

WARRANTY

LIMITED WARRANTY AGREEMENT - VOLUME 1



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CA May 2012

KB Home New Home Limited Warranty Agreement

California - Revised May 2012



**KB HOME
NEW HOME LIMITED WARRANTY AGREEMENT
CALIFORNIA**

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INTRODUCTION

KB HOME is proud of the quality design and construction of the new home we have built for you, and it is of paramount importance to us that our buyers be satisfied with the quality of their homes.

Your home is a unique product, one that requires proper care and maintenance. Under the terms of this KB HOME New Home Limited Warranty Agreement (the “Warranty”) and the Homeowner Maintenance Guide (the “Guide”) with which you have been provided and which is hereby incorporated into this Warranty by reference, you agree to comply with the Guide and to prevent damage and to ensure proper functioning of your home and its various systems (collectively, the “*Home*”).

Given the nature of production homebuilding and the large number of subcontractors and suppliers involved, it is not realistically feasible to build a 100% perfect house. KB HOME has endeavored to build your *Home* in a high-quality way, customized by your Studio selections but on a production basis in order to sell for a reasonable price. We made every effort to build your home in substantial conformance with local building codes and local practices and in substantial conformance to the plans and specifications approved by appropriate governmental agencies. However, while we cannot guarantee perfection or exact conformance, we are committed to live up to the terms of this Warranty by providing you with outstanding customer service and attention during the purchase process and after your *Home* is delivered in accordance with this Warranty. Indeed, whenever you have a concern about the quality or performance of your *Home*, even if you do not believe the concern is “covered” by the terms of this Warranty, we encourage you to bring those concerns to the attention of your local KB HOME Customer Service Department. Our customer service staff will take into account the terms of the Warranty and the Guide in responding to your concerns.

WE STRONGLY URGE YOU TO READ THE ENTIRE WARRANTY AND THE GUIDE CAREFULLY, especially the Warranty Coverage Disputes Section. Please note that the “Functionality Standards” are incorporated into Section II of the Warranty. The Warranty is intended to acquaint you with the extent of coverage and responsibility that KB HOME will assume. As outlined in the Functionality Standards in Section II of the Warranty and as summarized in Section III, you should also be aware that the coverage periods on certain items vary. Additionally, it is important to review the Guide, as it is incorporated into the terms of the Warranty.

After you have read the Warranty and the Guide, you will be asked to review and sign these documents and an Acknowledgment of Receipt, to confirm that you have received the Warranty and the Guide and understand their terms, including the Functionality Standards.

This Warranty is the only warranty given to you by KB HOME in connection with your new *Home*. All other warranties, including, but not limited to, all implied warranties of fitness, merchantability, use, workmanship or habitability, are disclaimed by KB HOME and are excluded pursuant to Section IV-E-4 of the Warranty.

I.

DEFINED TERMS

Throughout this Warranty, various italicized terms will be used. Some italicized terms are defined in the text of the Warranty. The following italicized terms are used throughout the Warranty and will have the meanings set forth below:

“*KB*”: *KB HOME* _____

Phone _____ Fax _____

“*Homeowner*”: _____
Purchaser (please print)

Purchaser (please print)

“*Parties*”: The parties to this Agreement (that is, *KB* and *Homeowner*) referred to herein collectively as the *Parties* or individually as the *Party*.

“*Home*”: The residential dwelling and other building or improvement constructed by *KB* upon Lot _____ of Tract/Plot _____ in _____ County, in the State of California. Such lot is also commonly known by a street address of:

The “*Home*” may also be referred to as the “Structure” in this Warranty.

“*Commencement Date*”: *KB* and *Homeowner* agree that this date is the date of the “close of escrow” for the purchase of the *Home* by the original *Homeowner* from *KB*.

II.

WARRANTY COVERAGE

KB agrees to provide to the *Homeowner* and to any subsequent owner of the *Home*, certain express warranties that various items and components of the *Home* will be free from defect for the periods of time set forth below using the “Functionality Standards” set forth in Sections II-A through II-J, inclusive. These warranties are expressly limited by the contents of the time periods set forth in Sections II and III, the “Exclusions” in Section V, the processes for resolving Warranty coverage disputes under Section VI, and by the other express terms of this Warranty. This Warranty may not be modified, revised, extended or supplemented except in writing signed by the *Homeowner* and an authorized senior officer of *KB*.

The term of each type of Warranty coverage shall be ten (10) years from the *Commencement Date* unless specified in Sections II or III, below, and for Warranty Structural Issues and Soil-Related Issues. Please note that there are a significant number of such coverages that are for a duration of less than ten (10) years. For ease of reference, Section III of this Warranty *summarizes* a number of Functionality Standards and/or other items that are lists items covered by the Warranty for less than ten (10) years. *KB* shall only be liable to warrant the following deficiencies as specifically set forth below. The term of the Warranty for Structural Issues and Soil-Related Issues shall be ten (10) years beginning on the *Commencement Date*.

KB and the *Homeowner* acknowledge that the California State Legislature adopted “SB 800”, also known as the “Right to Repair” bill in its 2002 legislative session. *KB* has adopted the specific Functionality Standards established by SB 800 as the core of the Warranty coverages contained herein. SB 800 also established certain pre-litigation, inspection and right to repair procedures which have been codified into law under Chapter 4 of the California Civil Code, Sections 910 through 938, inclusive (hereinafter, “SB 800”). The provisions, standards, rights, and obligations set forth in this Warranty are binding upon all original *Homeowner(s)* and their successors-in-interest. However nothing in the Warranty shall alter, limit, restrict, or in any way affect a *Homeowner’s* rights, remedies and obligations under SB 800.

