

## E.

### WARRANTY COVERAGE DISPUTES

1. INTENT OF THE PARTIES – *Home Owner* recognizes that the procedures described in this Warranty are the only methods by which *Home Owner* may demand that *KB* correct alleged defects in the *Home*. *KB* and *Home Owner* agree that all disputes in any way related to the coverage of this Warranty (the “Disputes”) which are not resolved as provided in Section C, shall be resolved according to the “Negotiation” and “Arbitration of Disputes” provisions of Subsections E.2 and E.3 of this Section E.

As is explained in further detail below, *Home Owner* shall have the option to select one of two options related to the binding or non-binding nature of the Arbitration process described in Subsection E.3, below. *Home Owner's* failure to initial one of the Option selections shall be deemed to establish *Home Owner's* selection of “Option One”, below. *Home Owner's* selection of “Option One” or “Option Two” in Subsection E.3 shall also determine the duration of the Major Structural Defects Warranty in Subsection B.1, above.

The *Home Owner* must make a written claim and give *KB* an adequate opportunity to inspect any alleged defect and to fix such defect before proceeding with the Dispute resolution processes outlined in Subsections E.2 or E.3 below.

In the event that *Home Owner* is not satisfied with *KB's* rejection or handling of a Warranty claim, *Home Owner* understands and agrees that this Warranty requires *Home Owner* to go through the entire process described in this Section E before filing any lawsuit against *KB* in the state or federal courts to the extent permitted under Option One in Subsection E.3 below.

2. NEGOTIATION

- A. The *Parties* each agree to participate in a period of good faith negotiations (the “Negotiation”), as described in this Subsection E.2 as the first step to resolving any Dispute.
- B. *Home Owner* recognizes that the Negotiation process described in this Subsection E.2 must be completed before *Home Owner* can begin the Arbitration process described in Subsection E.3, below.
- C. If *Home Owner* disputes or is unsatisfied with *KB's* handling or rejection of a particular Warranty claim, *Home Owner* must first give written notice to *KB* of such Dispute. The written notice must contain the following information:
  - (i) A description of the nature of the Dispute and a description of what *Home Owner* believes *KB* is obligated to do under the Warranty to resolve the Dispute;

warranty dispute  
conference

- (ii) A description of the facts on which *Home Owner* bases its belief that *KB* is obligated to provide Warranty service;
  - (iii) A proposed date and time for a conference (the "Conference"), which proposed date must fall on a business day between twenty-five (25) and sixty (60) days after the date *Home Owner* sends the notice to *KB*. The Conference shall be held at the *Home*, unless otherwise agreed; and
  - (iv) The notice shall be addressed to *KB* at the address set forth in this Warranty. The notice and all other notices described in this Warranty must be sent either by (a) personal delivery, (b) nationally-recognized overnight courier, prepaid with instructions for next-business day delivery or (c) prepaid certified or registered mail, return receipt requested.
- D. Within ten (10) days of *Home Owner's* sending the Conference notice, *KB* shall provide a follow-up notice to *Home Owner* confirming the time of the Conference and stating the name and title of *KB's* representatives to the Conference.
- E. Prior to the Conference, *KB* and *Home Owner* agree that they will, in good faith, discuss and consider possible resolutions of the Dispute. At the Conference, the *Parties'* representatives shall confer together to resolve the Dispute for a maximum period of two hours although the *Parties* may extend or adjourn the Conference by mutual agreement.
- F. If such Dispute cannot be resolved by the *Parties* at the Conference, the *Parties* agree to consider, in their reasonable discretion, but without obligation to so choose, using a third-party mediator, at *KB's* sole cost and expense, for up to one full day of such mediator's time, to resolve the Dispute.
- G. If, after such Conference (including the third party mediation Conference if chosen by the *Parties*), the entire Dispute has not been resolved, then *Home Owner* may, but shall not be required to, proceed to Arbitration as described in Subsection 3 below. If, as a result of the Conference, certain issues in the Dispute have been resolved, the *Parties* shall jointly state in writing the issues that have been resolved and the issues which remain unresolved and will require Arbitration. Although Arbitration is the next formal and required step in the dispute resolution procedure, the *Parties* may continue to negotiate informally to resolve the Dispute and/or mutually agree to submit the Dispute to a third-party mediator following the Conference and prior to Arbitration.
- H. As provided by Florida law, in order to increase the likelihood that the Dispute can be informally resolved outside of the courts and to promote the free flow of candid discussion between the *Parties*, the *Parties* agree that any offers of compromise or settlement are not admissible as evidence in the Arbitration or any later litigation under any circumstances.

