



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 Home Buyers Warranty Corporation doing business as Home Buyers Warranty hereinafter ("2-10 HBW®"), the Warranty Insurer hereinafter ("Insurer") and hereinafter ("Builder/Seller").

- 1. THE HOME BUYERS WARRANTY PROGRAM; THE INSURANCE.** Builder/Seller has, by submitting a completed Builder/Seller Application and security if required, applied to join the 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. Builder/Seller shall be allowed to apply to enroll newly constructed Homes in the 2-10 HBW Program, provided that Builder/Seller 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. A single family home accepted for enrollment ("Home") will carry a ten-year Structural Defect warranty insured by the Insurer if the Builder/Seller satisfies the Insurer's risk management requirements. Once the Certificate of Warranty Coverage has been issued indicating enrollment of a Home, Builder/Seller will warrant to each Homebuyer of an enrolled Home that the Home will be free for ten years from Structural Defects as defined in the Home Buyers Warranty Booklet ("2-10 HBW Warranty Booklet"). The Builder/Seller, 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 Builder/Seller 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 or warrantor under these warranties. 2-10 HBW performs certain administrative functions relating to Builder/Seller's warranties, including but not limited to processing membership application and Home enrollment paperwork, mailing the homeowner the Certificate of Warranty, assisting the seller in discussing warranty issues with the homeowner, and facilitating the arbitration paperwork between the seller and homeowner. 2-10 HBW and/or the Insurer may modify insured warranty coverage (for future enrollments only), and Builder/Seller agrees to abide by the warranty coverage provided to its Homebuyer. Builder/Seller may not change the terms of the warranties as defined in the 2-10 HBW Warranty Booklet. The insured Warranty Limit for Builder/Seller 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. Builder/Seller's and/or Insurer's costs of determining the existence and extent of a covered Defect are not deducted.

Builder/Seller will submit a completed Builder/Seller Application for Home Enrollment (HBW 302) ("Application")



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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 Builder/Seller'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 Builder/Seller agrees to abide by the warranty coverage provided to its Homebuyer. Builder/Seller may not change the terms of the warranties as defined in the 2-10 HBW Warranty Booklet. The insured Warranty Limit for Builder/Seller 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. Builder/Seller's and/or Insurer's costs of determining the existence and extent of a covered Defect are not deducted.

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within fifteen (15) days after closing, along with full payment of the warranty fee for that Home. All inspections and enrollment requirements shall be performed at Builder/Seller's expense.

The fact that someone other than the Builder/Seller actually forwards the Application does not relieve the Builder/Seller 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. Builder/Seller 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 Builder/Seller at the Builder/Seller'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. Builder/Seller'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 Builder/Seller, including without limitation, letters of credit and bonds.

Builder/Seller 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 Builder/Seller's name on it, Builder/Seller's failure to perform its obligations under this Agreement, or Builder/Seller's failure to perform its obligation under any other warranty given by Builder/Seller 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 District Office, and is available for review.

2. **THE WORKMANSHIP AND SYSTEMS WARRANTIES (OPTIONAL).** The Builder/Seller is the primary obligor under the One-Year Workmanship* and Two-Year Systems warranties ("Workmanship/Systems"), and the Builder/Seller promises to perform all of its warranty obligations and abide by the enrollment requirements, warranty specifications and Construction Performance Guidelines as set by 2-10 HBW or Insurer.

Insurer is a surety securing Builder/Seller'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 Builder/Seller's Workmanship/Systems warranties as defined in the 2-10 HBW Warranty Booklet should Builder/Seller for any reason fail to do so. In that event, the Builder/Seller waives all his rights in law and equity and Insurer will be subrogated to whatever rights Homebuyer may have against Builder/Seller. Builder/Seller agrees to indemnify Insurer for any damages incurred in performing Builder/Seller'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 Builder/Seller. 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 Builder/Seller, 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 Builder/Seller's ten-year Structural Defect warranty, provided that with respect to each warranted Home, Builder/Seller shall have complied with its warranty obligations, and with the provisions of this Agreement. Insurer is NOT Builder/Seller's commercial general liability insurer, and does not insure any Builder/Seller liability not expressly set forth in the Home Warranty Insurance Policy or in Builder/Seller's warranties issued pursuant to this Agreement. 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. Builder/Seller 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 owner, the Builder/Seller, the Warranty Insurer and/or 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 Builder/Seller whom the Home owner 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 Construction Arbitration Services, Inc., or by DeMars & Associates,

