

AGREEMENT WITH BUILDER

THIS AGREEMENT MADE BETWEEN:

NEW HOME WARRANTY PROGRAM OF MANITOBA INC., a body
corporate, carrying on business in the Province of Manitoba
(hereinafter called "the Program")

OF THE FIRST PART

- and -

(hereinafter called "the Builder")

OF THE SECOND PART

In consideration of the covenants contained herein, the parties agree as follows:

1. INTERPRETATION

In this Agreement:

- (1) "Builder" means the party to this Agreement who is a member in good standing of the New Home Warranty Program of Manitoba Inc., and any associated or affiliated person or entity engaged in the business of residential development, construction, or marketing, while trading under a similar name as that of the Builder where, in the opinion of the Program, the associated or affiliated person or entity may tend to be confused with the Builder by members of the public.

"Homeowner" means a person who pays a deposit to, or contracts with the Builder for the purchase or construction of a home built or to be built on real property in the Province of Manitoba.

- (2) "Home" means a building or part of a building which is:
- a) capable of ownership separate from the ownership of the other part or parts of the building; and
 - b) used or intended to be used for residential purposes and occupied or leased by the homeowner; and
 - c) constructed by the Builder; and
 - d) permanently, or through another part or parts of the building, attached to a permanent foundation located in Manitoba; and

- e) constructed for sale and which includes:
 - i.) a single detached unit.
 - ii.) a semi-detached unit.
 - iii.) a duplex unit.
 - iv.) a row housing unit.
 - v.) a condominium unit, except a condominium unit in a building having more than three (3) storeys;
 - vi.) in the case of buildings located on Indian Reserve lands, the subject of a Certificate of Possession in favour of the homeowner duly registered with the Indian Registry System as maintained pursuant to the Indian Act.
- (4) "Date of Possession" means the date set forth as the Date of Possession in the Possession Certificate hereinafter referred to.
- (5) "Warranty Certificate" means the certificate issued by the Program to homeowners immediately following the Date of Possession, which certificate sets forth the warranty obligations of the Program and the Builder in respect of the home described in each such certificate. The Warranty Certificate shall be in the form hereto annexed as Schedule "A", as may be amended by the Program from time to time in accordance with its by-laws. The Warranty Certificate forms an integral part of this Agreement.
- (6) "Renewal Date" means a date not later than a period of four months next following the end of the fiscal period of the Builder, which renewal date may be extended at the discretion of the Board of Directors of the Program.

2. BUILDER COVENANTS

- (1) The Builder covenants that all information supplied to the Program in connection with any application for registration or renewal of membership in the Program is complete and accurate.
- (2) The Builder shall construct each home in accordance with the Manitoba Building Code, and in accordance with the building standards prescribed by the local authority having jurisdiction in the municipal district in which the home is constructed, or as prescribed in the plans and specifications where such standards exceed the requirements hereinbefore set out.
- (3) The Builder agrees that the warranties set forth in the Warranty Certificate shall be fully binding and of full force and effect upon the Builder, notwithstanding that title to a home may not have passed to the Homeowner.
- (4) The Builder agrees that any termination of this Agreement shall not affect any of the obligations described herein and that the covenants contained in this Agreement and the Warranty Certificate shall survive any termination of this Agreement.
- (5) The Builder shall not make representations to the public that could require the Program to do anything outside the scope of the Program's responsibility set out in the Warranty Certificate.
- (6) The Builder shall pay all fees and charges to the Program at the Program's head office and provide to the Program any and all forms of security for the performance of its obligations herein as the program may require.

3. BUILDER INDEMNIFICATION

- (1) The Builder shall indemnify and save harmless the Program from any loss which the Program incurs:
 - a.) As a result of the failure of the Builder to refund a deposit which the Builder becomes legally obliged to repay to a homeowner.
 - b.) As a result of the default by the Builder in the performance of its obligations arising under this Agreement or the Warranty Certificate.
- (2) Where any defects in workmanship or materials or any major structural defects arise partially or totally out of any negligent or intentional act or omission of any person(s) other than the Builder, the Builder agrees, at the request of the Program, to subrogate or assign any right of action or claim it may have against such person(s) to the Program. The Program may bring action, at the Program's expense, in the name of the Builder to enforce such right of action or claim.

- (3) Notwithstanding any termination of this Agreement, the foregoing indemnities by the Builder shall remain in full force and effect.

4. REGISTERED BUILDER

During the term of this Agreement, the Builder shall be entitled and is encouraged to hold itself out as a "Registered Builder", and use or display any of the materials bearing the Program's logo or other identification, and to use all documents, paper writings or other material furnished to him by the Program, it being understood that all said documentation, paper writings and other materials remain in the property of the Program.

