

# PARTICIPATION AGREEMENT

Between: \_\_\_\_\_  
Builder Entity 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 to participate in the Professional Warranty Service Corporation 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 effective 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.** PWSC reserves the right to decline participation to any Affiliate where PWSC, in its sole judgment, determines that 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 and an Affiliate's performance of all obligations under any Builder's Limited Warranty issued on homes enrolled by an Affiliate in the PWSC Program.

**1.03 Acceptance of Builder.** Upon PWSC's execution of this Agreement, Builder is approved for participation in the PWSC Program and is authorized to begin enrolling eligible homes in the Program. Builder's enrollment of any home in the PWSC Program shall bind the Builder to the terms of this Agreement and obligate the Builder to perform in accordance with its obligations as stated in this Agreement and the Builder's Limited Warranty issued on each home enrolled by the Builder.

For so long as this Agreement remains in effect, Builder is authorized to represent that it is a participant in the PWSC Program. Any advertising copy or materials developed by Builder that makes reference to PWSC or the PWSC Program must be approved by PWSC, in writing and in advance of its use by Builder. In some cases, approval of the Builders Application for Participation may be conditionally given prior to completion of PWSC's underwriting review. In such a case, 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 Fees.** The Builder shall pay initial participation/application fees as determined by PWSC. Annually thereafter, the Builder shall renew and pay any renewal fees in the manner set by PWSC. Upon PWSC's 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 shall result in automatic termination of its participation in the PWSC Program.

**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, this Agreement shall be deemed 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, 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 finally enrolled.

- 1.06 Binding Arbitration.** Disagreements between the Builder and PWSC related to or arising out of this Agreement or the breach, termination, enforcement or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate shall be submitted to binding arbitration before a single arbitrator and conducted by an independent arbitration organization chosen by the parties hereto. The rules and procedures applicable to the chosen arbitration organization shall govern the conduct of the arbitration. In the event the parties do not agree on an arbitration service provider, either party may petition a court to appoint an independent arbitration service provider pursuant to the Federal Arbitration Act (9 U S C. §1, et seq.) and such appointment shall be binding on the parties. If a party is required to seek judicial enforcement of this agreement to arbitrate, that party shall be entitled to its costs, including reasonable attorney's fees. The fees for any such arbitration shall be shared equally by the parties bound by the arbitration award. The arbitration award may be entered in judgment and shall be enforceable in any court of competent jurisdiction.
- 1.07 Purchasing Group Membership.** By virtue of the Builder's 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 be made available to its members through PWSC.

## II. HOME ENROLLMENT

- 2.01 Home Enrollment Eligibility.** For the term of this Agreement and subject to the provisions in Section 2.02 below, the Builder shall enroll each and every eligible home it and its participating Affiliates build in the jurisdiction (s) defined by PWSC where the Builder or its Affiliate 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 High Value Homes and Condominium Buildings.** Individual homes and condominium buildings in which the sales price of the individual home or the aggregate sales price of all residential units within a single building might exceed \$4 Million may be subject to underwriting limits making them ineligible for enrollment. The builder shall contact PWSC's Underwriting Department before commencing construction on such high value homes or condominium buildings to determine eligibility.
- 2.03 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 the effective date of this Agreement. PWSC will determine eligibility prior to enrollment in accordance with its Home/Structure Eligibility Manual.
- 2.04 Enrollment Procedures.** The Builder shall enroll all eligible homes in the PWSC Program in accordance with the home 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.
- 2.05 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.
- 2.06 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. In the event Builder fails to pay the enrollment fee for a home on which PWSC issues a Builder's Limited Warranty, PWSC may, upon notice to the Builder, cancel the



home's enrollment and, with notice to the home buyer, cancel the Builder's Limited Warranty.

- 2.07 Failure to Enroll a Home or Failure to Pay a Home Enrollment Fee.** If the Builder fails to enroll a home or pay a home enrollment fee in accordance with the requirements 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 by the home purchaser. 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 any home enrolled by Builder in the PWSC Program will be constructed so as to comply, at a minimum, with applicable building codes, the warranty performance standards stated in the Builder's Limited Warranty, and any special quality control standards established by PWSC and communicated to Builder prior to commencement of 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 judgment of PWSC, Builder:
- (a) misrepresents facts in its application for participation, renewal forms, or other information relevant to the PWSC's evaluation of Builder's qualification to become or remain a participant in the PWSC Program;
  - (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 maintain acceptable standards for financial responsibility as determined by PWSC, or fails 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 demonstrate technical competence in home construction or to construct homes in accordance with applicable building codes, PWSC performance standards as stated in the Builder's Limited Warranty, 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 and pay the required enrollment fee in a timely manner and in accordance with the requirements of this Agreement;
- (f) fails to maintain 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 process available through the Program, fails to comply with a decision which is rendered pursuant to the dispute arbitration process, fails to abide by an agreement voluntarily made with the homeowner in settlement of a dispute, or fails to respond to PWSC's written request for assurance that it is willing and able to cooperate in the dispute settlement process and to perform the obligations under any decision rendered pursuant to that process;
- (h) fails in any way to perform in accordance with its obligations under the Builder's Limited Warranty;
- (i) exceeds maximum loss limitations established by PWSC; or
- (j) otherwise fails to comply with the terms of this Agreement.

**5.02 Suspension.** PWSC may, upon notice in writing to the Builder, suspend the Builder's participation in the Program for up to sixty (60) days while it determines whether termination of the Agreement is warranted. During the suspension period the Builder shall not be permitted to 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 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. Suspension shall not be a required intermediate step if PWSC determines that immediate termination is warranted.

**5.03 Termination of Affiliate Builder.** If the participation of a Builder is terminated by PWSC, PWSC at its option may also terminate the participation of any participating Affiliate. If PWSC should exercise its option to terminate the participation of an Affiliate under this Section, it may, at its sole discretion, reinstate that Affiliate as a participant if 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 Builder and provided the Affiliate would otherwise qualify for participation without the need to rely upon the financial and management resources of the terminated Builder.

**5.04 Cease Holding Out.** During suspension or following termination, the Builder shall not in any way advertise or hold itself out 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 to act as required in this Section of the Agreement.

**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 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.
- 6.02 Entire Agreement.** This Agreement, together with all other Program documents provided to or on behalf of the Builder, including any amendments thereto, contains the entire agreement of the parties. Representations or modifications regarding this Agreement shall have no force except as may be agreed in writing by the parties.
- 6.03 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 Agreement.
- 6.04 Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Virginia.
- 6.05 Assignment.** This Agreement may not be assigned by the Builder without the prior written consent of PWSC. In the event of an approved assignment, the assignee shall be bound to all terms and conditions of this Agreement as if it were the original Builder party to this Agreement, including performance of all warranty obligations of the Builder assignor.
- 6.06 Successors and Assigns.** This Agreement is binding upon and shall inure to the benefit of the parties, their heirs, executors, administrators, successors and assigns.
- 6.07 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.
- 6.08 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.
- 6.09 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.
- 6.10 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.
- 6.11 Effective Date.** This Agreement shall become effective as of: \_\_\_\_\_

**BUILDER ENTITY NAME:** \_\_\_\_\_

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
Signature of Officer or Controlling Principal

BY: \_\_\_\_\_  
Please Print Name of Officer and Controlling Principal

**PROFESSIONAL WARRANTY SERVICE CORPORATION (PWSC)**

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
Signature of Authorized PWSC Representative