



Rev. 04/15

## AGREEMENT WITH BUILDER

**THIS AGREEMENT MADE BETWEEN:** **ATLANTIC HOME WARRANTY ("AHW"),**  
a body corporate, carrying on business in the Atlantic Provinces  
  
...and...

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

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

POSTAL CODE \_\_\_\_\_ FAX NO. \_\_\_\_\_

### ("THE BUILDER")

The parties agree as follows:

#### 1. INTERPRETATION

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

- 1.1 "Homeowner" means a person who contracts with the Builder for the construction of a *Home*, and person(s) who become registered owners of the *Home* during the term of any *Limited Warranty* issued in relation to the *Home*.
- 1.2 "Home" means a building constructed on real property in the Atlantic Provinces built by the Builder solely for use as a permanent residence,
  - 1.2.1 which is directly or indirectly attached to a permanent foundation; and
  - 1.2.2 which is one of the following types of housing:
    1. single family detached
    2. semi-detached
    3. duplex
    4. row or townhouses
    5. a condominium project / units
    6. modular units, and / or mini homes
    7. any other type of housing (such as a cottage) approved by AHW in its sole discretion for issuance of a *Limited Warranty*.
- 1.3 "Certificate of Possession" means the certificate prescribed by AHW to be executed by the Builder and the *Homeowner* and which records the *Date of Possession*.
- 1.4 "Date of Possession" means the date of possession shown on the *Certificate of Possession*.
- 1.5 "Limited Warranty Certificate" means the certificate prescribed by AHW to be issued as evidence of a *Limited Warranty* applicable to a *Home*.
- 1.6 "Limited Warranty" means a Limited Warranty issued by AHW in relation to a *Home*.
- 1.7 "Major Structural Defects" means those defects constituting Major Structural Defects under the terms of a *Limited Warranty*.

## 2. BUILDER COVENANTS

The Builder agrees as follows:

- 2.1 All information supplied by the Builder with respect to any application, renewals or otherwise submitted to or required by AHW shall be complete and accurate.
- 2.2 Each *Home* shall be constructed in accordance with the National Building Code of Canada (“NBCC”) in effect during the course of construction, whether or not the NBCC has been adopted by legislation in the applicable jurisdiction.
- 2.3 Any *Limited Warranty* shall be legally binding on the Builder, whether or not title to the *Home* has passed to a *Homeowner*.
- 2.4 The termination of this Agreement shall not affect any obligations of the Builder under this Agreement arising prior to such termination.
- 2.5 The Builder shall not make public statements which the Builder knows or reasonably ought to know misrepresent or inaccurately describe the obligations of AHW either generally or with respect to any *Limited Warranty*.
- 2.6 For the purposes of this Section 2.6, “third parties” means subcontractors, suppliers, manufacturers or others who may be liable in whole or in part in relation to defects, including *Major Structural Defects*, which are covered by a *Limited Warranty*.
  - 2.6.1 Notwithstanding any other term of this Agreement, the Builder shall at all times preserve and protect any and all of the Builder’s rights, in contract or otherwise, against third parties.
  - 2.6.2 In the event that AHW incurs any costs or assumes any liability under a *Limited Warranty* in relation to defects, including *Major Structural Defects*, AHW shall be entitled to assume all of the Builder’s rights of recovery against third parties, and to enforce those rights in the name of the Builder.
  - 2.6.3 The Builder hereby assigns to AHW its rights against third parties in relation to any defects, including *Major Structural Defects*.
  - 2.6.4 The Builder shall, at the request and expense of AHW, execute and deliver such other assignments, powers of attorney, and other documents as may be required to give effect to the terms of this Section 2.6.
  - 2.6.5 Nothing contained in this Section 2.6 shall affect any rights or remedies that AHW may have against the Builder.
- 2.7 The Builder, and any officer, director, employee, agent or representative of the Builder, while a member of AHW, shall not at the same time be affiliated with or have membership or participate in, or otherwise promote the interests of any other home warranty program which is directly or indirectly a competitor of AHW.

