



# Home Owners Booklet



**1.866.770.LRWP (5797)**

**[www.luxrwp.com](http://www.luxrwp.com)**

## WARNING

Readers are advised that particulars of the Program are subject to change without notice. For the most current version of the Program one is advised to consult the Program's website at [www.luxrwp.com](http://www.luxrwp.com). A reader is warned, therefore, that any printed version other than the most current version appearing on the Program's website may be out of date and incorrect. Govern yourself accordingly.

**Your**  
Investment

**Your**  
Future



Dear Home buyer:

Congratulations on the purchase of your new home. The purchase of a new home is probably the largest, most important single investment you will ever make and we wish you many years of enjoyment.

This limited warranty affords you protection for many years of home ownership. During the first year your builder provides the warranty coverage described in this booklet. From then, until expiry, your warranty protects your home against major structural defects as defined in this agreement. The Program Warrantor stands behind the Builder and protects you in the event your Builder fails to perform.

Your warranty does contain certain exclusions and limitations. It is just as important for you to understand these exclusions and limitations as it is for you to understand your coverage.

Take the time to read this booklet in its entirety. The booklet describes the warrantor's responsibilities to you and your responsibility to your home. It is vital that homeowners and condominium associations perform required maintenance. Without such maintenance this warranty will be voided. Your Builder or the LRWP staff will be able to answer any questions that you may have concerning the warranty or any specific construction standards and how they apply to your home.

Again, congratulations and enjoy your new home!

Very truly yours,

Lux Residential Warranty Program Inc.

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YOU SHOULD READ THIS AGREEMENT IN ITS ENTIRETY IN ORDER TO UNDERSTAND THE PROTECTION IT AFFORDS, THE EXCLUSIONS APPLICABLE TO IT, WARRANTY STANDARDS WHICH WILL GOVERN ITS INTERPRETATION AND OPERATION, AND A PURCHASER'S RESPONSIBILITIES.

Lux Residential Warranty Program Inc. (LRWP) is the warrantor of this Agreement. Section A describes the protection which this program affords a Purchaser; Section B defines the terms used in this Agreement and sets forth the exclusions from the program, Section C sets forth warranty standards which govern the interpretation and operation of the program. Section D refers specifically to any endorsements and addendums to the Program.

It should be understood by a Purchaser that every newly constructed Home needs maintenance in order to prolong its life. It is a Purchaser's responsibility, not the Builder's or LRWP to maintain a Home. Regular maintenance includes, but is not limited to, such items as preserving soil drainage conditions, caulking, cleaning, resealing or repainting of finished surfaces as necessary, routine maintenance of mechanical systems, etc.

**Any damage or defect caused or worsened by neglect, abnormal use, or improper maintenance and operation of a Home, or the surrounding lot, will not be covered by this Agreement.**

## SECTION A. THE LIMITED WARRANTY PROGRAM

The LRWP is the warrantor of this Agreement. LRWP will perform the Builder's obligations hereunder if the Builder fails to do so. The warrantor also provides a Major Structural Defect Warranty as defined in Section B, during the second year through expiry of this warranty. LRWP will administer the limited warranty program for participating Builders and the Homeowner. The protection provided under the limited warranty program is automatically transferable to subsequent Purchasers of the Home during the term of this Agreement. LRWP will be responsible for the following:

- a. the maintenance of the minimum warranty criteria within the plan;
- b. the settlement of claims and refunds;
- c. the selection of eligible vendors/builders; and
- d. the ongoing administration of the program.
- e. Which legal authority and jurisdiction will govern LRWP's operation, and other parties involved. LRWP is a federally incorporated company and its head office is located in Ontario with a regional office located in provinces in which LRWP operates. Should a legal judgment/order be pursued and imposed on the LRWP in any province. LRWP shall honor such judgment/order and undertakes to allow any out of province legal judgment/order being registered by the claimant in LRWP's principal jurisdiction where its assets are held in order to be enforced.

