

Palmera at Wellen Park

**SELLER'S EXPRESS
LIMITED WARRANTY
WITH DISPUTE
RESOLUTION PROCEDURES**

SELLER'S EXPRESS LIMITED WARRANTY WITH DISPUTE RESOLUTION PROCEDURES:

A. Seller's Express Limited Warranty: Our Seller's Express Limited Warranty, as set forth herein, is the sole and only warranty, either express or implied, that you as the Buyer shall receive from the Seller with respect to the Buyer's home. There are no other express or implied warranties being given by the Seller to the Buyer, and the Buyer specifically waives to the full extent allowed by law any implied warranties of habitability, merchantability or fitness for any particular purpose with respect to the Buyer's home or any personal property or fixtures being provided to the Buyer by the Seller as part of the Buyer's home. At the Closing, the Buyer has received from the Seller this Homeowner's Manual, which further explains the Express Limited Warranty Program. In addition to the Seller's obligation to correct construction defects in accordance with the Express Limited Warranty during the Warranty Period, the Seller's Customer Service Program provides for the repair, if applicable, by the Seller during the one (1) year Warranty Period of minor problems in the Buyer's home that might not arise to the level of a construction defect under the Express Limited Warranty. Seller hereby expressly warrants for the one (1) year Warranty Period to the Buyer, and all subsequent purchasers of the home ("Warranty Beneficiaries"), that the home will be constructed in a good and workmanlike manner free from construction defects for the Warranty Period.

B. Express Limited Warranty Exclusions: The Express Limited Warranty does not cover and excludes any loss or damage incurred by any of the Warranty Beneficiaries resulting, either directly or indirectly, from the following causes or occurring in the following situations:

- (a) Fire (unless caused by a Construction Defect);
- (b) Lightning;
- (c) Explosion (unless caused by a Construction Defect);
- (d) Riot and Civil Commotion;
- (e) Smoke (unless resulting from a Construction Defect);
- (f) Hail;
- (g) Aircraft;
- (h) Falling Objects;
- (i) Vehicles;
- (j) Floods;
- (k) Earthquake;

- (l) Mine subsidence or sinkholes;
- (m) Changes in the underground water table not reasonably foreseeable by the Seller;
- (n) Wind, including:
 - (i) Gale force winds;
 - (ii) Hurricanes;
 - (iii) Tropical storms;
 - (iv) Tornadoes;
 - (v) Rain or water intrusion or moisture within the home resulting from any wind forces described in (n)(i) thru (iv) above;
- (o) Insects, animals or vermin;
- (p) Changes, additions, or alterations made to the home;
- (q) Any Construction Defect in material or workmanship supplied by anyone other than the Seller or its Contractor (as hereinafter defined), as hereinafter defined, or their subcontractors and suppliers, including any loss or damage to the home ;
- (r) Failure by the Buyer to exercise reasonable care in the maintenance of the home express provisions of the Declaration or any maintenance workbooks provided by the Seller to the Buyer; and
- (s) Normal wear and tear or normal deterioration of materials.

The following are additional Express Limited Warranty Exclusions:

- (a) Any damage to personal property that does not result from a Construction Defect;
- (b) Any consequential or incidental damages;
- (c) Any Construction Defect as to which the Warranty Beneficiaries have not taken timely and reasonable steps to protect and minimize damage;
- (d) Any non-conformity with local building codes, regulations or requirements where the condition does not meet the definition of a Construction Defect;
- (e) Any deviation from plans and specifications where the condition does not meet the definition of a Construction Defect;

DISPUTE RESOLUTION PROCEDURES:

