



Home Buyers Warranty
PO Box 371348
Denver, CO 80237-1348
800.488.8844

LIMITED WORKMANSHIP / SYSTEMS AND STRUCTURAL COVERAGE

Insurer identified in the signature block
Reinsured by National and International Reinsurance Companies

BUILDER PROPOSAL AND AGREEMENT

This Agreement is entered into by and between Home Buyers Warranty Corporation III doing business as Home Buyers Warranty (hereinafter "HBW"), the Insurer identified in the signature block and _____ (hereinafter "Builder"). The effective date of this Agreement shall be the "Acceptance Date" as reflected on the signature page for the signature of HBW hereto.

1. THE HBW WARRANTY PROGRAM; THE INSURANCE. Builder has, by submitting a completed Builder Application Form #201, applied to join the Warranty Program administered by HBW, and to become a member of the Insurer's risk retention group formed pursuant to the federal Liability Risk Retention Act. Upon Builder's acceptance into the HBW-administered Warranty Program, Insurer will cause HBW to authorize Builder to issue its insurance backed Warranty to each Homebuyer purchasing a Home which has been properly enrolled for insured warranty protection by Builder. In New Jersey, all new homes, shall be considered given for occupancy, enrolled and insured under the HBW Warranty where title has been first transferred to an unrelated owner by an HBW member builder in good-standing or a certificate of occupancy has been issued by a local enforcing agency to an unrelated owner pursuant to the New Jersey Uniform Construction Code. Builder will warrant to each enrolled Homebuyer that the Home s/he buys from Builder will be free for ten years from structural defects as defined in the Warranty and 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 running from the earlier of the closing date, or first occupancy of the Home (always the original closing date for FHA-insured-mortgage Homes), and "defect" under the one year and two year warranties defined in each instance as a failure to meet the Construction Performance Standards as set forth in the Warranty, as they may be modified prospectively from time by HBW and/or Insurer in its/their sole discretion, by notice to the Builder. A copy of the warranty in effect as of this date is enclosed; as Insurer modifies insured warranty coverage (for future enrollments only), it will provide modified warranties to Builder, and Builder agrees to employ such warranties from and after their receipt. **The insured warranty obligations of Builder and/or Insurer during the entire term of a warranty are limited to the final sales price of each warranted Home, or \$5,000,000 or such lesser amount as HBW or Insurer shall communicate to Builder from time to time. BUILDER'S AND/OR INSURER'S COSTS OF DESIGNING, ACCOMPLISHING, AND MONITORING REPAIRS TO A WARRANTED HOME ARE DEDUCTED FROM THE HOME'S WARRANTY LIMIT. BUILDER'S AND/OR INSURER'S COSTS OF DETERMINING THE EXISTENCE AND EXTENT OF A COVERED DEFECT, AND OF UNSUCCESSFUL REPAIR ATTEMPTS, ARE NOT DEDUCTED.**

Prior to the start of construction of any Home which Builder plans to enroll in the HBW program, Builder will provide to HBW with respect to each such Home the address, legal description, estimated sales price, and approximate construction starting date, utilizing in each instance a Notification of Starts form #107 (and Notification of Construction and Inspection form #108, if required by HBW) following the instructions contained on those forms. Builder will submit a completed Certificate of Participation on Form #202 within three days after closing, along with full payment of the fee for that Home.

The fact that someone other than Builder actually forwards the Certificate of Participation does not relieve Builder of its obligation to ensure that the Certificate of Participation is submitted in order to be received on time, is accompanied by the proper fee, and is complete and truthful in every respect.

BUILDER HEREBY AGREES TO INDEMNIFY AND HOLD HBW AND INSURER HARMLESS FROM ANY AND ALL DAMAGES THEY MAY INCUR IN RELYING ON INACCURATE DATA CONTAINED IN ANY CERTIFICATE OF PARTICIPATION SUBMITTED WITH BUILDER'S NAME ON IT, AND TO ASSUME HBW'S/INSURER'S OBLIGATIONS IN RESPECT OF ANY WARRANTY AS TO ANY HOME NOT BUILT IN ACCORDANCE WITH THE CONSTRUCTION PERFORMANCE STANDARDS IN EFFECT AT THE TIME OF ITS ENROLLMENT.

