



## LIMITED WORKMANSHIP/SYSTEMS AND STRUCTURAL COVERAGE MEMBER PROPOSAL AND AGREEMENT

- INSURER:  WARRANTY INSURER
- ADDENDA:  MULTI FAMILY ENROLLMENT
- (Check any that apply)  SHARED RISK AGREEMENT
- AFFILIATED OR SUBSIDIARY COMPANIES
- JOINT WARRANTORS/JOINT AND SEVERAL LIABILITY
- CONSTRUCTION LENDER

REINSURED BY NATIONAL AND INTERNATIONAL REINSURANCE COMPANIES

This Member Proposal and Agreement ("Agreement") is entered into by and between 2-10 Home Buyers Warranty Corporation doing business as 2-10 Home Buyers Warranty® (hereinafter "2-10 HBW®"), the Insurer and \_\_\_\_\_ (hereinafter "Lender").

1. **THE 2-10 HOME BUYERS WARRANTY® PROGRAM; THE INSURANCE.** Lender has, by submitting a completed Lender Application and security if required, applied to join the 2-10 Home Buyers Warranty Program ("2-10 HBW Program"), and agreed to become a member of Insurer's risk retention group formed pursuant to the federal Liability Risk Retention Act.

Lender shall be allowed to apply to enroll newly constructed Homes in the 2-10 HBW Program, provided that Lender agrees to abide by the terms of this Agreement with respect to each Home, even if the Effective Date of Warranty predates or postdates the term of this Agreement. The 2-10 HBW Program for Lenders is only available for homes newly constructed by licensed builders and acquired by Lender through foreclosure or liquidation. A home which satisfies the Insurer's risk management requirements and is accepted for enrollment ("Home") will carry a ten-year Structural Defect warranty as defined in the 2-10 Home Buyers Warranty Booklet ("2-10 HBW Warranty booklet") and such warranty obligations shall be insured by the Insurer. In addition, the Lender, may warrant that the Home will be free for one year from Defects in workmanship and materials\* and free for two years from Defects in the plumbing, electrical and mechanical systems. Each warranty commences on the earlier of the closing date, or first occupancy of the Home.

*\* State of Indiana Only: The Lender warrants that the Home will be free from Defects in materials and workmanship for two (2) years instead of one year as stated in the Construction Performance Guidelines and the roof will be free from Defects in faulty workmanship or defective materials for four (4) years from the Effective Date of Warranty.*

A copy of the 2-10 HBW Warranty Booklet in effect as of the date of this Agreement is enclosed. 2-10 HBW is not an obligor under these warranties. 2-10 HBW performs certain administrative functions relating to Lender's warranties, including but not limited to processing membership application and Home enrollment paperwork, collecting the warranty fee, transmitting the insurance premium to the Warranty Insurer, assisting the seller in resolving warranty issues with the homeowner, and facilitating the arbitration process between the seller and homeowner. 2-10 HBW and/or the Insurer may modify insured warranty coverage (for future enrollments only), and Lender agrees to abide by the warranty coverage provided to its Homebuyer. Lender may not change the terms of the warranties as defined in the 2-10 HBW Warranty Booklet. The insured Warranty Limit for Lender and/or Insurer during the entire term of the warranty is limited to the lesser of either the original sales price of the warranted Home, or as stated on the Certificate of Warranty coverage. Insurer's costs of designing, accomplishing and monitoring repairs to a warranted Home are deducted from the Home Warranty Limit. Lender's and/or Insurer's costs of determining the existence and extent of a covered Defect are not deducted.

Lender will submit a completed Lender Application for Home Enrollment (HBW 302) ("Application") within fifteen (15) days after transfer of title to a first Homebuyer, along with full payment of the warranty fee for that Home. All inspections and enrollment requirements shall be performed at Lender's expense.