A. GENERAL PROVISIONS: It is Seller's intent that the home constructed by Seller be of a quality that is consistent with good construction and development practices for similar properties and be free of Construction Defects. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluation of such quality issues may arise as to whether alleged Construction Defect exists and Seller's responsibility therefor. It is Seller's intent to attempt to resolve all claims and disputes regarding Construction Defects amicably through personal negotiations with the Warranty Beneficiaries. If such personal negotiations fail for whatever reason, then the Warranty Beneficiaries shall be bound to follow the procedures and provisions set forth in Chapter 558 Florida Statutes – Construction Defects, as may be amended from time to time (the "Act") with respect to claims for Construction Defects against the Seller as well as other Covered Parties (as defined below). A copy of the Act has been provided to the Buyer pursuant to Section 10.E. of the Purchase Contract, and the terms and provisions of the Act, including the Notice provision set forth in Section 12 of the Purchase Contract and at Section 558.005(6) of the Act are fully incorporated into this Agreement. In the event that personal negotiations and adherence to the procedures and provisions set forth in the Act fail to resolve the claims and disputes of the Warranty Beneficiaries regarding Construction Defects, the Beneficiaries shall be bound to resolve such claims and disputes pursuant to the Mandatory Binding Arbitration provisions set forth in Section 23 of the Purchase Contract.

B. COVERED PARTIES: Covered Parties shall mean the Seller and its general contractor, Benko Construction Co., Inc. (the "Contractor"), and the Contractor's subcontractors and suppliers and any design professionals to be obtained by either the Seller or the Contractor, including, but not limited to, architects and engineers, alleged to be responsible for Construction Defects. With respect to Warranty Beneficiaries' claims for Construction Defects brought against the Seller and/or Contractor, Seller and/or Contractor shall be entitled to seek indemnification, contribution or other forms of damages or relief against the other Covered Parties to the extent that the other Covered Parties' scope of work on the home is the cause of Construction Defects alleged by the Warranty Beneficiaries. Seller and Contractor each reserve their rights against the Covered Parties accordingly, and any resolution of the Warranty Beneficiaries' claims and disputes through personal negotiations, proceedings under the Act or pursuant to an award through arbitration (hereinafter provided for) shall include a release by the Warranty Beneficiaries of their claims against the applicable Covered Parties and an assignment of those claims at the option of the Seller to the Seller and/or Contractor. Seller may also, in its discretion, cause the Covered Parties to participate in any of arbitration proceedings hereinafter provided for.

C. CHAPTER 558 – FLORIDA STATUTES – NOTICE OF CLAIM: **ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.**

D. Non-Express Limited Warranty Claims: In the event that Buyer and/or any Warranty Beneficiaries of the home assert Construction Defect claims against the Seller or other Covered Parties based upon causes of action other than breach of the Seller's Express Limited Warranty, the exclusion provisions of Section B. of Section 3 of this Homeowner's Manual and of Section 21.B. of the Purchase Contract shall be legal defenses applicable to such claims and the Dispute Resolution Procedures, Mandatory Binding Arbitration and Warranty Disclaimers; Arbitration Provisions and Procedures; and the Mediation provisions of this Homeowner's Manual and Sections 22 and 23 of the Purchase Contract shall apply and govern the resolution of such claims.

