



Professional
Warranty
Service
CORPORATION

PARTICIPATION AGREEMENT

Between: _____
Builder Name (print or type)

Address

and: **Professional Warranty Service Corporation**
("PWSC") P.O. Box 800, Annandale, VA. 22003-0800

PWSC and the Builder, intending to be legally bound and in consideration of the mutual promises set forth in this Agreement, covenant and agree as follows:

I. Application, Participation and Term

- 1.01 Application for Participation.** The Builder hereby applies for the privilege of participating in the Professional Warranty Program (the "PWSC Program" or "the Program") which is administered by PWSC and represents that all information supplied in connection with its application and contained in its Builder Application and any Supplemental Business Information provided is true and correct as of the date of this Agreement.
- 1.02 Participation by Affiliates.** An affiliated builder ("Affiliate") is defined as any home building entity in which the Builder has an ownership interest of at least 10% or in which the principals of the Builder serve as officers or directors. A wholly owned Affiliate of the Builder, or an Affiliate which is controlled by the Builder, may apply for participation by completing a separate Builder Application for each Affiliate and by listing the Affiliate on the multiple entity participation form provided by PWSC. For all other Affiliates, the Affiliate must complete a separate Builder Application and execute a separate Participation Agreement with PWSC. PWSC reserves the right to decline participation to any Affiliate where PWSC determines the Affiliate's participation constitutes an unacceptable risk. The Builder shall be responsible for compliance by its Affiliates with all terms of this Participation Agreement.
- 1.03 Acceptance of Builder.** Upon its execution of this agreement, PWSC has accepted and approved the Builder's Application for Participation and agrees that the Builder is entitled to participate in the PWSC program. The Builder is authorized to represent to the public that it is a participant in the PWSC Program and use the emblems of the PWSC Program in its business, provided that any contract language or advertising copy which makes references to PWSC must be approved by PWSC, in writing, in advance of its use by the Builder. In some cases, approval of the Builders Application for Participation may be given prior to completion of PWSC's underwriting review. If information later becomes known to PWSC which it deems adverse to the Builder's qualification for participation in the PWSC Program, PWSC reserves the right to rescind its approval and cancel this Agreement upon written notice as provided in and subject to all rights of the parties as described in Section 1.05 below.
- 1.04 Participation and Renewal Fees.** The Builder shall pay initial participation fees as determined by PWSC. Annually thereafter, the Builder shall renew and pay any renewal fees in the manner set by PWSC. Upon review and approval of renewal, the Builder shall be entitled to continue its participation in the PWSC Program. Failure by the Builder to renew its participation in the PWSC Program pursuant to this Section 1.04 shall result in automatic termination of its participation in PWSC.
- 1.05 Term.** The term of this Agreement shall be one (1) year from the last day of the month in which it becomes effective. Upon renewal of the Builder's participation in the PWSC Program, the provisions of this Agreement shall be automatically extended to cover the one (1) year term of each renewal. The Builder may terminate this Agreement by providing notice to PWSC, in writing, 30 days prior to the effective date of termination. PWSC may terminate this Agreement at any time without cause, by providing sixty (60) days prior written notice of termination to the Builder. If this Agreement is terminated under this Section 1.05, the Builder shall have thirty days from the effective date of termination to deliver to PWSC any bona fide contracts of sale executed prior to the date of termination and PWSC will cause, provided such homes otherwise meet PWSC criteria for enrollment, the Builder's Limited Warranty documents to be issued for each such home when filially enrolled.
- 1.06 Binding Arbitration.** Disagreements between the Builder and PWSC related to this Agreement shall be submitted to binding arbitration conducted by an independent arbitration organization designated by PWSC. The rules and procedures applicable to the designated arbitration organization shall be used in accordance with the arbitration. A copy of the applicable rules and procedures will be provided upon request.

