



## HOME LIMITED WARRANTY PROGRAM — MEMBERSHIP AGREEMENT

Insured through Warranty Underwriters Insurance Company

HOME of Texas (HOME), Warranty Underwriters Insurance Company, (WUIC) and the Member, intending to be legally bound, in consideration of the mutual promises contained herein, covenant and agree as follows:

### A. Membership, Registration and Terms

1. Member has applied for registration as a member of the HOME Limited Warranty Program and represents that all information supplied in connection with its application is true and correct.
2. Member certifies that it is properly licensed and approved to do business in accordance with all governmental requirements of the areas in which it conducts business and will remain so licensed and approved for the entire term of this Agreement.
3. HOME has accepted Member as a registered member of the HOME Limited Warranty Program.
4. Member has paid its initial membership fee. All membership/registration fees (initial and annual) are set by HOME, at its discretion, and are nonrefundable.
5. Member agrees to abide by all of the rules and regulations applicable to the Program as issued by HOME or WUIC from time to time.
6. The term of this Agreement shall be for twelve (12) months dating from the date of execution by HOME. This Agreement shall be automatically renewed at each one (1) year anniversary for an additional one (1) year term unless it is terminated by either party by giving written notice to the other of its intention not to renew at least ninety (90) days prior to the expiration of the initial or any renewal term or it is terminated pursuant to Section G of this Agreement.
7. Member hereby authorizes HOME and WUIC to conduct such investigation of Member's activities and make such inquiries and obtain such credit reports as may be necessary for its determination of Member's financial and technical ability to meet its obligations. Member hereby directs all credit reporting agencies to make available to HOME and WUIC any information in the possession of such agencies.

### B. Warranties

1. When warranting homes other than detached single family dwellings, Member shall warrant all individual units of any multi-unit dwelling such as, but not limited to, duplexes and townhouses. If Member is purchasing commercial insurance through a HOME affiliated company, Member must warrant all homes and all remodeling projects that affect the structural integrity of the building to be remodeled or that cost the building owner \$25,000 or more.
2. For each home and remodeling project warranted, Member shall pay a non-refundable warranty fee, the amount and time of payment of which shall be determined by HOME. A minimum warranty fee, as indicated on the enrollment form, may apply.
3. Member shall abide by all Program procedures established by HOME. Homes and remodeling projects must be submitted (initially enrolled) prior to completion of construction, except under the following limited circumstances:
  - (a) A newly approved Member may warrant homes under construction and homes completed but not closed or occupied as of the date of initial acceptance in the HOME Warranty Program, provided that a list of such homes accompanies the Membership Application, and all such homes were inspected by an engineer or other accepted or approved municipal authority immediately prior to the foundation pour and installation of drywall. HOME can establish additional reasonable underwriting criteria for any such homes. Final inspections may be required on completed homes.
  - (b) A model home must be warranted by the end of the first year of use as a model to qualify for a HOME warranty. The warranty will be issued to the Member and the unused portion of the warranty will automatically transfer to the buyer.
  - (c) Homes which remain in Member's inventory longer than eighteen (18) months must be enrolled by the end of the nineteenth month to qualify for a HOME warranty. The warranty will be issued to the Member and the unused portion of the warranty will automatically transfer to the buyer.
  - (d) Homes and remodeling projects that are enrolled under the Warranty Express program.
4. HOME will not approve a home or remodeling project nor will WUIC issue a warranty if Member is not registered; is not a member in good standing; is in a probationary or suspended standing; if the home or remodeling project is not constructed in accordance with HOME Warranty Standards and building codes accepted by HOME; or if the home or remodeling project was not enrolled in accordance with the procedures set forth herein.
5. HOME shall supply Member with all applicable paperwork for every home or remodeling project enrolled in accordance with HOME's enrollment procedures. Member shall be responsible for delivering the Limited Warranty book and executed copy of enrollment form to the Purchaser as well as returning the enrollment form (signed by both Member and Purchaser(s)) to HOME. Paperwork received after ten (10) days from the settlement date or first occupancy date, whichever occurs first, as listed on the enrollment form, may be subject to a penalty charge in an amount to be determined by HOME.
6. Member may not make a separate charge to the Purchaser for any part of the warranty fee.
7. Member shall assign all manufacturer's warranties to the Purchaser.
8. If the Member fails to warrant or enroll a home or remodeling project in accordance with the procedures set forth herein and any losses or expenses of whatever kind or nature are incurred by HOME or WUIC, the Member will indemnify and hold them each harmless against losses or expenses, including attorney and expert witness fees, incurred in connection with the unenrolled or improperly warranted home or remodeling project.