MANDATORY BINDING ARBITRATION AND WARRANTY DISCLAIMERS; ARBITRATION PROVISIONS AND PROCEDURES; MEDIATION

A. MANDATORY BINDING ARBITRATION AND WARRANTY DISCLAIMERS: TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND HABITABILITY, WITH RESPECT TO THE HOMES CONSTRUCTED BY THE SELLER AND THE COVERED PARTIES, OR WITH RESPECT TO CONSUMER PRODUCTS OR OTHER MATERIALS OR EQUIPMENT THAT MAY BE INSTALLED OR THAT ARE CONTAINED IN OR RELATE TO THE HOMES. EACH OF THE WARRANTY BENEFICIARIES, BY TAKING TITLE TO THEIR HOME ACKNOWLEDGE AND AGREE, IF ANY CLAIMS OR DISPUTES BETWEEN THE SELLER AND OTHER COVERED PARTIES, ON THE ONE HAND, AND THE WARRANTY BENEFICIARIES, ON THE OTHER HAND, RELATING TO ALLEGED CONSTRUCTION DEFECTS ARE NOT RESOLVED BY PERSONAL NEGOTIATIONS OR THE PROCEDURES AND PROVISIONS OF THE ACT REFERRED TO ABOVE, THAT SUCH CLAIMS AND DISPUTES, WHETHER BASED ON THE EXPRESS LIMITED WARRANTY, CONTRACT, TORT, STATUTE, OR EQUITY, BE RESOLVED SOLELY AND EXCLUSIVELY THROUGH MANDATORY BINDING ARBITRATION PURSUANT TO THE PROVISIONS AND PROCEDURES FOR VOLUNTARY BINDING ARBITRATION SPECIFIED IN SECTION 44.104 FLORIDA STATUTES; PROVIDED, HOWEVER, TO THE EXTENT SUCH STATUTORY PROVISIONS AND PROCEDURES ARE IN CONFLICT WITH THE ARBITRATION PROVISIONS AND PROCEDURES SET FORTH IN THIS HOMEOWNER'S MANUAL AND IN THE PURCHASE CONTRACT SECTIONS 23.B. (i) THRU SECTION 23.B. (xi), THEN THE ARBITRATION PROVISIONS AND PROCEDURES SET FORTH IN THIS HOMEOWNER'S MANUAL AND IN SECTIONS 23.B. (i) THRU (xi) OF THE PURCHASE

CONTRACT SHALL GOVERN AND CONTROL OVER SAID STATUTORY PROVISIONS AND PROCEDURES.

B. ARBITRATION PROCEDURES AND PROVISIONS:

(i) Initiation of Action. To initiate the arbitration, either the Warranty Beneficiaries or the Seller (hereinafter in this Section sometimes "party" or "parties") shall file an application for voluntary binding arbitration with the Clerk of Circuit Court for the Sarasota County, Florida ("Court") and pay the applicable fees. The application for voluntary binding arbitration must be verified under oath by the party initiating the action as being true and must allege that the procedures under Chapter 558 Florida Statutes were followed, if applicable.

(ii) Procedure. The rules of civil procedure will apply to the arbitration as if the matter were a civil action. Any petition or motion for emergency or temporary relief, which in a civil action would be presented to the Court, shall be presented to the arbitrator for ruling. Such ruling shall be final unless and until reversed by the Court upon appeal. Preliminary hearings may be held in person or by telephone conference. If either party requests a preliminary hearing, then the party setting the hearing shall make the arrangements for either a physical meeting or a telephone conference of the parties, their attorneys and the arbitrator. The arbitrator will select the time and place of all hearing and of all meetings. The arbitrator shall regulate the proceedings at all hearings. The party filing a pleading, motion or request shall assure that the arbitrator receives a copy from the Clerk of Court or by forwarding a copy to the arbitrator at the time of filing.

(iii) Selection of Arbitrator. The parties agree that there shall be one arbitrator to resolve any and all claims and disputes regarding Construction Defects. Within ten (10) days of the filing and service on the opposing party of an application for voluntary binding arbitration with the Clerk of Court, each party shall provide the other party a list of three (3) potential arbitrators. Within five (5) days of receipt of the other party's list of proposed arbitrators, the receiving party shall provide a written response either accepting or rejecting each proposed arbitrator. If multiple arbitrators are acceptable, the parties shall mutually agree as to which of the accepted arbitrators shall act as the arbitrator of the claims and disputes. If either party fails to timely provide their list of three (3) potential arbitrators or fails to timely respond to the opposing party's list of proposed arbitrators, the party in full compliance shall solely be responsible for selection of the arbitrator. If no arbitrator has been selected after the above procedure is completed, the appointment of the arbitrator shall be made by the Court. Each arbitrator proposed, and the one

arbitrator ultimately selected, must be a member in good standing of the Florida Bar for at least ten (10) years or a retired circuit court judge. The arbitrator must also meet the minimum standards established by the Florida Supreme Court.