The fact that someone other than the Lender actually forwards the Application does not relieve the Lender of its obligation to ensure that the Application is timely received, is accompanied by the proper warranty fee, and is complete and truthful in every respect. Lender agrees to pay the warranty fee upon Insurer's issuance of a Letter of Acceptance for FHA/VA financing. All amounts owed under this Agreement shall be due on the fifteenth (15th) day after written demand is sent by the Insurer to the Lender at the Lender's address that is on file with the Insurer. In the event any amount due the Insurer under this Agreement is not paid by the due date, the amount remaining unpaid shall bear interest at the rate of one and one-half percent per month or the highest amount allowed by law, whichever is lower, until paid. In addition to recovering delinquent amounts owed under this Agreement, the Insurer shall be entitled to recover interest, reasonable attorneys' fees and cost of collection, including cost of a collection agency. Lender's obligation to the Insurer to pay delinquent amounts shall survive cancellation or termination of this Agreement. Insurer shall be entitled, but not obligated, to collect delinquent fees including reasonable attorneys' fees and costs of collection from security provided by the Lender, including without limitation, letters of credit and bonds.

Lender agrees to indemnify and hold 2-10 HBW and Insurer harmless from any and all costs and damages including without limitation reasonable attorneys' fees, they may incur in relying on inaccurate data contained in any application submitted with Lender's name on it, Lender's failure to perform its obligations under this Agreement, or Lender's failure to perform its obligation under any other warranty given by Lender to Homebuyer. Insurer's insurance obligation and surety obligation are set forth in the Home Warranty Insurance Policy, which is on file at the HBW Office, and is available for review.

**2. THE WORKMANSHIP AND SYSTEMS WARRANTIES (OPTIONAL). The Lender is the primary obligor under the One-Year Workmanship\* and Two-Year Systems warranties ("Workmanship/Systems").**

Insurer is a surety securing Lender's obligations under the Workmanship/Systems warranties. Insurer, in its sole discretion, shall adjust any claim or suit, determine the scope of warranty coverage and settle, repair, replace or pay the cost of repair, including the manner and method of any repairs for any item(s) covered by the Lender's Workmanship/Systems warranties as defined in the 2-10 HBW Warranty Booklet should Lender for any reason fail to do so. In that event, the Lender waives all his rights in law and equity and Insurer will be subrogated to whatever rights Homebuyer may have against Lender. Lender agrees to indemnify Insurer for any damages incurred in performing Lender's obligations, including but not limited to, costs of materials and labor, cost of inspecting the Home, fees for engineers, for independent inspectors, attorneys' fees, collection agency fees, costs for servicing the claim, arbitration fees paid by 2-10 HBW or Insurer, and any and all costs incurred in collecting such expenses from Lender. **In addition, 2-10 HBW reserves the right to terminate from the 2-10 HBW Program, and Insurer reserves the right to terminate from membership, a Lender, or any of its affiliated entities, who fails or refuses promptly to perform its duties or to cooperate fully with 2-10 HBW or Insurer under this Agreement.**

**3. THE STRUCTURAL DEFECT WARRANTY.** Insurer indicated on page one of this Agreement is the Insurer of the Lender's ten-year Structural Defect warranty, provided that with respect to each warranted Home, Lender shall have complied with its warranty obligations, and with the provisions of this Agreement. Insurer is NOT Lender's commercial general liability insurer, and does not insure any Lender liability not expressly set forth in the Home Warranty Insurance Policy. Insurer, in its sole discretion, shall adjust all claims, determine scope of warranty coverage and settle, repair, replace or pay cost of repair, including, the manner and method of any repairs. Insurer shall only be liable for the cost of those repairs related to Structural Defects which Insurer investigates, designs and approves in writing. Lender shall not repair a Structural Defect without the Insurer's prior written consent.

**4. ARBITRATION.** Any and all claims, disputes and controversies by or between the Homeowner, the Lender, the Warranty Insurer and/or 2-10 HBW, or any combination of the foregoing, arising from or related to this Agreement, the Warranty, the Home Warranty Insurance Policy, the subject Home, or the 2-10 HBW Program shall be settled by binding arbitration. Agreeing to arbitration means you are giving up your right to a jury trial. Any person in contractual privity with the Lender whom the Homeowner contends is responsible for any construction defect in the Home shall be entitled to enforce this arbitration agreement. Any party shall be entitled to recover reasonable attorney's fees and costs incurred in enforcing this arbitration agreement. The decision of the arbitrator shall be final and binding and may be entered as a judgment in any State or Federal court of competent jurisdiction.