5. ENROLLMENT OF HOMES

- (1) The Builder shall enroll with the Program each home which it commences to construct after the date of this Agreement.
- (2) The Program may require the Builder to enroll with the Program all unsold homes which it commenced to construct or has constructed prior to the date of this Agreement.
- (3) All homes shall be enrolled with the Program forthwith upon the earlier of the date of issue of a building permit authorizing construction, or the date of payment of a deposit by a homeowner, by the Builder submitting to the Program:
 - a.) A completed enrollment form as may be prescribed by the Program from time to time,
 - b.) A non-refundable enrollment fee as established from time to time. Should any Building permits be cancelled, the Builder shall provide evidence thereof to the Program not more than 12 months from the permit date in which case the Builder shall receive a partial credit of 75% of the fees paid,
 - c.) Proof of satisfaction or waiver by the homeowner of any special conditions in the Offer to Purchase.
- (4) In the event that the Builder fails to enroll homes within the time prescribed by the Program (presently 61 days after taking out a building permit), the Program, upon providing written notice to the Builder may assess an administration fee of 20% of the enrollment fee per home against the Builder.
- (5) In the event a home shall remain unsold or uncompleted for a period of two (2) years from the date of its enrollment, the Program may, at its discretion, upon notice to the Builder as hereinafter provided, require an additional enrollment fee to be paid to the Program or alternatively the Program may cancel the enrollment without refund of the enrollment fee in which case the Program accepts no further responsibility concerning the said home.

6. INSPECTIONS

- (1) The Program may, at its option, conduct inspections of any of the homes being constructed by the Builder, and the Builder shall grant the Program's inspectors uninterrupted access to each home at all reasonable times prior to the Date of Possession.
- (2) If required to do so by the Program, the Builder shall advise the Program upon the completion of the footings, the framing and the interior finish and other such stages of construction as may be specified by the Program, in order that the Program may conduct inspections to ensure that construction complies with existing building codes and standards of local authorities. The Program will carry out inspections within 3 days of notification by the Builder. The Builder shall pay an inspection fee for each inspection which the Program conducts or cause to be conducted, which fees shall be in accordance with the fee schedule established by the Program from time to time.

7. PROGRAM WARRANTY

- (1) Forthwith upon granting possession of a home to a homeowner, the Builder shall complete and execute and shall cause the homeowner to complete and execute a Possession Certificate in the form determined from time to time by the Program. The Builder shall furnish the homeowner with a copy of such Possession Certificate and shall immediately forward the designated copy of the Possession Certificate to the Program.
- (2) Upon receipt of the Possession Certificate, the Program undertakes to honour the terms of its Warranty and to evidence such undertakings, the Program shall issue to the Homeowner a Warranty Certificate relating to the home.
- (3) The Builder hereby authorizes the Program to execute the aforesaid Warranty Certificate on its behalf.

8. CONCILIATION

- (1) The Builder agrees to postpone its right of recourse to the courts in relation to any dispute between the Builder and a homeowner concerning the fulfillment of warranty obligations until completion of the conciliation procedure set forth in the Warranty Certificate.
- (2) If Conciliation Procedures are instituted by the homeowner and the decision of the conciliator is in favour of the homeowner, the Builder shall pay the Program the costs of the conciliation including the fees of the conciliator.
- (3) Should the Builder refuse to comply with a decision of a conciliator within the time specified, and if the Program is required to fulfill the Builder's obligations, the Builder shall reimburse the Program for the total costs incurred by the Program in fulfilling those obligations, together with a surcharge equivalent to 25% of the total costs, subject to a minimum surcharge of \$250.00, such surcharge to be paid as liquidated damages and not as a penalty.
- (4) The Builder may seek a review of a conciliator's decision by the Board of Directors of the Program by delivering to the Program, within 15 days of the decision, a written request for review. The sole ground for review is the conciliator having exceeded jurisdiction. In all other respects, the decision of the conciliator is final and binding.

9. TERM

- (1) This Agreement shall be in force for a period ending on its Renewal Date.
- (2) The Agreement, in the absolute discretion of the Program, may be renewed from year to year for additional one (1) year periods commencing on the Renewal Date of the Agreement, upon such terms and conditions as shall be specified by the Program to the Builder. Notwithstanding the foregoing, the Builder acknowledges that before or after such renewal, the Program may establish additional terms and conditions to the renewal of the Agreement, and should the Builder fail to comply therewith within a reasonable period of time then this Agreement shall terminate upon fourteen (14) days written notice by the Program to the Builder.