(iv) Fees and Costs in Arbitration. Each party will each pay one-half of the fees charged by the arbitrator, or if there are multiple parties, each party shall pay a pro rata share of such fees. If the parties fail to make an appointment, each party will still be obligated to pay the fees of the selected arbitrator. Any fees or costs due the Clerk of Court will be payable by the party filing the application incurring the charge. Upon request of the arbitrator, each party shall deposit in advance its share of the anticipated fees and costs with the arbitrator sufficient money to cover the anticipated costs and fees chargeable to the parties for conducting the arbitration proceeding through completion. If the any party fails to pay the fees or costs chargeable to them, or fails to make an advance deposit requested by the arbitrator within fourteen (14) days of request, then upon request, the arbitrator shall dismiss the complaint and/or application with prejudice or strike the responsive pleadings of the defaulting party and issue a ruling accordingly. If the arbitrator fails to issue such an order, then either party may apply to the Court for such ruling.

(v) Expert Reports. No expert may testify at any arbitration hearing, except for rebuttal, unless the party calling such expert has provided a detailed written summary of the testimony such expert is expected to present at the hearing at least thirty (30) days prior to the hearing or as otherwise required by the arbitrator.

(vi) Attorney Fees or Costs. The parties will each be responsible to pay their own attorneys' fees and their own costs. Both the prevailing party and the non-prevailing party shall be responsible to pay said fees and costs and shall not be recovered from the other any attorneys' or consultants' fees or costs (including copy charges, expert witness fees, consultant fees, filing fees, arbitrator fees, room rental fees, court report fees or service costs).

(vii) Jurisdiction. The arbitrators shall not have any jurisdiction to issue any ruling or order: (i) that grants any party attorneys' fees or costs or that determines the prevailing party for the purpose of awarding attorney's fees or other fees or costs referred to in (f) immediately above; (ii) that awards any compensation in disregard of the terms of the Express Limited Warranty, the Express Limited Warranty exclusions, expiration dates, or other limitations set forth in this Agreement; or (iii) in disregard of the applicable statute of limitations or statute of repose.

(viii) Scope. The parties intend that the scope of this Section B of Section 3 of this

Homeowner's Manual and Section 23.B of the Purchase Contract be broadly interpreted. The provisions regarding alternative dispute resolution, the Act and arbitration apply not only to the parties, but also to anyone connected in any way to the parties. For example, these provisions apply to parties' affiliated companies or entities, contractors, subcontractors, sub-subcontractors, material suppliers, employees, officers, agents and representatives; to parties' family, parties' heirs, successors and assigns; and to anyone who has any claim arising by or through any party. If by law or contract any party or subject is not subject to the provisions of this Section, then this Section B of Section 3 of this Homeowner's Manual and Section 23.B of the Purchase Contract will nonetheless apply to all other parties and subject matters. Warranty Beneficiaries hereby agree that any individual claims relating to Construction Defects that Warranty Beneficiaries may wish to assert against the Seller and/or Contractor must also be brought under these dispute resolution procedures. The Warranty Beneficiaries hereby agree that they will not object to Seller adding any other third parties to the arbitration that Seller desires to join in order to fully adjudicate all related claims and disputes.

(ix) Waiver of Jury Trial. THE SELLER AND WARRANTY BENEFICIARIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIMS AND DISPUTES BETWEEN THE PARTIES REGARDING CONSTRUCTION DEFECTS.

(x) Class Action Disputes. The parties agree that neither party will voluntarily join, nor participate as a member of a class, in any judicial action alleging, involving or relating to matters which are capable of or subject to arbitration pursuant to this Agreement. The parties agree that there shall be no right or authority for any claims to be arbitrated on a class action or consolidated basis or on a basis involving claims brought in a purported representative capacity on behalf of the general public, other homeowners, or other persons similarly situated.