## 3. INDEMNIFICATION

- 3.1 The Builder shall indemnify and save harmless AHW from any loss or expense whatsoever which AHW incurs as a result of:
  - 3.1.1 failure of the Builder to refund a deposit which the Builder is legally obligated to repay to the *Homeowner*.

- 3.1.2 failure of the Builder to fulfill the Builder's obligations under a *Limited Warranty*, including, without restricting the generality of the foregoing, all costs of repair of defects.
- 3.1.3 AHW's warranty obligations in relation to any *Major Structural Defect(s)*.
- 3.1.4 a *Homeowner* vacating a *Home*:
  - 1. due to any wrongful act or omission by the Builder, including by the Builder's employees, agents and subcontractors, or
  - 2. for the purpose of carrying out investigations, inspections, testing, or repairs, where AHW agrees that vacant possession is necessary.
- 3.1.5 the investigation, conciliation and/or settlement of a warranty claim including expert costs, legal fees (on a solicitor and client basis), and all out of pocket expenses and disbursements reasonably incurred in relation to the claim.
- 3.2 The Builder shall indemnify AHW as required by Section 3.1 notwithstanding that the Builder may have ceased to be a member of AHW at the time the claim arose or the losses or expenses were incurred, and whether or not this Agreement remains in force or has terminated.

#### 4. ENROLLMENT OF HOMES

- 4.1 The Builder shall enroll with AHW all eligible *Homes* which the Builder commences to construct after the date of this Agreement.
- 4.2 AHW may require the Builder to enroll any or all unsold *Homes* which the Builder has under construction, or has completed, prior to the date of this Agreement.
- 4.3 **MANDATORY TIME FOR ENROLLMENT**
  - 4.3.1 **ALL HOMES SHALL BE ENROLLED BY THE BUILDER IMMEDIATELY UPON THE EARLIER OF:**
    - 1. **THE DATE OF ISSUANCE OF THE BUILDING PERMIT**
    - 2. **THE DATE OF START OF CONSTRUCTION**
  - 4.3.2 **LATE ENROLLMENT SHALL BE SUBJECT TO LATE CHARGES AS PRESCRIBED BY AHW.**
- 4.4 Enrollment shall be effected upon receipt by AHW of:
  - 1. a properly completed Enrollment Form in the form prescribed by AHW.
  - 2. a non-refundable enrollment fee in the amount prescribed by AHW.
  - 3. such bond or other security as AHW deems appropriate, in a form acceptable to AHW.
- 4.5 In the event a *Home* shall remain unsold or uncompleted for a period of two (2) years from the date of its enrollment, AHW may, in its sole discretion:
  - 4.5.1 require an additional enrollment fee, or
  - 4.5.2 cancel the enrollment.
- 4.6 In the event the enrollment of a *Home* is cancelled in accordance with Section 4.5.2, the original enrollment fee shall not be refunded, and, effective as of the date of the cancellation, AHW shall have no obligations whatsoever in respect of the *Home*, under this Agreement or otherwise.

## 5. INSPECTIONS

- 5.1 If AHW so requires, the Builder shall advise AHW as soon as practicable of the completion of each of the following stages of construction of a *Home*:
  - (a) prior to backfill,
  - (b) prior to drywall,
  - (c) final completion, or
  - (d) such other stages of construction as may be specified by AHW.
- 5.2 AHW, in its sole discretion, may inspect any of the *Homes* under construction or completed by the Builder, and the Builder in such case shall provide AHW full and uninterrupted access to each *Home* at all reasonable times prior to the *Date of Possession*.
- 5.3 Unless AHW elects otherwise, the Builder shall pay an inspection fee as prescribed by AHW for each inspection carried out further to Section 5.2.