The arbitration shall be conducted by the American Arbitration Association pursuant to its Home Construction Arbitration Rules and Mediation Procedures, or by DeMars & Associates, Ltd. The choice of arbitration service shall be that of the Homeowner if the Homeowner is a claimant and if not the choice shall be that of the Lender or the Warranty Insurer, if applicable. The arbitration shall be conducted pursuant to the applicable rules of the arbitration service selected unless noted otherwise. All administrative fees of the arbitration service and fees of the arbitrator shall be allocated to the parties as provided in the rules of the arbitration service, subject to the discretion of the arbitrator to reallocate such fees in the interests of justice. If for any reason this method of selecting an arbitration service cannot be followed, the parties to the arbitration shall mutually select an arbitration service.

The parties expressly agree that this Warranty and this arbitration agreement involve and concern interstate commerce and are governed by the provisions of the Federal Arbitration Act (9 U.S.C. § 1, et seq.) now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule.

**5. MAINTENANCE OF STANDARDS.** 2-10 HBW and Insurer reserve the right (but undertake no duty) to rescreen Lender annually or more frequently, to ensure that Lender continues to meet the financial stability and technical competence standards set by 2-10 HBW and Insurer. Nothing in this Agreement shall create, or be construed as creating, any express or implied rights

in any person or entity other than the parties to this Agreement. Lender, 2-10 HBW and Insurer are independent contractors. Lender may not assign his rights or obligations under this Agreement.

6. **SELLER MARKETING MATERIALS.** Lender may, during its membership in the 2-10 HBW Program but not thereafter or during suspension, represent to the public that it is a participant in the 2-10 HBW Program by, and only by, displaying the 2-10 HBW logos, and/or other marketing materials provided by 2-10 HBW. Lender will not, at any time, represent that he/she is an agent of 2-10 HBW or Insurer, and Lender agrees to indemnify and hold harmless 2-10 HBW and/or Insurer from any and all costs and damages that arise as a result of such representation. Upon termination from the 2-10 HBW Program, Lender may not enroll any additional Homes and must return forthwith all Lender Application for Home Enrollment forms, 2-10 HBW Warranty Booklets, and 2-10 HBW marketing materials in its possession.
7. **IN-TERM CANCELLATION.** 2-10 HBW and/or Insurer may terminate Lender from program membership and cancel this Agreement with Lender if they determine in their sole discretion that Lender has made any false statement in connection with its application for program membership, any proposed Home enrollment or any other matter; has failed to timely advise 2-10 HBW and/or Insurer of any change in ownership status; has submitted homes that have developed a claim history which 2-10 HBW and/or Insurer, in their sole discretion, find unacceptable; has developed a financial condition which 2-10 HBW and/or Insurer, in their sole discretion, find unacceptable and Lender fails to provide security, as determined in Insurer's sole discretion; or has failed to meet its 2-10 HBW Warranty Program obligations; and/or submits Homes that do not satisfy the Construction Performance Guidelines, failed to notify 2-10 HBW or Insurer in writing that a legal proceeding has been commenced against the Lender related to the warranty obligations; or violated any of the provisions of this Agreement.

In addition, 2-10 HBW and/or Insurer may suspend the program membership of Lender if it appears to 2-10 HBW and/or Insurer, in their sole discretion, that Lender is likely to be unable to carry out any of its obligations described in this Agreement.

8. **ADHERENCE TO CONSTRUCTION PERFORMANCE GUIDELINES AND CONSTRUCTION GUIDELINES.** Lender will construct all Homes enrolled in the 2-10 HBW Program in accordance with the local building, electrical, mechanical and plumbing codes, and the recommendations of any competent engineer; provided however, the foregoing standards shall be equal to, or better than the Insurer's risk management guidelines. Lender must notify 2-10 HBW or Insurer of any Structural Defects, or suspected Structural Defects; and no structural repairs were made prior to the enrollment of the Home in the 2-10 HBW Program. Homes with physical damage, which would qualify as a Structural Defect as defined in the 2-10 HBW Warranty Booklet, may not be enrolled without Lender first notifying the Insurer and completing repairs acceptable to 2-10 HBW or Insurer.