Ltd. The choice of arbitration service shall be that of the Home owner if the Home owner is a claimant and if not the choice shall be that of the Builder/Seller 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 Builder/Seller annually or more frequently, to ensure that Builder/Seller 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. Builder/Seller, 2-10 HBW and Insurer are independent contractors. Builder/Seller may not assign his rights or obligations under this Agreement.
6. **BUILDER/SELLER MARKETING MATERIALS.** Builder/Seller 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. Builder/Seller will not, at any time, represent that he/she is an agent of 2-10 HBW or Insurer, and Builder/Seller 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, Builder/Seller may not enroll any additional Homes and must return forthwith all Builder/Seller 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 Builder/Seller from program membership and cancel this Agreement with Builder/Seller if they determine in their sole discretion that Builder/Seller 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 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 Builder/Seller 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 Builder/Seller 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 Builder/Seller if it appears to 2-10 HBW and/or Insurer, in their sole discretion, that Builder/Seller 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.** Builder/Seller 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 used by Builder/Seller; provided however, the foregoing standards shall be equal to, or better than the Insurer's risk management guidelines. Builder/Seller must notify 2-10 HBW or Insurer of any Structural Defects, suspected Structural Defects, or any structural repairs that 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 Builder/Seller first completing repairs acceptable to 2-10 HBW or Insurer. Prior to Home enrollment, Builder/Seller 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. In addition, all Homes enrolled in the 2-10 HBW Program shall be constructed in accordance with the 2-10 HBW Construction Performance Guidelines, and construction guidelines and requirements for Special Standards Areas in effect at the time of construction. The Construction Performance Guidelines in effect at the time of Builder/Seller'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 Builder/Seller when modification takes place. Builder/Seller will adopt new rules, regulations, guidelines, requirements, and standards upon such notification, and Builder/Seller's next subsequent submission of Builder/Seller 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.

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 Builder/Seller 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. Builder/Seller 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, Builder/Seller will have proof that fills were placed and tested in accordance with the criteria in this paragraph. It is recommended that the Builder/Seller 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 Builder/Seller's registered professional geotechnical engineer. The Builder/Seller is responsible for any damages relating to a Structural Defect that occurs in the Home constructed by the Builder/Seller 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 Builder/Seller's failure to follow the requirements and recommendations in this paragraph, the Builder/Seller shall be liable for breach of this agreement and pay the Insurer any expenses, including without limitation, repair costs, court costs, and reasonable attorneys' fees, that Insurer incurs with respect to such Home, provided Builder/Seller's liability to Insurer shall not exceed Builder/Seller's liability for construction deficiencies under the laws of the state in which the Home is located.

All exterior Common Element Stairways and Landings contained within multifamily projects must be constructed by Builder/Seller with metal and/or concrete materials. However, treated or rot resistant wood materials may be used by Builder/Seller in exterior Common Element Stairways and Landings if pre-approved by 2-10 HBW and Insurer prior to the enrollment of any unit in the building. A supplemental fee specified by 2-10 HBW and Insurer may be required for this purpose, and payment of any supplemental fee will be recorded on the Certificate of Warranty Coverage of each unit in the multifamily project.