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

- 6.1 **THE BUILDER SHALL:**
  - 6.1.1 **FULLY COMPLETE AND EXECUTE THE *CERTIFICATE OF POSSESSION*.**
  - 6.1.2 **CAUSE THE *HOMEOWNER* TO EXECUTE THE *CERTIFICATE OF POSSESSION*, AND PROVIDE A COPY THEREOF TO THE *HOMEOWNER*.**
  - 6.1.3 **IMMEDIATELY DELIVER A COPY OF THE *CERTIFICATE OF POSSESSION* TO AHW.**
- 6.2 **AHW SHALL HAVE NO OBLIGATION TO ISSUE A *LIMITED WARRANTY* UNTIL THE BUILDER HAS COMPLIED WITH SECTION 6.1.**
- 6.3 **THE BUILDER SHALL PAY SUCH ADMINISTRATIVE FEES AND CHARGES AS MAY BE ESTABLISHED BY AHW FROM TIME TO TIME IN CONNECTION WITH THE ISSUANCE OF A DUPLICATE OR REPLACEMENT *CERTIFICATE OF POSSESSION*.**

## 7. PROGRAM WARRANTY

- 7.1 Upon receipt of the *Certificate of Possession*, AHW shall issue the applicable *Limited Warranty*, and a *Limited Warranty Certificate* as evidence thereof.
- 7.2 The Builder hereby authorizes AHW (if AHW elects in its sole discretion to do so) to execute the *Certificate of Possession* and *Limited Warranty Certificate* on the Builder's behalf.

## 8. CONCILIATION

- 8.1 The Builder agrees not to commence legal proceedings or pursue any other recourse in respect of any warranty dispute with a *Homeowner* until completion of the conciliation procedure set forth in the *Limited Warranty*.
- 8.2 AHW shall appoint Conciliator(s) to conciliate unresolved disputes between the Builder and the *Homeowner* as required by the *Limited Warranty*.
- 8.3 If the *Homeowner* submits a dispute to conciliation, and the decision of the Conciliator is in favour of the *Homeowner*, unless AHW in its sole discretion waives payment thereof, the Builder shall pay AHW the costs of the conciliation.
- 8.4 Should the Builder fail to comply with the decision of the Conciliator within the stipulated time, and if AHW is required to carry out the Builder's obligations, the Builder

shall reimburse AHW for the total cost notwithstanding that the Builder may have ceased to be a member of AHW at the time that the default arose or at the time of the Conciliation.

## 9. TERM

- 9.1 Subject to the terms and conditions of this Agreement, this Agreement will expire one year from the date of this Agreement.
- 9.2 AHW, in its sole discretion, may:
  - 1. renew this Agreement for additional terms of up to one year (the “Renewal Term”).
  - 2. impose terms and conditions of each such renewal as AHW deems appropriate (the “Renewal Conditions”).
- 9.3 During the Renewal Term, if the Builder fails to comply with any Renewal Conditions, AHW may terminate this Agreement by giving ten (10) days written notice to the Builder of the default.

## 10. DEFAULT BY THE BUILDER

- 10.1 The Builder shall be immediately in default of this Agreement upon the occurrence of any one or more of the following events of default:
  - 10.1.1
    - 1. The Builder fails to pay any monies when due and owing by the Builder to AHW.
    - 2. If the Builder’s obligation to pay monies is the subject of pending arbitration or litigation, the Builder shall not be considered to be in default under this Section 10.1.1 until a final decision is rendered in such proceedings affirming such obligation.
  - 10.1.2 The Builder fails to perform or comply with any term or condition of this Agreement.
  - 10.1.3 The Builder fails to comply with Rules or Regulations in force further to Section 12 herein, or with the Articles of Association of AHW.
  - 10.1.4 The Builder fails to comply with a decision of a Conciliator.

## 11. TERMINATION

- 11.1 AHW, without prejudice to any of its other rights or remedies, may terminate this Agreement upon the happening of any of the following events:
  - 11.1.1 The Builder is in default of this Agreement, and has failed to rectify such default within 10 days of receiving written notice of such default from AHW.
  - 11.1.2 The Builder ceases to be a member in good standing of AHW.
- 11.2 Should this Agreement be terminated, the Builder shall:
  - 11.2.1 cease the use or public display of any material bearing AHW’s identification.
  - 11.2.2 return, if AHW so requests, all documentary materials furnished to the Builder by AHW.
  - 11.2.3 not represent or in any way hold out to the public that any *Homes* enrolled but not sold on the date of termination are eligible for a *Limited Warranty* to be issued by AHW.