The Construction Performance Guidelines in effect at the time of Lender's entry into the 2-10 HBW Program are set forth in the 2-10 HBW Warranty Booklet provided with this Agreement. 2-10 HBW and/or Insurer reserve the right to modify the Construction Performance Guidelines, construction guidelines and requirements for Special Standards Areas, and other rules and regulations of the 2-10 HBW Program from time to time in accordance with good business and construction practices and undertake to notify Lender when modification takes place. Lender will adopt new rules, regulations, guidelines, requirements, and standards upon such notification, and Lender's next subsequent submission of the Application for Home Enrollment will evidence its acceptance of the modified rules, regulations and standards with respect to the Home which is the subject of that Application, and all Homes subsequently enrolled by it.

Prior to Home enrollment, Lender must also notify 2-10 HBW or Insurer of known or suspected geological hazards, including but not limited to, historic landslide complexes, collapsible soil deposits, high organic content soils, shallow artesian conditions, peat bogs, sinkholes, underground caves, areas of caldera development, fault lines, dipping bedrock, areas of rock fall, rock slides, strip mines, and underground mines.

All fill which carries the load of the foundation must be uniformly compacted throughout the complete depth of the fill to the density required by a registered professional geotechnical engineer. Fills must be free of all organic and metallic materials that deteriorate with the passage of time and in the presence of moisture. The Lender warrants that in constructing the Home the recommendations of a registered professional geotechnical engineer were consulted and followed including but not limited to proper compaction and stabilization for all native or fill slopes that affect the performance of the foundation, which includes without limitation slopes equal to or steeper than three (3) horizontal units to one (1) vertical, mechanically stabilized fill slopes, conventional or mechanically stabilized earth retaining walls. The natural soil under any fill must have sufficient strength and density to support the load of the fill above without total consolidation exceeding that which could cause Structural Defect damage to the Home. Lender must maintain all geotechnical design and testing results for fills under and around Homes enrolled in the 2-10 HBW Program, so that in the event of a Structural Defect claim, Lender will have proof that fills were placed and tested in accordance with the criteria in this paragraph. It is recommended that the Lender have its registered professional geotechnical engineer perform soil tests on land purchased from a developer to confirm that all fills or suspected fills are uniformly compacted throughout the complete depth of the fill to the density specified by Lender's registered professional geotechnical engineer. The Lender is responsible for any damages relating to a Structural Defect that occurs in the Home constructed by the Lender if the Home was placed on fill or natural soils which did not meet all of the requirements and recommendations of the registered professional geotechnical engineer. If any Home is damaged by settlement of fill and/or natural soils due to the Lender's failure to follow the requirements and recommendations in this paragraph, the Lender will indemnify Insurer and hold it harmless from any expenses or liability that Insurer incurs with respect to such Home, provided Lender's liability to Insurer shall not exceed Lender's liability for construction deficiencies under the laws of the state in which the Home is located.

All exterior Common Element Exterior Stairways and Landings contained within multi-family projects must be constructed by Lender with metal and/or concrete materials. However, wood materials may be used by Lender in exterior Common Element Exterior Stairways and Landings if a supplemental fee specified by 2-10 HBW has been paid for this purpose and payment of this supplemental fee is recorded on the Certificate of Warranty Coverage of each unit in the multi-family project. Enrollment of units in a multi-family project that contains wood materials in exterior Common Element Exterior Stairways and Landings without payment of the supplemental fee is fraudulent and Lender will indemnify Insurer and hold it harmless from any expense or liability it incurs in respect to Common Element Exterior Stairways and Landings repair. EXCEPTION: In the Las Vegas and Phoenix metropolitan areas, no written notice and additional fee is required for coverage of wood materials used on exterior Common Element Exterior Stairways and Landings.

9. **LIMITATIONS ON WARRANTABILITY.** New Home construction is eligible for enrollment in the 2-10 HBW Program only when the Home is enrolled in the name of Lender or another 2-10 HBW-approved entity affiliated with Lender which has its own 2-10 HBW Member number, title to the Home is transferred to an unrelated second party, and the home was completed prior to transfer of the home to the homeowner. Lender may not make a Structural Defect claim as owner/titleholder with respect to a Home. Model Homes are eligible for coverage in accordance with 2-10 HBW and Insurer's risk management guidelines. Renovated housing, including condominiums, cooperatives, and lofts, which have been substantially refurbished or renovated to be sold as individual housing units may be eligible for insured warranty coverage in accordance with 2-10 HBW and Insurer's requirements. Earth sheltered Homes, or Homes constructed using straw bale, rammed earth, cob, or other alternative building methods must be pre-approved by 2-10 HBW and Insurer prior to enrollment and may not be eligible for coverage.