The following “Functionality Standards” govern your *Home’s* Warranty coverage:

A. WATER INTRUSION:

1. A door shall not allow unintended water to pass beyond, around, or through the door or its designed or actual moisture barriers, if any.
2. Windows, patio doors, deck doors, and their systems shall not allow water to pass beyond, around, or through the window, patio door, or deck door or its designed or actual moisture barriers, including, without limitation, internal barriers within the systems themselves. For purposes of this paragraph, “systems” include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.

3. Windows, patio doors, deck doors, and their systems shall not allow excessive condensation to enter the Structure (from the outside of the *Home*) and with such condensation causing damage to another component of the *Home*. For purposes of this subparagraph, "systems" include, without limitation, windows, window assemblies, framing, substrate, flashings and trim, if any.
4. Roofs, roofing systems, chimney caps, and ventilation components shall not allow water to enter the Structure or to pass beyond, around, or through the designed or actual moisture barriers, including, without limitation, internal barriers located within the systems themselves. For purposes of this subparagraph, "systems" include, without limitation, framing, substrate, and sheathing, if any.
5. Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow water to pass into the adjacent Structure. For purposes of this subparagraph, "systems" include, without limitation, framing, substrate, flashing, and sheathing, if any.
6. Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow unintended water to pass within the systems themselves and cause damage to the systems. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashing, and sheathing, if any.
7. Foundation systems and slabs shall not allow water or vapor to enter into the Structure so as to cause damage to another building component of the *Home*.
8. Foundation systems and slabs shall not allow water or vapor to enter into the Structure so as to limit the installation of the type of flooring materials typically used for the particular application.
9. Hardscape, including paths and patios, irrigation systems, landscaping systems, and drainage systems, that are installed as part of the original construction, shall not be installed in such a way as to cause water or soil erosion to enter into or come in contact with the Structure so as to cause damage to another building component of the *Home*.
10. Stucco, exterior siding, exterior walls, including, without limitation, exterior framing, and other exterior wall finishes and fixtures and the systems of those components and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall be installed in such a way so as not to allow unintended water to pass into the structure or to pass beyond, around, or through the designed or actual moisture barriers of the system, including any internal barriers located within the system itself. For purposes of this subparagraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.
11. Stucco, exterior siding, and exterior walls shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of

this subparagraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

12. Retaining and site walls and their associated drainage systems shall not allow unintended water to pass beyond, around, or through its designed or actual moisture barriers including, without limitation, any internal barriers, so as to cause damage. This standard does not apply to those portions of any wall or drainage system that are designed to have water flow beyond, around, or through them.
13. Retaining walls and site walls, and their associated drainage systems, shall only allow water to flow beyond, around, or through the areas designated by design.
14. The lines and components of the plumbing system, sewer system, and utility systems shall not leak.
15. Plumbing lines, sewer lines, and utility lines shall not corrode so as to impede the useful life of the applicable systems.
16. Sewer systems shall be installed in such a way as to allow the designated amount of sewage to flow through the applicable system.
17. Shower and bath enclosures shall not leak water into the interior of walls, flooring systems, or the interior of other components of the *Home*.
18. Ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components of the *Home* so as to cause damage.

B. STRUCTURAL ISSUES:

1. Foundations, load bearing components, and slabs, shall not contain significant cracks or significant vertical displacement. The term "significant" is intended by the *Parties* to refer to cracks or vertical displacement significant enough to negatively affect the function or structural integrity of the *Home*.
2. Foundations, load-bearing components, and slabs shall not cause the Structure, in whole or in part, to be structurally unsafe.
3. Foundations, load-bearing components, and slabs, and underlying soils shall be constructed so as to materially comply with the design criteria set by applicable government building codes, regulations, and ordinances for chemical deterioration or corrosion resistance in effect at the time of original construction.
4. A Structure shall be constructed so as to materially comply with the design criteria for earthquake and wind load resistance as set forth in the applicable government building codes, regulations, and ordinances in effect at the time of original construction.

C. SOIL-RELATED ISSUES:

1. Soils and engineered retaining walls shall not cause, in whole or in part, damage to the Structure built upon the soil or engineered retaining wall.
2. Soils and engineered retaining walls shall not cause, in whole or in part, the Structure to be structurally unsafe.
3. Soils shall not cause, in whole or in part, the land upon which no Structure is built to become unusable for the purpose represented at the time of original sale by *KB* or for the purpose for which that land is commonly used.

D. FIRE PROTECTION ISSUES:

1. The *Home* shall be constructed so as to materially comply with the design criteria of the applicable government building codes, regulations, and ordinances for fire protection of the occupants in effect at the time of the original construction.
2. Fireplaces, chimneys, chimney structures, and chimney termination caps shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire outside the fireplace enclosure or chimney.
3. Electrical and mechanical systems shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire.

E. PLUMBING AND SEWER ISSUES:

Plumbing and sewer systems shall be installed to operate properly and shall not materially impair the use of the Structure by its inhabitants. However, the Warranty for plumbing and sewer issues described herein or in other aspects of Section II - Warranty Coverage related to plumbing and sewer issues shall be limited to a duration of four (4) years from the *Commencement Date*.