### C. Representations and Sales Agreements

1. Member is authorized to represent to the public that it is a member of the HOME Warranty Program and to use the HOME logo in its business provided that any contract language or advertising copy which makes reference to HOME or WUIC must be approved by HOME in writing in advance of its use.
2. Member shall make no representations concerning HOME that are not contained in the Limited Warranty book, the enrollment form, or the promotional materials provided by HOME, or that are not otherwise pre-approved by HOME. In this connection, Member hereby agrees to indemnify and hold HOME harmless from any unauthorized statement by Member which results in a claim that Member misrepresented the terms of the Limited Warranty.
3. Member shall deliver or otherwise provide access to a sample warranty book, to be furnished by HOME at no charge, to Purchaser on or before the date the Sales Agreement or Earnest Money Contract or Agreement to perform a Remodeling Project is signed.
4. Members shall incorporate the following language into Member's Sales Agreement or Earnest Money Contract, or Agreement to Construct a Home or to perform a Remodeling Project with Purchaser unless Member obtains the express approval of HOME for any changes in this provision:

Purchaser has received or otherwise has been provided access to a sample warranty book and has read and understands the limited warranty administered by HOME of Texas. Validation of the Warranty is not guaranteed, but is conditioned on the satisfactory completion of any required inspections, upon Seller's compliance with all of HOME's enrollment procedures, and upon Seller remaining in good standing in the HOME

Program. Purchaser understands and agrees that if the above Warranty is validated, it is provided by the Seller in lieu of all other warranties, verbal agreements or representations to the extent permitted by law; and Seller makes no warranty, express or implied, as to quality, fitness for a particular purpose, merchantability, habitability or otherwise, except as is expressly set forth in the Program or as required by law. Purchaser understands and agrees the warranties of all appliances and other consumer products installed in the home or remodeling project are those of the manufacturer or supplier and same are assigned to Purchaser, effective on the date of closing or completion of the home or remodeling project. In any event, Seller shall not be liable for any personal injury or other consequential or secondary damages and/or losses which may arise from or out of any and all defects. Purchaser acknowledges and understands that the Warranty includes a provision requiring all disputes that arise under the Warranty to be submitted to binding arbitration.

