



## AGREEMENT WITH BUILDER

### THIS AGREEMENT MADE BETWEEN:

LUX RESIDENTIAL WARRANTY PROGRAM INC. (LRWP),

A federally incorporated corporation doing business in Atlantic Canada

AND

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

POSTAL CODE: \_\_\_\_\_ TEL: \_\_\_\_\_

FAX: \_\_\_\_\_ EMAIL \_\_\_\_\_

(“THE BUILDER”)

AND

APPLICANT NAME: \_\_\_\_\_

(“THE APPLICANT”)

The parties agree as follows:

### 1. INTERPRETATION

In this Agreement, the following terms shall have the meaning set forth in this Section.

- 1.1 “Homeowner” means a person who contracts with the Builder for the construction of a home, and person(s) who become registered owners of the Home during the term of any Limited Warranty issued in relation to the Home.
- 1.2 “Home” means a building constructed on real property, modular units, condominiums etc. in the Atlantic Provinces built by the Builder solely for use as a permanent residence.

- 1.3 "Certificate of Possession" means the certificate prescribed by LRWP to be executed by the Builder and the Homeowner and which records the Date of Possession.
- 1.4 "Date of Possession" means the date of possession shown on the Certificate of Possession.
- 1.5 "Limited Warranty Certificate" means the certificate prescribed by LRWP to be issued as evidence of a Limited Warranty applicable to a Home.
- 1.6 "Limited Warranty" means a Limited Warranty issued by LRWP in relation to a Home.
- 1.7 "Major Structural Defects" means those defects constituting Major Structural Defects under the terms of the Limited Warranty.

## **2. BUILDER COVENANTS**

The Builder agrees as follows:

- 2.1 All information supplied by the Builder with respect to any application, renewals or otherwise submitted to or required by LRWP shall be complete and accurate.
- 2.2 Each Home shall be constructed in accordance with the National Building Code of Canada in effect during the course of construction, whether or not the National Building Code has been adopted by the legislation in the applicable jurisdiction.
- 2.3 Any Limited Warranty shall be legally binding on the Builder, whether or not title to the Home has passed to a Homeowner.
- 2.4 The termination of this Agreement shall not affect any obligations of the Builder under this Agreement arising prior to such termination.
- 2.5 The Builder shall not make public statements which the Builder knows or reasonably ought to know misrepresent or inaccurately describe the obligations of LRWP either generally or with respect to any Limited Warranty.
- 2.6 In the event that LRWP incurs any costs or assumes any liability under a Limited Warranty in relation to defects, including Major Structural Defects, LRWP shall be entitled to assume all the Builder's rights of recovery against third parties, and to enforce those rights in the name of the Builder. Nothing contained in this paragraph shall affect any rights or remedies that LRWP may have against the Builder.

## **3. INDEMNIFICATION**

The Builder & Applicant shall indemnify and save harmless LRWP from any loss or expense whatsoever which LRWP incurs as a result of:

- 3.1 Failure of the Builder to refund a deposit which the Builder is legally obligated to repay the Homeowner.
- 3.2 Failure of the Builder to fulfill the Builder's obligations under a Limited Warranty, including without restricting the generality of the foregoing, all related costs of repair of defects.
- 3.3 All costs associated with LRWP investigation, conciliation and/or settlement of a warranty claim.

3.4 The Builder and Applicant shall indemnify LRWP as required by paragraph (3) notwithstanding that the Builder or Applicant may have ceased to be a member of LRWP at the time the Claim arose or the losses or expenses were incurred, and whether or not this Agreement remains in force or has terminated.

#### **4. ENROLLMENT OF HOMES**

4.1 The Builder shall enrol with LRWP all eligible Homes which the Builder commences to construct after the date of this Agreement.

4.2 The Builder shall enrol immediately upon the earlier of:

1. The date of issuance of the Building Permit
2. The date of start of construction
3. LATE ENROLLMENT MAY BE SUBJECT TO LATE CHARGES AS PRESCRIBED BY LRWP.

4.3 Enrolment shall be effected upon receipt by LRWP of:

1. A properly completed Home Registration form as prescribed by LRWP
2. A non-refundable enrolment in the amount prescribed by LRWP
3. Any other requirements as prescribed by LRWP from time to time

#### **5. INSPECTIONS**

5.1 If LRWP, in its sole discretion, may inspect any of the Homes under construction or completed by the Builder, and the Builder in such case shall provide LRWP full and uninterrupted access to each Home at all reasonable times prior to the Date of Possession.

5.2 Unless LRWP elects otherwise, the Builder shall pay an inspection fee as prescribed by LRWP for each inspection carried out.