### 1. BUILDER UNDERTAKING

Subject to the exclusions and limitations contained elsewhere, the Program provides you a Purchaser the following protection:

- a. The Builder undertakes to repair Latent Defects in workmanship in the construction of a Home and to repair or replace defective materials supplied by the Builder, where such Latent Defects become apparent within one year from the Date of Possession of a Home provided said defects are due to nonconformity with the warranty standards as set forth in Section C of this Agreement. The Builder will not be responsible for Latent Defects in workmanship or material that become apparent after the first year from the Date of Possession of a Home except for Major Structural Defects, as hereinafter defined.
- b. The Builder will repair any Major Structural Defects in a Home which become apparent during the



period commencing with the Date of Possession until the end of the first year set out on the Notice of Possession.

c. Exceptions to Latent Defects. The following items will not be considered Latent Defects in workmanship or materials:

- (1) Defects in materials, appliances, design and workmanship supplied by the Purchaser and any resultant damage directly or indirectly caused to the Home therefrom;
- (2) Normal cracks in plaster, paint, drywall, masonry, stucco and concrete;
- (3) Normal shrinkage of materials caused by drying after the Date of Possession;
- (4) Defects arising from improper maintenance by a Purchaser and damage caused by dampness or condensation;
- (5) Defects in workmanship or materials in alterations by a Purchaser and defects in workmanship or materials supplied by the Builder arising from such alterations made by a Purchaser, and any resultant damages to a Home therefrom;
- (6) Subsidence of the land around the building or along utility lines, excluding subsidence beneath the footings of the house;
- (7) Defects that are/were visible and accepted by the purchaser at the date of possession.
- (8) Damage to the Home resulting from an act of God or other causes not due to the negligence of a Builder; and
- (9) Personal injury or damage to private property.

## 2. DEPOSIT COVERAGE

### Policy

The Program Warrantor acknowledges and agrees that the deposit money paid by a Purchaser to a Builder or Retailer is refundable to the Purchaser. In the event that such deposit monies fail to be recovered by a Purchaser due to bankruptcy, insolvency or proven fraud of a Builder or Retailer, the Program Warrantor agrees to repay the deposit monies to a Purchaser subject always to the following limiting conditions:



- A Builder must have fulfilled to the unfettered discretion of the Program Warrantor all of the conditions set out in the Deposit Protection Coverage Confirmation certificate for a Home as defined herein.
- A Purchaser has performed all of his obligations or shall be ready, willing and able to complete all of his obligations to a Builder pursuant to any contract between them.
- A Purchaser shall, in the event of repayment of any deposit monies by the Program Warrantor to such Purchaser, forthwith assign and transfer to the Program Warrantor, to the extent of such payment, any security position, judgment, agreement for sale or equity security the Purchaser may hold against a Builder or Retailer relating to the same transaction.
- The Purchaser's copy of the Deposit Protection Coverage Confirmation must be registered with the Program Warrantor by the Builder promptly following the execution of this receipt and confirmation of coverage will be issued by the Program Warrantor to correspond exactly with the Offer to Purchase.
- Coverage under this Deposit Protection will expire on the later of the date of possession, as set out on the Certificate of Possession, or the closing date, as set out in the Agreement of Purchase and sale, provided that coverage will expire, in any event, no less than six (6) months after possession.
- In no event shall the Program Warrantor be liable for any deposit or costs related thereto in excess of \$30,000.

A policy for Deposit Protection will only take effect when (i) it has been executed by or on behalf of the Program Warrantor and the Builder, (ii) when it has been delivered to the trustee or the Builders solicitor holding the money for which the policy is being provided as security.

The trustee or the Builders solicitor, as the case may be, shall hold this policy in trust for the beneficiary until such time as it no longer presents liability to the Program Warrantor.

The Builder shall pay the Deposit Protection Fee in respect of this policy and shall in no way transfer the cost of the premium to a beneficiary.

#### Delivery of Policy

Upon written request, the trustee or the Builders solicitor, as the case may be, shall deliver the original policy to a beneficiary in order that the beneficiary can make a claim under it.

#### Notice of Claim

The Program Warrantor will pay the beneficiary within 90 days of receipt of a written notice of a claim and the establishment of the right of the beneficiary to payment under policy.

Receipt of a written notice of a claim. The Program Warrantor will pay the beneficiary within 90 days of receipt



of a written notice of a claim and the establishment of the right of the beneficiary to payment under policy.