The insurance policy is on file at the HBW Customer Service Center, and is available for review.

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2. THE WORKMANSHIP AND SYSTEMS WARRANTIES. BUILDER IS THE PRIMARY OBLIGOR UNDER THE ONE-YEAR WORKMANSHIP AND TWO-YEAR SYSTEMS WARRANTIES, AND BUILDER PROMISES TO PERFORM ALL OF ITS WARRANTY OBLIGATIONS AND ABIDE BY THE ENROLLMENT REQUIREMENTS, WARRANTY SPECIFICATIONS AND CONSTRUCTION PERFORMANCE STANDARDS AS SET BY HBW OR INSURER.

HBW is not an obligor under these warranties. HBW performs certain administrative functions relating to Builder's warranties. The Insurer insures Builder's obligations under the one-and two-year warranties, and Insurer will perform Builder's obligations should Builder for any reason fail to do so. In that event, Insurer will be subrogated to whatever rights Homebuyer may have against Builder. Builder agrees to reimburse Insurer for all of its costs of so performing, and whatever additional costs it may incur in so doing, including but not limited to costs of material and labor, costs of inspecting the Home, fees for engineers, attorney's fees, costs for servicing the claim, arbitration fees paid by HBW or Insurer, and any and all costs incurred in collecting such expenses from Builder. HBW further reserves the right TO TERMINATE FROM THE HBW PROGRAM, AND INSURER RESERVES THE RIGHT TO TERMINATE FROM MEMBERSHIP, ANY BUILDER WHO FAILS OR REFUSES PROMPTLY TO PERFORM ITS DUTIES UNDER THE HBW ONE-AND TWO-YEAR WARRANTIES.

3. THE STRUCTURAL WARRANTY. Insurer is the insurer of Builder's ten year structural warranties, provided that with respect to each warranted Home, Builder shall have complied with its warranty obligations, and with the provisions of this Agreement. The Insurer is NOT Builder's comprehensive and general liability (CGL) insurer, and does not insure any Builder liability not expressly set forth in Builder's warranties issued pursuant to this Agreement.

4. ARBITRATION. Any and all claims, disputes and controversies by or between the Builder, the Warranty Insurer and/or HBW, or any combination of the foregoing, arising from or related to this Agreement, the Warranty, the subject Home, any defect in or to the subject Home or the real property on which the subject Home is situated, or the sale of the subject Home by the builder, including without limitation, any claim of breach of contract, negligent or intentional misrepresentation or nondisclosure in the inducement, execution or performance of any contract, including this arbitration agreement, and breach of any alleged duty of good faith and fair dealing, shall be submitted to arbitration by and pursuant to the rules in effect at the time of the request for arbitration of the American Arbitration Association Home Construction Arbitration Rules and Mediation Procedures; or by DeMars & Associates, Ltd.

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.

This arbitration agreement shall be deemed to be a self-executing arbitration agreement. Any disputes concerning the interpretation or the enforceability of this arbitration agreement, including without limitation, its revocability or voidability for any cause, the scope of arbitrable issues, and any defense based upon waiver, estoppel or laches, shall be decided by the arbitrator.

The parties expressly agree that this Agreement 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; and to the extent that any state or local law, ordinance or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.

If any provision of this arbitration agreement shall be determined by the arbitrator to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

5. MAINTENANCE OF STANDARDS. HBW and Insurer reserve the right (but undertake no duty to Builder) to rescreen Builder annually upon re-application or more frequently, to ensure that Builder continues to meet the financial stability and technical competence standards set by HBW and/or Insurer.

6. IN-TERM CANCELLATION. HBW and/or Insurer may terminate Builder from program membership and cancel this agreement as to Builder if it determines in its sole discretion that Builder has made any false statement in connection with its application for program membership, any proposed Home enrollment or any other matter, or has failed to timely advise it of any change in ownership status, or has developed a financial condition which HBW or Insurer, in its sole discretion, finds unacceptable, or failed to meet its warranty obligations, failed to meet or to maintain the

financial stability or technical competence standards specified by HBW or Insurer, or violated any of the provisions of this agreement. In addition, HBW may suspend the program membership of Builder if it appears to HBW, in its sole discretion, that Builder is likely to be unable to carry out any of its obligations hereunder. Upon termination, HBW will notify the New Jersey Department of Community Affairs of Builder's termination. Builder may not enroll any additional Homes and must return forthwith all Certificate of Participation Forms, Warranties, and HBW marketing materials in its possession.