(xi) Judicial Determination of Statue of Limitations, Repose and Warranty Expiration. In order to avoid the expenses of arbitration proceedings for claims which may be extinguished by applicable statute of limitations, statute of repose or warranty expiration, the parties desire to provide for judicial resolution of these defenses prior to any arbitration hearing. Accordingly, after commencement of any arbitration proceeding, but prior to opening of the arbitration hearing either party may, by giving notice to the other party and the arbitrator, stay the proceedings and seek judicial determination as to whether and to what extent such defenses apply. All proceedings and discovery in any arbitration shall be stayed immediately upon delivery of such notice. Thereafter, the party seeking the stay shall file appropriate pleadings in the Court with jurisdiction over the home. The judge shall be the sole

finder of fact in such proceeding. The parties agree that discovery shall be permitted in such civil action, but only as related to the issue of repose, statute of limitations or warranty expiration. In the event that the Court determines that such defenses apply to the entire claim, then any arbitration proceedings that have commenced shall be dismissed with prejudice. In the event that the Court determines that such defenses apply to only a portion of the claim, then any claims that are determined to be extinguished by repose, limitation or warranty expiration shall be dismissed with prejudice and the arbitration shall resume as to all other claims. In the event neither party seeks judicial determination of these defenses prior to the opening of the arbitration hearing, then such defenses shall be decided by the arbitrator(s). The parties herein agree that the seeking of a judicial determination of a statute of limitations defense, statute of repose defense and/or warranty expiration defense shall not act as a waiver or abandonment of the rights and obligations to demand and participate in arbitration pursuant to Section B of Section 3 of this Homeowner's Manual and Sections 22 and 23 of the Purchase Contract.

C. **MEDIATION:** Notwithstanding any provision to the contrary in this Section C of this Section 3 of this Homeowner's Manual and Sections 22 and 23 of the Purchase Contract prior to submitting claims and disputes to mandatory arbitration, the Seller and Warranty Beneficiaries may mutually agree to submit the claims and disputes of the Warranty Beneficiaries to nonbinding mediation before a mutually selected single mediator at a location mutually determined.

NO CO-VENTURER OR GUARANTOR: The purchase of a home in Palmera at Wellen Park is a contractual matter solely between the Buyer and the Seller. Neither the Seller nor any sales agent or other representative thereof is authorized to make any statements or commitments on behalf of the Palmera at Wellen Park Homeowners' Association, Inc. or to waive any requirements applicable to the development or ownership of a home in Palmera at Wellen Park.

RADON GAS: Radon Gas is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health department. Seller makes no representation to Buyer concerning the presence or absence of radon gas in the home at any time or in any quantity. Buyer hereby expressly releases Seller from any loss claim, liability or damages now or hereafter arising from or related to the presence or absence of radon gas in the home.

MOLD INFORMATION DISCLOSURE AND LIMITATION OF LIABILITY: There are many different types of indoor environmental contaminants, such as pet dander, dust mites and mold. Molds and other potential contaminants have been a part of our environment for millions of years. Contaminants are everywhere, indoors and outdoors. Therefore, everyone is exposed to some contaminants on a daily basis without evident harm. Mold will grow wherever the conditions are favorable, which includes dark, damp and warm spaces. Due to a number of factors, including the fact that sensitivities to various types of molds and other potential contaminants vary from person to person, there are no state or federal standards concerning acceptable levels of exposure to mold. According to the Consumer Product Safety Commission and the American Lung Association, some diseases or illnesses have been linked with biological pollutants in the indoor environment, including some forms of mold. However, many of these conditions also have causes unrelated to the indoor environment. Therefore, it is unknown how many potential health problems relate exclusively to poor indoor air. Buyer should determine for him/herself whether Buyer, Buyer's family members or any other individuals who will occupy or use their home have special needs or increased risk to these conditions. Buyer should carefully monitor the conditions in Buyer's home for mold growth and other contaminants.

When excessive moisture or water accumulates indoors, mold growth can and will occur, particularly if the moisture problem remains unaddressed. There is no practical way to eliminate all molds or mold spores in an indoor environment. The key to controlling indoor mold growth is to control moisture.