#### **D. Construction and Inspection**

1. The Member shall construct all homes and remodeling projects in conformity with the Technical Standards and Guidelines for Builders and Engineers (form #8140), HOME's Warranty Standards, HOME approved building codes and all special industry standards recognized by HOME which are in force at the beginning of the construction of the home or remodeling project. In the event that a home or remodeling project is not constructed in accordance with a HOME approved model building code, then Member shall have full responsibility for warranty claims arising from such noncompliance for the entire length of the limited warranty. HOME may establish special standards, conditions and tests, including requirements for escrow payments or other methods of protection, with respect to some or all homes and remodeling projects constructed by Member which are high risk in the opinion of HOME.
2. HOME approved National Model Codes include:
  - (a) Building Codes
    - (1) International Building Code (IBC)
    - (2) International Residential Code (IRC)
  - (b) Mechanical Codes
    - (1) International Mechanical Code (IMC)
  - (c) Plumbing Codes
    - (1) International Plumbing Code (IPC)
  - (d) Electrical Codes
    - (1) International Building Code (IBC)
    - (2) International Residential Code (IRC)
    - (3) National Fire Prevention Code 70 (NFPA70) (NEC)
  - (e) Any building, mechanical, plumbing or electrical code that has been formally adopted by the state, city or local governing body in which the warranted home is located.
3. Member shall place all fill material in accordance with HUD Data Sheet 79g or its replacement unless more stringent requirements are called for by the design engineer. If Member is informed by HOME that it is building in an area designated as one with active soil conditions, Member agrees to obtain such soil investigations and reports as may be required by HOME. Regardless whether a home or remodeling project is constructed in an active or a non-active soil area, Member agrees that the foundation for each of Member's homes and or remodeling projects shall be either an engineered foundation or constructed to meet or exceed the minimum foundation criteria set forth in the Technical Standards and Guidelines for Builders and Engineers (Form #8140). An engineered foundation shall be defined as: "a site specific design generated and sealed by a professional engineer who is registered in the State of Texas." The foundation must be inspected by the engineer or his authorized representative; must conform with all accepted engineering practices for the area; and address specific parameters including, but not limited to: soil conditions (vegetation, fence lines, trails, tracks, slopes, and cut and filled sections), drainage, time of construction, climate conditions, and structural requirements.
4. If HOME deems it appropriate, Member shall cooperate in spot inspections, periodic inspections and procedures. HOME shall recognize private and governmental inspection departments meeting HOME's criteria. It shall be the Member's responsibility to have every home or remodeling project inspected and to pay all fees for the inspections and various certificates as may be required by HOME.
5. Member represents and warrants to HOME and WUIC that it has followed the standards and procedures set forth herein and agrees to indemnify and hold them harmless from any loss or expense, including, but not limited to, attorney and expert fees, arising from a breach of these representations and warranties.
6. By enrolling a home or remodeling project for warranty coverage, Member warrants and certifies that it has investigated the soil conditions under and around the home or remodeling project and complied with the requirements of paragraph D.3.
7. Member represents and warrants to HOME and WUIC that Member will take whatever precautionary measures are necessary to prevent native trees and/or trees planted by Member from adversely affecting the foundation of any home enrolled by Member.
8. Condominium and commercial structures will not be accepted for warranty coverage.

#### **E. Warranty Obligations**

1. Member shall, at its own expense, perform all obligations as set forth in the HOME Warranty Program and this Agreement which include meeting the Warranty Standards upon notice from the Purchaser without the necessity of HOME intervention. In consideration of the fee structure granted, Member agrees to reimburse HOME and WUIC for all costs and losses which either incurs, including, but not limited to, inspection, counsel and expert fees, relating to coverage during those periods when Member is the warrantor under the provisions of the applicable Limited Warranty book, regardless of whether Member has breached its obligations hereunder.
2. If Member fails or refuses to perform its warranty obligations under the HOME Warranty Program for any reason, WUIC will perform the Member's obligations. If WUIC fulfills Member's obligations or if WUIC or HOME incurs any loss, cost or expense, including, but not limited to, inspection, attorney and expert fees, by reason of Member's failure to perform hereunder or by reason of a dispute between Member and Purchaser, Member shall, upon demand, and regardless of whether Member is held liable to Purchaser, reimburse WUIC and HOME for all expenses incurred in so performing or by reason of such failure or dispute, including, but not limited to, cost of materials, labor, architect fees, engineering fees, attorney fees, expert fees, incidental expenses including lodging, transportation and related expenses from Member and cost of collection of such reimbursement. In addition, Member shall indemnify and hold harmless WUIC and HOME against any and all expenses, including attorney fees, incurred by them as a result of Member's failure or refusal to perform or delay in performance. In addition, Member shall pay interest to HOME or WUIC as appropriate, at the rate of eighteen percent (18%) per annum on all sums due to HOME or WUIC hereunder if such sums are not paid within thirty (30) days of demand by HOME or WUIC.
3. During that period when WUIC is the Warrantor under the provisions of the applicable Limited Warranty book, WUIC represents that it will perform its obligations with respect to warranted structural defects as set forth and defined in the Program without the right of subrogation against the Member provided that:
  - (a) the defect or symptoms of the subsequent occurrence of a defect first arose during that period when WUIC is the Warrantor under the provisions of the applicable Limited Warranty book for that home or remodeling project; and
  - (b) Member did not attempt to conceal or cosmetically repair the defect or symptoms of the subsequent occurrence of a defect during that period when Member is the Warrantor under the provisions of the applicable Limited Warranty book; and
  - (c) the defect does not arise from Member's failure to construct the home or remodeling project in compliance with HOME Warranty Standards; and