Insurer will not accept a Home for enrollment and provide warranty insurance coverage on any Home (even though the Lender has submitted the Lender Application for Home Enrollment) unless all of Insurer's enrollment requirements for that Home have been satisfied (as determined in the sole discretion of Insurer) and the Lender is in good standing with 2-10 HBW and Insurer. If 2-10 HBW or Insurer determines Home's construction does not adhere to the Construction Performance Guidelines, construction guidelines, inspection requirements or special standards contained in this Agreement, the Home is not eligible for enrollment in the 2-10 HBW Program. Further, if 2-10 HBW or Insurer determines, in their sole discretion, that steep slopes or other unusual geological conditions have not been adequately addressed in the engineering, design, and construction of the Home, the Home is not eligible for enrollment.

10. **INSPECTIONS.** As a condition precedent to enrollment, all Homes enrolled in the 2-10 HBW Program must have a final inspection conducted by an 2-10 HBW-approved engineer or fee/staff inspector. In lieu of a final inspection and with the Insurer's approval, building department inspections of the foundation, rough-in and final inspections may be substituted. The results of the building department inspections must be submitted by Lender with documentation acceptable to 2-10 HBW and Insurer, verifying the approval of the foundation, rough-in and final inspections in accordance with the following:

a. The Foundation System: the excavation, footing or beam depth, placement of reinforcement, and formwork, will be inspected for both conventional and engineered foundation systems.

b. Rough-In Stage: the framing, plumbing, electrical and mechanical systems and all other aspects of the construction available for inspection will be inspected for proper installation.

c. Final Stage: the drywall, siding, brickwork, finishes and cosmetic portions of the building will be inspected. All systems must be functioning properly; construction and grading must be complete and the house ready for occupancy.

**All model Homes, newly constructed Homes or newly constructed multi-family projects that were substantially complete twelve or more months prior to the Effective Date of Warranty must have a final inspection conducted by a 2-10 HBW-approved engineer or fee/staff inspector.** 2-10 HBW and Insurer reserve the right, in their sole discretion, to independently inspect or cause to be inspected any Home or multi-family building proposed to be enrolled in the 2-10 HBW Program.

11. **MULTI-FAMILY AND HIGH-END HOMES.** Homes with a sales price greater than \$2 million may be subject to additional risk management requirements. The Lender is required to contact the Insurer to obtain necessary risk management requirements.

2-10 HBW and Insurer reserve the right, in their sole discretion, to establish warranty cost differentials for Workmanship/Systems and Structural Defect warranty coverage on single-family attached, multi-family and high-end Homes, and to set limits on the maximum sales price of any Home or multi-family building or project proposed to be enrolled in the 2-10 HBW Program. Lender should contact 2-10 HBW or Insurer with any questions regarding Home or multi-family project eligibility.

12. **SPECIAL STANDARDS AREAS.** In areas where expansive, active or other unstable soil conditions exist that are not adequately addressed by conventional construction methods and controls, referred to herein as "Special Standards Areas", Lender will make all applicable geotechnical reports, plans and specifications available to 2-10 HBW. 2-10 HBW and Insurer reserve the right, in their sole discretion, to examine, audit, accept or reject all engineering investigations conducted and foundation designs developed. Enrollment of Homes located in Special Standards Areas is subject to special risk management requirements, including without limitation the following:

