



**AGREEMENT WITH BUILDER
THIS AGREEMENT MADE BETWEEN:**

LUX RESIDENTIAL WARRANTY PROGRAM INC., a federally incorporated corporation
doing business in Atlantic Canada

AND

BUILDER COMPANY NAME: _____

ADDRESS: _____

POSTAL CODE: _____ TEL: _____

FAX: _____ EMAIL: _____

AND

APPLICANT NAME: _____
("THE APPLICANT")

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, modular units, condominiums etc in the Atlantic Provinces built by the Builder solely for use as a permanent residence.
- 1.3 "Possession Certificate" means the certificate prescribed by Lux 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 Possession Certificate.
- 1.5 "Limited Warranty" means a Limited Warranty issued by Lux in relation to a Home.
- 1.6 "Limited Warranty Certificate" means the certificate prescribed by Lux to be issued as evidence of a Limited Warranty applicable 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 Lux shall be complete and accurate.
- 2.2 Any Limited Warranty shall be legally binding on the Builder, whether or not title to the Home has passed to a Homeowner.
- 2.3 Each Home shall be constructed in accordance with the National Building Code of Canada in effect during the course of construction, whether or not the National Building Code has been adopted by the legislation in the applicable jurisdiction.
- 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 Lux either generally or with respect to any Limited Warranty.
- 2.6 In the event that Lux incurs any costs or assumes any liability under a Limited Warranty in relation to defects, including Major Structural Defects, Lux shall be entitled to assume all the Builder's rights of recovery against third parties, and to enforce those rights in the name of the Builder. Nothing contained in this paragraph shall affect any rights or remedies that Lux may have against the Builder.

3 INDEMNIFICATION

The Builder & Applicant shall indemnify and save harmless Lux from any loss or expense whatsoever which Lux incurs as a result of:

- 3.1 Failure of the Builder to refund a deposit which the Builder is obligated to repay to the Homeowner.
- 3.2 Failure of the Builder to fulfil the Builder's obligations under a the Limited Warranty, including without restricting the generality of the foregoing, all costs of repair of defects.
- 3.3 All costs associated with Lux investigation, conciliation and/or settlement of a warranty claim.
- 3.4 Lux's warranty obligations in relation to Major Structural Defects.
- 3.5 The Builder and Applicant shall indemnify Lux as required by paragraph (3) notwithstanding that the Builder or Applicant may have ceased to be a member of Lux 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 enrol with Lux all eligible Homes which the Builder commences to construct after the date of this Agreement.
- 4.2 The Builder shall enrol immediately upon the earlier of:
A The date of issuance of the Building Permit.
B The date of the start of construction.
- 4.3 The home enrolment shall be effected upon receipt by Lux of:
1 A properly completed Home Registration form as prescribed by Lux
2 A non-refundable enrolment in the amount prescribed by Lux
3 Any other requirements as prescribed by Lux from time to time

5 INSPECTIONS

- 5.1 If Lux, may inspect any of the Homes under construction or completed by the Builder. The Builder in such case shall provide Lux full access to each Home at all reasonable times prior to the Date of Possession.

Initials_____

5.2 Unless Lux elects otherwise, the Builder shall pay an inspection fee as prescribed by Lux for each inspection carried out.

6 DELIVERY & EXECUTION OF THE LUX POSSESSION CERTIFICATE

6.1 The Builder shall fully complete and execute the Possession Certificate with the Homeowner and shall have the Homeowner execute the Possession Certificate upon the possession date of the home.

6.2 The Builder shall immediately deliver a copy of the Possession Certificate to Lux.

6.3 Lux shall have no obligation to issue a Limited Warranty unless the Builder has complied with section 6.1 & 6.2.

6.4 Upon receipt of the Possession Certificate, Lux will issue the applicable Limited Warranty, and a Limited Warranty Certificate on the Builder's behalf.

