

RATLIFF HARDSCAPE, LTD. ONE YEAR LIMITED WARRANTY

RATLIFF HARDSCAPE, LTD.'S WARRANTY OBLIGATIONS ARE LIMITED TO THE TERMS SET FORTH BELOW

THIS LIMITED WARRANTY: This Ratliff Hardscape, Ltd. One Year Limited Warranty shall be referred to as the “**Limited Warranty**” in this document.

WHAT IS COVERED: Ratliff Hardscape, Ltd.’s (“**Ratliff**”) Work. “**Work**” shall mean that certain work and those services further described between Ratliff and Owner (the “**Agreement**”) and this Limited Warranty is an exhibit to such Agreement.

WARRANTY: Ratliff warrants that the Work furnished will: (i) be provided in a professional manner; (ii) be performed by appropriately knowledgeable and skilled personnel; (iii) conform to the requirements of the Agreement; (iv) conform to standards generally observed in the industry for similar services and work; and (v) will meet all applicable municipal or other jurisdictional requirements and other applicable laws pertaining to the Work.

Ratliff warrants that except for any Shrink Cracks, any cracking, in excess of one-quarter inch and longer than 20% of all the joints and edges of the concrete flatwork, occurring during the curing process and resulting from poor workmanship or use of substandard materials shall be repaired or replaced, at the sole election of Ratliff. Ratliff makes no claim that hairline cracks might not develop, but insures that reasonable precautions are taken to minimize their occurrences by using industry tested methods and quality materials. It is acknowledged that color differences may result for repairs. Please see the section entitled “Shrink Cracks and Control Joints” for a further explanation of shrink crack and control joints.

EXCLUSIONS FROM COVERAGE: Ratliff’s Limited Warranty for the Work excludes loss, damages and defects caused by any of the following:

1. Any work performed, services provided or material supplied in accordance with any plans or specifications supplied, prepared or requested by the Owner, or by anyone on behalf of the Owner other than Ratliff, or Ratliff’s employees, agents, contractors or subcontractors acting under Ratliff’s direction (collectively “**Ratliff’s Employees**”).
2. Any defects caused or made worse by the negligence, gross negligence, willful conduct, abusive use, improper maintenance, lack of regular maintenance or other action of anyone other than Ratliff, or Ratliff’s Employees.
3. Defects in driveways, walkways, patios, boundary walls, retaining walls, bulkheads, fences, landscaping, including without limitation sodding, seeding, shrubs, trees and plantings, off-site improvements, or any other improvements not part of the Work itself.
4. Any damage to the extent it is caused or made worse by failure of the Owner or by anyone other than Ratliff’s Employees, to comply with the warranty requirements, including without limitation the Manufacturer Warranties, of manufacturers of items used in accordance with the Work; or failure by the Owner to give notice to Ratliff of any defects within a reasonable time; or changes of the grading of the ground by anyone other than Ratliff, or Ratliff’s Employees; or changes, alterations or additions made to the Work by anyone after the Effective Date; dryness, cracking, dampness, condensation or soil movements, due to the failure of the Owner to maintain adequate irrigation; seepage of water; or insect damage.
5. Loss or damage which the Owner has not taken timely action to minimize.
6. Any defect in, caused by, or resulting from, materials or work supplied by anyone other than Ratliff or Ratliff’s Employees, including without limitations defects covered under any of the Manufacturer Warranties.
7. Normal wear and tear or normal deterioration.

8. Loss or damage not specifically covered under this Limited Warranty.
9. Loss or damage not caused by a defect in the Work completed by Ratliff or Ratliff's Employees.
10. Loss or damage caused by, or resulting from, accidents, riot and civil commotion, fire, explosion, smoke, water escape, falling objects, aircraft, vehicles, acts of God, adverse environmental conditions, lightning, windstorms, hail, flood, mudslide, earthquake, wind-driven water and changes in the underground water table which were not reasonably foreseeable.
11. Defects, which are the result of characteristics common to the materials used (such as but not limited to fading and minor cracking).
12. Notwithstanding any provisions in this Limited Warranty to the contrary, this Limited Warranty shall not apply to any loss or damage related to any Shrink Cracks.
13. Notwithstanding any provisions in this Limited Warranty to the contrary, this Limited Warranty shall not apply to any loss or damage caused directly or indirectly by any underground movement, including without limitation any surface cracking, unless Ratliff performed repairs to the concrete underground pier or footings as part of the Work.
14. Loss or damage caused or made worse pursuant to the provisions specified in the section entitled "Notice of Claim".
15. Loss or damage to any third party manufactured products.