### 3. ARBITRATION OF DISPUTES

In the event that the *Parties* have completed the entire Negotiation process as described in and required by Subsection E.2 above, but failed to resolve the Dispute, and provided that *Home Owner* has given *KB* an adequate opportunity and access to the *Home* to inspect and fix any alleged defect, then, if either of the *Parties* wishes to pursue the matter further, the unresolved aspects of the Dispute shall be resolved by Arbitration in accordance with the Rules for Residential Construction then in effect with the American Arbitration Association ("AAA"). In the event of non-existence or revocation of the Rules for Residential Construction by the AAA, the AAA Commercial Arbitration Rules shall apply.

*Home Owner* Selection of Arbitration Process - Be sure to read all of Section E before making this election.

**The *Parties* expressly understand that, in the event that the *Parties* have completed the Negotiations as required by Section E.2 of the Warranty but have been unable to resolve the Dispute, then, the unresolved aspects of the Dispute shall next be resolved by Arbitration in accordance with the Rules for Residential Construction Disputes then in effect with the American Arbitration Association. An Arbitration shall be required to take place regardless of which arbitration "Option" *Home Owner* selects below.**

With respect to the format of Arbitration to be utilized under this Warranty, the *Home Owner* has the right to and must elect one of the following two options as to the binding or non-binding nature of the Arbitration:

Option One – Mandatory Non-Binding Arbitration ✓

Under this Option, once an Arbitration has been completed and a decision rendered, then *Home Owner* shall have the right to either (a) bind *KB* and itself to the result of the Arbitration or (b) refuse to accept the results of the Arbitration and take legal action in state or federal courts after the Arbitration Decision has been issued. In the event *Home Owner* selects this Option One, the period of coverage for Major Structural Defects as set forth in Section B.1 of the Warranty shall be ten (10) years from the *Commencement Date*. *Home Owner* acknowledges that its agreement to this Option One is voluntary and it has received full disclosure of each of the Options available herein.

*Home Owner's* Initials: \_\_\_\_\_

Option Two – Mandatory Binding Arbitration ✓

Under Option Two, each of the *Parties* agrees to be completely bound by the decision of the Arbitrator, which shall be final and non-appealable. A *Home Owner* selecting Option Two hereby understands that any dispute arising out of the matters included in the Arbitration of Disputes provision will be decided on a final and binding basis by a single neutral Arbitrator as provided elsewhere in this Warranty and that *Home Owner* is giving up any and all rights it may possess to have the Warranty-related dispute litigated in a court or jury trial. By initialing in the space associated with Option Two, the *Home Owner* is giving up its rights to a court or jury trial with respect to any matters covered by this Warranty, including any right of appeal of an Arbitration decision or award.

In consideration of *Home Owner's* acceptance of the binding, final and non-appealable aspects of such Arbitration, *Home Owner* and *KB* agree that the term of coverage for Major Structural Defects shall be twelve (12) years beginning on the *Commencement Date* as defined above. *Home Owner* also recognizes and agrees by selecting Option Two, if the *Home Owner* refuses to submit to or accept the results of the Arbitration after agreeing to this provision, the *Home Owner* may be compelled to arbitrate on the authority of state law. *Home Owner* acknowledges that its agreement to this binding Arbitration provision is voluntary and it has received full disclosure of each of the Options available herein.

