

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (“Agreement”) is made and entered into as of _____, 200____, by, between and among _____, a _____ (together with its successors and assigns, “Insurer”) and _____, a _____ (together with its successors and assigns, “Builder”), and _____ and _____ (individually and collectively and together with their heirs, successors and assigns, “Principal”).

RECITALS

A. Builder is in the business of constructing homes and other residences in the Commonwealth of Virginia.

B. Principal is the owner/controlling member of Builder.

C. To protect their interests, Builder and Principal have obtained comprehensive general liability insurance coverage from Insurer against liabilities associated with Builder’s construction of homes (“Liability Insurance”).

D. Builder does not typically provide a home protection insurance policy to any buyer (“Buyer”) of a home it builds.

E. As a condition to issuing the Liability Insurance to Builder, Insurer requires Builder and Principal to pay, and indemnify Insurer from, any liabilities that could have been insured under a ten-year home protection insurance policy.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged by the parties, Insurer, Builder and Principal, stipulate and agree as follows:

1. Primary Obligation. Builder and Principal jointly, severally and unconditionally will pay any and all liabilities, losses, damages, causes of action, claims, costs and expenses (collectively, “Claims”) asserted or brought by or on behalf of a Buyer against Builder, Principal or Insurer which could have been insured by the provisions of a ten-year home protection insurance policy described on Exhibit A attached to and incorporated in this Agreement by this reference.

2. Indemnification. Builder and Principal jointly, severally and unconditionally will indemnify, hold harmless and defend Insurer from and against any and all Claims, including, without, limitation, any and all reasonable attorney’s fees/costs, expert witness fees/costs and costs of litigation (whether at trial or on appeal) incurred by Insurer in connection with any Claim. The obligation to defend Insurer includes the obligation to pay the attorney’s fees and costs of counsel selected by Insurer to represent Insurer in any litigation in connection with any Claim.

3. Administrative Provisions.

(g) Headings. The headings used in this Agreement are used for convenience only and are not intended to be used to construe or interpret the substance of this Agreement.

(h) Counterparts; Telecopied Signatures. This Agreement may be executed in any number of counterparts and by different parties to this Agreement on separate counterparts, each of which, when so executed, shall be deemed an original but all such counterparts shall constitute one and the same instrument. Any signature delivered by a party by facsimile transmission shall be deemed to be an original signature to this Agreement.

(i) Attorney's Fees. If any dispute between the parties related to this Agreement is adjudicated, arbitrated, mediated or resolved by any court, arbitrator, mediator or other third party, then the non-prevailing party shall pay all the reasonable attorney's fees, costs and expenses of the prevailing party in any such proceeding.

(j) No Third Party Beneficiary. The provisions of this Agreement are intended to be for the benefit of the parties to this Agreement and their heirs, personal representatives, successors and assigns. No other person will have the right under the provisions of this Agreement to make any claim with respect to any debt, liability or obligation created by the provisions of this Agreement.

(k) Survival of Obligations. The obligations of each party will survive and remain in full force and effect notwithstanding the dissolution, bankruptcy, insolvency, incapacity or death of any party to this Agreement.

(l) WAIVER OF RIGHT TO JURY TRIAL. THE PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, IN ANY ACTION, PROCEEDING, ARBITRATION, MEDIATION OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. THE PARTIES EACH AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A JUDGE WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY PROVISION OF THIS AGREEMENT. THIS WAIVER APPLIES TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

[Remainder of page intentionally blank; signatures on next page.]

IN WITNESS WHEREOF, the parties have signed this Agreement effective the day and year first above written.

_____ [Insurer]

By: _____ (SEAL)

Name: _____

Title: _____

_____ [Builder]

By: _____ (SEAL)

Name: _____

Title: _____

_____ (SEAL) [Principal]

Name: _____

_____ (SEAL) [Principal]

Name: _____

Exhibit A

Ten-Year Home Protection Insurance Coverage Provisions

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