F. ELECTRICAL SYSTEM ISSUES:

Electrical systems shall operate properly and shall not materially impair the use of the Structure by its inhabitants. However, the Warranty for electrical system issues described herein or in other aspects of Section II - Warranty Coverage related to electrical system issues, shall be limited to a duration of four (4) years from the *Commencement Date*.

G. OTHER AREAS OF CONSTRUCTION:

1. Exterior pathways, driveways, hardscape, sidewalls, sidewalks, and patios installed by *KB* shall not contain cracks that display significant vertical displacement or that are excessive. The warranty against cracks and exterior pathways, driveways, hardscape, sidewalls, sidewalks and patios described herein or in other aspects of Section II - Warranty Coverage related to such issues, shall be limited to a duration of four (4) years from the *Commencement Date*.

2. Stucco, exterior siding, and other exterior wall finishes and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall not contain significant cracks or separations.
3. This section governs the Functionality Standards for Manufactured Products delivered by *KB* with the *Home*:
 - (a) To the extent not otherwise expressly covered by other Functionality Standards in this Warranty, “Manufactured Products” shall be installed by *KB* so as not to interfere with the products’ useful life, if any.

The term “Manufactured Products” includes the following items: windows, doors, roofing surface materials, plumbing products and fixtures, fireplaces, electrical fixtures, air conditioning condenser units and furnaces, countertops, cabinets, interior and exterior paint, and appliances. Further, among the “appliances” included in this definition are: barbeque, burglar alarm, dishwasher, fans, freezer, garbage disposal, garage door opener, hot water dispenser, ice maker, intercom, microwave oven, range, refrigerator, smoke detector, trash compactor, washer or dryer, water heater and whirlpool bath.

- (b) For purposes of this Subparagraph II-G-3, the term “useful life” means a representation or warranty of how long a Manufactured Product is warranted, through its express limited warranty or any written representations provided by its manufacturer.
- (c) For purposes of this Subparagraph II-G-3, the term “Manufactured Product” means a component of the *Home* that is manufactured completely offsite. The warranty coverage for a Manufactured Product shall fall in one of the following two subcategories: “Manufacturer-Warranted Products” and “KB-Warranted Products,” defined as follows:
 - (i) Manufacturer-Warranted Products - “Manufacturer-Warranted Products” are those Manufactured Products for which the *Homeowner* shall rely on the manufacturer’s warranty for the warranty of that product. *Homeowner* recognizes that *KB* makes no representation as to the useful life of these Manufacturer-Warranted Products; however, all manufacturer’s warranties for these Manufacturer-Warranted Products shall be of at least one (1) year in duration beginning with the *Commencement Date*. *KB* provides no warranty whatsoever for these Manufacturer-Warranted Products. A list of the Manufacturer-Warranted Products, the names and addresses of the manufacturers associated with such products and other contact information for the applicable manufacturer is enclosed as Exhibit I to this Warranty. To the extent a *Homeowner* finds any defects or has any other claim with respect to any Manufacturer-Warranted Products listed in Exhibit I, it is the *Homeowner*’s obligation to follow the procedures in the

applicable manufacturer's warranty and deal directly with the manufacturer of such Manufacturer-Warranted Product. No claim can be made to *KB* with respect to Manufacturer-Warranted Products; provided, however, *KB* agrees to use reasonable efforts to assist *Homeowner* in dealing with coordinating with such manufacturers to the extent reasonably necessary.

- (ii) KB-Warranted Products - "KB-Warranted Products" are defined as all Manufactured Products which are not Manufacturer-Warranted Products. *KB* represents that the useful life of each of the KB-Warranted Products shall be for one (1) year. *KB's* Warranty of the KB-Warranted Products shall be for one (1) year after the *Commencement Date*. Claims of defects associated with such KB-Warranted Products shall be made directly to *KB* following the dispute resolution procedures described in this Warranty.
 - (d) Only where a Manufactured Product is damaged as a result of another component of the *Home's* failure to be in compliance with any of the Functionality Standards, will damage to the Manufactured Product be a recoverable element of damages, if any. This subparagraph does not limit recovery if there has been damage to another building component of the *Home* caused by a defect in the product during the Manufactured Product's useful life.
 - (e) Subparagraph II-G-3 does not apply in any action seeking recovery solely for a defect in a Manufactured Product located within or adjacent to the *Home*.
 - (f) *KB's* warranty coverage for KB-Warranted Products is further limited with respect to any "Cosmetic Deficiencies" in such KB-Warranted Products as defined and more particularly described in Section II-I-3 below.
- 4. Heating, if any, shall be installed so as to be capable of maintaining a room temperature of 70 degrees Fahrenheit at a point three feet above the floor in any living space.
 - 5. Living space air-conditioning, if any, shall be provided in a manner consistent with the size and efficiency design criteria specified in Title 24 of the California Code of Regulations or its successor.
 - 6. For "attached" structures only – Attached structures shall be constructed to comply with inter-unit noise transmission standards set by the applicable government building codes, ordinances, or regulations in effect at the time of the original construction. If there is no applicable code, ordinance, or regulation, this subparagraph does not apply and no warranty is provided with respect to interior noise transmission in applicable attached structures. However, the Warranty for inter-unit noise transmission in attached structures, if any, described herein or in

any other aspects of Section II-Warranty Coverage related to inter-unit noise transmission shall be limited to the later of (a) one (1) year from the *Commencement Date* or (b) one year from the date of the original occupancy of each applicable adjacent unit affecting the *Homeowner*.