#### Liability

The Program Warrantor will remain liable under this policy until,

- a) the Builder delivers to a beneficiary a deed in registerable form to a Home, in respect of which the beneficiary or a person on the beneficiary's behalf has purchased;
- b) the Builder will pay the beneficiary all money and interest due under the application legislation;
- c) the Program Warrantor pays the beneficiary the amount of the loss;
- d) the beneficiary acknowledges in writing that,
  - (i) the beneficiary is not entitled to the payments made by or on behalf of the beneficiary under applicable legislation in respect of a proposed Home and any interest paid thereon by the Builder, and
  - (ii) the Program Warrantor is no longer liable under this policy; or
- e) a court of competent jurisdiction has made a final determination that the beneficiary is not entitled to the payments made by or on behalf of the beneficiary in respect of a Home as well as any interest paid thereon by the Builder.

#### Refund of Deposit

This Agreement makes provisions for a refund totalling 100% of deposit amounts of \$30,000 or less. For deposits more than \$30,000, the maximum refund will be \$30,000. A deposit to a Builder includes a prepayment or equivalent funds provided by a Purchaser on account of the purchase price of the Home.

### 3. PROGRAM WARRANTY

- a. If a Builder fails to repair the Latent Defects, which have become apparent within one year from the Date of Possession of a Home, LRWP agrees to repair such defects, provided, that a Purchaser has complied with all of its obligations hereunder. LRWP will inspect the alleged defects as soon as convenient, and advise the Purchaser of its decision. The decision will be final and binding on a Purchaser, unless varied, revoked or altered by an order or judgment of a court of competent jurisdiction.
- b. The Program Warrantor will repair any Major Structural Defect in a Home which



becomes apparent during the period commencing one year from the Date of Possession until the expiry date as shown, provided, however, that a Purchaser has completed their obligations hereunder.

#### 4. CONDITIONS

In each instance, a Builder or LRWP responsibilities for warranty coverage under the Program are subject to the following:

- a. In the event of a warranty claim, the decision of whether to repair or replace a defective item is solely the Builder's or LRWP, as applicable.
- b. The maximum aggregate liability to LRWP for the Latent Defect Warranty or the Major Structural Defect Warranty is capped at \$30,000.
- c. During the first year after possession of a Home if a Builder does not fulfil its obligations under this Agreement LRWP will be responsible for the Builder's obligations, subject to a one time deductible of \$100. In years 2 to expiry of the term of coverage under the Program, if a Builder does not fulfil its obligations under the program LRWP will be responsible for a Builder's obligations subject to a deductible of \$250.00 per claim. In each instance, the deductible must be paid by a Purchaser prior to commencement of a repair or replacement.
- d. Any time taken to repair defects hereunder will not extend the periods of coverage specified in this Agreement.
- e. Prior to a Builder or LRWP repairing or replacing a defective item under the Program, the Purchaser must sign and deliver to a Builder or LRWP, as the case may be, a full and unconditional release, in recordable form, of all legal obligations with respect to the defect and any conditions arising from the defect. However, the repairs or replacement items will continue to be covered by this Agreement.
- f. In the event a Builder or LRWP repairs or replaces, any item covered by this Agreement, the Builder and LRWP agrees to be subrogated to all of a Purchasers' rights of recovery therefore against any person or entity (including a Builder if its obligations hereunder have been performed by LRWP) and a Purchaser agrees to execute and deliver any and all instruments and papers and to take any and all other actions necessary to secure such rights, including, but not limited to, assignment of the proceeds of any other insurance or warranties to a Builder or LRWP, as appropriate. A Purchaser agrees to do nothing to prejudice such rights of subrogation.
- g. In the event that a Homeowner, Builder and or a Program Insurer are in the process of



a dispute resolution, LRWP undertakes to cause the related warranty obligation to be resolved as set out in the Program to be repaired within 30 days. As all decisions of the third party arbitrator are binding on all parties, LRWP will be fully compensated for all work performed with respect to said dispute by the culpable party.