*Home Owner's* Initials: \_\_\_\_\_

**The failure of *Home Owner* to initial its selection of either Option One or Option Two shall be deemed to act as *Home Owner's* election of Option One. If *Home Owner* inadvertently initials its selection of both Option One and Option Two, *Home Owner* shall be deemed to have elected Option One.**

B. Whether *Home Owner* selects Option One or Option Two above with respect to the binding nature of the Arbitration, *Home Owner* and *KB* agree that in addition to the Rules for Residential Construction Disputes, the following additional rules shall govern the required Arbitration:

- (i) Prior to submitting any Dispute to Arbitration, *Home Owner* shall deliver to *KB* a detailed written description of *Home Owner's* claim(s), together with any documents upon which *Home Owner* intends to rely at the Arbitration which support *Home Owner's* claim(s);
- (ii) *KB* shall promptly pay all AAA fees and expenses necessary to initiate the Arbitration, but the fees, expenses and Arbitrator's compensation in the Arbitration shall ultimately be allocated between the *Parties* as determined by the Arbitrator in its reasonable discretion. In the absence of a determination by the Arbitrator, *KB* shall remit all fees of the AAA necessary to initiate the Arbitration and, with respect to the remaining fees and costs, (including the costs of the Arbitrator), each *Party* shall bear one-half of the fees and costs of the Arbitration other than the fee to initiate Arbitration (the "Non-Initiation Arbitration Costs"). Each Party shall bear all of its own attorneys' fees and other costs in connection therewith. In the event *Home Owner* reasonably asserts a financial hardship to bear its share of the Non-Initiation Arbitration Costs, *KB* shall initially bear *Home Owner's* share of such Non-Initiation Arbitration Costs, although the determination of the final allocation between the *Parties* of the Non-Initiation Arbitration Costs shall be determined by the Arbitrator as the Arbitrator determines is appropriate in its reasonable discretion;
- (iii) There shall be only one Arbitrator, who shall be a neutral and impartial person selected by mutual agreement of the *Parties*. No person shall serve as the Arbitrator who has any financial or personal interest in the result of the Arbitration or if there is any circumstance likely to affect the person's impartiality, including any bias or any past or present relationship with the *Parties* or their representatives. If the *Parties* are unable to agree on an Arbitrator, the Arbitrator shall be selected using procedures established in the AAA rules within ten (10) days thereafter;
- (iv) The Arbitration shall be commenced in a prompt and timely manner and shall be conducted in *Home* unless otherwise agreed to by the *Parties*;

- (v) The Arbitrator may act as a mediator to attempt to resolve the Dispute before commencing any formal Arbitration proceedings;
- (vi) The Arbitrator shall apply Florida substantive law in rendering a final decision;
- (vii) The Arbitrator shall have the power to provide all recognized remedies available in Florida law or in equity for any cause of action that is the basis of the Arbitration;
- (viii) The Arbitration shall be concluded in a prompt and timely manner with the Arbitrator rendering a written award which shall state findings of fact and conclusions of law, including, if applicable, the Arbitrator's determinations as to the allocation of Non-Initiation Arbitration Costs between the *Parties* and as to whether the Dispute is covered by the Warranty and whether *KB* was given an adequate opportunity and access to the *Home* to inspect and fix any alleged defect prior to Arbitration; and
- (ix) In the event of any conflict between Subsection E.3 and the AAA Rules for Residential Construction Disputes, the terms of Subsection E.3 shall prevail.

C. In the event the *Home Owner* selected Option One or is deemed to have selected Option One, the *Parties* acknowledge that *KB* will be bound by the results of any Arbitration which takes place if *Home Owner* so chooses but *Home Owner* shall have the right to refuse to accept the results of Arbitration and initiate legal action in state or federal courts after the Arbitration Decision has been issued within the earlier to occur of (1) 30 days after the Arbitrator's publication of the award or (2) the end of any applicable statute of limitations period.