7 HOMEOWNER HELP REQUEST AND CONCILIATION

7.1 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 Homeowner Help Request and conciliation procedure set forth in the Limited Warranty.

7.2 Lux shall appoint Conciliator(s) to conciliate unresolved disputes between the Builder and Homeowner as defined by the Limited Warranty.

7.3 If a conciliation is in favour of the Homeowner, unless Lux in its sole discretion waives payment thereof, the Builder shall pay Lux the costs of the conciliation.

7.4 Should the Builder fail to comply with the decision of the Conciliator within the stipulated time, and if Lux is required to carry out the Builder's obligations, the Builder shall reimburse Lux for the total cost notwithstanding that the Builder may have ceased to be a member of Lux at the time that the default arose or at the time of the Conciliation.

8. TERM

8.1 Subject to the terms and conditions of this Agreement, this Agreement will expire one year from the date of this Agreement.

8.2 Lux, in its sole discretion, may renew this Agreement for additional terms of up to one year.

8.3 Lux may terminate this Agreement at any time should the Builder fail to comply with any Conditions.

9. TERMINATION

9.1 Lux, without prejudice to any of its other rights or remedies, may terminate this Agreement upon the happening of any of the following events:

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 Lux.

2 The Builder ceases to be a member in good standing of Lux

9.2 Should this Agreement be terminated, the Builder shall:

1 Cease the use of any material bearing Lux's identification for public display or other.

2 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 Lux.

3 Continue to be liable to reimburse Lux for all costs incurred in the event that Lux is required to perform the Builder's obligations after the date of termination.

9.3 Any Home enrolled but not sold or possessed as of the date of termination, in the sole discretion of Lux, may be removed from enrollment without refund in whole or in part of enrollment fees.

Initials_____

- 9.4 In the event that Lux decides not to exercise its rights to terminate this Agreement under any original default, such decision shall not limit or waive Lux's right to subsequently terminate this Agreement'
- 9.5 Where the Builder continues to fail to rectify an original default or any other default of this Agreement.

10. DEFAULT BY THE BUILDER

- 10.1 The Builder shall be in default of this Agreement upon the occurrence of any one or more of the following events of default:
- 10.2 The Builder fails to pay any monies when due and owing by the Builder to Lux.
- 10.3 The Builder fails to perform or comply with any term or condition of this Agreement.
- 10.4 The Builder fails to comply with Rules or Regulations in force further to Section 12 herein.
- 10.5 The Builder fails to comply with a decision or requirements of the warranty conciliator or inspector.

11. TERMINATION REVIEW

In the event membership in Lux is terminated by Lux, the Builder has the right to apply in writing within ten (10) days from the date of such termination to Lux Head Office for a review of the decision.

12. RULES AND REGULATIONS

The Builder agrees that, from time to time, Lux will make rules and regulations with respect to matters arising or related to this Agreement, dealings with Builder and Lux, and for the better administration and implementation of the warranty program. The Builder agrees to strictly comply with such Rules and Regulations at all times.

13. NOTICES

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 and or by Email. Any notices sent by mail shall be deemed to be received by the other party seven (7) days next following the date of mailing. The builder is responsible to notify Lux in writing of any change in address and contact information.

14. ASSIGNMENT AND OWNERSHIP CHANGE

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

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 on the Agreement remain in full force and effect.

16. NON-WAIVER

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 further or continuing waiver beyond its express terms. 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 Lux's right thereafter to enforce strict compliance with every term, covenant, condition or other provision hereof.

Initials_____



RESIDENTIAL
WARRANTY PROGRAM

PO Box 27046
Dieppe, NB E1A 6V3
1-506-854-4432
1-877-854-4432

SIGNATURES OF AGREEMENT BY THE PARTIES DATED _____

THE BUILDER _____

(SEAL)

PER: _____
(PRINCIPAL SIGNATURE)

APPLICANT SIGNATURE: _____

LUX RESIDENTIAL WARRANTY

PER: _____