- h. If a Major Structural Defect arises in a Home during years two through expiry of coverage under this Agreement, LRWP at its sole option will repair or replace the defective item. The responsibilities of a Builder or the LRWP as set forth herein, will be limited to such actions as are necessary to restore load-bearing capability to the load-bearing component of a Home and to repair those elements of a Home and to repair those elements of a Home damaged by the Major Structural Defect which make a Home physically unsafe.

- i. Major Structural Defects (MSD).

Major Structural Defects occurring within ten (10) years immediately following the Date of Possession of a Home by a Purchaser are to be dealt with as follows:

- (1) Major structural defects are defined as defects resulting in failure of the load bearing portion of a Home, including but not limited to damage due to soil movement which affects its load bearing function, all of which affects the use of a Home for residential purposes.

Load bearing components include:

1. piles;
2. footings;
3. foundation walls;
4. grade beams;
5. teleposts;
6. bearing walls;
7. floor joists;
8. posts and beams; and
9. roof trusses.

- (2) Examples of non-load-bearing elements which will be deemed not to have Major Structural Defect potential are, (this list is not exhaustive):

- i. Non-load-bearing partitions and walls;
- ii. Wall tile or paper, etc.;



- iii. Plaster, laths, or dry wall;
- iv. Flooring and sub-flooring material;
- v. Brick, stucco, stone, or veneer;
- vi. Any type of exterior siding; and
- vii. Roof shingles, sheathing, and tar paper.
- viii. Heating, cooling, ventilating, plumbing, electrical and mechanical systems;
- ix. Appliances, fixtures, or items of equipment;

## 5. HOW TO MAKE A WARRANTY CLAIM

### 1. Dispute Settlement:

- a. *Carefully read and review* this Agreement and the standards contained herein to determine whether a defect is covered.
- b. Notice to Builder concerning defects arising in Year 1. If you have a complaint or claim, which you believe is covered by this Agreement and it arises during the warranty period as defined by this Agreement, you must send a notice to LRWP. This notice must be clear and describe the defect in detail. Written notice of a defect covered during year one must be received by a Builder no later than seven (7) calendar days following the expiration of the applicable warranty period. If notice to the Builder does not result in satisfaction within 30 days, written notice should be given to LRWP as warrantor. The notice must describe each defect in detail and be forwarded by Registered Mail, Return Receipt Requested.
- c. Conciliation and Arbitration: If a dispute cannot be successfully resolved between a Builder and Homeowner, a third party conciliation/arbitration service will be made available by LRWP as a means of dispute resolution. The findings of said third party conciliation/arbitration shall be binding on all parties.
- d. Claims Contact: The Homeowner shall forward all claims in writing to the LRWP head office at:

Claims Department  
Lux Residential Warranty Program Inc.  
350 Bay Street, Suite 250  
Toronto, Ontario, M5H 2S6



## 6. INSPECTION AND MEDIATION

- a. LRWP will, during the first thirty (30) days of its receipt of proper notice of a defect or claim, review and mediate the claim by communicating with the Builder, the Purchaser and any other individuals or entities who LRWP believes possess relevant information. If, after thirty (30) days, LRWP has not been able to successfully mediate the claim, or at any earlier time should LRWP believe that a Builder and a Purchaser have arrived at an impasse, then LRWP will notify the Purchaser that their claim is an “unresolved dispute”.
- b. LRWP, may at any time following receipt of proper notice of a claim under the Program, schedule an inspection or an appraisal acceptable to LRWP. Homeowner must provide LRWP or a Builder with reasonable weekday access during normal Business Hours in order to perform its obligations under the Program. Failure by Purchaser to provide such access to a Builder or LRWP may relieve a Builder or LRWP of its obligations under this Agreement.
- c. Where a claim is filed that cannot be observed or determined under normal conditions, it is a Purchaser's responsibility to substantiate that the alleged condition exists. Any cost involved will be paid by a Purchaser, and if properly substantiated, reimbursement will be made by a Builder or LRWP.
- d. Remedial Action. When a defect has been identified, LRWP will ensure that it is corrected by a Builder or themselves. Cash settlements are contemplated only under very special circumstances. A decision in favour of a cash settlement will only occur with the approval of the approved lender.