There are many ways to help control mold and moisture in Buyer's home. The following is a list of suggestions, which is not meant to be all inclusive:

- Keep indoor humidity levels inside your home (60% or lower) as low as possible by running the air conditioning unit at a comfortable level. Remember, the cooler the air is, the less humidity it will hold, thereby limiting the growth of mold and mildew.
- Use of a dehumidifier is a great way to keep the humidity levels lower than normal when needed.
- In the event that your home is to be left unoccupied for a long period of time, if breakers are turned off, make sure not turn off the breakers that run the air conditioning system and that thermostats are set appropriately.
- The addition of a humidistat to the existing air conditioning control system is also an excellent way to keep the humidity levels lower when a home is left unoccupied for extended periods of time.
- There are numerous brands of moisture absorbent chemicals available to help keep the humidity inside at a proper level while a home is unoccupied for short periods of time.

- Leave all interior doors inside the home open so that the air from the air conditioner and dehumidifier can circulate freely from room to room.
- Have the air conditioning system checked out by a licensed contractor prior to leaving for long periods of time to insure its proper operating condition.
- Do not run air conditioners with windows open. The air conditioning system is not designed to keep up with the moisture and heat load this condition will generate. When this is done, there is a risk of saturating everything inside the home (walls, furniture, clothing, carpeting, etc.) with more moisture than an air conditioning system is designed to remove in one night. Remember, mold needs moisture to survive. The drier the home, the better off the home will be.
- Be very careful when bringing stored household items, clothing, shoes, furniture, books, paperwork, etc. inside the home. These items could be infected with mold or mildew and not be visible to the eye at the time. It is always safer to wash or clean these items prior to bringing them in from an outside storage area.
- Fix leaking plumbing and any other source of unwanted water immediately.
- Maintain proper indoor humidity. Equipment that conditions the air, such as air conditioners, humidifiers and ventilation systems must be operated year round.
- Have major appliances and equipment, such as heating, ventilating and air conditioning systems inspected, cleaned and serviced regularly by a qualified professional.
- Clean and dry refrigerator, air conditioner and dehumidifier drip pans and filters regularly and make sure that refrigerator and freezer doors are sealed properly.
- Respond promptly when signs of moisture or mold appear.
- Do not allow moisture to stand or make contact with carpet, furniture and cellulose-based materials, such as wood, drywall or other non-tile, non-plastic or non-metal materials.
- Dry all water damaged areas and items immediately to prevent mold growth.
- If mold develops, clean up the mold by washing off hard surfaces and completely drying the surface.
- Depending upon the nature and extent of any mold infestation, trained professionals may be needed to assist in the remediation effort.
- Mold that is not properly and adequately removed may reappear.
- When leaving your home for a lengthy period of time, have a friend or neighbor check the condition of your home from time to time. Many summer storms kick off breakers on an air conditioning system, which may cause moisture and mold to develop.

Buyer acknowledges and agrees that neither the Seller nor its Contractor will be liable to the Buyer for any actual, special, incidental or consequential damages based on any legal theory whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory with respect to the presence and/or existence of molds, mildew and/or microscopic spores unless caused by the sole negligence or willful misconduct of Seller or Contractor. Buyer, on behalf of herself/himself and his/her family members, tenants, invitees and licensees, hereby releases and agrees to indemnify Seller and Contractor and their officers, directors,

partners, members, successors and assigns from and against any and all claims, actions, damages, causes of actions, liabilities and expenses (including without limitation, attorney's fees and costs of enforcing this release and indemnity) for property damage, injury or death resulting from the exposure to microscopic spores, mold and/or mildew and from any loss of resale value due to the presence and/or existence of mold, mildew and/or microscopic spores; provided, however, that in no event is Buyer releasing or indemnifying Seller or Contractor as a result of the presence and/or existence of mold, mildew and/or microscopic spores if caused by the negligence or willful misconduct of Seller or Contractor.