7. Irrigation systems and drainage shall operate properly so as not to damage landscaping or other external improvements. However, the Warranty for irrigation systems and drainage described herein or otherwise described in other aspects of Section II-Warranty Coverage related to irrigation systems and/or drainage, shall be limited to a duration of one (1) year from the *Commencement Date*.
8. Untreated wood posts shall not be installed in contact with soil so as to cause unreasonable decay to the wood based upon the finish grade at the time of original construction. However, the Warranty for untreated wood posts described herein or elsewhere in Section II - Warranty Coverage related to untreated wood posts shall be limited to a duration of two (2) years from the *Commencement Date*.
9. Untreated steel fences and adjacent components shall be installed so as to prevent unreasonable corrosion. However, the Warranty for steel fences and adjacent components described herein or elsewhere in Section II - Warranty Coverage related to untreated steel fences and/or adjacent components shall be limited to a duration of four (4) years from the *Commencement Date*.
10. Paints and stains shall be applied in such a manner so as not to cause deterioration of the building surfaces for the length of time specified by the paint or stain manufacturers' representations, if any. However, the Warranty for paint and stains described herein or in other aspects in Section II - Warranty Coverage related to paint and/or stains shall be limited to a duration of five (5) years from the *Commencement Date*.
11. Roofing materials shall be installed so as to avoid materials falling from the roof of the *Home*.
12. Plants and other organic landscaping materials provided by *KB* as part of the *Home* shall be warranted to survive until one (1) year from the *Commencement Date*. Landscaping equipment systems installed by *KB* (for example, sprinklers and landscaping pipes), if any, shall be warranted by *KB* for a duration of one (1) year from the *Commencement Date*.
13. Ceramic tile and tile backing shall be installed in such a manner that the tile does not detach.
14. Dryer ducts shall be installed and terminated pursuant to manufacturer installation requirements. However, the Warranty for dryer ducts described herein or in other aspects of Section II - Warranty Coverage related to dryer ducts, shall be limited to a duration of two (2) years from the *Commencement Date*.

15. Structures shall be constructed in such a manner so as not to impair the occupants' safety because they contain public health hazards as determined by a duly authorized public health official, health agency, or governmental entity having jurisdiction. This paragraph does not limit recovery for any damages caused by a violation of any other paragraph of this section on the grounds that the damages do not constitute a health hazard.

H. COMPREHENSIVE INTENT; OTHER MATTERS CAUSING DAMAGE:

The standards set forth in this Warranty are intended to address every function or component of a Structure or *Home*. However, to the extent that a function or component of a structure is not addressed by the standards set forth in this Section II of the Warranty, such function and/or component shall only be warrantable by *KB* if and to the extent it causes damage.

I. FIT AND FINISH WARRANTY; ONE-YEAR WARRANTY:

1. Except as expressly set forth below, for a period of one (1) year from the *Commencement Date*, *KB* warrants that the *Home* will be free of deficiencies in certain items considered to be the "fit and finish" of the *Home*. *KB* hereby provides a one (1) year express limited warranty covering the fit and finish of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes and trim (collectively, the "components"). For purposes of this Warranty, "fit and finish" shall mean the non-structural, cosmetic appearance or alignment of the items mentioned above, and "deficiencies" shall mean the fit and finish of a component which fails to meet the standards of quality as measured by applicable industry standards. The one (1) year paint "fit and finish" warranty only applies to the cosmetic appearance of the paint finish. *KB* separately warrants the paint's original application for five (5) years as it relates only to the deterioration of the underlying building surfaces for that five (5) year period only.
2. The fit and finish warranty described in subparagraph II-I-1 above shall not apply to damage to those components caused by defects in other components governed by the other provisions of this Warranty.
3. Exceptions for Certain Cosmetic Deficiencies - The following are considered to be solely "Cosmetic Deficiencies," and are not covered under this Warranty:
 - Scuffed, scratched or smudged painted surfaces, flooring or countertops;
 - Chipped or stained porcelain, tile, grout or fiberglass in countertops or plumbing fixtures;
 - Chipped or otherwise defective surfaces of appliances or plumbing fixtures;
 - Torn or defective window or door screens;
 - Smudged, scratched or stained cabinet surfaces or finishes; or
 - Broken glass, windows or mirrors.

KB will not be obliged to correct or repair any Cosmetic Deficiency where such deficiency: (a) is not readily visible; or (b) was caused in any way by

Homeowner or any agent or guest of *Homeowner*; or (c) is due to non-compliance with the Warranty and/or *Homeowner*'s maintenance obligations as described in the Guide; or (d) is due to normal wear and tear. Further, as to any Cosmetic Deficiencies which *Homeowner* fails to bring to *KB*'s attention during the walk-through or within thirty (30) days following the *Commencement Date*, those deficiencies will be deemed to have been caused by *Homeowner* or its agents, unless otherwise reasonably established by *Homeowner*. This limitation for Cosmetic Deficiencies applies to further limit the Warranty for KB-Warranted Products as defined and described in Subparagraph II-G-3, above.