(d) the defect does not arise from Member's failure to adhere to Member's responsibilities hereunder.

If Member repairs a warranted structural defect during the period where the Member is the Warrantor under the provisions of the applicable Limited Warranty book, HOME must be notified. Member will remain responsible for all defects if the defect or its symptoms arose during the period when the Member was Warrantor under the provisions of the applicable Limited Warranty book and the Member failed to adequately repair the defect. Member must provide to HOME an inspection report from a licensed engineer showing repairs are in compliance with the plan of repair.

4. WUIC represents that it will indemnify and hold Member harmless against the payment of any money judgment, order or decree made by an arbitrator, court or administrative agency of competent jurisdiction as a result of a breach by WUIC of its representations contained in paragraph E.3. hereof.

#### **F. Warranty Resolution**

1. All unresolved warranty issues by the Purchaser against the Member arising under the HOME Warranty Program shall be referred to HOME for settlement in accordance with the procedures established by HOME.
2. Member shall have a representative present when HOME performs an Inspection. HOME will notify Member in advance of the scheduled time and date.
3. Member shall cooperate fully in the warranty resolution process including full cooperation with an investigator appointed by HOME. In this connection, Member shall, upon request, furnish HOME or its investigator with copies of the design and specifications of the home or remodeling project, certification of drainage, soil and compaction tests, warranty or customer service files and any and all further investigations conducted by Member or its representatives.
4. Member shall be bound by and shall comply with the decision of HOME. Member agrees that it will not commence any arbitration proceeding with Purchaser unless expressly permitted to do so in the applicable limited warranty and will not otherwise challenge HOME's decision.
5. In the event that an unresolved warranty issue between Member and Homeowner is submitted to arbitration as provided in the warranty book, Member agrees to be bound by the arbitrator's decision. Member shall have a representative present at the arbitration hearing.
6. If Member fails to perform its obligations hereunder, in a timely and good and workmanlike manner including the restoration of repaired affected areas to their original condition as required by the HOME Warranty Program and subject to its terms, conditions, standards and exclusions, such failure shall be considered a failure to perform as governed by paragraph E.2. hereof.
7. Member shall be responsible for all arbitration fees on homes and remodeling projects located in any jurisdiction which provides that no portion of such fees shall be payable by the Homeowner. In all other jurisdictions, where such a requirement is valid, such fees shall initially be paid by the Homeowner, but the arbitrator will award the cost to the Homeowner if he prevails.

