaping (including sod, seeding, shrubs, trees, plantings), all boundary walls, all retaining walls and bulkheads that are not necessary for the structural stability of the residence, all fencing, and all sprinkler systems.
- (6) Defects caused by movements of outbuildings, swimming pools, detached garages or carports when these structures are not secured by footings.
- (7) Settling of the ground around the foundation and all underground utility laterals.
- (8) Any damage caused by soil movement.
- (9) Exterior hardware and lighting fixture finishes.
- (10) Cosmetic discrepancies such as matching of touchup painting on walls, ceilings, interior trim, exterior trim, siding, roofing, flooring, etc. as a result of a covered defect, or as a result of the repair thereof.

(c) Work Performed by Someone Other Than Builder or Builders Agents:

- (1) Defects in materials supplied by anyone other than the Builder or agents acting on the Builder's behalf.
- (2) Any work performed by Buyer or by Buyer's subcontractor(s) or agents.
- (3) Damage to Builder's work that is caused by Buyer, Buyer's subcontractor or agent.
- (4) Any adjustments or changes to the grading performed by anyone other than the Builder or its agents acting on the Builder's behalf.

(d) Other Warranties That Are Transferred to the Buyer:

- (1) Any appliance, equipment, or other item within the residence which is considered a "consumer product" as defined in the Magnuson – Moss Warranty Act (15U.S.C. SS2301 -2311) where the "consumer product" manufacturer's warranty would apply. Buyers only Warranty on these items is limited to the warranty, if any, granted by the manufacturer thereof. "Consumer Products" covered by the Magnuson-Moss Warranty Act including, but not limited to:
 - a. Heating and Ventilation – Furnace, air conditioning, coils and compressor, humidifier, electronic air cleaner, heat pump, exhaust fans, or thermostat.
 - b. Mechanical/Electrical – Intercom, central vacuum system, security system, fire and smoke alarm, fire extinguisher, garage door opener, door chimes, electric meter, gas meter, barbecue grill, or light bulbs.
 - c. Plumbing – Water heater, water pump, water meter, sump pumps, water softener, or whirlpool.
 - d. Appliances – Oven, surface unit, range, trash compactor, freezer, refrigerator, dishwasher, oven hood, disposal, icemaker, food center, clothes washer, clothes dryer or hot water dispenser.
- (2) Any other product covered by a manufacturer's warranty.

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(e) Acts Outside of Builders Control, Actual Physical Damage, and Consequential Damages from Defects:

- (1) Loss or damage caused by external conditions outside of the Builder's control including but not limited to riots, civil commotion, acts of God, accidents, explosions, smoke, water, changes in the level of the underground water table, windstorm, hail, lightning, falling trees, aircraft, vehicles, mud slides, earthquakes, natural or introduced gases.
- (2) Any defect or condition that does not result in actual physical damage to the property.
- (3) Personal or bodily injury of any kind (including physical or mental pain and suffering and/or emotional distress), medical, hospital, rehabilitation or other incidental or consequential expenses, damage to personal property or damage to real property which is not part of the building covered by this Warranty.
- (4) Cost of shelter, transportation, food, moving, storage or any other incidental or consequential damages or expenses associated with or related to any defect or the repair or replacement of any defects in workmanship, materials or design.
- (5) Loss of use, loss of opportunity, loss of fair market value, loss of rental value or any other similar consequential loss.
- (6) Any defect where the buyer has received compensation from Builder or its agents.

4. Warning: Microorganisms, including, but not limited to, mold, mildew, spores, or any other form of fungi or bacteria ("Microorganisms"), occur naturally in the environment and may be present, during or after construction, in the indoor air and/or on the interior surfaces of the building including, without limitation to, wall cavities, attics, windows, basements, and/or on the exterior surfaces of the building, or any part thereof. Concentration of moisture in the building may result from cooking, showering, or similar activities inside the building, the outside atmosphere, and/or the design, construction means and methods, and/or the building materials used in the construction of the building. This moisture may cause growth, release, discharge, dispersal, or presence of Microorganisms which, at certain levels, can cause deterioration of building materials, damage to property, health hazards, personal injuries and/or other irritant effects such as, without limitation to, skin irritation, respiratory problems and/or allergic reactions. Likewise, concentrations of radon released from soil or chemicals released from household furnishings, appliances, mechanical equipment, personal possessions, or building materials may, at certain levels, create health hazards and/or other irritant effects such as, without limitation to, skin irritation, respiratory problems and allergic reactions. Because Microorganisms and radon occur naturally in the environment, Builder cannot eliminate the possibility that radon may be present or that Microorganisms may grow in, on, or about the building. Buyer may minimize these effects by proper utilization and maintenance of heating, cooling, dehumidification or ventilation equipment, interior maintenance and cleaning, and exterior maintenance such as, but not limited to, proper grading, landscaping, painting, and caulking. **BUYER ACKNOWLEDGES THAT BUYER HAS BEEN INFORMED OF SUCH DEFECTS AND BUYER ASSUMES ALL RISKS OF DAMAGE, PERSONAL INJURY, OR DESTRUCTION OF OR INJURY TO PROPERTY THAT MAY ARISE AS A RESULT OF OR IN ANY WAY CONNECTED WITH THE INDOOR AIR QUALITY OR THE PRESENCE OF MICROORGANISMS, RADON, OR CHEMICALS IN, ON OR ABOUT THE BUILDING.**