7. **ADHERENCE TO CONSTRUCTION PERFORMANCE STANDARDS AND CONSTRUCTION GUIDELINES FOR SPECIAL STANDARDS AREAS.** Builder will construct all Homes enrolled in the HBW program in accordance with the local building, electrical, mechanical and plumbing codes, and the recommendations of any HBW-approved professional engineer used by the Builder. In addition Builder will construct all Homes enrolled in the HBW program in accordance with the Construction Performance Standards. Permits must be obtained for any defect correction work where required by Code. Builder must notify HBW or Insurer of any structural repairs or alterations that are made to the Home that occur during the construction period prior to the final enrollment of the Home in the HBW program. The Construction Performance Standards in effect at the time of Builder's entry into the HBW program are set forth in the Warranty booklet provided with this Agreement. WITH THE APPROVAL OF THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS, HBW AND/OR INSURER RESERVE THE RIGHT TO MODIFY THE CONSTRUCTION PERFORMANCE STANDARDS, CONSTRUCTION GUIDELINES AND REQUIREMENTS FOR SPECIAL STANDARDS AREAS, AND OTHER RULES AND REGULATIONS OF THE HBW PROGRAM FROM TIME TO TIME IN ACCORDANCE WITH GOOD BUSINESS AND CONSTRUCTION PRACTICE AND UNDERTAKE TO NOTIFY BUILDER WHEN MODIFICATION TAKES PLACE. BUILDER WILL ADOPT NEW RULES, REGULATIONS, GUIDELINES, REQUIREMENTS, AND STANDARDS UPON SUCH NOTIFICATION, AND BUILDER'S NEXT FOLLOWING SUBMISSION OF A CERTIFICATE OF PARTICIPATION 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 CERTIFICATE OF PARTICIPATION, AND ALL HOMES SUBSEQUENTLY ENROLLED BY IT.

All fill placed by Builder under and around Home foundations must be uniformly compacted throughout the complete depth of the fill to the density specified by Builder's registered professional engineer. Fills must be free of all organic and metallic materials that deteriorate with the passage of time and in the presence of moisture. Builder must have their registered professional geotechnical engineer perform soil tests on land purchased from developers to confirm that all fills or suspected fills are uniformly compacted throughout the complete depth of the fill to the density specified by Builder's professional engineer. 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 as defined in the warranty booklet. Builder must maintain all design and testing results for fills under and around Homes enrolled in the HBW program, so that in the event a question arises in a Structural Defect claim concerning the compaction of any fill, Builder will have proof that fills were placed and tested in accordance with the criteria in this paragraph. In the HBW program, Builders are completely responsible for any structural damage that occurs in their Homes if the Home was placed on fill or natural soil which do not meet all of the requirements in this paragraph. If any Home is damaged by settlement of fill or natural soils which fails any of the criteria in this paragraph, the Builder will indemnify Insurer and hold it harmless from any expenses or liability Insurer incurs with respect to such Home.

If Builder enrolls one condominium unit from a condominium building in the HBW (Structural Coverage) program, Builder must enroll all of the condominium units from the condominium building in order to receive any structural coverage for the building's common elements. If Builder fails to enroll all units in a condominium building, Builder will be terminated from the HBW program forthwith and there will be no insured structural coverage provided on any of the common elements. All common exterior stairways and landings contained within multi-family projects must be constructed with metal and/or concrete materials. However, wood materials may be used in common element stairways and landings if a supplemental premium specified by HBW has been paid for this purpose and payment of this supplemental premium is recorded on the Certificate of Participation of each unit in the multi-family project. Stairways shall be built of materials consistent with the types of materials permitted for the type of construction of the building as required by Building Code. Enrollment of units in a multi-family project that contains wood materials in common element stairways and landings without payment of the supplemental premium is fraudulent and Builder will indemnify Insurer and hold it harmless from any expense or liability it incurs with respect to common element stairways and landings repair.