#### **G. Termination or Suspension**

1. Member will be considered not to be in good standing and HOME may terminate Member's registration and membership in the HOME Warranty Program, as well as the registration and membership of any person or organization controlling, controlled by, or under common control with Member, if, in the opinion of HOME, Member:
  - (a) falsified material information in connection with its application for initial or re-registration, home or remodeling project enrollment, or another matter;
  - (b) has lost its license to do business or has become noncompliant with any governmental requirements of the areas in which it builds or remodels;
  - (c) did not inform HOME of a change of its ownership;
  - (d) did not inform HOME of an adverse change in its financial standing which could impair its ability to meet its obligations;
  - (e) did not meet HOME's requirements of financial strength and stability or professional competence and ethical conduct with customers;
  - (f) develops a financial condition or claim history which HOME finds unacceptable;
  - (g) does not construct homes or remodeling projects which comply with HOME approved building codes, HOME Warranty Standards or other standards adopted by HOME (HOME shall have the right to perform any spot inspections to verify Member's compliance with this provision);
  - (h) does not have homes or remodeling projects inspected as may be required by HOME or does not provide an engineer's certification or an acceptable inspection report;
  - (i) does not enroll homes or remodeling projects in a timely manner;
  - (j) does not respond to a notice from a Homeowner or HOME in a timely fashion;
  - (k) does not cooperate in the warranty resolution process established by HOME or does not comply with a voluntary agreement with the Homeowner or a decision rendered by HOME or an arbitrator;
  - (l) fails to notify HOME in writing that a legal proceeding has been commenced against Member;
  - (m) furnishes a Warranty to a Homeowner when the home or remodeling project is not preregistered or properly enrolled with HOME; or
  - (n) otherwise fails to comply with the terms of this Agreement or the procedures of the Program.Additionally, Member agrees to indemnify and hold HOME and WUIC harmless from any claims or damages which are proximately caused by any of the foregoing acts or omissions by Member.
2. Member and HOME also may terminate this Agreement by giving notice to the other as provided in paragraph A. 6 of this Agreement.
3. No termination hereunder by HOME or by the Member shall in any way affect or impair the rights and obligations of HOME, WUIC or the Member under this Agreement with respect to any homes or remodeling projects warranted in the Program prior to termination, provided that as of the date of termination:
  - (a) all applicable Enrollment forms and inspection documents have been received and processed by HOME; and
  - (b) full warranty payment has been received by HOME.
4. If a membership is terminated by HOME for cause, HOME at its option may also terminate the membership of any other "affiliated Member." An affiliated Member is defined as a Member in which the terminated Member has an ownership interest of at least ten percent (10%) or in which the principals of the terminated Member serve as officers or directors. If HOME should exercise its option to terminate the membership of an affiliated Member under this paragraph, it may reinstate that affiliated Member as a Member if, in its sole discretion, HOME determines that the terminated Member or its principals are not in a position to control the affiliated Member.
5. Whenever HOME believes that there may be reason to terminate membership hereunder, it may immediately suspend Member by giving written notice to Member. Such suspension may be for a period of up to sixty (60) days in order to allow HOME time to investigate the situation. No homes or remodeling projects may be enrolled or warranted in the HOME Warranty Program during the period of suspension. If, after completion of its investigation, HOME does not terminate the membership, Member shall be reinstated with full rights and privileges of a participating Member, provided, however, that such reinstatement shall not affect the right of HOME to suspend or terminate Member in the future based on new or additional information.
6. During suspension or following termination, Member shall not in any way advertise or display itself as being a member of the HOME Warranty Program, shall not use and shall return all materials bearing the HOME logo or any reference to the Program, including references to WUIC; and shall notify promptly in writing any person who is at that time under contract to purchase a home or remodeling project from Member, that Member has been suspended or terminated, as the case may be, and that the HOME Warranty Program will not be available. Should Member fail to take the steps set forth herein during suspension or following termination, it shall indemnify and hold harmless HOME and WUIC against any and all expenses incurred and losses suffered, including, but not limited to, attorney fees, by either of them as a result.