J. DEFINITIONS:

As used in Section II of this Warranty:

1. "Structure" means any residential dwelling, other building, or improvement located upon a lot or within a common area.
2. "Designed moisture barrier" means an installed moisture barrier specified in the plans and specifications, contract documents, or manufacturer's recommendations.
3. "Actual moisture barrier" means any component or material, actually installed, that serves to any degree as a barrier against moisture, whether or not intended as such.
4. "Unintended water" means water that passes beyond, around, or through a component or the material that is designed to prevent that passage.
5. "Close of escrow" means the date of the close of escrow between *KB* and the original *Homeowner*.
6. "Claimant" or "*Homeowner*" includes the individual owners of single-family homes, individual unit owners of attached dwellings.

III.

WARRANTY COVERAGES LESS THAN TEN (10) YEARS

The following table summarizes — for informational purposes only — portions of the Warranty for which the coverage is less than ten (10) years from the *Commencement Date*.

<u>Function</u>	<u>Time Limit</u>	<u>Warranty Section References</u>
Operation of plumbing and sewer systems	Four (4) years from <i>Commencement Date</i>	II-A-14, II-A-15, II-E and II-G-3
Cracks in exterior pathways, driveways, hardscape, sidewalks, sidewalks and patios	Four (4) years from <i>Commencement Date</i>	II-A-9 and II-G-1
Manufactured Products	“Manufactured Products” are defined in II-G-3; <u>Manufacturer-Warranted Products</u> - as warranted by manufacturer (minimum one year); and <u>KB-Warranted Products</u> - one year	II-A-2, II-A-3 and II-G-3
Noise for attached units	Later of one (1) year from <i>Commencement Date</i> or one (1) year from original occupancy of adjacent units	II-G-6
Operation of irrigation and drainage system	One (1) year from <i>Commencement Date</i>	II-A-9, II-A-12, II-A-13, II-G-7
Decay of untreated wood posts	Two (2) years from <i>Commencement Date</i>	II-G-8
Unreasonable corrosion of untreated steel fences and adjacent components	Four (4) years from <i>Commencement Date</i>	II-G-9
Deterioration of building surfaces due to paint or stain deficiencies	Five (5) years from <i>Commencement Date</i>	II-G-10
Landscaping	Plants/organic materials - one (1) year from <i>Commencement Date</i> ; Landscaping equipment systems - one (1) year from <i>Commencement Date</i>	II-A-9, II-G-7 and II-G-12
Dryer ducts	Two (2) years from <i>Commencement Date</i>	II-G-14
Fit and Finish Warranty	One (1) year from <i>Commencement Date</i> ; provided, however, certain Cosmetic Deficiencies must be claimed within thirty (30) days of <i>Commencement Date</i>	II-I (1) through (3) and V-W

IV.

MAKING A CLAIM

- A. **HOMEOWNER'S MAINTENANCE OBLIGATION** – By signing this Warranty and purchasing the *Home*, *Homeowner* agrees that it will perform all reasonable maintenance consistent with the terms of any manufacturers' maintenance obligations and schedules provided to the *Homeowner* and the terms of the Guide (incorporated herein by reference), and further take care of the *Home* in accordance with commonly accepted maintenance practices to prolong the life of the materials and construction in the *Home*. *Homeowner* acknowledges that *KB* and/or any manufacturers of Manufacturer-Warranted Products shall have the right, but not the obligation, by written notice to *Homeowner* to supplement and/or amend any such maintenance and preventative maintenance requirements and recommendations from time to time. *Homeowner* hereby acknowledges and agrees that *Homeowner* shall faithfully follow all such maintenance and preventative maintenance requirements and recommendations and *Homeowner* shall cause any tenant or occupant of the *Home* to faithfully follow such requirements and recommendations.
- B. **INITIAL CLAIM** – *Homeowner* agrees that with respect to any concerns about the quality or condition of the *Home*, *Homeowner* shall contact *KB* in writing just as soon as reasonably possible after the discovery of a problem and to contact *KB* **first** if it is believed that the type of problem *Homeowner* has may be covered by the Warranty. Since it would not be reasonable to *KB* or its subcontractors if they were not first given an opportunity to inspect and resolve such a Warranty claim, *Homeowner* accepts and agrees that, in such event, *KB* will not be responsible for unauthorized repairs done by anyone other than *KB*, its agents, or its subcontractors, or for the cost of such repairs. Furthermore, the unauthorized repair of any covered warranty item done by anyone other than *KB*, its agents, or its subcontractors will void the Warranty for that covered item and may void the Warranty on related covered items. *Homeowner* agrees that, as an express condition of this Warranty, *KB* will be given a written Warranty claim by *Homeowner*, a reasonable opportunity to inspect the *Home* and, if action is required under the Warranty, *KB* will be given a reasonable opportunity (and access to the *Home*) to resolve the *Homeowner's* claim. Further, *Homeowner* recognizes and agrees that both California state law and the express terms of this Warranty require that *KB* be provided with such first opportunity to cure any applicable Warranty claim. In the event *KB* is not provided a reasonable opportunity to inspect the *Home* or to take the action required under the Warranty to cure any problems described by *Homeowner*, *Homeowner* will be in breach of the Warranty.
- C. **FAILURE TO PROVIDE *KB* WITH TIMELY WRITTEN CLAIM** – Except as expressly noted in this Warranty with respect to emergency Warranty claims, *Homeowner* shall provide timely written notice of all Warranty claims. No Warranty claim shall be considered timely and may be rejected in *KB's* sole discretion if it is made either more than 30 days after *Homeowner* becomes aware of any problem believed to be potentially covered by this Warranty (or is made after the applicable Warranty period(s) set forth in Section II or III above). Except for emergency Warranty claims described below, claims may not be made by telephone or by word of mouth alone. Nothing herein is intended to

change or extend any statute of limitations/repose as expressly provided in SB 800 or the California Civil Code.