8. **LIMITATIONS ON WARRANT ABILITY.** The HBW program is available only for Homes enrolled in the name of Builder or another HBW-approved Builder-owned entity which has its own HBW Builder number, and title to which is transferred to an unrelated second party. Builder may not make a structural claim as owner/titleholder with respect to a home Builder has built. Rental units are not available for workmanship or systems insured warranty coverage.

Warranties issued on “model homes” and speculative homes, that have not had title change for more than 6 months will require an inspection by an HBW approved fee inspector at the builder’s expense. The date of closing/or first occupancy by homeowner will be the effective date of warranty on these type homes.

9. **INSPECTIONS.** HBW reserves the right to inspect or to cause to be inspected any Home which is proposed to be enrolled in the HBW Warranty program. In Special Standards Areas which may be designated from time to time by HBW, Builder will have a state-registered HBW-approved professional engineer perform any necessary soil investigations and design the foundation system in accordance with HBW Special Standards requirements and accepted engineering practices. Builders must accept the consequences of electing to build in areas of unusual risk.

All Homes enrolled in the HBW program must have the foundation, rough-in and final inspections conducted by an HBW-approved building department, engineer or fee/staff inspector. Homes constructed in areas where building department inspections are not conducted or approved by HBW must be inspected by HBW-approved inspectors. The results of the inspections must be submitted with documentation acceptable to HBW, verifying the approval of the foundation, rough-in and final inspections in accordance with the following:

- a. The Foundation System: The placement of reinforcement, formwork, excavation, and the placement of concrete 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 for compliance with the Construction Quality Standards. All systems must be functioning properly, construction and grading must be complete and the house ready for occupancy.

All Homes or multi-family projects started prior to Builder’s acceptance into the HBW program and Insurer, and Model homes used as a model more than six months, must have a final inspection conducted by an HBW-approved engineer fee/staff inspector. All multi-family projects with a building height greater than three stories must be pre-approved by HBW prior to the enrollment of any unit in the multi-family project. HBW reserves the right, in its sole discretion, to require additional inspections, examine and reject plans, specifications, and engineering on any multi-family project. All homes where the sales price exceeds \$1 million but is less than \$2 million must have an inspection conducted by an HBW fee inspector. On homes where the sales price is greater than \$2 million and does not exceed \$5 million (no homes over \$5 million may be enrolled) Insurer will assign an independent engineer to inspect the home. On multi-family buildings with an aggregate sales price over \$5 million, Builder must contact HBW for pre-approval of project.

10. **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, Builder will make all applicable soils reports, plans and specifications available to HBW. HBW or Insurer reserve the right, in its sole discretion, to examine, audit and reject all engineering investigations conducted and foundation designs developed. The following special construction requirements will be implemented:
- a. A soils investigation and report must be conducted and prepared in compliance with HBW specifications and requirements for each individual lot, subdivision or development for all proposed new home construction to be enrolled in the HBW program in all areas containing expansive, active or unstable soils.
 - b. If the results of the soil investigation indicate that an engineered foundation system is required, then Builder must have an HBW-approved registered professional engineer design the foundation system in compliance with HBW specifications and requirements;
 - c. HBW may waive the soil report requirement where an approved soil or structural engineer, through previous soil investigations, has 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) will be utilized throughout the subdivision or on the individual lot(s);
 - d. HBW may waive the soil report requirement where documented evidence indicates that the individual lot(s) or subdivision contains no active soils and a conventional foundation system can be utilized;
 - e. All soil and structural engineers utilized by Builder must be approved by HBW;
 - f. A copy of all soil reports conducted must be submitted to HBW from Builder with the Notification of Construction and Inspection Form #108;
 - g. All post-tension slab systems must have the proper stressing of cables inspected by an approved engineer, representative of the post-tensioning firm or fee/staff inspector, on forms provided by HBW;
 - h. All structural fills must be inspected and certified by an approved engineer. All certifications must be in writing and submitted to HBW prior to enrollment of the Home(s);

- i. A Final Grade Certificate Form #U-34 will be required on all Homes built in areas that contain expansive soils and in other areas that contain active or unstable soils as designated by HBW.

