



WEATHERALL BUILDERS

LIMITED WARRANTY AGREEMENT

ADDRESS

2015 Meagher Rd
Helena, MT 59602

CONTACT

Warranty@WeatherallBuilders.com
(406) 594-0979

Home Address : _____

Homeowner(s) Name(s) : _____

Date of Initial Occupancy : _____

WARRANTY COVERAGE

Except as otherwise provided below, Weatherall Builders Inc. provides a non-transferable limited Warranty for a period of one (1) year from date of Initial Occupancy of the home. This limited non-transferable warranty covers structural defects in Contractor- and subcontractor- supplied labor and materials subject to the exclusions herein. A structural defect shall be any defect which reduces the stability or safety of the home below accepted standards or which restricts the normal intended use of all or any part of the home and which requires repair or replacement.

Homeowner shall provide written notice of any warranty item to the Contractor, as soon as practical following discovery of the warranted item, but in no event later than one (1) year from the date of Initial Occupancy. Initial Occupancy for purposes of this Warranty shall be the date of closing as provided in the purchase agreement for the home. If the homeowner fails to notify Contractor and give contractor the opportunity to cure any warranty item during the one (1) year warranty period, homeowner waives the right to require correction of said warranty item(s) and to make a claim for breach of warranty of said item(s).

The sole remedies under this Warranty are repair and replacement by Contractor or its subcontractors. In the event of any defect in any item or component covered by this Warranty, Contractor will repair or replace the defective item or component: in such a manner as to restore the item or component to the condition which would have existed had the defect not been present, at no cost to the homeowner. Any replacement item will be substantially comparable to the item replaced.

This limited Warranty does not excuse or limit the need for homeowner to properly care for and maintain the home. Under the terms of this limited Warranty, and as a condition precedent to any claim against the limited Warranty, homeowner must properly

maintain the home and take normal steps necessary to prevent damage to the home and to ensure proper functions of the home

EXCLUSIONS FROM WARRANTY

This limited warranty only covers defects in construction and materials as discussed above. Repair or replacement of the following items are specifically excluded from this Contractor's warranty when in compliance with local residential building codes.

1. Damage resulting from fires, floods, storms, accidents, or acts of God.
2. Damage to the Home caused by casualties normally covered by standard homeowners' insurance
3. Damage resulting from a malfunction of equipment lines of a utility company.
4. Defects or smudges in painted surfaces; chipping or cracking of counter tops, fiberglass, or tiles; defective or broken glass or similar defects readily visible to the human eye which are not noted for correction at the time of inspection prior to closing.
5. Damage resulting from failure to provide reasonable and necessary maintenance.
6. Effects of aging, settlement or expansion, contraction, or shrinkage or warping of materials that may occur in walls, floors, ceiling, doors, or any other components of the home, , if such defect will not prevent the normal intended use of the home.
7. Damage resulting from abuse, ordinary wear and tear, or homeowner's negligence.
8. Failure of homeowner to take timely action to minimize loss or damage or failure of homeowner to give the Contractor timely notice of the defect.
9. Minor cracking and/or spalling (scaling) of concrete, including cracks in the foundation or floor, or in the concrete driveway or sidewalks; minor cracking in stucco and/or plaster.
10. Minor stress fractures in drywall and nail pops due to the curing of lumber.
11. Minor warping and deflection of wood; shrinking/cracking of grouts and caulking.
12. Fading of paint and finishes due to exposure to sunlight.
13. Damage resulting from adverse weather conditions such as icing, attic frost or torrential rains.
14. Materials furnished by the homeowner for installation.
15. Indoor air quality resulting from such sources as radioactive soils and Radon gas, wood burning devices, etc.
16. Defects in or defects caused by materials furnished or work done by anyone other than Contractor or the employees, agents or subcontractors expressly selected and contracted by the Contractor.
17. Damage or defects in electrical and plumbing operating fittings and fixtures .