## H. Alternate Forms of Security

1. **Corporations Only:** In order to induce HOME and WUIC to accept Member into the HOME Warranty Program, Member represents, warrants and certifies to HOME that the "adjusted stockholder equity" of Member as of the date hereof is as stated on the most recent financial statement Member has submitted to HOME. For purposes of this Agreement, adjusted stockholder equity means total equity, as reflected on Member's financial statements, presented in accordance with generally accepted accounting principles, consistently applied, reduced by an amount equal to the total of loans to related parties, accounts receivable which are over ninety (90) days old, and intangible assets.
2. At the request of HOME or WUIC, Member agrees to provide a certification of its equity within fifteen (15) days of the request.
3. If Member fails to supply any certifications, or if a certification fails to disclose a minimum adjusted stockholder equity of at least eighty percent (80%) of the amount stated on the financial statement referenced in Section H.1., then HOME shall be entitled to suspend or terminate Member's registration and membership as set forth in Section G.1. If Member's adjusted stockholder equity falls below eighty percent (80%) of the amount stated on the financial statement referenced in Section H.1., and HOME is not notified in writing within ten (10) days of that occurrence, then the undersigned hereby declare that they shall personally indemnify and hold HOME and WUIC harmless against any and all expenses and losses, including attorney fees, incurred because of Member's failure to fulfill its obligations and responsibilities as stated in this Agreement and in the Warranty Program.
4. If Member is required to furnish HOME with an Alternate Form of Security (such as, but not limited to, a Letter of Credit, Surety Bond, Certificate of Deposit, or Escrow Agreement) as a condition of acceptance or retention of Member into the HOME Warranty Program, Member agrees that HOME or WUIC may draw upon the full amount of the Security in the event that Member breaches any of its obligations under this Agreement or under any other prior agreement Member has had with HOME and/or WUIC; or if Member fails to renew the Security with a replacement satisfactory in form and substance to HOME at least thirty (30) days prior to the expiration of such Security or its replacement. In the event of such a draw, HOME shall hold the proceeds of such Security as a deposit against Member's obligations hereunder. At such time as Member's obligations hereunder have been satisfied in full, HOME shall return any balance to Member. HOME shall not be under any obligation to pay interest to Member with respect to such amounts, and HOME's determination of reimbursement shall be final and conclusive.

## I. Miscellaneous Provisions

1. If a claim is made against Member or WUIC concerning a home or remodeling project covered by the HOME Warranty Program, Member shall, upon request, assign to WUIC any rights which it may have against a supplier, manufacturer, subcontractor or other person for work performed or materials supplied in connection with such claim.
2. Whenever timely performance is called for hereunder, the time there for shall be extended to the extent performance is delayed by an event not caused by the conduct of the person obligated to perform. Such events include, but are not limited to, epidemic, pandemic, acts of God or the public enemy, war, riot, civil commotion or governmental conduct.
3. If a claim is made against Member or WUIC concerning a home or remodeling project covered by the HOME Warranty Program, escrowed monies being held by the Owner of the home or remodeling project shall be considered separate and apart from and cannot affect the terms of this Agreement or the terms of the Limited Warranty.
4. This Agreement contains the entire understanding of the parties and cannot be altered or amended in any way except by a formal written instrument signed by all of the parties hereto.
5. Should legal action arise between the parties involving this Agreement, the substantially prevailing party shall be reimbursed for reasonable attorney and expert witness fees by the other party. Should any provision of this Agreement be determined by a court of competent jurisdiction to be unenforceable, that determination will not affect the validity of the remaining provisions.
6. Member acknowledges that HOME is an administrator and not a warrantor or insurer. Member agrees to indemnify HOME and hold it harmless from any loss or expense, including attorney fees, if Member should ever claim otherwise.
7. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Texas.
8. This Agreement is not assignable by Member without the prior written consent of HOME.
9. This Agreement is binding on the parties, their heirs, executors, administrators, successors and assigns.
10. All notices required hereunder must be in writing and sent by certified mail, postage prepaid, or other such form of notice deemed acceptable by HOME to the recipient at the respective address shown hereon or to whatever other address the party may designate in writing. Member must inform HOME of any change in address in writing.
11. Failure of either party to insist upon compliance with any provision of this Agreement shall not constitute a waiver of the provision.
12. Whenever appropriate, it is intended that the use of one gender herein includes all genders and the singular includes the plural.
13. The effective date of this Agreement shall be the date of execution by HOME.
14. All terms not defined herein shall have the meanings ascribed in the Limited Warranty book containing the Warranty Resolution Procedures, and Approved Standards which are referred to herein as the "HOME Warranty Program."
15. This Agreement does not create an agency. Member is not an agent of HOME or WUIC, and Member and its employees are not authorized to hold themselves out as agents of HOME or WUIC. Member and its employees have no authority to bind or obligate HOME or WUIC. Member agrees to indemnify and hold HOME and WUIC harmless against any and all expenses incurred and losses suffered, including, but not limited to, attorney fees by either of them as a result of Member's violation of this provision.
16. Member agrees to maintain all terms of the Membership Agreement in confidence and not to disclose any such terms to any person or entity.