TERM: The terms of the coverage of this Limited Warranty begin on the date of substantial completion of the Work (the "**Effective Date**") and continue until the one (1) year anniversary of the Effective Date (the "**Expiration Date**"). The Effective Date of the warranty period for all incomplete punch list items identified in writing as "punch list items" as of the date of substantial completion of the Work shall begin when the Owner and Ratliff have mutually and reasonably agreed that such incomplete punch list items are 100% complete, in which case the Expiration Date for the warranty period for such incomplete punch list items shall be one (1) year following the Effective Date assigned to such incomplete punch list items.

MANUFACTURERS' WARRANTIES: Ratliff assigns and passes through to Owner the manufacturers' warranties on all manufactured products (including, but not limited to, bricks, cinder blocks, and manufactured stone) and equipment (collectively, the "**Manufacturer Warranties**").

RATLIFF DOES NOT WARRANT ANY THIRD PARTY MANUFACTURED PRODUCTS.

LIMITATIONS ON WARRANTY: RATLIFF'S LIABILITY TO THE OWNER OR ANY OTHER THIRD PARTY, FOR A CLAIM OF ANY KIND ARISING AS A RESULT OF, OR RELATED TO THE GOODS OR SERVICES PROVIDED HEREUNDER, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), UNDER ANY WARRANTY, OR OTHERWISE, SHALL BE LIMITED TO MONETARY DAMAGES AND THE AGGREGATE AMOUNT THEREOF FOR ALL CLAIMS SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE AMOUNT PAID OR PAYABLE BY THE OWNER TO RATLIFF UNDER THE AGREEMENT. UNDER NO CIRCUMSTANCES SHALL RATLIFF BE LIABLE TO THE OWNER OR ANY THIRD PARTY FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING

LOST PROFITS), EVEN IF OWNER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR WARRANTIES GRANTED BY THE OWNER TO ANY THIRD PARTY. THE OWNER ACKNOWLEDGES AND AGREES THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. NO ACTION, REGARDLESS OF FORM, ARISING UNDER THE AGREEMENT OR THIS LIMITED WARRANTY MAY BE BROUGHT BY THE OWNER AFTER THE EXPIRATION DATE.

DISCLAIMER OF WARRANTIES

EXCEPT AS EXPRESSLY SET FORTH IN THIS LIMITED WARRANTY AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTY AND REMEDIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED AND RATLIFF EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE GOODS OR OTHER SERVICES PROVIDED BY RATLIFF HEREUNDER, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY OR MERCHANTABILITY QUALITY OR MERCHANTABILITY, DESIGN, QUANTITY, QUALITY, LAYOUT, FOOTAGE, PHYSICAL CONDITION, OPERATION, COMPLIANCE WITH SPECIFICATIONS, ABSENCE OF LATENT DEFAULTS OR COMPLIANCE WITH LAWS AND REGULATIONS (INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY AND THE ENVIRONMENT), FITNESS FOR A PARTICULAR PURPOSE, OR THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE OR ANY OTHER MATTER AFFECTING THE WORK.

WARRANTY CLAIMS

NOTICE OF CLAIM: If the Owner believes a defect in the Work that is covered by this Limited Warranty arises, then Owner shall provide written notice to Ratliff, and Ratliff must receive such written notice, at Ratliff's current address of record, and such written notice shall include a detailed description of such defect (the "**Defect Notice**"). Ratliff must receive the Defect Notice on or before the *earlier of* the Expiration Date or thirty (30) days after the date Owner or any of Owner's shareholders, members, partners, owners, directors, managers, officers, employees, contractors, agents, or representatives discover the defect specified in such Defect Notice. Ratliff is not responsible for any loss or damage covered by this Limited Warranty if such loss or damage is caused or made worse by failure to give written notice to Ratliff of such defect within the time periods required pursuant to this paragraph.