To initiate binding arbitration under this section the initiating party shall provide written notice of intent to arbitrate to the other party. Binding arbitration shall be the exclusive remedy for resolution of disagreements between the parties to this Agreement for disputes arising under the Agreement. The fees for any such arbitration shall be shared equally by the parties bound by the arbitration award. The binding arbitration award granted may be entered in judgment and may be enforceable in any court of competent jurisdiction. Except as modified, corrected or vacated in accordance with the applicable rules and procedures of the arbitration organization, or, where those rules are silent, the United States Arbitration Act (9 U.S.C. §1, et seq.), the arbitrator's award shall be final, binding and enforceable. The binding arbitration shall determine all rights and obligations between the Builder and PWSC under this Agreement, including any rights and remedies conferred by Federal, state or local statutes in connection with this Agreement.

1.07 Purchasing Group Membership. By virtue of the builders participation in the PWSC Program, the builder is also a member of the Professional Warranty Purchasing Group. The Professional Warranty Purchasing Group is an association that will, through PWSC, negotiate and secure insurance coverage's that will made available to its members through PWSC or sponsoring Home Builder Associations.

II. Home Enrollment

2.01 Home Enrollment Eligibility. For the term of this Agreement the Builder shall enroll each and every eligible home it and its Affiliates build in the jurisdiction (s) defined by PWSC where the Builder is a participant in the PWSC Program. For each home enrolled, the Builder shall pay the non-refundable fees in the amount and time of payment which PWSC shall designate. In this Agreement, "eligible home" means one constructed to conform to the standards described in Section 4.01 below and includes detached and attached single family dwellings, for-sale multi-family residential structures of four (4) stories or less and intended to be operated under a condominium or cooperative regime, and certain other qualifying residential structures as described in PWSC's Home/Structure Eligibility Manual, a copy of which shall be provided to the Builder.

2.02 Other Homes. Homes under construction and homes completed but not closed or occupied as of the date the Builder is approved for participation, may be submitted for enrollment at the Builder's election provided that a list of such homes is submitted to PWSC within sixty (60) days of approval. PWSC will determine eligibility prior to enrollment in accordance with its Home/Structure Eligibility Manual.

2.03 Enrollment Procedures. The Builder shall enroll all eligible homes in the PWSC Program in accordance with the enrollment process established by PWSC. No home will be accepted for enrollment if the Builder is not in good standing with PWSC at the time the home is submitted for enrollment except as otherwise expressly provided in Section 1.05 above.

2.04 Issuance of Warranty. If PWSC accepts an enrollment, it will deliver to the purchaser, on the Builder's behalf, the Builder's Limited Warranty, in the form then approved by PWSC, and the Builder's Limited Warranty Coverage Validation Form. The Builder shall assign all manufacturer's warranties to the purchaser.

2.05 Enrollment Fee. The Builder shall submit the enrollment fee for each home with the enrollment application form(s) designated by PWSC in the time-frame determined by PWSC. The Builder may not make a separate charge to the home purchaser for any part of the enrollment fee.

2.06 Failure to Enroll a Home. If the Builder fails to enroll a home in accordance with the procedures set forth by PWSC where required by Section 2.01 of this Agreement, and any losses or expenses of whatever kind or nature are incurred by PWSC or the Insurer of the Builder's Limited Warranty as a consequence of such failure by the Builder, the Builder will indemnify and hold them each harmless against losses or expenses, including attorney and expert witness fees, incurred in connection with the un-enrolled or improperly enrolled home.

III. Representations

3.01 General Liability Insurance Required. Throughout the term of this Agreement and any renewal term, Builder agrees to carry Commercial General Liability ("CGL") insurance covering all operations of the Builder with a combined single limit of no less than \$1,000,000. At commencement and upon each renewal of this Agreement, Builder will provide evidence of its CGL insurance to PWSC in the form of a certificate of insurance expressly identifying Professional Warranty Service Corporation as the certificate holder.

3.02 Sample Warranty. The Builder shall deliver a sample of the Builder's Limited Warranty, to be furnished by PWSC at no charge, to the home purchaser on or before the date the Sales Agreement or Earnest Money Contract is signed. The Builder shall have the home purchaser sign that portion of the enrollment form(s) acknowledging review and understanding of the Builder's Limited Warranty at or prior to closing on the home.

