

ARBITRATION LANGUAGE

At the request of participating builders of the Professional Warranty Program, the following language relative to binding arbitration is provided as a guide for an arbitration provision to be included in the builder's purchase agreement. All such provisions should be submitted to builder's counsel for review prior to use in a purchase agreement. Such provisions should include notice of buyer's waiver of a jury trial and should be clearly set-out within the contract and initialed by both parties.

Please note that HUD requires that 10-Year Insured Warranty Plans include binding arbitration as a provision for the settlement of disputes related to the warranty, but that binding arbitration is not the sole remedy under which a buyer can pursue dispute resolution (judicial resolution must be permitted if the buyer so elects in lieu of binding arbitration). The applicable warranty booklet for FHA/VA originally financed homes (PWC Form No. 107H) reflects this requirement. Also, the State of New Jersey approves warranty documents by private warranty plans and also requires that binding arbitration be provided, but not mandated for the resolution of warranty disputes (PWC Form No. 107NJ). Accordingly, the sample contract language contained below is not applicable for homes sold under those situations.

Sample contract language:

ARBITRATION:

a. **Warranty Disputes:** Any and all claims or disputes of any kind arising from or related to warrantable issues shall be submitted to final and binding arbitration pursuant to and in accordance with the provisions of the arbitration agreement contained in the BUILDERS LIMITED WARRANTY (PWC Form No. 107), administered by Professional Warranty Services Corporation, which arbitration agreement is incorporated by reference herein as though fully set forth.

b. **Other Disputes:** In addition to and not in limitation of the foregoing arbitration provision, in the event any cause of action may arise between buyer and seller, whether or not such matter is related to or not related to, or arises directly or indirectly under this contract and such issues are not subject to the arbitration agreement contained in the BUILDERS LIMITED WARRANTY, then such disputes shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ('AAA'). Any fees or costs in initiating arbitration which must be paid prior to such arbitration shall be borne equally by the buyer and seller, provided, however, that any such costs or fees may be awarded to the prevailing party as part of the award of the arbitrator. The decision of the arbitrator shall be binding upon buyer and seller and may, to the extent provided by applicable law, be entered as judgment or order in any court of competent jurisdiction.