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 Builder/Seller or another 2-10 HBW-approved entity affiliated with Builder/Seller which has its own 2-10 HBW Member number, title to the Home is transferred to an unrelated second party, and the Builder/Seller was responsible for the completion of the Home with tradesmen employed by the Builder/Seller. Builder/Seller may not make a Structural Defect claim as owner/titleholder with respect to a Home that Builder/Seller has built. Rental units are not eligible for Workmanship/Systems insured warranty coverage. 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 is being 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 Builder/Seller has submitted the Builder/Seller 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 Builder/Seller is in good standing with 2-10 HBW and Insurer. If 2-10 HBW or Insurer determines Builder/Seller did 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 the foundation, rough-in and final inspections conducted by a 2-10 HBW/Insurer-approved building department, engineer or fee/staff inspector. Homes constructed in areas where building department inspections are not conducted or approved by 2-10 HBW must be inspected by 2-10 HBW/Insurer-approved inspectors. The results of the inspections must be submitted by Builder/Seller 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 for compliance with the Construction Performance Guidelines. All systems must be functioning properly; construction and grading must be complete and the house ready for occupancy.

All Homes or newly constructed multifamily projects completed prior to Builder/Seller's acceptance into the 2-10 HBW Program and model Homes used as a model more than one (1) year, must have a final inspection conducted by an 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 multifamily building, and to approve or reject any Home or multifamily building proposed to be enrolled in the 2-10 HBW Program.

11. **MULTIFAMILY AND HIGH-END HOMES.** All Homes with a sales price of \$1 million and above must be pre-approved by 2-10 HBW and Insurer prior to enrollment. Homes with a sales price between \$2 million and \$5 million must have an inspection by an 2-10 HBW-approved engineer or fee/staff inspector. Homes with a sales price of \$5 million and above must have a geotechnical investigation and report conducted and prepared in compliance with the Insurer's specifications, and must be inspected by an 2-10 HBW-approved engineer.

Prior to the start of construction of any single-family attached or multifamily building which Builder/Seller will propose for enrollment in the 2-10 HBW Program, Builder/Seller will provide to 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 and Notification of Construction and Inspection (HBW 108), following the instructions contained on those forms. All single-family attached or multifamily structures having a combined sales price of all units in a building of \$5 million or above, and all renovated housing, must be pre-approved by 2-10 HBW and Insurer prior to the enrollment of any unit in the building. Multifamily buildings with an aggregate sales price of \$5 million or above must have a geotechnical investigation and report conducted and prepared in compliance with 2-10 HBW specifications; must include complete foundation and structural plans prepared by a state-registered professional engineer, and must be inspected by a 2-10 HBW-approved engineer reporting results of inspections directly to 2-10 HBW and Insurer. 2-10 HBW and Insurer reserve the right, in their sole discretion, to require additional inspections, to examine, audit, and determine the acceptability of all engineering investigations and foundation designs developed, and approve or reject any single-family attached or multi-family project proposed to be enrolled in the 2-10 HBW Program.

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. Builder/Seller should contact 2-10 HBW or Insurer with any questions regarding Home or multifamily project eligibility.

12. **SPECIAL STANDARDS AREAS.** Areas with expansive, active or other unstable soil conditions that may not be adequately addressed by conventional construction methods and controls have been designated by 2-10 HBW as "Special Standards Areas". All or portions of the states of Colorado, Mississippi, Oklahoma, Texas, and Utah have Special Standard Areas. In addition, Colorado and Central Texas which includes all of Dallas and portions of Fort Worth, San Antonio, and Austin, have been determined to be Special Investigative Areas. The construction guidelines and requirements for Special Standards and Special Investigative Areas are set forth in the Risk Management Manual for 2-10 HBW Builders, Engineers, and Fee Inspectors. Prior to the start of construction Builder/Seller should contact 2-10 HBW to obtain the Risk Management Manual for the state in which the Home is constructed. In Special Standards and Investigative Areas, Builder/Seller will make all applicable geotechnical reports, plans and specifications available to 2-10 HBW. The Builder/Seller shall implement all special construction requirements contained in the Risk Management Manual, including the following:

- a. A geotechnical investigation and report must be conducted and prepared in compliance with 2-10 HBW/Insurer specifications and requirements for each individual lot, subdivision or development for all proposed new Home construction to be enrolled in the 2-10 HBW Program in all areas containing expansive, active or unstable soils;
- b. If the results of the geotechnical investigation indicate that an engineered foundation system is required, then Builder/Seller must have 2-10 HBW/Insurer-approved registered professional engineer design 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, 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. 2-10 HBW and Insurer may waive the geotechnical 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 geotechnical and structural engineers utilized by Builder/Seller must be approved by 2-10 HBW and Insurer;
- f. A copy of all geotechnical reports conducted must be submitted to 2-10 HBW from Builder/Seller with the Notification of Construction and Inspection (HBW 108);
- g. All engineered foundation systems must have a foundation pre-pour inspection by an approved engineer or fee staff inspector, and reported on forms provided by 2-10 HBW;
- h. All pier and beam foundations must have pier drilling, foundation void, and drain installation inspected by an approved engineer or fee/staff inspector, and reported on forms provided by 2-10 HBW;

- i. 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, and reported on forms provided by 2-10 HBW;
- j. All structural fills must be inspected during soil placement and certified by an approved engineer;
- k. 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 2-10 HBW and Insurer.

Prior to the start of construction of any Homes in a Special Standards Area which Builder/Seller will propose for enrollment in the 2-10 HBW Program, Builder/Seller 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. Builder/Seller will be notified by 2-10 HBW if 2-10 HBW has determined that Builder/Seller is building in a Special Standards Area. Builder/Seller will be required to follow these same procedures if construction conditions require same even if 2-10 HBW has not notified Builder/Seller. Builder/Seller should contact 2-10 HBW with any questions regarding these requirements. 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; and establish warranty-cost differentials for Structural Defect warranty coverage in Special Standards Areas.

- 13. **NO OBLIGATION TO DEFEND.** Builder/Seller agrees to notify 2-10 HBW and/or Insurer if a legal proceeding has been commenced against the Builder/Seller 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 Builder/Seller 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.** Builder/Seller may elect to eliminate all Homes in a subdivision from the Workmanship/Systems Warranty coverage, provided, however, Builder/Seller agrees to enroll all Homes in a subdivision for the Structural Defect warranty coverage, if Builder/Seller enrolls one Home in that same subdivision, unless the Insurer declines to accept further enrollments pursuant to paragraph 9 of this Agreement. If Builder/Seller fails to do so, then 2-10 HBW and Insurer may terminate the Builder/Seller'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 Builder/Seller enrolls one Home or unit in a single-family attached or multi-family building, Builder/Seller 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 Builder/Seller 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, Builder/Seller 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 Builder/Seller 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 Builder/Seller'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 Builder/Seller that applies for enrollment in the 2-10 HBW Program and a nonrefundable annual re-registration 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. Builder/Seller 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 Builder/Seller 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 Builder/Seller 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, Builder/Seller rate may vary depending upon the final sales price. Contact 2-10 HBW regarding Builder/Seller rates for Homes, single-family attached, or multi-family buildings with a sales price greater than \$2 million.

Builder/Seller 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 Builder/Seller Application for Home Enrollment. Accordingly, Builder/Seller 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 Builder/Seller is in good standing in the 2-10 HBW Program. Builder/Seller 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
10375 East Harvard Avenue
Denver, Colorado 80231

Warranty Insurer
10375 East Harvard Avenue
Denver, Colorado 80231

18. **DUTY TO COOPERATE.** Builder/Seller 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 Builder/Seller'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, Builder/Seller, 2-10 HBW, Warranty Term, Warranty Limit, Defect, Certificate of Warranty Coverage, Builder/Seller 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 Builder/Seller 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 (builder) or claimant (homebuyer) for the purpose of defrauding or attempting to defraud the policyholder (builder) 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 Builder/Seller may be terminated or suspended earlier by 2-10 HBW as provided herein. Termination of this Agreement, by Builder/Seller, 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

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PRINT TITLE



Home Buyers Warranty®