- a. A geotechnical investigation and report prepared in compliance with 2-10 HBW/Insurer specifications and requirements for each individual Home enrolled in the 2-10 HBW Program in all areas containing expansive, active or unstable soils must be provided to 2-10 HBW;
- b. If the results of the geotechnical investigation indicated that an engineered foundation system is required, then Lender must provide sufficient evidence to 2-10 HBW and the Insurer that an approved registered professional engineer designed the foundation system in compliance with 2-10 HBW/Insurer specifications and requirements;
- c. 2-10 HBW and Insurer may waive the geotechnical report requirement where an approved geotechnical or structural engineer, through previous geotechnical investigations, determined that a maximum foundation design (an engineered foundation system designed for the most expansive, active or unstable soil condition found in the area being investigated) was utilized throughout the subdivision or on the individual lot(s);
- d. 2-10 HBW and Insurer may waive the geotechnical report requirement where documented evidence indicates that the individual lot(s) or subdivision contained no active soils and a conventional foundation system could be utilized;
- e. All geotechnical and structural engineers must be approved by 2-10 HBW and Insurer;
- f. A copy of all geotechnical reports conducted must be submitted to 2-10 HBW;
- g. As applicable, foundation pre-pour inspection by an approved engineer or fee staff inspector for engineered foundation systems must be provided to 2-10 HBW;
- h. As applicable, pier drilling, foundation void, and drain installation reports prepared by an approved engineer or fee/staff inspector, and reported on forms provided to 2-10 HBW;
- i. As applicable cable stressing reports for post-tensioned slab systems must have been prepared by an approved engineer, or representative of the post-tensioning firm or fee/staff inspector, and reported to 2-10 HBW;
- j. All structural fills must have been inspected during soil placement and certified by an approved engineer. All certifications must be in writing and submitted to 2-10 HBW prior to enrollment of the Home(s);
- k. A Final Grade Certificate (Form #U-34) is required on all Homes built in areas that contain expansive soils and in other areas that contain active or unstable soils as designated by 2-10 HBW and Insurer.

**Lender Constructs a New Home.** If the Lender intends to enroll a Home that has not been completed or commenced at the time the Lender receives possession of the Home, then prior to the start of construction of any Homes Lender will provide 2-10 HBW with respect to each such Home: the address, legal description, estimated final sales price, approximate starting date, and expected closing date of each Home, utilizing in each instance a Notification of Starts (HBW 107) or other listing acceptable to 2-10 HBW. Lender will be notified by 2-10 HBW if 2-10 HBW has determined that Lender is building in a Special Standards Area. Lender will be required to follow the 2-10 HBW Program risk management requirements if construction conditions require same, even if 2-10 HBW has not notified Lender. Lender should contact 2-10 HBW with any questions regarding these requirements. **2-10 HBW and Insurer reserve the right, in their sole discretion, to establish warranty-cost differentials for Structural Defect warranty coverage in Special Standards Areas.**

13. **NO OBLIGATION TO DEFEND.** Lender agrees to notify 2-10 HBW and/or Insurer if a legal proceeding has been commenced against the Lender with respect to his warranty obligations. However, neither 2-10 HBW nor Insurer shall, under any circumstances, be obligated to defend or pay for the cost of defense of any lawsuit or arbitration proceeding initiated against the Lender by a Homebuyer or any other person, whether such lawsuit or arbitration proceeding relates to the warranty coverage provided under the 2-10 HBW Program.
14. **REQUIRED ENROLLMENT.** Lender may elect to eliminate all Homes in a subdivision from the Workmanship/Systems Warranty coverage, provided, however, Lender agrees to enroll all Homes in a subdivision for the Structural Defect warranty coverage, if Lender enrolls one Home in that same subdivision, unless the Insurer declines to accept further enrollments pursuant to paragraph 9 of this Agreement. If Lender fails to do so, then 2-10 HBW and Insurer may terminate the Lender's participation in the 2-10 HBW Program and reject all future enrollments. Individual lots that are not within a subdivision may be selectively enrolled in the 2-10 HBW Program.

If Lender enrolls one Home or unit in a single-family attached or multi-family building, Lender must enroll all Homes or units in the building for the Structural Defect warranty coverage, and, in such instance, the combined warranty limits for all units shall be available for the repair of designated load-bearing elements which are common to all units. Single-family attached buildings include all duplexes, triplexes, quadraplexes and row houses. Multi-family buildings include any low-rise, mid-rise, or high-rise building with five or more units and/or an association club house used solely for recreation purposes by unit owners. If Lender enrolls one or more Home(s) or unit(s) in any single-family attached or multi-family building, and fails to enroll all Homes or units for the Structural Defect warranty coverage, Lender will be terminated from the 2-10 HBW Program forthwith and Structural Defect coverage for the designated load-bearing element used in common with other Homes shall be reduced pro rata based upon the ratio of the number of non-enrolled Homes/units to the total Homes/unit in the building. If the Lender fails to enroll all multi-family units in the building for Workmanship/Systems and or Structural Defect coverage, the Insurer's coverage for Workmanship/Systems and/or Structural Defects in areas of the building used in common with other units shall be reduced pro rata based upon the ratio of the number of non-enrolled Homes/units to the total Homes/units in the building.