In the event *Home Owner* selected Option Two, the *Parties* agree to be completely bound by the decision of the Arbitrator, which shall be final, binding and non-appealable. Judgment upon the decision rendered by the Arbitrator may be entered in any court having proper jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement. The award is subject to review in accordance with applicable statutes governing arbitration awards.

4. STATUTE OF LIMITATIONS – A demand for Arbitration must be filed under the rules for Residential Construction arbitration within the time periods prescribed by the applicable statutes of limitations under Florida law. The giving of the written notice described in Subsection E.2.C. shall not stop the running of any statute of limitations.

5. ACCEPTANCE OF ARBITRATION

**Notice:** By initialing in the space below you are agreeing to have any dispute arising out of the matters included in the "Arbitration of Disputes" provision decided by neutral arbitration as provided by Florida law and you are giving up any rights you may possess to have the dispute litigated in a court or jury trial. By initialing in the space below you are giving up your judicial rights to discovery and appeal, unless those rights are specifically included in the "Arbitration of Disputes" provision. If you refuse to submit to arbitration after agreeing to Option One or Option Two, you may be compelled to arbitrate. Your agreement to this arbitration is voluntary.

I/We have read and understand the foregoing and agree to submit disputes arising out of this Warranty to neutral arbitration as set forth above.

**Home Owner's Initials:** \_\_\_\_\_

**KB Initials:** \_\_\_\_\_

Although the above provision may be required by law, in the event *Home Owner* has selected Option One or is deemed to have selected Option One, *KB* unequivocally represents that this Warranty gives the *Home Owner* the right to file a lawsuit against *KB* in the event *Home Owner* is unsatisfied with the results of the Conference proceedings and Arbitration Ruling.

**KB Initials:** \_\_\_\_\_

F.

MISCELLANEOUS

1. This Warranty does not cover any appliance, piece of equipment, or other item which is a "consumer product" for purposes of the Magnuson-Moss Warranty Act (15 U.S.C. Sec. 2301-2312), and *KB* disclaims any implied warranties with respect thereto. However, some of these products have written warranties by the manufacturer. Please see Subsection B.3. of this Warranty regarding "Equipment" and that portion of the Warranty Performance Standards entitled "Manufactured Products" for more information about manufacturer's warranties.
2. In the event any provision of this Warranty is held to be unenforceable, the other provisions hereof shall remain in full force and effect.
3. *KB's* obligations under this Warranty and under the corresponding purchase and sale agreement are limited as set forth herein. Under no circumstances shall *KB* be liable for

*[Handwritten mark]*

any special, indirect, incidental or consequential damages, including, without limitation, any damages based on a claimed decrease in the value of the Home, even if KB has been advised of the possibility of such damages. This Warranty is the only warranty applicable to the Home.

**G.**

**AGREEMENT AND ACCEPTANCE**

By signing in the appropriate area below, KB agrees to fulfill all of its obligations under this Warranty. By its signature(s), Home Owner acknowledges its receipt and understanding of the Warranty and its acceptance of the Warranty in lieu of all other warranties, express or implied, including merchantability, habitability, construction in a workmanlike manner and fitness for a particular purpose. Home Owner acknowledges that it has been advised to read this Warranty (including the attached Warranty Performance Standards) and has done so prior to completing the purchase of the Home. Home Owner further acknowledges and agrees, and understands the contents of the Warranty to its satisfaction, and was given the opportunity to seek, if necessary, help in understanding these documents, including the Warranty Performance Standards. Home Owner agrees to perform its obligations, which include, but are not limited to, notifying KB in writing when requesting service.

*KB*

*Home Owner*

KB HOME \_\_\_\_\_ LLC

Print Name(s)

\_\_\_\_\_  
\_\_\_\_\_

Signature(s)

By: \_\_\_\_\_  
Name Date

\_\_\_\_\_  
Name Date

Its: \_\_\_\_\_  
Title Name

\_\_\_\_\_  
Name Date

FL/JULY 18, 2003