3.03 Other Representations. The Builder shall make no representations concerning PWSC or the Program that are not contained within the Builder's Limited Warranty or materials furnished by PWSC, or which are not otherwise approved in advance by PWSC. In this connection, the Builder agrees to indemnify and hold PWSC and the Insurer of the Builder's Limited Warranty harmless from any unauthorized statement by the Builder which results in a claim that the Builder misrepresented the terms of the Builder's Limited Warranty.

IV. Home Construction and Inspection

- 4.01 Conformance.** The Builder warrants to PWSC that the Builder will construct all homes in conformity with PWSC's warranty performance standards, building codes, and any special quality control standards established by PWSC which are in force at the beginning of the construction of the home. The Builder shall cause each home to be inspected and approved by governmental inspectors, or where no inspection is provided by governmental authority, the Builder shall cause each home to receive at least two (2) satisfactory inspections—one immediately prior to foundation placement and one at the final or finish stage—by a private inspector approved by PWSC. If PWSC deems it appropriate, the Builder shall cooperate in additional inspections and provide evidence of such inspections and approvals in the manner PWSC shall direct.
- 4.02 Inspectors.** In the absence of governmental inspectors, or where supplemental inspections are required by PWSC, PWSC shall provide the Builder a list of approved private inspectors. The Builder is responsible to provide evidence of inspections and approvals, and to pay the fees for the inspections and certificates required by PWSC.
- 4.03 Special Tests.** PWSC may establish special standards, conditions, and tests, including requirements for escrow payments or other financial arrangements with respect to some or all homes constructed by the Builder which in PWSC's opinion constitute a high risk. When PWSC deems it appropriate, PWSC may conduct periodic inspections of the Builder's homes.

V. Termination or Suspension

- 5.01 Termination.** The Builder will be considered not to be in good standing and PWSC may, upon giving written notice to the Builder, terminate the Agreement and the Builder's registration and participation in the PWSC Program if, in the opinion of PWSC, Builder:
- (a) misrepresents facts in its application for participation, renewal forms, or other related items which were material to the evaluation;
 - (b) fails to advise PWSC within thirty (30) days of a change, of 10% or more, in the ownership of the Builder;
 - (c) fails to meet PWSC Program standards of financial responsibility or to provide financial information when requested, or fails to advise PWSC within thirty (30) days of any adverse change in its financial condition which could jeopardize its ability to perform its warranty obligations;
 - (d) fails to meet PWSC standards of technical competence in home construction or to construct homes in accordance with generally accepted industry practices, PWSC performance standards, any special quality control standards required by PWSC, or fails to have homes inspected or to provide proof of satisfactory inspections;
 - (e) fails to enroll all eligible homes or to enroll such homes in a timely period or in accordance with the rules and regulations of the Program;
 - (f) fails to show a record of fair dealing with its customers, or fails to respond to PWSC's notice of a homeowner complaint in a timely fashion;
 - (g) fails to cooperate in the dispute settlement arbitration process available through the Program, fails to comply with a decision which is rendered pursuant to the dispute settlement arbitration process, fails to abide by an agreement voluntarily made with the homeowner in a dispute settlement arbitration, or fails to respond to PWSC within ten (10) days after receiving a written request from PWSC for assurance that it is willing and able to cooperate in the dispute settlement arbitration process and to perform the obligations under any decision rendered pursuant to that process;
 - (h) exceeds maximum loss limitations established by PWSC; or
 - (i) otherwise fails to comply with the terms of this Agreement or the procedures of the Program.
- 5.02 Suspension.** If PWSC believes that there may be reason for termination of a Builder's participation, PWSC may, upon notice in writing to the Builder, suspend the Builder's participation in the Program for up to sixty (60) days. During this time PWSC may conduct an investigation and decide whether to terminate the Builder's registration and participation. During the suspension period the Builder may not enroll homes or represent itself as a participant in the PWSC Program. If, after completion of its investigation, PWSC does not terminate the Builder's registration and participation, the Builder shall be reinstated with full rights and privileges of a participating builder provided such reinstatement shall not affect the future right of PWSC to suspend or terminate the Builder's participation based on new or additional information.
- 5.03 Affiliate Builder.** If the participation of a Builder is terminated by PWSC, PWSC at its option may also terminate the participation of any Affiliate, any home building entity in which the terminated Builder has an ownership interest of at least 10%, or any home building entity in which the principals of the terminated Builder serve as officers or directors. If PWSC should exercise its option to terminate the participation of an Affiliate under this Section 5.03, it may reinstate that Affiliate as a participant if, at its sole discretion, PWSC determines that the terminated Affiliate or its principals are not in a position to control the actions which led to the termination of the other Builder.
- 5.04 Cease Holding Out.** During suspension or following termination, the Builder shall not in any way advertise or display itself as a participant of the PWSC Program, shall not use materials bearing the PWSC logo or referencing the PWSC Program, including references to the Insurer of the Builder's Limited Warranty, shall return all materials bearing