18. Damages caused by the presence of mold, fungi, or other microbial growth in the home and its consequences. A mold disclosure notice and disclaimer are attached to this Warranty.

Contractor shall not be responsible for any damage to the home, including water damage or damage to the foundation, resulting from changes to the finished grade of the land by the homeowner, landscaping contractors, or any other third party, by altered rain gutter extenders, leaking underground sprinklers, or any landscaping which disrupts drainage away from the house.

Contractor gives no warranty on any appliances, materials, fixtures, or equipment, but will transfer to the initial homeowner all manufacturer's and dealer's warranties or received by Contractor on appliances, materials, fixture, and equipment. All manufacturer warranties on equipment and consumer products incorporated into the property such as air conditioners, heating equipment, water heaters, refrigerators, ranges, dishwashers, and other appliances or equipment are hereby assigned to the homeowners.

If a soils test has been obtained, Contractor warrants that it has followed the construction recommendations contained in that report, but Contractor shall not be responsible for any settling, structural damage, or other damage to the home if recommendations in that report do not adequately address any potential construction problems which later arise due to soil conditions. If no soils test has been done, Contractor shall not be responsible for any settling, structural damage, or other damage to the home due to any soil conditions.

A soils test [**has not**] been done.

CONTRACTOR'S RIGHT TO CURE

The Contractor, at the Contractor's sole discretion and judgement, shall have the right to cure by repair or replacement of any defective components of the home that do not meet the conditions of this Warranty. The Contractor must be given notice in writing (Mail or Email), of such defects by the homeowner and allowed the opportunity to correct such defects prior to seeking mediation, or arbitration or other legal remedies for compensation or to cure such defects.

In any mediation or arbitration, the homeowner may recover only the following damages proximately caused by a construction defect:

- A. The repairs, or the reasonable cost of repairs, necessary to cure covered construction defects, including any reasonable and necessary engineering or consulting required to evaluate and cure the construction defect, that the contractor is responsible for repairing as a result of the mediation or arbitration.

- B. The reasonably necessary expenses of temporary housing during the repair period.

The homeowner understands that the homeowner's sole remedy under this limited Warranty agreement are repair and replacement as set forth herein.

Both parties understand and agree that the "right to cure" provisions found in this Warranty are contractual alternative dispute resolution procedures and are intended to, and do, supersede any statutory right-to-cure provisions found in law, including but not limited to those found in title 70, chapter 19, part 4 Montana Code Annotated. However, should these contractual right-to-cure provisions be found to be invalid or unenforceable, the parties further understand and agree that the statutory right-to-cure provisions apply to this Warranty and that this Warranty serves as written notice to the homeowner of the statutory right provisions required by section 70-19-127(8), M.C.A.

The original buyer may not assign, transfer, or convey this Warranty without prior written consent of the Contractor.

THE OWNER UNDERSTANDS THAT THE LIMITED ONE (1) YEAR NON-TRANSFERABLE EXPRESS WARRANTIES CONTAINED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, HABITABILITY, DESIGN, OR FITNESS FOR A PARTICULAR USE OR PURPOSE. ANY IMPLIED WARRANTY THAT EXISTS DESPITE THIS DISCLAIMER IS LIMITED TO A PERIOD OF ONE (1) YEAR. THIS LIMITED WARRANTY EXCLUDES CONSEQUENTIAL AND INCIDENTAL DAMAGES AND LIMITS THE DURATION OF IMPLIED WARRANTIES TO THE FULLEST EXTENT PERMISSIBLE UNDER STATE AND FEDERAL LAW.

_____ (Owner's Initials)

DISPUTE RESOLUTION AND LIMITATIONS ON DAMAGES

While the parties are both entering into this Warranty agreement in good faith, the parties understand that conflicts in any relationship can arise. Traditional methods of dispute resolution involving legal action filed in court are often lengthy and costly, and rarely provide an efficient means for solving the problem. Therefore, the parties agree that it is in the best to settle any dispute involving construction of the home outside of the court room. Accordingly, this section sets out the remedies available to each party should a problem develop within the home. Both parties specifically acknowledge that mediation and arbitration are in the parties' best interests.