RATLIFF'S PERFORMANCE: If a defect occurs in an item which is covered by this Limited Warranty, Ratliff, within 60 days after receipt of the related Defect Notice, will repair, replace, or pay Owner the reasonable cost of repairing or replacing the defective item. Ratliff's total liability under this Limited Warranty is limited pursuant to the provisions of the section entitled "Limitations on Warranty". Ratliff, in Ratliff's sole and absolute discretion, may choose among the repair, replacement or payment options specified in this paragraph. Steps taken by Ratliff to correct defects shall not act to extend the terms of this Limited Warranty.

INSURANCE: If Ratliff repairs, replaces, or pays the cost of repairing, any defect covered by this Limited Warranty for which Owner is covered by insurance, Owner must, upon request by Ratliff,

assign the proceeds of such insurance to Ratliff to the extent of the cost to Ratliff of such repair or replacement.

SETTLEMENT OF DISPUTES: All disputes between the parties may be resolved by litigation, in a court of competent jurisdiction, except that Ratliff may, at its sole option, require that any dispute be submitted to binding arbitration pursuant to the Construction Industry Rules of the American Arbitration Association. Each arbitrator selected by the American Arbitration Association shall be a licensed construction attorney with at least seven (7) years of experience. If the dispute is arbitrated, the award rendered by the arbitrator(s) shall be final, and the judgment may be entered upon it in accordance with the application law in any court having jurisdiction thereof. The arbitration election by Ratliff shall be made no later than thirty (30) days following receipt of service of process of any litigation from Owner or, if the claim is asserted by Ratliff, shall be made upon the filing of demand for arbitration by Ratliff. Notwithstanding the above, Ratliff shall not be deemed to have waived any right it may have to arbitrate its dispute with Owner by the filing of litigation against Owner and its surety. The demand for arbitration in no event shall be made after the date within institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statute of limitations. In the event of litigation or arbitration of any dispute between Ratliff and Owner, Ratliff (if it prevails in prosecution or defense) shall be awarded attorneys' fees, costs of court and such other damages as may be permitted by this Limited Warranty and applicable law. In the event of litigation or arbitration of any claim brought by Owner against Ratliff, the Owner (if it prevails) shall be awarded attorneys' fees and costs of court. Except as specifically provided in this Limited Warranty, Owner shall have no claim against Ratliff for any cause related to any defect in the Work whatsoever.

MISCELLANEOUS

GENERAL PROVISIONS: Should any provision of this Limited Warranty be deemed by a court of competent jurisdiction to be unenforceable, that determination will not affect the enforceability of the remaining provisions. Use of one gender in this Limited Warranty includes all other genders, and use of the plural includes the singular, all as may be appropriate. The section and subsection headings contained in this Limited Warranty are for reference purposes only and shall not effect in any way the meaning or interpretation of this Limited Warranty. This Limited Warranty is to be governed by and construed in accordance with the laws of the State of Texas. Capitalized terms not defined herein shall have the meaning set forth in the Agreement.

No Ratliff Employee is authorized to make any modification, extension, or addition to this Limited Warranty.

SHRINK CRACKS AND CONTROL JOINTS: Newly placed concrete can be expected to crack within the first few days of placement during the curing process. These cracks are often referred to as “**Shrink Cracks**”. Shrink Cracks are, typically, narrow stress cracks in the surface of the concrete. Reinforcing steel and/or fiber will minimize the number and width of Shrink Cracks. “**Control Joints**” are saw cut or hand grooved joints in the concrete. Control Joints encourage the concrete to crack (there by relieving the natural stress of the curing process) along these predetermined cuts and grooves. Control Joints do not prevent Shrink Crack; however, they may assist in reducing and/or hiding the crack when they occur.

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