Builder will be notified by HBW if HBW has determined that Builder is building in a Special Standards Area. Builder will be required to follow these same procedures if construction conditions require same even if HBW has not notified Builder. Builder should contact HBW with any questions regarding these requirements. HBW reserves the right, in its sole discretion, to establish warranty-cost differentials for structural warranty coverage in Special Standards Areas.

11. NO OBLIGATION TO DEFEND. Neither HBW or 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 Builder by a Homebuyer or any other person, whether or not such lawsuit or arbitration proceeding relates to the warranty coverage provided under the HBW program.
12. REQUIRED ENROLLMENT. Builder agrees to enroll all homes while Builder is a member of the HBW Program. The enrollment fee paid to HBW for each Home enrolled includes an insurance premium payment and a capital contribution to Insurer for each Home. Homes built on Homebuyer provided or purchased lot(s) will be assessed an additional charge of twenty-five percent (25%) of Builder's total enrollment fee for that unit(s).
13. ANNUAL REGISTRATION FEE. There will be a non-refundable initial registration fee in an amount specified by HBW from time to time paid to HBW for each new Builder that applies for enrollment in the HBW (WORKMANSHIP/SYSTEMS and/or STRUCTURAL COVERAGE) program and an annual re-registration fee in an amount specified by HBW from time to time for every one year thereafter.
14. COST OF WORKMANSHIP AND SYSTEMS COVERAGE. The total cost of the HBW (WORKMANSHIP/SYSTEMS and STRUCTURAL COVERAGE) program is based on the final sales price of each Home enrolled. Builder's rate has been predetermined and is based on each One Thousand Dollars (\$1,000.00), or part thereof, of the final sales price of each home. Contact HBW for individual Builder rates. There is a minimum charge of One Hundred Dollars (\$100.00) for any Home enrolled in the HBW (WORKMANSHIP/SYSTEMS and STRUCTURAL COVERAGE) program.

Payments to HBW shall be as follows: A predetermined deposit per Home shall be paid at the time Builder submits the Notification of Starts Form #107 which will include the address, legal description, estimated final sales price, and approximate starting date of each Home. A refund of this deposit (less any administrative costs incurred by HBW and/or Insurer) will be made to Builder upon Builder's written request should Builder, HBW or Insurer decide not to enroll the Homes. The balance of all payments due must be made in full to HBW when the Certificate of Participation for Home Enrollment Form #202 is requested.

15. DEFINITIONS. Homebuyer(s), Home, Builder, HBW, Warranty Term, Defect, Certificate of Participation, Insurer, and Structural Defect are defined in the Warranty booklet which is an enclosure.

Common Stairways and Landings are defined as areas that are maintained by the Homeowners Association or someone other than the owner/occupant of the particular residence.

Special Standards Areas are defined as areas which HBW believes present greater than usual risk of structural failure, and HBW can refuse to accept enrollment of any Home which HBW believes is built in an area subject to greater than usual risk of structural failure unless Builder has provided a warranty fee commensurate with the risk, or has in some other way satisfactory to HBW in its sole discretion absorbed to itself the greater than usual risk referred to above.

This Agreement, when properly executed, commits all parties to meet their obligations as previously stated herein for all Homes enrolled in the HBW (WORKMANSHIP/SYSTEMS and/or STRUCTURAL COVERAGE) program. This Agreement shall remain in effect for ONE (1) YEAR from the acceptance date indicated below, except as Builder may be terminated or suspended earlier by HBW or Insurer as provided herein, and may be renewed upon builder's Certificate of Participation for succeeding years thereafter at the sole option of HBW or Insurer. Termination of this Agreement, by Builder, after the first (1st) year must be submitted to the undersigned HBW entity in writing as well. Time is of the essence of this Agreement. This Agreement, which incorporates the Warranty booklet which is enclosed, contains the entire understanding between the parties, and may not be modified orally or by another writing, except as provided herein.

Type or Print Name and Title

BUILDER

DATE

SIGNATURE

WITNESS

Type or Print Name and Title

HOME BUYERS WARRANTY CORPORATION III

ACCEPTANCE DATE

SIGNATURE

Type or Print Name and Title

INSURER

ACCEPTANCE DATE

SIGNATURE