The parties specifically acknowledge the fact that under this Warranty agreement both parties waive their right to file an action in court and waive their right to trial by jury for

any dispute that may arise involving construction of the home Any dispute that arises between the parties shall be subject to mediation as a condition precedent to the institution of arbitration proceedings by either party. The parties shall select a single mediator who is knowledgeable about construction matters. The mediation session shall be held as soon as practicable after it is demanded by either side. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Helena, Montana, unless the parties mutually agree in writing to conduct the mediation in another location. Any agreements reached in mediation shall be enforceable as settlement agreements by any court having jurisdiction.

Any dispute not resolved by mediation shall be decided by **BINDING ARBITRATION under the provisions of the Montana Uniform Arbitration Act** unless the parties mutually agree otherwise in writing. The parties shall share the costs arbitration equally. The prevailing party of any arbitration shall be entitled to payment of reasonable attorney's fees, costs, and expenses. The arbitrator's decision shall be final and binding.

_____ (Owner's Initials)

DAMAGES RELATING IN ANY WAY TO THIS AGREEMENT, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY CLAIMS, REGULATORY CLAIMS, PURSUANT TO EQUITY OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE ACTUAL DAMAGES NECESSARY TO COMPENSATE THE INJURED PARTY, AND IN NO EVENT SHALL CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL OR TREBLE DAMAGES (OR DAMAGES BASED UPON ANY OTHER MULTIPLIER), BE RECOVERABLE. HOMEOWNER AND CONTRACTOR WAIVE, RELEASE AND COVENANT NOT TO ASSERT ANY RIGHT OR CLAIM TO CONSEQUENTIAL, PUNITIVE, SPECIAL, INCIDENTAL, OR TREBLE (OR OTHER MULTIPLIER), DAMAGES. IN NO EVENT AND UNDER NO CIRCUMSTANCES, SHALL DAMAGES EVER EXCEED THE PRICE NECESSARY TO REPAIR AND/OR REPLACE THE WARRANTY ITEM(S). HOMEOWNER EXPRESSLY UNDERSTANDS AND AGREES THAT THE DAMAGE LIMITATIONS CONTAINED IN THIS AGREEMENT ARE THE RESULT OF A KNOWING ALLOCATION OF RISK BETWEEN THE HOMEOWNER AND CONTRACTOR. THE PARTIES ACKNOWLEDGE AND AGREE THAT THESE LIMITATIONS ARE A REASONABLE MANNER OF RISK ALLOCATION BETWEEN THE PARTIES. HOMEOWNER AND CONTRACTOR ACKNOWLEDGE AND AGREE THAT THIS DAMAGE LIMITATION SHALL HAVE BEEN GIVEN FOR AND IN CONSIDERATION OF NEGOTIATED ARMS LENGTH TRANSACTION UPON WHICH EACH OF THE PARTIES HAD A FULL AND COMPLETE OPPORTUNITY TO NEGOTIATE.

_____ (Owner's Initials)

By signing below homeowner acknowledges and agrees that they have received, read, and understand this limited Warranty Agreement. Homeowner further acknowledges and agrees that this Warranty constitutes the exclusive remedy of all claims by the homeowner against the Contractor related to work covered by the Warranty. Homeowner further acknowledges and agrees that the remedies under this Warranty are limited to the dispute resolution and right to cure provisions contained in this Agreement, which include **BINDING ARBITRATION**.

By : _____
(Weatherall Builders Representative)

Date: _____

By : _____
(Owner)

Date: _____

By : _____
(Owner)

Date: _____

MOLD NOTICE, DISCLOSURE AND DISCLAIMER

What homeowners should know about mold: Lately, mold has been in the news. Mold is a type of fungus. It occurs naturally in the environment, 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 cannot be, designed to exclude mold spores. If the growing conditions are right, mold can grow in your home. Most homeowners are familiar with mold growth in the form of bread mold, and mold that may grow on bathroom tile.