the PWSC logo, and shall return all Program materials to PWSC. The Builder shall promptly notify, in writing, any person who is at that time under contract to purchase a home from it or any Affiliate that it has been suspended or terminated, and that the PWSC Program will not be available. If the Builder fails to take the steps set forth in this Section 5.04, it shall indemnify and hold harmless PWSC and the Insurer of the Builder's Limited Warranty against any and all expenses and losses incurred, including but not limited to attorney fees, by either of them as a result of the Builder's failure.

5.05 Continuing Obligation. Termination or suspension of the Builder, by PWSC or by the Builder, shall in no way relieve the Builder from its obligations under this Agreement or the Builder's Limited Warranty with respect to homes enrolled in the Program prior to the termination or suspension.

5.06 Purchasing Group Membership. Suspension or termination of the Builder's participation in the PWSC Program will also result in suspension or termination of membership in the Purchasing Group.

VI. General Provisions

6.01 Rules and Regulations. The Builder and any of its participating Affiliates shall be bound by the Program's rules and regulations as fully as if these rules and regulations were set-out in this Agreement.

6.02 Force Majeure. Whenever performance is called for under this Agreement, the time for performance shall be extended to the extent such performance is delayed by an event not caused by the party obligated to perform, including without limitation events such as, any Acts of God or the public enemy, war, riot, civil commotion or governmental conduct.

6.03 Entire Agreement This Agreement, together with all other Program documents provided to or on behalf of the Builder as amended by PWSC from time to time along with rules and regulations adopted by PWSC and provided to the Builder, contains the entire agreement of the parties. Representations or modifications regarding this instrument shall have no force except for subsequent modification by the parties, in writing, or by amendment to the rules and regulations, standards, or other documents of the PWSC Program.

6.04 Partial Invalidity. Should any provision of this Agreement be held by a court of competent jurisdiction to be unenforceable, that finding will not affect the validity of the remainder of the provisions.

6.05 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Virginia.

6.06 Assignment. This Agreement may not be assigned by the Builder without the prior written consent of PWSC.

6.07 Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the parties, their heirs, executors, administrators, successors and assigns.

6.08 Notice. Any notice required hereunder shall be in writing and may be delivered personally or by registered or certified mail, return receipt requested, to the intended recipient as follows:

Notice to the Builder: The Builder's address shown on the first page of this Agreement.
Notice to PWSC: P.O. Box 800, Annandale, VA 22003-0800.

Each party may change the address for notice to it by designating such change in writing in accordance with this section.

6.09 Waivers. Failure of either party to insist upon compliance with any provision of this Agreement, shall not constitute a waiver of any provision of this Agreement or be construed as consent to any subsequent breach.

6.10 Numbers. In this Agreement, whenever appropriate, it is intended that the use of the singular includes the plural and use of the plural includes the singular, and that the use of one gender includes all genders.

6.11 No Agency. This Agreement shall not constitute or be considered an agency, employer-employee relationship, joint venture or partnership between the parties. Neither of the parties, nor any of their employees, shall have authority to bind or obligate the other party except as provided by this Agreement.

6.12 Effective Date. This Agreement shall become effective as of the date of its execution by PWSC.

Builder: _____

Date of execution by Builder

By: _____
Signature of Officer or Controlling Principal

By: _____
Please Print Name of Officer or Controlling Principal

Professional Warranty Service Corporation

Date of execution of Agreement by PWSC

By: _____
Authorized PWSC Representative