## 7. NOTICE OF MAJOR STRUCTURAL DEFECT CLAIM ARISING IN YEARS 2 THROUGH EXPIRY

Claims resulting from a Major Structural Defect that occurs during the second year through expiry date of this Agreement should be contained in a notice to LRWP as Warrantor. LRWP will investigate the claim. Notice of such claims must be sent in writing to: LRWP, 350 Bay Street, Suite 250, Toronto, Ontario, Canada, M5H 2S6, by Registered Mail, Return Receipt Requested within a reasonable time after the Major Structural Defect arises but in no event later than Thirty (30) days after the expiration of the term of this Agreement. Claims received after that period will not be heard. Notices should describe the defect in as much detail as possible.



## 8. CONTENT AND TIMING OF NOTICE TO LRWP

1. LRWP must receive written notice of a claim hereunder from a Purchaser within thirty (30) days of the expiration of the applicable warranty period. For example, if the defect is one which is covered under the Builder one year warranty period, notice must be received by LRWP within thirty (30) days of the end of the first year, or the Notice will not be honored. Notice to the Builder does not constitute notice to LRWP, nor will it be deemed to extend applicable coverage periods. Notice must contain the following information:

- a. The enrolment number and possession date of the Home,
- b. A \$25.00 search fee which should be included with a notice;
- c. The Builders name and address;
- d. Homeowners name, address, and phone number (both home and work);
- e. A specific description of the defect(s);
- f. The page and section number of this Agreement containing the applicable warranty standard(s); and
- g. A copy of the Homeowners written notice to the Builder.

## 9. 30 DAY RESPONSE

Homeowner has an obligation to cooperate with LRWP's inspection and investigation of a claim. From time to time, LRWP may request information from Homeowner regarding a claim. Failure by Homeowner or appointed representative to respond with the requested information with 30 days of the date of request shall result in the closing of a claim file.

## 10. ROLE OF LRWP

LRWP is the warrantor of this Agreement. In the event Homeowner commences any legal action against LRWP, in its individual capacity, Homeowner agrees to reimburse LRWP for all costs and expenses, including legal fees, unless such action is proven to arise out of an independent wrongful action of LRWP.



## 11. HOME BUYER/MORTGAGEE AS BENEFICIARY

When the policyholder is unable to provide the warranty coverage as set out in the Lux Residential Warranty Program due to a change of legal status or insolvency, the Homeowner and/or the mortgagee will have the full benefit of the insurance proceeds as provided under this Agreement.

## 12. GENERAL TERMS AND CONDITIONS AFFECTING THIS AGREEMENT

1. The following terms and conditions of general applicability will govern the interpretation and operation of this Agreement:

- a. This Agreement is separate and apart from and cannot be affected by the Purchasers' contract with a Builder. It cannot be altered or amended in any way by any other agreement;
- b. If a Builder fails to complete items of work, it becomes the Purchaser's responsibility to take reasonable steps to complete such items where the failure to do so may lead to structural damage. The warranty period for any item completed after the Effective Date shall be deemed to have commenced on the Effective Date;
- c. All Notices required under this Agreement must be in writing, and sent by Registered Mail, postage prepaid, to the recipients address shown on the Possession Certificate form, or to whatever other address the recipient may designate in writing;
- d. Should any provision of the Agreement be determined by a court of competent jurisdiction to be unenforceable, that determination will not affect the validity of the remaining provisions;
- e. This Agreement is binding on a Builder and his administrators. This Agreement is binding on a Purchaser, his administrators, successors and assigns;
- f. This Agreement will be interpreted and enforced in accordance with the laws of the Province in which the Home is located;
- g. This Agreement cannot be modified, altered or amended in any way except by a formal written instrument signed by all of the parties hereto;
- h. If performance by a Builder or the LRWP of any of their respective obligations under this Agreement is delayed by an event not resulting from their own conduct, such performance will be excused until the delaying effects of the event are remedied. Such events include acts



of God, the common enemy, war, riot, civil commotion, sovereign conduct, terrorism or acts of a force majeure nature or omissions by the Purchasers or any other person, not a party to this Agreement;

- i. Whenever appropriate, it is intended that the use of one gender in this Agreement includes all genders and the use of the singular includes the plural, where applicable;
- j. This Agreement is non-cancelable by a Builder, LRWP or the Program Insurer after execution by all parties; and
- k. No Corporation of any kind can enter into the Agreement as Purchaser.