The warranty fee paid to 2-10 HBW for each Home enrolled in either warranty program includes an insurance premium payment to Insurer for each Home. An additional charge of twenty-five percent (25%) of Lender's total warranty fee will be assessed on Homes built on Homebuyer provided or purchased lot(s).

15. **ANNUAL REGISTRATION FEE.** There will be a nonrefundable initial registration fee in an amount specified by and paid to 2-10 HBW, for each new Lender that applies for enrollment in the 2-10 HBW Program and a nonrefundable annual reregistration fee in an amount specified by 2-10 HBW for every one year thereafter.
16. **COST OF STRUCTURAL DEFECT WARRANTY AND/OR (OPTIONAL) WORKMANSHIP/SYSTEMS WARRANTY.** The warranty fee for the Workmanship/Systems and/or Structural Defect warranty coverage is based on the final sales price of each Home enrolled. Lender rate is predetermined annually and is based on each One Thousand Dollars (\$1,000.00), or part thereof, of the final sales price of each Home. The predetermined Lender rate is dependent upon the sales price of the Home and may increase once, any time during the annual term, provided such increase does not exceed ten percent (10%). Contact 2-10 HBW for individual Lender rates. There is a minimum warranty fee of One Hundred Dollars (\$100.00) per Home enrolled for both the Workmanship/Systems and Structural Defect warranty coverage. There is a minimum warranty fee of Seventy-Five Dollars (\$75.00) per Home enrolled for the Structural Defect warranty coverage only. For single-family detached Homes with a final sales price greater than \$2 million, and single-family attached or multi-family buildings having a combined final sales price of all Homes or units in a building greater than \$2 million, Lender rate may vary depending upon the final sales price. Contact 2-10 HBW regarding Lender rates for Homes, single-family attached, or multi-family buildings with a sales price greater than \$2 million.

Lender agrees that 2-10 HBW may deposit any warranty fees received and such a deposit shall not constitute acceptance of the Home identified in the Lender Application for Home Enrollment. Accordingly, Lender agrees that, notwithstanding any such deposit, warranty coverage shall not be effective unless and until 2-10 HBW or Insurer determines that all enrollment requirements have been met and the Lender is in good standing in the 2-10 HBW Program. Lender agrees that it shall not be entitled to any interest earned due to 2-10 HBW's deposit of warranty fees received.

17. **NOTICE:** Any notice to 2-10 HBW or Insurer shall be in writing, personally delivered or sent by certified mail, postage prepaid as follows:

Home Buyers Warranty Corporation  
10375 East Harvard Avenue  
Denver, Colorado 80231