THIS AGREEMENT is among HOME OF TEXAS (HOME), a Texas corporation and Warranty Underwriters Insurance Company (WUIC), with offices at 5300 Derry Street, Harrisburg, PA 17111 and

\_\_\_\_\_  
(Company Name: indicate whether a corporation, partnership, individual or other)

\_\_\_\_\_  
(Complete Address of Company)

\_\_\_\_\_  
Date of Execution by Member

MEMBER: \_\_\_\_\_  
Member Company Name (print or type)

By: \_\_\_\_\_  
Signature and Title of Principal or Corporate Officer

By: \_\_\_\_\_  
Spouse's Signature (if proprietorship)

HOME OF TEXAS (HOME)

\_\_\_\_\_  
Date of Execution by HOME

By: \_\_\_\_\_

WARRANTY UNDERWRITERS INSURANCE COMPANY (WUIC)

\_\_\_\_\_  
HOME Registration Number  
(If Presently Registered)

By: \_\_\_\_\_  
Susan R. Kent, Secretary

**By signing this area you are agreeing to act in the capacity of a Surety and are acknowledging and agreeing to the Surety agreement.**

**NOTE: You are signing this Surety Agreement in an individual capacity, not as an officer of the company, therefore, please do not use a title.**

**SURETY:**

**ADDRESS:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Street Address

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Social Security Number

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City, State, Zip

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Signature

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Street Address

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Social Security Number

\_\_\_\_\_  
City, State, Zip

## **SURETY AGREEMENT, An Explanation and Its Applicability**

The success of HOME is based on its management of risks. This is the reason for HOME's stringent membership criteria — better Members represent lower risk.

**The Surety Agreement does not add any additional liability beyond the terms of the Warranty and Membership Agreement.** The purpose of the Surety Agreement is simple: the Member which provides the HOME Warranty is making certain representations and commitments. If it does not honor its commitment, another entity or individual(s) agrees to do so. If the HOME Member does what it says it will do, the Surety Agreement will not have any impact.

The Member's primary obligation is during those periods of time in which the Member is identified as the Warrantor in the applicable Limited Warranty book. However, the Member's (i.e. corporation or surety) responsibilities extend past those periods of time if the Member breaches any of its obligations under the Warranty, under the Membership Agreement, or under any Addenda signed by the Member. **Liability is limited to Member's liability to HOME and WUIC.**

Regarding exchange, etc. of collateral or changes to the terms of Member Obligations, the purpose of this language is to prevent WUIC's involvement in disputes among sureties and builders.

The Surety Agreement is binding upon heirs and assigns. This is reiterating that if responsibility passes to heirs and assigns, the original commitment to the warranty will be honored.

If HOME requests a Surety Agreement and the corporate officers do not want to provide such an agreement, an Alternate Security may be acceptable provided it is approved by HOME.

## **SURETY AGREEMENT**

To induce HOME of Texas (HOME) to accept Member into the HOME Warranty Program and intending to be legally bound, the undersigned (each jointly and severally, if more than one) agrees to act as unconditional surety to HOME and to Warranty Underwriters Insurance Company (WUIC), with respect to all of Member's duties and obligations pursuant to the foregoing Membership Agreement (Agreement), including interest due on late payments or reimbursements by Member and any costs, legal fees and expenses incurred by HOME or WUIC in the enforcement of any of the foregoing (Member Obligations).