### 13. BUILDER'S RESPONSIBILITY AND PURCHASER'S RIGHTS: YEAR ONE

If a defect in the Home arises due to nonconformity with the warranty standards during the first year of this Agreement the Builder will repair or replace the defective item; if a Major Structural Defect arises in a Home during the first year of this Agreement, a Builder will repair or replace the defective item, limited to such actions as are necessary to restore load-bearing capability to the load-bearing components of a Home and to repair those elements of a Home damaged by the Major Structural Defect which make the Home physically unsafe.

### 14. LIMITATION OF WARRANTY

1. There are no warranties or guaranties given by a Builder, which are binding upon LRWP except as contained in this Agreement.
2. The warranties contained in this Agreement apply to defects in workmanship and materials and resultant damage there from to a Home only and **NEITHER A BUILDER NOR LRWP SHALL HAVE ANY LIABILITY OTHER THAN TO REPAIR OR REPLACE THE SAID DEFECTS AND SAID RESULTANT DAMAGE**, and in particular, will not in any way, directly or indirectly be liable to resultant physical injury, or damage to a person or persons, or to property other than a Home covered by this Agreement.
3. Warranty Transferability. The Warranties contained in this Agreement shall extend to the Purchasers named in the warranty certificate and to the individual or individuals who subsequently become the registered Purchasers during the period of the warranty, unless otherwise specified by a specific warranty program.



## 15. PURCHASER OBLIGATIONS

1. This Agreement shall become null and void in the event that a Purchaser fails to fulfil any of the following obligations:

- a. A Purchaser shall keep a Home in a clean and sanitary condition;
- b. A Purchaser shall not make any use of a Home other than a primary single family residential unit; and
- c. In the event a Home covered by this Agreement is sold by a Purchaser during the term of this Agreement, all of the foregoing obligations will be binding upon any subsequent Purchaser and in particular any previous acts, omissions, defaults or agreements of any kind made by a Purchaser with a Builder or LRWP shall be binding upon any subsequent Purchaser.

## 16. RELOCATION

A Builder or LRWP assumes any liability for the relocation of a Home. The warranty does not cover the physical relocation of a Home. If a Home is moved in any way shape or form, this Agreement becomes null and void.

## SECTION B. DEFINITIONS AND EXCLUSIONS

### 1. DEFINITIONS

For the purpose of this Agreement, the following terms shall have the meanings set forth herein:

- a. Purchaser. The individual or individuals names on the Possession Certificate as Purchasers and includes any individual or individuals who become registered Purchasers of a Home during the term of this warranty. The Purchaser shall include the first Purchaser of a Home covered under this Agreement and any and all successors in title, lessees having a leasehold interest in a Home of at least fifty (50) years, and a mortgage in possession of a Home.
- b. Builder. Means a person who undertakes the performance of all the work and supply of all the materials necessary to conduct a completed Home whether for the purpose of sale by the person or under a contract with a vendor or owner.
- c. Effective Date. The Date of Possession specified on a LRWP Possession Certificate form.



- d. Home. Means:
- (1) a self-contained single family dwelling, detached or attached to one or more others by common wall,
  - (2) a building composed of more than one and not more than two self-contained, one-family dwellings under one ownership,
  - (3) a condominium dwelling unit, including the common elements, or
- e. Program Insurer. The insurance obligations under this Agreement may be assigned by the Administrator in its absolute discretion as required by provincial regulations.
- f. Date of Possession. The date on which a Purchaser lawfully takes possession of a Home from a Builder.
- g. Major Structural Defects. Defects resulting in failure of the load bearing portion of a Home, including but not limited to damage due to soil movement which affects its load bearing function, and which virtually affects the use of a Home for residential purposes.
- (1) Load bearing components include:
    - i. piles;
    - ii. footings;
    - iii. foundation walls;
    - iv. grade beams;
    - v. teleposts;
    - vi. bearing walls;
    - vii. floor joists;
    - viii. posts and beams; and
    - ix. roof trusses.
  - (2) Examples of non-load-bearing elements which will be deemed not to have Major Structural Defect potential are (this list is not exhaustive):
    - i. Non-load-bearing partitions and walls;
    - ii. Wall tile or paper, etc.;
    - iii. Plaster, laths, or dry wall;