Warranty Insurer  
10375 East Harvard Avenue  
Denver, Colorado 80231

18. **DUTY TO COOPERATE.** Lender agrees to cooperate with 2-10 HBW and Insurer in the investigation, settlement or defense of any warranty claim, including without limitation providing complete and accurate information reasonably requested by 2-10 HBW or the Insurer, the execution of any documents and taking such other actions as may be reasonably requested by 2-10 HBW or the Insurer which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement.
19. **CONSTRUCTION OF AGREEMENT.** The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be construed to, define, limit or extend the scope or intent of this Agreement. The failure of a party to insist upon the strict performance of the terms and conditions hereof shall not constitute a waiver of that party's right to enforce the same in the event of a continuing or subsequent default on the part of the other party. The Insurer's administrative services, including without limitation underwriting, risk management and inspections are being performed solely for the benefit of 2-10 HBW and the Insurer. The performance of these administrative services shall not create, or be construed as creating, any express or implied rights in any person or entity. 2-10 HBW'S LIABILITY FOR PERFORMING ADMINISTRATIVE FUNCTIONS, INCLUDING WITHOUT LIMITATION THOSE FUNCTIONS DESCRIBED IN PARAGRAPH 1 OF THIS AGREEMENT, AND ANY NEGLIGENT, WILLFUL MISCONDUCT, PRODUCT OR STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY SHALL BE LIMITED IN THE AGGREGATE TO THE LESSER OF THE WARRANTY FEES RECEIVED FROM THE BUILDER OR \$5,000. In no event will 2-10 HBW or the Insurer be liable to any party or third party in contract, tort, products or strict liability or on any other basis, for any special, indirect or consequential damages of any nature, which shall include, without limitation, such items as: indirect operating costs, future overhead costs, loss of future profits or revenues, future costs of capital, loss of use of money, other business interruption costs or losses, or costs associated with insolvency, failure or dissolution of a business entity.
20. **SURVIVAL.** The agreement to arbitrate and Lender's hold harmless and indemnity obligations shall survive termination, cancellation or expiration of this Agreement.
21. **COMPLETE AGREEMENT.** This Agreement constitutes and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior oral or written agreements.
22. **WAIVER.** The failure of a party to insist upon the strict performance of the terms and conditions hereof shall not constitute a waiver of that party's right to enforce the same in the event of a continuing or subsequent default on the part of the other party.
23. **SEVERABILITY.** In the event that any part of this Agreement shall be declared void or unenforceable by any court having jurisdiction, such imperfection shall not affect the validity or enforceability of the remainder of the Agreement.

24. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado, without reference to its conflicts of laws principles. Any legal proceedings arising out of or related to this Agreement shall be brought in the City and County of Denver, Colorado or the United States District Court for the District of Colorado. The parties hereby consent to the jurisdiction and venue of the above-referenced courts.
25. **DEFINITIONS. Home, 2-10 HBW, Warranty Term, Warranty Limit, Defect, Certificate of Warranty Coverage, Application for Home Enrollment, Multi-Family Unit, Common Element, Common Element Exterior Stairways and Landings, Effective Date of Warranty, and Structural Defect are defined in the 2-10 HBW Warranty Booklet which is an enclosure.**

**Special Standards Areas** are defined as areas which 2-10 HBW believes present greater than usual risk of structural failure, and 2-10 HBW and/or Insurer can refuse to accept enrollment of any Home which 2-10 HBW and/or Insurer believe is built in an area subject to greater than usual risk of structural failure unless Lender has provided a warranty fee commensurate with the risk, or has in some other way satisfactory to 2-10 HBW and Insurer, in their sole discretion, retained for itself the greater than usual risk referred to above.

The parties acknowledge that it is unlawful to knowingly provide false, incomplete, or misleading facts or information to an Insurer for the purpose of defrauding or attempting to defraud the Insurer. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any Insurer or agent of an Insurer who knowingly provides false, incomplete, or misleading facts or information to a policyholder (Lender) or claimant (Homebuyer) for the purpose of defrauding or attempting to defraud the policyholder (Lender) or claimant (Homebuyer) with regard to a settlement or award payable from insurance proceeds shall be reported to the applicable state insurance commissioner.

By signing this Agreement, the parties agree that Homes accepted for enrollment in the 2-10 HBW Program commit all parties to meet their obligations as previously stated herein. This Agreement shall remain in effect for ONE (1) YEAR from the acceptance date indicated below, and automatically renew for successive one year terms, except as Lender may be terminated or suspended earlier by 2-10 HBW as provided herein. Termination of this Agreement, by Lender, after the first (1st) year must be submitted to the undersigned 2-10 HBW entity in writing. Time is of the essence of this Agreement. This Agreement, may not be modified orally or by another writing except as provided therein. The parties agree to be bound by their facsimile signatures.

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

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
PRINT TITLE

\_\_\_\_\_  
HOME BUYERS WARRANTY

\_\_\_\_\_  
ACCEPTANCE DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
PRINT TITLE

\_\_\_\_\_  
INSURER

\_\_\_\_\_  
ACCEPTANCE DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
PRINT TITLE





## Notes





**Home Buyers Warranty<sup>®</sup>**

**America's  
Choice<sup>®</sup>**