- D. **EMERGENCY CLAIMS** – In the event of requests for covered emergency repairs only, claims may be made by telephone to a representative of the *KB* Customer Service Department, but must be followed up promptly with a completed written Warranty Claim Form. *KB*'s representatives will provide an emergency claim number to *Homeowner* at time of walk-through.
- E. **RESPONSE TO CLAIMS** – Upon receipt of a Warranty claim, *KB* will arrange for a member of its Customer Service Department to determine whether or not the claim is covered by the terms of this Warranty. *Homeowner* agrees that if the claim is covered by the Warranty, *KB* has the choice under the terms of this Warranty of (a) repairing the item, (b) replacing the item or (c) paying the *Homeowner* the reasonable cost of repairing or replacing the item. Such decision to repair, replace or reimburse will be made solely by *KB* and/or its subcontractors, suppliers or consultants in its or their sole discretion. *KB* will determine the materials and methods that should be used in making any repair, and whether repair or replacement is most appropriate, in their sole discretion. *Homeowner* acknowledges and accepts that substitutions of brands, colors or patterns may be necessary and perfect matches are not guaranteed.
1. **REPAIR MATERIALS/SUBCONTRACTORS** – If *KB* elects to perform repairs in response to a Warranty claim, all of such repairs will be made with materials or components of an equal or better grade or quality than the materials or components used in the original construction of the *Home*. *KB* has the right to independently select the contractors, subcontractors or tradespeople used for repair or replacement work in its sole discretion.
 2. **NO OBLIGATION FOR REIMBURSEMENT** – *KB* has no obligation to reimburse the *Homeowner* for work performed by the *Homeowner* or for amounts paid by *Homeowner* to a repairperson or subcontractor who has not been pre-approved, in writing, by *KB*'s Customer Service Department. However, in the event of an emergency caused by a defect expressly covered by this Warranty in which the *Homeowner* can reasonably demonstrate that *KB* could not be contacted by the *Homeowner* despite *Homeowner*'s diligent efforts, *KB* will reimburse the *Homeowner* for the reasonable and actual costs of repairing or replacing the item.
 3. **TIME FOR CORRECTIVE WORK** – *KB* intends to fulfill its obligations to respond to a warranty claim for items covered by this Warranty within thirty (30) days of its receipt of a completed Warranty Claim Form so long as *KB* is given reasonable cooperation by *Homeowner* in terms of timely access to the *Home* to resolve the claim or perform applicable repairs. However, *Homeowner* recognizes that the thirty (30) day period for certain covered repairs or replacements may be required to be extended for circumstances beyond the reasonable control of *KB*, such as the unavailability of parts, strikes, labor or material shortages, unsuitable weather conditions, lack of cooperation by the *Homeowner* or the magnitude of the repair required.

4. LIMITS ON WARRANTY OBLIGATIONS –THIS WARRANTY AND THE EXPRESS WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED; THERE ARE NO WARRANTIES CONCERNING THE *HOME* WHICH EXTEND BEYOND THOSE EXPRESSLY SET FORTH HEREIN. ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, THE IMPLIED WARRANTY OF USE, THE IMPLIED WARRANTY OF WORKMANSHIP, AND THE IMPLIED WARRANTY OF HABITABILITY, ARE EXPRESSLY DISCLAIMED BY KB, WAIVED BY *HOMEOWNER* AND EXCLUDED.

Homeowner also understands and agrees that KB shall not be obligated to incur any costs for the repair or replacement of defects in the *Home* or for the reimbursement of *Homeowner* which, in the aggregate, exceed the amount value of the *Home*.

- F. CLAIMS NOT COVERED BY WARRANTY – If KB takes the position that a particular claim is not covered by this Warranty or otherwise rejects a claim, KB will provide *Homeowner* with a notification describing why the *Homeowner's* claim is not covered within twenty-one (21) days of KB's receipt of a completed Warranty Claim Form. If *Homeowner* is not satisfied by KB's determination to decline a claim and *Homeowner* wants to pursue the issue further with KB, *Homeowner* agrees to take the steps described in Section VI, below. Similarly, *Homeowner* agrees that it must proceed under Section VI if *Homeowner* is not satisfied with any aspect of KB's handling of a particular written claim made under this Warranty, including, without limitation, the extent or quality of any applicable repairs.
- G. PERMITTED RELEASES – *Homeowner* acknowledges that KB shall have the right to require a reasonable release if it resolves a Warranty claim in whole or in part by cash payment or other form of reimbursement. Each *Party* shall, under such circumstance, have the right to negotiate the terms and conditions of such reasonable release.

V.

