

III.
MAJOR STRUCTURAL DEFECTS THAT ARE COVERED
BY THIS LIMITED WARRANTY DURING YEARS ONE THROUGH TEN

1. GENERAL

- A. The term "Major Structural Non Foundation Defect" means actual physical damage to a load bearing component of the Home specifically listed below, if meeting all of the following requirements:
- (i) actual physical damage to any of the load bearing portions of the Home listed below; and
 - (ii) that is caused by defect of a load bearing component listed below; and
 - (iii) that affects its load bearing function; and
 - (iv) the reasonable and customary cost to repair such component listed below exceeds \$250, if the Request for Warranty Performance is submitted by Owner during years three through ten of coverage.

Such load bearing components of the Home which may be Major Structural Non Foundation Defects, if meeting all of the above conditions, are:

- (a) load bearing walls;
- (b) floor framing systems (joists and trusses);
- (c) roof framing systems;
- (d) structural girders;
- (e) lintels (other than lintels supporting veneers);
- (f) load bearing beams; and
- (g) structural columns.

Examples of components that are not load bearing components are:

- (a) electrical, plumbing, heating, cooling ventilation systems and mechanical systems;
- (b) Fixtures, Appliances and Equipment;
- (c) paints and stains;
- (d) doors and windows, trim, cabinets, insulation and hardware;
- (e) roofing and sheathing;
- (f) dry wall and plaster;
- (g) exterior siding;
- (h) brick, stone, stucco, or veneer;
- (i) floor covering and subflooring materials;
- (j) wall tile and other wall coverings;
- (k) non load bearing walls and partitions; and
- (l) concrete floors of an attached patio, garage, or basement that is built separately from foundation walls or other structural elements of the Home.

- B. The term "Foundation Defect" means a defect of the foundation of the Home as determined by the opinion of a licensed professional engineer ("Engineer") following the standards for Determination of a Foundation Defect stated in subsection 2.
- C. Subject to the provisions of this Limited Warranty, Builder will repair or replace a Major Structural Defect occurring during the ten year warranty period. However, repair of a Major Structural Defect is limited to the following:
- (i) the repair of damage to the load bearing portion of the Home itself that is necessary to restore its load bearing function; and
 - (ii) the repair of those items or components of the Home damaged by the Major Structural Defect.

2. DETERMINATION OF FOUNDATION DEFECT

- A. An Engineer may determine that a Foundation Defect exists when all of these three conditions are met and taking into account the following additional relevant factors:
- (1) calculations show that either excessive deflection or excessive tilt of the slab foundation exists; and
 - (2) there is actual physical damage to the foundation affecting its load-bearing function to the degree that it materially affects the physical safety of the occupants of the Home; and
 - (3) there is more than minor associated cosmetic damage to the interior or exterior finishes of the Home.

"Excessive deflection" (bending or angular distortion) means a calculation of vertical distance that exceeds $L/360$, where "L" is the

distance between any two points not less than 20 feet apart on the surface of the foundation, and deflection is the vertical distance between the foundation surface and a line connecting those two points. For example, for an L of 20' (240") excessive deflection exists when the vertical distance is greater than $240''/360 = 0.667''$ or two-thirds of an inch.

"Excessive tilt" (planar rotation) means post-construction movement – after allowing for customary construction tolerance because no slab is poured perfectly level – that is greater than 1% measured from edge-to-edge across an entire expanse of the foundation in any direction.

Additionally, the Engineer must consider relevant factors affecting foundation performance, including but not limited to, (i) trees, vegetation, planter boxes, flower beds, a patio, pool, structure or surface, that was added by the homeowner, (ii) homeowner failure to maintain proper soil moisture content through proper watering or irrigation, and (iii) homeowner changes to lot grading or drainage. The Engineer may determine that excessive foundation movement caused by such factors is not a Foundation Defect under this Performance Standard.

B. Foundation Defect Resolution Provisions. In the event that Owner believes that there is a problem with the foundation of the Home, the parties agree that the following provisions will apply:

1. Owner shall notify Builder of the alleged foundation problem within the time period set forth in Section 2.02 of this Limited Warranty. Builder will inspect the alleged Foundation Defect and notify Owner of Builder's determination of whether a covered Defect has occurred. The Builder may choose to utilize the services of an Engineer at this stage or later.
2. If Owner disagrees with Builder's determination of whether a covered Defect has occurred, Owner shall have the right to select a licensed engineer from the ACES Foundation Engineer List to perform an inspection. Builder shall have the right to select an additional Engineer from the ACES' Foundation Engineer list to perform an inspection, or may accept the Engineer selected by Owner. Selection of the engineer will be made within seven (7) days after ACES has provided the ACES Foundation Engineer List to Builder and Owner. Prior to the inspection, as provided in this subparagraph, Owner will pay ACES for the Engineer's inspection; however, if the Engineer selected by Owner determines that there is a Foundation Defect in accordance with the methodology in subsection 2 above, Builder will reimburse Owner for the cost of the inspection. Owner and Builder may obtain the cost of the Engineer's proposed inspection and report from ACES (which cost will not exceed a reasonable and customary amount for such inspection) at the time the Engineer is selected. The inspection shall occur promptly after the selection of the licensed engineer. If after the issuance of the Engineer's report, Builder and Owner do not agree on whether a Foundation Defect has occurred, then the binding arbitration procedures in Section 7.03 of this Limited Warranty shall apply.

ACES is not an insurer. No insurance is provided by ACES in connection with this Limited Warranty. No provision in this Limited Warranty shall be deemed to imply that Builder's obligations in this Limited Warranty are insured or that any insurance is otherwise furnished in favor of Owner or any other person or entity.