

## 2-10 HBW Asset Protection Program<sup>®</sup>

In order to satisfy the insurance carriers requirements for participating in the 2-10 HBW Asset Protection Program<sup>®</sup> (APP) we have attached to this letter an Addendum to Purchase Contract. This Addendum will help to integrate your purchase contract with the HBW Warranty which will be issued upon enrollment of the home.

The purpose of this Addendum is to incorporate the HBW all disputes arbitration agreement and the exclusive remedy agreement in your purchase contract at the time that contract is signed. This arbitration agreement is intended to permit you to move any lawsuit by the purchaser into a binding arbitration proceeding. The HBW arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16), which mandates its enforcement and which preempts all state anti-arbitration laws. The United States Supreme Court has upheld the HBW arbitration agreement under the Federal Arbitration Act. *Lopez v. Home Buyers Warranty Corp.* (1995) 513 U.S. 1123.

The exclusive remedy agreement is intended to limit any recovery by the initial purchaser after the first year of ownership to the coverage provided in the HBW Warranty. It contains a waiver by the purchaser of any common law warranties, as well as any claims for negligence or strict liability. However, the enforceability of the exclusive remedy agreement is governed by state and not federal law, so the extent to which it will be enforceable depends upon the laws of your state.

The provisions of the Addendum supersede any contrary provisions contained in your purchase contract, and the HBW Warranty, when issued, will become a part of that contract. Hence, no further modification is needed to your purchase contract in order to effectuate the protections provided to you by the HBW Warranty. We strongly recommend review by local counsel prior to use.

In order to make this Addendum part of your purchase contract, you should:

- (1) Furnish the purchasers with a sample copy of the HBW Warranty which will be issued upon enrollment of the home. You should encourage the purchasers to read the Warranty before they sign your purchase contract.
- (2) Have the purchasers sign and date the attached Addendum, then attach it, with your signature, to your purchase contract as the last page.
- (3) Keep a copy of the Addendum for your records.

The Addendum to the Purchase Contract was drafted by counsel for ease of use by our clients. Should you have any questions, please call your APP insurance agency.

# Addendum to Purchase Contract

## Comprehensive Arbitration Agreement And Exclusive Remedy Agreement

Address of Subject Home: \_\_\_\_\_

1. The HBW Warranty. At or about close of escrow, Seller, at its sole expense, will furnish Homebuyer(s) with an HBW Warranty from Home Buyers Warranty Corporation. The HBW Warranty is a ten-year, new home warranty providing coverage for construction defects in the subject home and is part of the Purchase Agreement to which this Addendum is attached. As consideration for the HBW Warranty, Homebuyer(s) agrees to the provisions of this Addendum, which supersede any different or inconsistent provisions in the Purchase Agreement. Homebuyer(s) represents that Homebuyer(s) has been furnished with a copy of the HBW Warranty and has had an opportunity to read and understand it before signing this Addendum.

2. Arbitration Agreement. Any and all claims or disputes between Seller and Homebuyer(s) arising from or relating to this contract, to the subject home, or to the sale of the subject home, shall be submitted to binding arbitration pursuant to the arbitration agreement in the HBW Warranty. That arbitration agreement is incorporated in full herein.

3. Exclusive Remedy Agreement. Effective one year from the Effective Date of the HBW Warranty when issued, Homebuyer(s) waives the right to seek damages or other legal equitable remedies from Seller, its subcontractors, agents, vendors, suppliers, design professionals and materialmen, for any defect in or to the subject home, or to the real property upon which it is situated, under any common law or statutory theory of liability, including but not limited to negligence and strict liability. Homebuyers(s) exclusive remedy in the event of a defect in or to the subject home or the real property on which it is situated shall be the coverage provided in the HBW Warranty. The agreement contained in this paragraph shall be enforceable to the maximum extent permitted by the law of the state in which the home is located and shall be applicable to any claim made after the effective date of the agreement contained in this paragraph. This paragraph shall not be applicable to any written warranty provided by a manufacturer or vendor who has supplied any appliance or component.

_____ Date: _____	Builder: _____ Date: _____
Homebuyer	By: _____
_____ Date: _____	Its: _____
Homebuyer	