- iv. Flooring and sub-flooring material;
  - v. Brick, stucco, stone, or veneer;
  - vi. Any type of exterior siding; and
  - vii. Roof shingles, sheathing, and tar paper.
- h. Patent Defect. A defect which is plainly visible, or which can be discovered by such an inspection as would be made in the exercise of ordinary care and prudence.
- i. Latent Defects in Workmanship and Defective Material. Latent Defects are defined as hidden defects which even with reasonably careful inspection during construction will not be revealed until after a Home is completed, and put in use for some time. Latent Defects become manifest within the first year after the Date of Possession of a Home by the Purchaser.
- j. Administrator. Lux Residential Warranty Program Inc.
- k. Warrantor. Lux Residential Warranty Program Inc.
- l. Load-Bearing. Means subjected to or designed to carry loads in addition to its own dead load, but does not include a wall element subjected only to wind or earthquake loads in addition to its own dead load.
- m. Soil Movement. The subsidence, expansion or lateral movement of the soil excluding flood, earthquake, acts of God and other causes not due to the negligence of a Builder.
- n. Agreement. Refers to the LRWP in all parts hereafter executed.
- o. Fungi. Fungi means any type or form of fungus, including mold or mildew and any micro toxins, spores, scents or by products produced or released by fungi.
2. **EXCLUSIONS**. The following exceptions apply to defects not covered under this Agreement:
- a. Failure of Builder to complete construction or installation of the Home on or before the Effective Date or damages arising from such failure. An incomplete item is not considered a defect hereunder, although a Builder is otherwise obligated to complete such items.
  - b. Any act of terrorism.



- c. Any defect which does not result in actual physical damage.
- d. All consequential damages including, but not limited to, transportation, food, moving, storage, or other incidental expenses related to relocation during repairs.
- e. Property damage or bodily injury.
- f. Any claim reported after an unreasonable delay or later than thirty (30) days after the expiration of the applicable warranty period.
- g. Loss or damage caused to a Home directly or indirectly by insects, birds, vermin, rodents, or wild or domestic animals.
- h. Defect which arises while a Home is used for non residential purposes, including renting, leasing etc.
- i. Damage caused by soil movement, including subsidence of land around the Home or along the utility lines, expansion or lateral movement of the soil, to any Home or to any other Home in the surrounding area.
- j. Any deficiencies in or damage caused by material or work supplied by anyone other than the Builder or its employees, agents, or subcontractors.
- k. Damages or losses not caused by a defect in construction of a Home by a Builder or its employees, agents, or subcontractors, but resulting instead from acts or omissions of the Purchaser, his agents, employees, invitees, accidents, riots, civil commotion, nuclear hazards, acts of God or nature, fire, explosion, blasting, smoke, water escape, windstorms, hail, lightning, falling trees, aircraft, vehicles, flood, mud slides, sinkholes, faults, crevices, earthquake, including land shock waves or tremors before, during or after a volcanic eruption.
- l. Loss or damage resulting from a Purchaser's failure to perform routine maintenance.
- m. Loss or damage resulting from the Purchaser's failure to minimize or prevent such damage in a timely manner.
- n. Loss or damage to or resulting from defects in outbuildings including, but not limited to detached carports, (a fence, utility line or similar union shall not cause an outbuilding to be considered attached), site located swimming pools and other recreational facilities; driveways; walkways; patios; boundary and retaining walls, bulkheads; fences, landscaping (including



sodding, shrubs, trees and planting) French drains; septic systems; off-site improvements; or any other improvement not a part of a Home itself.

