

Incentive Program Agreement

Membership Registration #: _____

Warranty Company(ies): *Select applicable company or companies in which Member wishes to participate*

Residential Warranty Company, LLC

MHWC

(Insurer for RWC, MHWC: Western Pacific Mutual Insurance Company, A Risk Retention Group)

HOME of Texas (Insurer for HOME: Warranty Underwriters Insurance Company)

THIS AGREEMENT, made this _____ day of _____, _____, by and between the Warranty Company(ies) designated above, (hereinafter "Warranty Company"), 5300 Derry Street, Harrisburg, Dauphin County, Pennsylvania, and _____

(hereinafter "Member"), with registered offices at _____.

WITNESSETH:

WHEREAS, Member is engaged in the construction and development of homes and/or building projects; and

WHEREAS, the designated Warranty Company administers participation of qualified members in its Warranty Program(s), and

WHEREAS, more favorable warranty rates are available to Member if the Warranty Company maintains certain funds to cover potential warranty performance expenses related to homes/building projects built by Member that may arise as a result of non-performance, omissions, deficiencies in workmanship and materials, or other claims, costs or expenses which the Insurer may pay or incur in connection with warranties covering homes/building projects built by Member (hereinafter "Costs"); and

WHEREAS, Member and the Warranty Company are contributing respective program participation fees of \$ _____, and \$ _____; and

WHEREAS, the Warranty Company has agreed to administer a fund consisting of Member's program participation fee and certain accumulations as described below (Member Fund), for purposes of paying costs or returning the balance of the Member Fund to Member, all in accordance with the terms hereof; and

WHEREAS, the Warranty Company also has agreed to establish an account consisting of its program participation fee and accumulations (Warranty Company Fund), to pay Costs after exhaustion of the Member Fund.

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, and intending to be legally bound hereby, the parties agree as follows:

1. **Accumulations.** In addition to its program participation fee, the Warranty Company agrees to provide over the next five (5) years, accumulations of thirty percent (30%) of the warranty fee for each home/building project constructed by Member which is enrolled in the Limited Warranty Program.
2. **Apportionment.** The Member's Fund shall be increased by forty-nine percent (49%) of accumulations as described in paragraph 1 hereof, and the Warranty Company Fund shall be increased by fifty-one percent (51%) of accumulations as described in paragraph 1 hereof.
3. **Costs.** The Warranty Company, in its sole discretion, shall determine the validity of Costs claimed by the Insurer. The Warranty Company's decision shall be final and binding on all concerned. Costs shall be charged first to the Member's Fund, and after that Fund is reduced to zero (0), then to the Warranty Company Fund. Costs may be paid from the Fund for every home/building project enrolled in the Warranty Program by Member whether the home/building project was enrolled before or after the date of this Agreement, and regardless of when during the term of coverage, as indicated in the Limited Warranty book, the Costs were incurred.
4. **Distribution of the Fund.** During the sixth (6th) year following the date of this Agreement, the Warranty Company shall begin making annual distributions of the balance of the Member Fund to the Member. Unless homeowner/purchaser requests for warranty performance are pending against Member, the Warranty Company shall complete such distributions by the tenth (10th) year following the date of this Agreement. As managing party, the Warranty Company shall determine the amount and time of each distribution. All distributions described in this section shall be paid to the Warranty Company in the event Builder ceases operations, enters bankruptcy, or otherwise ends its operations.
5. **Termination.** The Member Fund shall terminate upon the earlier of its exhaustion for Costs or the final distribution to the Member.
6. **No Additional Liability.** Execution of this Incentive Program Agreement shall not require Member to pay any further program participation fees hereunder, nor shall it cause Member to incur any cost or liability in addition to those costs and liabilities arising from the Membership Agreement between Member, the Insurer and the Warranty Company, except to the extent that the Member Fund is used to pay for Costs incurred when the Insurer is primarily responsible for warranty performance.
7. **Incorporation of Terms of Membership Agreement.** Member and the Warranty Company agree that, in addition to the terms and conditions of this Incentive Program Agreement, they shall also be legally bound and subject to the terms and conditions set forth in the Membership Agreement, a copy of which is attached hereto, made part hereof and identified as "Exhibit A." All annual Registration Fees as established in Exhibit A shall be waived during years 2 through 5 of this Agreement. Member's rate for standard warranty enrollments shall be locked for years 1 through 5 of this Agreement, exclusive of any applicable surcharges; Member's rate-per-home for state specific warranty enrollments may be adjusted annually by the Warranty Company based on the number of prior year enrollments.

8. **Default.** During the first five (5) years following the date of this Agreement, the following occurrences shall constitute a default of this Agreement: a) failure by either party to fulfill the terms and conditions of this Agreement or of the Membership Agreement; b) termination by the Member of the Membership Agreement, unless the Member has ceased operations as discussed in paragraph 10; or c) Member fails to finally enroll a minimum of ten (10) homes or \$1 million in finally enrolled sales volume for a given year.
9. **Effect of Default.** Upon default by a party to this Agreement, no new program participation fees or accumulations shall be made hereunder. This Fund shall remain intact until the end of the fifth (5th) year following execution of this Agreement to cover Costs. Thereafter, the Fund and all accumulated income shall be payable entirely to the non-defaulting party. The defaulting party shall forfeit all right, title and interest in the Fund as liquidated damages for the breach of this Agreement. This provision shall in no way increase or decrease Member's or the Warranty Company's liability to the other arising from a default under the Membership Agreement.
10. **Ceasing Operations or Bankruptcy.** Should a party cease operations, enter bankruptcy or otherwise end its operations, further accumulations under paragraph 1 shall immediately terminate. The Fund, however, shall continue to exist until the end of the tenth (10th) year following the date of this Agreement to cover Costs. Thereafter, distribution shall be made according to the terms of this Agreement. Management of the Fund shall be assumed by the active, non-bankrupt party.
11. **Accountings.** The Warranty Company shall keep proper and complete account of the Member Fund and the Warranty Company Fund at all times. Such accounts shall be open to inspection by Member or its properly designated representation at any time during reasonable business hours. The Fund accounts shall be examined and reviewed as of the close of each fiscal year by the corporate CPA of the Warranty Company.
12. **Administration Fee.** If a Member fails to meet the Incentive Program annual minimum requirement of ten (10) homes finally enrolled, or \$1.0 million in finally enrolled sales volume, a \$250 administration fee shall be charged to the Member for each year the requirement is not met.
13. **No Partnership.** This Agreement shall not constitute a partnership between the parties for state law purposes.
14. **Additional Executions.** The parties agree to execute any further instruments and to perform any other acts necessary to effectuate and carry on the purposes of this Agreement.
15. **Modification.** No modifications of this Agreement shall be binding or enforceable unless in writing and signed by Member and the Warranty Company. This Agreement represents the entire agreement and understanding of the parties regarding the subject matter hereof.
16. **Savings Provision.** If any provisions of this Agreement are determined to be illegal or unenforceable, the remaining provisions shall nevertheless be deemed valid, binding and subsisting. The waiver by either party of a breach or violation of any provision of the Agreement shall not operate or be construed as a waiver of any subsequent breach or violation thereof.
17. **Effective Date.** This Agreement shall be effective immediately upon execution by the parties.
18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties have set their hands and seals on the day and year first above written.

WITNESS:

WARRANTY COMPANY

By: _____
Witness for Warranty Company Warranty Company Representative Date

Seal

MEMBER

By: _____
Witness for Member Member Representative Date

Seal