EXCLUSIONS

Notwithstanding other provisions of this Warranty, certain defects or damages are explicitly excluded from the coverage of the Warranty. To that end, ***Homeowner recognizes that notwithstanding the terms of Sections II or III of the Warranty, this Warranty does NOT cover any of the following:***

- A. Damage to the *Home* due to ordinary wear and tear, normal deterioration or lack of *Homeowner* maintenance. For the purposes of this subparagraph, a *Homeowner's* "lack of maintenance" shall be determined by a failure of *Homeowner* to meet the requirements of the Guide, which has been defined above and incorporated in this Warranty by reference. Moreover, *Homeowner* acknowledges and agrees that, from time to time, *KB* may perform a maintenance task as a courtesy to *Homeowner* that could otherwise have been denied by *KB* pursuant to the terms of the Guide or other limitations described in this Warranty; however, *KB's* performance of such a task on one or more occasions does not imply or require that *KB* will perform a similar task at a later date, nor shall such performance be deemed to extend the Warranty time periods described herein.
- B. Damage to the *Home* caused by casualties normally covered by standard *Homeowner's* insurance policies or damage resulting from natural catastrophes, acts of God, tropical storms, tropical depressions, hurricanes, fire, smoke, war, terrorism, explosion, nuclear hazards, volcanoes, riots, civil unrest, vandalism, blasting, aircraft crash, aircraft noise, vehicles, mud slides, sink holes, power surges, power failures, water escape, flood, wind, hail, lightning, earthquake, insects or falling trees, or any unforeseen acts of nature in excess of the design criteria expressed by the applicable building codes, regulations and ordinances in effect at the time of original construction. Further, this Warranty does not cover loss or damage to the *Home* or to persons or property caused directly or indirectly by insects, birds, vermin, rodents or wild or domestic animals.
- C. Damage caused either by the abuse of the *Home* or use of the *Home* for non-residential purposes or any other manner for which it is not intended.
- D. Damage resulting from or made worse by the *Homeowner's* failure to take appropriate action to prevent further damage, including notifying *KB* of any defect within a reasonable time under the circumstances. Any such failures by *Homeowner* to: (1) take appropriate action to prevent further damage, (2) notify *KB* within a reasonable time, or (3) give *KB* the opportunity to inspect and/or repair, shall reduce the claims by the extent of such failures, and result in denial or limitation of any claims or reimbursement requests or demands by *Homeowner*, *Homeowner's* insurers or its subrogees to not to exceed *KB's* cost to repair any such claims if *Homeowner* had taken the action described in (1), (2), or (3) above.
- E. Damage to the *Home* caused by the *Homeowner* (including accidental damage and damage during move-in) or damage caused by animals (including pets), or by an invitee, lessee, guest trespasser, tenant, renter or other occupant of the *Home*.

- F. Damage resulting from (a) any changes after the *Commencement Date* to the grading or drainage of the property on which the *Home* is located or (b) modifications or additions to the *Home* or the property under or around the *Home* after the original *Homeowner* took title to the *Home*.
- G. Defects in or defects caused by materials furnished or work done by *Homeowner* or at the request of *Homeowner* by anyone other than *KB* or its employees, agents or subcontractors expressly selected or approved by *KB*.
- H. Insignificant cracks, non-excessive cracks and cracks that do not display significant vertical displacement in concrete, masonry or stucco surfaces. *Homeowner* acknowledges that it is not unusual for insignificant cracks to typically appear in such surfaces and frequently occur due to normal settling of a *Home*. *Homeowner* acknowledges that it has been informed, and is hereby again informed that (a) when new concrete hardens, insignificant shrinkage cracks often occur, and (b) because concrete is not an elastic material, insignificant cracks are inevitable and are rarely a cause for concern.
- I. Insignificant separations or cracks in stucco, exterior siding and other exterior wall finishes and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns and plant-ons. *Homeowner* has been informed, and is hereby again informed that insignificant separations and cracks are not unusual in such surfaces.
- J. Insignificant cracks which appear more than one (1) year after the *Commencement Date* in grouting of ceramic tile joints or at junctions with other materials such as a bathtub. *Homeowner* has been informed, and is hereby again informed that insignificant cracks are commonly due to normal wear and tear and/or shrinkage conditions and are not warranted.
- K. Insignificant wood cracks or minor openings of wooden joints such as in panel doors, mitered casings and solid paneling. Such cracks and openings are generally caused by normal shrinkage during the drying-out process of wood in the *Home* and may be mitigated with proper maintenance, including caulking. In addition, the Warranty does not cover cracking, checking, twisting or turning of wood beams, unless such condition(s) prevent(s) the beam from otherwise meeting industry structural standards.
- L. Loss or damage to land.
- M. Any condition which does not result in actual physical damage to the *Home*, including, but not limited to, inhabitability or health risk due to the presence or consequence of unacceptable levels of radon gas, formaldehyde, electric and magnetic fields, carcinogenic substances, dust, or other pollutants and contaminants, noise, unpleasant odors, or the presence of hazardous or toxic on-site materials.
- N. Negligent, improper or inadequate maintenance or operation, or changes, additions, or alterations by *Homeowner* or any parties other than *KB* or its agents with respect to the *Home*, its systems, appliances, equipment, and its fixtures or appurtenances. Negligent,

improper or inadequate maintenance will be determined by *Homeowner's* failure to comply with the terms of the Guide, which is incorporated herein by reference.