- o. Loss or damage resulting from concrete floors of basements and attached or detached garages or chimneys.
- p. Loss or damage to real property which is not part of a Home (land is not considered a part of a Home) covered by this Agreement and which may or may not be included in the final sale price.
- q. Loss or damage resulting from, or made worse by, changes in the grading of the property surrounding a Home by anyone except a Builder or its employees, agents or subcontractors, or changes in the grading or drainage resulting from erosion or subsidence.
- r. Damage resulting from, or made worse by, dampness, condensation or heat build-up caused by the failure of a Purchaser to maintain proper ventilation.
- s. Loss or damage resulting from, or made worse by, modifications or additions to a Home done by a Purchaser, or property under or around a Home, made after commencement of the term of this Agreement (other than changes made in order to meet the obligations of this Agreement).
- t. Any defect, damage or loss which is caused or made worse by the failure of a Purchaser to notify a Builder or LRWP, as applicable, of any defect within the period of time specified by this Agreement.
- u. Any defect, damage, or loss which is caused or made worse by failure by anyone to comply with a Builders' warranty requirements concerning appliances, fixtures or items of equipment.
- v. Loss or damage resulting from or made worse by, negligent maintenance or operation of a Home and its systems by anyone other than a Builder or its employees, agents or subcontractors.
- w. Any deficiencies in fixtures, appliances, and items of equipment whether or not components of the cooling, ventilating, heating, electrical, plumbing or in-house sprinkler systems. During the first year of this Agreement, coverage on fixtures, appliances, and items of equipment (including attachments and appurtenances) is for a Builder's written warranty period, only. Damage caused by improper maintenance or operation, negligence, or



improper service of such systems will not be covered by this Agreement.

- x. Loss or damage resulting from a condition not resulting in actual physical damage to a Home, including uninhabitability or health consequences of insects, unacceptable levels of radon, formaldehyde, carcinogenic substances, or other pollutants and contaminants; or the presence of hazardous or toxic materials.
- y. Loss or damage caused directly by flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these (whether or not driven by wind), water which backs up from sewers or drains, changes in the water table, or water below the surface of the ground (including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool, or other structure) wetlands, springs or aquifers.
- z. Violations of applicable building codes or ordinances unless such violation results in a defect which is otherwise covered under this agreement. Under such circumstances, the obligation of a Builder or the Program Insurer under this Agreement shall only be to repair the defect, but not to restore or bring the Home to conform to code.
- aa. Any loss or damage resulting from the weight and/or performance of any type of waterbed or any other furnishings excessive in weight for which a Home was not designed.
- bb. Loss of damage caused by abuse, misuse, negligence, accident or other casualty or any damages caused by the same.
- cc. Loss or damage resulting from failure to comply with instructions contained in the manufactures warranty manual.
- dd. Loss or damage resulting from improper set up or levelling of a Home.
- ee. Loss or damage caused by normal deterioration due to wear or exposure.
- ff. Loss or damage resulting from the storage of firewood or other wood products under a Home.
- gg. Loss or damage caused by the phenomenon known as roof truss uplift.
- hh. Loss or damage caused by, defects in any part of the foundation or the building, or the attachment of components, such as vents, fascia, skylights, or other such materials, accessories or machinery, the attachment of which is made known to and approved by a



Builder in writing or any other cause beyond the reasonable control of a Builder.

- ii. Loss or damage to products or materials which are not manufactured by a Builder except to the extent of the guarantee given by the actual Builder.
- jj. Loss or damage to used materials or to materials repaired or replaced under this Agreement except to the extent of the remainder of the applicable warranty period (to repaired, repainted, replaced or used materials).
- kk. Loss or damage to or caused by any paints or coating applied after installation not furnished or specifically recommended in writing by a Builder.
- ll. Loss or damage to driveways, basement floors, garage floors, patios, sidewalks, retaining walls, and all concrete constructions which are not load bearing.
- mm. Loss or damage to any tires, axles, wheels, tie down straps, anchors, or any defects that occur owing to skirting installation or anchoring device affixed to the foundation, from or structure of a Home.
- nn. Loss or damage caused by condensation damage to the floor system resulting from improper ground moisture retarder protection.
- oo. Loss or any resultant damage caused by the failure of any appliance, system, or structure which may be covered under any Purchasers' insurance policy whether purchased or not.
- pp. Damage which would not have occurred, in whole or in part, but for the actual or alleged exposure to, existence of, or presence of, any Fungi or bacteria on or within a building or structure, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such damage.

**Builder does not provide any warranty for work done or any materials provided by the Retailer, any installer or contractor or any other person, except where it has expressly so stated in this Agreement.**

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