#### **6. EXECUTION AND DELIVERY TO LRWP OF THE CERTIFICATE OF POSSESSION**

6.1 The Builder shall fully complete and execute the Certificate of Possession with the Homeowner and shall have the Homeowner Execute the Certificate of Possession upon possession date of the home.

6.2 The Builder shall immediately deliver a copy of the Certificate of Possession to LRWP.

6.3 LRWP shall have no obligation to issue a Limited Warranty until the Builder has complied with section 6.1.

6.4 The Builder shall pay such Administrative fees and charges as may be established by LRWP from time to time in connection with the issuance of a Certificate of Possession due to failure of a Builder to comply with section 6.1 and 6.2.

6.5 Upon receipt of the Certificate of Possession, LRWP will issue the applicable Limited Warranty, and a Limited Warranty Certificate on the Builder's behalf.

## **7. HOMEOWNER HELP REQUEST AND CONCILIATION**

- 7.1 The Builder agrees not to commence legal proceedings or pursue any other recourse in respect of any warranty dispute with a Homeowner until completion of the Homeowner Help Request and conciliation procedure set forth in the Limited Warranty.
- 7.2 LRWP shall appoint Conciliator(s) to conciliate unresolved disputes between the Builder and Homeowner as required by the Limited Warranty.
- 7.3 If the Homeowner submits a dispute to conciliation, and the decision of the Conciliator is in favour of the Homeowner, unless LRWP in its sole discretion waives payment thereof, the Builder shall pay LRWP the costs of the conciliation.
- 7.4 Should the Builder fail to comply with the decision of the Conciliator within the stipulated time, and if LRWP is required to carry out the Builder's obligations, the Builder shall reimburse LRWP for the total cost notwithstanding that the Builder may have ceased to be a member of LRWP at the time that the default arose or at the time of the Conciliation.

## **8. TERM**

- 8.1 Subject to the terms and conditions of this Agreement, this Agreement will expire one year from the date of this Agreement unless renewed by LRWP.
- 8.2 LRWP, in its sole discretion, may renew this Agreement for additional terms of up to one year.
- 8.3 LRWP may terminate this Renewal Agreement at any time should the Builder fail to comply with any Conditions.

## **9. TERMINATION**

- 9.1 LRWP, without prejudice to any of its other rights or remedies, may terminate this Agreement upon the Builder upon the happening of any of the following events:
  1. The Builder is in default of this Agreement, and has failed to rectify such default within 10 days of receiving written notice of such default from LRWP.
  2. The Builder ceases to be a member in good standing of LRWP
- 9.2 Should this Agreement be terminated, the Builder shall:
  1. Cease the use of public display of any material bearing LRWP's identification.
  2. Not represent or in any way hold out to the public that any Homes enrolled but not sold on the date of termination are eligible for a Limited Warranty to be issued by LRWP.
  3. Continue to be liable to reimburse LRWP for all costs incurred in the event that LRWP is required to perform the Builder's obligations after the date of termination.

## **12. RULES AND REGULATIONS**

The Builder agrees that, from time to time, LRWP will make rules and regulations with respect to matters arising or related to this Agreement, dealings with Builder and LRWP, and for the better administration and implementation of the warranty program. The Builder agrees to strictly comply with such Rules and Regulations at all times.

**13. NOTICES**

Any notice or communication required to be in writing by this Agreement shall be sent to the address as shown on the face of this Agreement and or by Email. Any notices sent by mail shall be deemed to be received by the other party seven (7) days next following the date of mailing.

**14. ASSIGNMENT AND OWNERSHIP CHANGE**

The Builder shall not assign this Agreement or any of its rights hereunder.

**15. SEVERABILITY CLAUSE**

In the event any of the covenants, clauses or provisions of this Agreement are held by any competent authority to be individually void or unenforceable, the parties hereto agree that the remaining covenants, clauses or provisions on the Agreement remain in full force and effect.

**16. NON-WAIVER**

No waiver of term, provision, condition, of this Agreement, whether express or implied, and whether by conduct or otherwise, in any one or more instances, shall be valid unless the same shall be in writing and any such valid written waiver shall not be construed as further or continuing waiver beyond its express terms. Any default, breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time shall not in any way affect, limit, modify or waive LRWP's right thereafter to enforce strict compliance with every term, covenant, condition or other provision hereof.

SIGNATURES OF AGREEMENT BY THE PARTIES DATED \_\_\_\_\_:

THE BUILDER \_\_\_\_\_

(SEAL) PER: \_\_\_\_\_

PRINCIPAL SIGNATURE

THE APPLICANT \_\_\_\_\_ SIGNATURE

LUX RESIDENTIAL WARRANTY

PER: \_\_\_\_\_