10. DEFAULT BY THE BUILDER

The Builder shall be in default under this Agreement upon the occurrence of any of the following events:

- (1) If the Builder shall default in the payment of any monies owing by the Builder to the Program;
- (2) If the Builder shall neglect to carry out or observe any agreement, covenant or condition herein contained on the part of the Builder to be observed or performed, or should the Builder fail to comply with any rules and regulations made by the Program under the terms of this Agreement;
- (3) If an order shall be made or an effective resolution shall be passed for the winding up or liquidation of the Builder;
- (4) If the Builder shall make a general assignment for the benefit of its creditors or shall commit an act of bankruptcy or if a custodian or receiver/manager or any other officer with similar powers shall be appointed by the court or any of the creditors of the Builder or of the property of the Builder or of any part thereof;
- (5) If an encumbrancer shall take possession of any warranted property of the Builder which is, in the opinion of the Program, a substantial part of the Builder's property or if a distress or execution or a similar process shall be levied or enforced against such property.

11. TERMINATION

- (1) This Agreement shall terminate at the option of the Program upon the happening of any of the following events:
 - a.) If the Builder ceases for any reason to remain a member in good standing of the Program.
 - b.) If the Builder shall be in default of any of the covenants, terms or conditions set forth in this Agreement and shall fail to remedy it within ten (10) days of receiving written notice from the Program of the particular default.
 - c.) If the Program should discontinue its operations or pass a special resolution to wind up and dissolve.

- (2) Should the Program, in its discretion, decline to exercise its option to terminate this Agreement, such action shall not operate as a waiver of the right of the Program to exercise its said option at any time thereafter for the first or any subsequent default of the Builder under this Agreement.
- (3) In the event of termination of this Agreement, the Builder acknowledges, undertakes and agrees to cease the use or public display of any material bearing the Program's logo or other identification and that all documentation, paper writing or other materials furnished by the Builder by the Program shall forthwith be returned by the Builder to the Program on demand by the Program.
- (4) In the event of termination of this Agreement, any home enrolled but not sold on the date of termination of this Agreement may be removed from enrollment at the discretion of the Program and such enrollment fees may, at the option of the Program, be deemed to be earned in full by the Program. Further, the Builder shall not hold out such homes as eligible for warranty coverage through the Program.
- (5) In the event that the Builder's membership in the Program is terminated by the Program under clause 11(1)(b), the Builder has the right exercisable within ten (10) days from the date of notice of such termination, to appear before the next meeting of the Board of Directors of the Program for review of the Program's decision.
- (6) If monies owing to the Program by the Builder are the subject of pending arbitration or litigation, the Builder will not be considered to be in default until such time as a final ruling is made.
- (7) After the occurrence of the event described in clause 11(1)(c) hereof, when the Directors of the Program have determined acting reasonably that all other liabilities of the Program have been satisfied or a proper reserve for such liabilities has been established, the Program shall from time to time pay to the Builder, as a refund of premiums, a proportionate share of the surplus reserve funds of the Program then remaining and available for payment calculated as follows:

$$\frac{\text{Number of enrollments by the Builder (including any predecessor corporation)}}{\text{Number of enrollments of all members of the Program (including any predecessor corporation) at such time}} \times \text{remaining surplus reserve funds}$$

- (8) For the purposes of this clause a predecessor corporation shall mean a corporation that was previously a member of the Program and was controlled by the same person or group of persons who control the Builder.

12. RULES AND REGULATIONS

The Builder covenants and agrees that the Board of Directors of the Program may, from time to time during the currency of the Agreement, make reasonable rules and regulations to better define or carry out the intent of this Agreement and in all such cases, the Builder agrees that such rules and regulations shall be binding upon the said Builder as if the same formed a part of this Agreement. Without limiting the generality of the foregoing, the Builder undertakes and agrees to comply with all rules and regulations of the Program pertaining to full disclosure and all matters, things, or information as might be required by the Program from time to time during the currency of this Agreement.

13. NOTICES

- (1) Any notice or communication may be served upon a party to this Agreement by either delivering it or forwarding it by mail to the address of the other party as shown on the face of the Agreement.
- (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.
- (3) Either party shall upon changing its address to another address give written notice of such change to the other party.
- (4) All notices and communications between the parties shall be in writing.

14. ASSIGNMENT

- (1) The Builder shall not assign this Agreement or any of its rights hereunder.
- (2) If the Builder is incorporated, it undertakes that it will forthwith notify the Program of any changes in the identity of its shareholders, or any of them who may acquire an interest of ten percent (10%) or more in the company.

15. SAVINGS CLAUSE

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

(To be completed by the Program)

DATED THIS _____ DAY OF _____ A.D. 20 _____.

NEW HOME WARRANTY PROGRAM OF MANITOBA INC.

PER: _____
(Director)

SEAL

PER: _____
(Chief Executive Officer)

(To be completed by the Builder)

THE BUILDER: _____
(Name of Builder)

PER: _____
Name (Signing Officer) Title (If incorporated, Specify Office Held)

Signature

SEAL

PER: _____
Name (Signing Officer) Title (If Incorporated, Specify Office Held)

Signature

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

REGISTERED BUILDER NO: _____