- 11.2.4 continue to be liable to reimburse AHW for all costs incurred in the event that AHW is required to perform the Builder's obligations after the date of termination.
- 11.3 Any *Home* enrolled but not sold as of the date of termination, in the sole discretion of AHW, will be removed from enrollment without refund in whole or in part of enrollment fees.
- 11.4 In the event that AHW decides not to exercise its rights to terminate this Agreement under Section 11.1.1 in relation to a default (the "original default"), such decision shall not limit or waive AHW's right to subsequently terminate this Agreement:
  - 11.4.1 where the Builder continues to fail to rectify in the original default.
  - 11.4.2 for any other default of this Agreement.
- 11.5 In the event membership in AHW is terminated by AHW, the Builder has the right to apply in writing within ten (10) days from the date of such termination to the Board of Directors of AHW for a review of AHW's decision.

## **12. RULES AND REGULATIONS**

- 12.1 The Board of Directors of AHW may, from time to time, make rules and regulations (the "Rules and Regulations") with respect to matters arising or related to this Agreement, dealings between the Builder and AHW, and for the better administration and implementation of the warranty program.
- 12.2 The Builder agrees that the Rules and Regulations made by the Board of Directors of AHW from time to time shall be deemed to be incorporated by reference herein and shall be binding upon the Builder as if set forth herein as terms and conditions of this Agreement. The Builder shall strictly comply with such Rules and Regulations at all times.

## **13. NOTICES**

- 13.1 Any notice or communication required to be in writing by this Agreement shall be sent to the address as shown on the face of this Agreement by:
  - 1. personal or courier delivery,
  - 2. ordinary or registered mail,
  - 3. confirmed facsimile transmission, or
  - 4. sent by email
- 13.2 Any notices sent by mail shall be deemed to be received by the other party seven (7) days next following the date of mailing
- 13.3 Notice may be sent by facsimile or other form of electronic communication during the transmission of which, there is no indication of failure of receipt communicated to the sender. If delivered by facsimile or other electronic communication, including email, it shall be considered delivered on the date of transmission; however, if such day is not a Working Day, or received after the end of normal business hours at the place of receipt, the document is deemed to be received at the opening of business at the place of receipt on the first Working Day next following the transmission thereof."
- 13.4 Either party may change its address by giving fourteen (14) days notice of change to the other party.

**14. ASSIGNMENT AND OWNERSHIP CHANGE**

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

14.2 If the Builder is incorporated, the Builder shall forthwith notify AHW in writing of any change in the direct or beneficial ownership of ten percent (10%) or more of the Builder, including any transfer, by sale, assignment or in any other manner, of all or part of the corporate shares of the Builder which results in a change in the effective voting control of the Builder of ten percent (10%) or more.

**15. SEVERABILITY CLAUSE**

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

**16. NON-WAIVER**

16.1 No waiver of term, provision, condition of this Agreement, whether express or implied, and whether by conduct or otherwise, in any one or more instances, shall be valid unless the same shall be in writing and any such valid written waiver shall not be construed as a further or continuing waiver beyond its express terms.

16.2 Any default, breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time shall not in any way affect, limit, modify or waive AHW's right thereafter to enforce strict compliance with every term, covenant, condition or other provision hereof.

**(See over for signatures)**

**THE BUILDER:** \_\_\_\_\_  
**(The Builder)**

(SEAL) PER: \_\_\_\_\_  
**(Principal's Signature)**

PER: \_\_\_\_\_  
**(Principal's Signature)**

Two signing officers must execute this document under seal or provide a certificated copy of the Company's minutes which authorizes one signature.

**ATLANTIC HOME WARRANTY**

(SEAL) PER: \_\_\_\_\_  
**(Director)**

PER: \_\_\_\_\_  
**(Chief Executive Officer)**

**INTERNAL USE ONLY**

**EFFECTIVE DATE: THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_\_**

**REGISTERED BUILDER NO. \_\_\_\_\_**