Surety consents that HOME or WUIC may, at its sole option, without in any way affecting Surety's liability hereunder: (a) exchange, surrender or release any or all collateral security or any guaranty or surety held by HOME or WUIC for any of the Member Obligations; (b) renew, extend, modify, supplement, amend, release, alter or compromise the terms of any or all of the Member Obligations; and (c) waive any of HOME or WUIC's rights, remedies, benefits or security against Member or any other surety.

**CONTINUING SURETY.** This Surety Agreement shall be a continuing one and shall be binding upon Surety regardless of how long before or after the date hereof any of the Member Obligations were or are incurred.

**EXTENT OF SURETY'S LIABILITY.** Surety's liability hereunder shall be for the full amount recoverable by HOME from Member under the Membership Agreement and warranty and for the full amount recoverable by WUIC from Member under the Membership Agreement and warranty, including, but not limited to, claim payments, costs of repairs, interest due on late payments or reimbursement by Member, and any costs, legal fees and expenses incurred by HOME and/or WUIC in the enforcement of any Member Obligation and in the enforcement of this Surety Agreement.

**UNCONDITIONAL LIABILITY.** Surety's liability hereunder is absolute and unconditional and shall not be reduced, diminished, released or affected in any way by reason of: (a) any failure of HOME or WUIC to obtain, retain, or preserve, or the lack of enforcement of, any rights against any person, firm or entity (including, without limitation, any other Surety) or in any property (including, without limitation, collateral security for any of the Member Obligations); (b) the invalidity or unenforceability of any such rights which HOME or WUIC may attempt to obtain; (c) any delay in enforcing or any failure to enforce such rights, even if such rights are thereby lost; or (d) any delay in making demand on the Member or any other Surety for performance or payment of any part or all of the Member Obligations.

**WAIVERS.** Surety hereby waives all notices of any character whatsoever with respect to this Surety Agreement and the Member Obligations, including without limitation: notice of the present existence or future incurring of any Member Obligations; the amount, terms and conditions thereof; and any defaults thereon. The death, incapacity or legal incompetence of any Surety shall in no way affect the liability hereunder of that or any other Surety.

**SATISFACTION.** In the event that the Member Obligations are satisfied in full by Member or any other Surety, HOME and WUIC shall return this Agreement to Surety marked "satisfied" upon the express written request of Surety and then only upon the latter of ninety-one (91) days from the date of the last payment on the Member Obligations, or ten (10) years from the final enrollment of the last enrolled unit.

**PAYMENT OF COSTS AND ATTORNEY FEES.** In addition to all other liabilities of Surety hereunder, Surety also agrees to pay to HOME and WUIC on demand all costs and expenses (including reasonable attorney fees and legal expenses) which may be incurred in the enforcement of any of the Member Obligations or this Surety Agreement.

**NOTICES TO HOME OR WUIC BY SURETY.** Any notice to HOME or WUIC by Surety pursuant to the provisions hereof shall be sent certified mail, return receipt requested to the addresses set forth in the Agreement.

**MISCELLANEOUS.** This Agreement shall be binding upon Surety and Surety's heirs, executors, administrators, successors, assigns and other legal representatives, and shall inure to the benefit of HOME, WUIC and their representatives, successors and assigns. The rights and remedies of HOME and WUIC under this Surety Agreement are cumulative and shall be in addition to any other rights and remedies available to them, at law or in equity, all of which may be exercised singly or concurrently. In the event that this Agreement is preceded or followed by any other guaranty or surety agreement(s), all rights granted HOME or WUIC in such agreement(s) shall be deemed to be cumulative. If any provision of this Agreement shall for any reasonable cause be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, but this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein. Surety intends this to be a sealed instrument and to be legally bound hereby. All issues arising hereunder shall be governed by the laws of the State of Texas.