5. Remedy — If a defect is covered by this Warranty and notice is given to Builder prior to the expiration of this Warranty in accordance with Paragraph 6 below, then Buyer's sole remedy under this Warranty is for Builder to repair or replace, at Builder's sole option, the covered defect. Builder makes no express or implied warranty of any building materials, services and/or construction methods, except as otherwise expressly provided herein. **THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, USE, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE) AND ANY AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED.** Buyer waives any and all claims for consequential and incidental damages and any other expenses associated with or related to any defect, or the repair or replacement of any defects, in workmanship, materials or design, arising from or relating to this Warranty, including a breach thereof.

6. Time of Notice of Claim — In order for a defect to be covered by this Warranty, Buyer must give prompt written notice of such defect to Builder and be able to provide proof of delivery, prior to the date of expiration of this Warranty. Any defect, latent or otherwise, for which written notice is not provided to the Builder prior to the expiration of this Warranty shall not be covered by this Warranty.

Buyer's Initials_____

7. Builder Access — Buyer shall provide Builder with reasonable access to the home during normal working hours for the performance of any work under this Warranty. Buyer shall ensure that all furniture and other obstacles within or around the portion of the home to be repaired will be removed so that Builder has reasonable access and sufficient working space necessary to repair and/or replace the covered defect.

8. Other Insurance or Warranties – In the event Builder repairs, replaces or pays the cost of repairing or replacing any defect covered by this Warranty which Buyer is covered by other insurance or warranties of Buyer, then Buyer shall assign the proceeds of such insurance or warranties to Builder to the extent of the cost to the Builder for such repair or replacement, or the extent of the payment. Buyer shall not permit repairs to be undertaken by any insurance carrier prior to Builder's written notification to Buyer that said repair is not covered by this Warranty.

9. Warranty Assignments – Builder hereby assigns to Buyer all manufacturers' warranties pertaining to any fixtures, appliances and equipment in the building. This Warranty is not assignable or transferable to any subsequent owner of the residence without the Builder's prior written consent.

10. Disputes and Resolutions – (1) Mediation: Any controversy arising out of the condition of the home or the interpretation of this Warranty, including, but not limited to, what constitutes a defect, any claim for damages against the builder, or any claim of negligence, fraud, breach of express warranty, breach of implied warranty, consumer protection act violations, and breach of contract, shall be decided by alternative dispute resolution. The parties agree to initially mediate in good faith and to attempt to achieve resolution of any dispute. (2) Binding Arbitration: In the event that the dispute is not fully resolved in mediation, the dispute shall then be submitted to binding arbitration. Arbitration shall be conducted in accordance with the Construction Industry Rules of the American Arbitration Association that are in effect at the time of the dispute. The arbitrator shall employ the standards of construction contained in the current edition of the Residential Construction Performance Guidelines in determining what constitutes a defect in construction. Should any party refuse or neglect to appear or to participate in arbitration proceedings, the arbitrator is empowered to decide the controversy in accordance with whatever evidence is presented. The arbitrator shall be authorized to order replacement or repair or to award damages. However, awarded damages shall not exceed the cost of replacement and repair. Each party shall be responsible for their own legal expenses and the cost of any expert witnesses. The fee for mediation and/or arbitration services shall be divided equally between the builder and the buyer.

If either party refuses to submit a claim to arbitration, fails to abide by all of the rules adopted by the applicable arbitration body, or fails to abide by the decision of the arbitrators, the non-breaching party shall be entitled to recover all costs, including attorneys' fees, incurred in seeking further action to enforce the terms of this Warranty and/or to compel arbitration.

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Enforceability – If any part of this Warranty is found to be unenforceable, it shall not affect the enforceability of the remainder of this Warranty. The failure of either party to enforce any term or condition of this Warranty, shall not constitute a waiver of any other breach of any right, claim, term or condition of this Warranty. This Warranty is to be covered by and construed in accordance with the laws of the State of North Carolina.

This shall constitute the sole and entire warranty and no other written or implied warranties exist between the parties whose signatures are affixed below:

Buyer Date

Amward Homes of NC, Inc Date

Buyer Date