In order for mold to grow, it requires a food source. This might be supplied by items found in the home, such as fabric, carpet, or even wallpaper, or by building materials, such as drywall, wood, and insulation, to name a few. Also, mold growth requires a temperate climate. The most growth occurs at temperatures between 40 and 100 degrees Fahrenheit. Finally, mold growth requires moisture. Moisture is the only mold growth factor that can be controlled in a residential setting. By minimizing moisture, a homeowner can reduce or eliminate mold growth.

Moisture in the home can have many causes. Spills, leaks, overflows, condensation, and high humidity are common sources of home moisture. Good housekeeping and home maintenance practices are essential in the effort to prevent or eliminate mold growth. If moisture can remain on the growth medium, mold can develop within 24 to 48 hours.

Consequences of mold: All mold is not necessarily harmful, but certain strains of mold have been shown to have adverse health effects in susceptible persons the most common effects are allergic reactions, including skin irritation, watery eyes, runny nose, coughing, sneezing, congestion, sore throat and headache. Individuals with suppressed immune systems may risk infections, some experts contend that mold causes serious symptoms and diseases which may even be life threatening. However, experts disagree about the level of mold exposure that may cause health problems, and about the exact nature and extent of the health problems that may be cause by mold. The Center for Disease Control states that a causal link between the presence of toxic mold and serious health conditions have not been proven.

What the Homeowner can do: The homeowner can take positive steps to reduce or eliminate the occurrence of mold growth in the home, and thereby minimize any

possible adverse effects that may be caused by mold. These steps include the following:

1. Before bringing items into the home, check for signs of mold. Potted plants (roots and soil), furnishing, or stored clothing and bedding material, as well as many other household goods, could already contain mold growth.
2. Regular vacuuming and cleaning will help reduce mold levels. Mild bleach solutions and most tile cleansers are effective in eliminating or preventing mold growth.
3. Keep the humidity in the home low. Vent clothes dryers to the outdoors. Ventilate kitchens and bathrooms by opening the windows, by using exhaust fans, or by running the air conditioning to remove excess moisture in the air, and to facilitate evaporations of water from wet surfaces.
4. Promptly clean up spill, condensation, and other sources of moisture. Thoroughly dry any wet surfaces or material. Do not let water pool or stand in your home. Promptly replace any materials that cannot be thoroughly dried, such as drywall or insulation.
5. Inspect for leaks on a regular basis. Look for discolorations or wet spots. Repair any leaks promptly. Inspect condensation pans (refrigerator and or conditions) for mold growth take notice of musty orders, and any visible signs of mold.
6. Should mold develop, thoroughly clean the affected area with a mild solution of bleach. First, test to see if the affected material or surface is color safe. Porous materials, such as fabric, upholstery or carpet should be discarded. Should the mold growth be severe, call on the services of a qualified professional cleaner.

MOLD DISCLAIMER AND WAIVER

Whether or not you as an owner experience mold growth depends largely on how you manage and maintain your structure. Our responsibility as a contractor must be limited to things that we can control. As explained in our written warranty, provided by our Warranty Agreement, we will repair or replace defects in our construction (defects defined as a failure to comply with reasonable standards of construction) for a period of one year. We, the Contractor, will not be responsible for any damages caused by mold, or by some other agent, that may be associated with defects in our construction,

to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects. Any implied warranties, including an implied warranty of workmanlike construction, and 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 a part of our Warranty Agreement. Should any term or provision of this Agreement be ruled invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall nonetheless stand in full force and effect.

I acknowledge receipt of the Mold Notice, Disclosure and Disclaimer agreement. I have carefully read and reviewed its terms, and I agree to its provisions.

By : _____
(Weatherall Builders Representative)

Date: _____

By : _____
(Owner)

Date: _____

By : _____

Date: _____