- O. Loss or damage caused by or resulting from the abnormal loading of structural elements which exceeds designed loads, including, without limitation, water beds, safes, weight benches, large fish tanks and pool tables.
- P. If a claim for damages is made under this Warranty, *Homeowner* is only entitled to the damages expressly described in Section 944 of the California Civil Code, which are as follows: (1) damages for the reasonable value of repairing any violation of the Functionality Standards set forth in the Warranty, (2) the reasonable cost of repairing any damages caused by *KB's* repair efforts, (3) the reasonable cost of repairing and rectifying any damages resulting from the failure of the *Home* to meet the Functionality Standards, (4) the reasonable cost of removing and replacing any improper repair by *KB*, (5) reasonable relocation and storage expenses, (6) lost business income if the *Home* was used as a principal place of a business licensed to be operated from the *Home*, (7) reasonable investigative costs for each established defect covered under the Functionality Standards, and (8) all other costs or fees recoverable by contract or statute. **Except as expressly listed above, all other types of claims of damages are EXCLUDED from the coverage of this Warranty.**
- Q. Loss or damage resulting from, or made worse by: (i) changes to the grading of the property surrounding the *Home* by anyone, including changes made by neighbors of *Homeowner*, except *KB* or its authorized employees, agents or subcontractors, (ii) changes in the grading or drainage resulting from erosion or subsidence, or (iii) other soil movement. *KB* assumes no responsibility for damage caused by the lack of or improper landscaping, changing the grade of a yard, or fencing, patios, spas, pools or otherwise which alters the grading or the water table.
- R. Loss or damage resulting from, or made worse by: dampness, condensation, cold or heat buildup caused by *Homeowner's* failure to maintain proper ventilation in accordance with the terms of the Guide.
- S. Loss or damage due to the actions of others, including, without limitation, actions by or failure to act of cities, counties or utility companies, including failure to provide utility service to the *Home* or its property (including, without limitation, any delay or failure to provide DSL, internet, cable or telephone services to the *Home*).
- T. Loss or damage due to loss of views or privacy, including, without limitation, loss of views or privacy resulting from the construction or occupancy of homes adjoining or adjacent to the *Home*. No warranty of any kind is made as to the future use of any land parcels adjacent to or near the *Home*.
- U. Loss or damage to wiring to and between communication devices from the source of power, whether or not connected to the interior wiring system of the *Home*. Such devices shall include, but not be limited to, telephone systems, television cable systems, intercom systems, computer systems and security systems.

- V. Damage to tract boundary walls or fencing occurring after obligations for maintenance of such walls or fencing has been dedicated to and accepted by a homeowners association, maintenance district or governmental entity.
- W. Claims for “Cosmetic Deficiencies” (see Subsection II-I-3 above) made after the date thirty (30) days after the *Commencement Date*.

VI.

WARRANTY COVERAGE DISPUTES

- A. INTENT OF THE *PARTIES* – *KB* and *Homeowner* agree that all disputes in any way related to the coverage of this Warranty (the “Disputes”) shall be resolved according to the “Mediation Procedures” and “Mandatory Final and Binding Arbitration of Disputes” provisions of Subsections VI-B and VI-C of this Warranty.

In the event that *Homeowner* is not satisfied with *KB*’s rejection or handling of all or part of any claim under this Warranty, *Homeowner* understands and agrees that this Warranty requires *Homeowner* to make a claim that complies with the terms of Section IV of the Warranty and thereafter, go through the entire process described in this Section.

In the event that *Homeowner* is not satisfied with *KB*’s rejection or handling of a Warranty claim, *Homeowner* understands and agrees that this Warranty requires *Homeowner* to go through the entire process described in this Section VI before filing any lawsuit against *KB* in the state or federal courts in the event Arbitration and Judicial Reference are determined to be unenforceable.

- B. PRE-ARBITRATION MEDIATION

1. The *Parties* acknowledge and agree the California State Legislature adopted “SB 800” in its 2002 state legislative session which added Sections 910 through 938, inclusive to Chapter 4 of the California Civil Code. In this Section VI of the Warranty regarding Warranty Coverage Disputes, the above-referenced Chapter 4 of the California Civil Code shall be referred to herein as the “State Mandated Pre-Litigation Procedures.”
2. *Homeowner* acknowledges its receipt at the time of sale of the text of SB 800 (Title 7 of California Civil Code Division 2, Part 2) (the “SB 800 Documents”).
3. The *Parties* each agree to abide by the terms of the State Mandated Pre-Litigation Procedures before *Homeowner* can begin the Arbitration process described in Subsection VI-C, below.
4. If *Homeowner* disputes or is unsatisfied with *KB*’s handling or rejection of all or any portion of a particular Warranty claim, *Homeowner* must commence the State Mandated Pre-Litigation Procedures outlined in Sections 910 and the following sections of the state’s Civil Code. A copy of the entire SB 800 legislation was provided to the *Homeowner* during the sales procedures leading up to the original

Homeowner's acquisition of the *Home*. In the event that *Homeowner* does not have a copy of these State Mandated Pre-Litigation Procedures, *KB* shall provide a copy at no charge to the *Homeowner*. *Homeowner* shall be obligated to follow the requirements imposed upon "*Homeowners*" or "*claimants*" as described in the statutory State Mandated Pre-Litigation Procedures. Similarly, *KB* agrees to abide by the requirements of the "*builder*" as described in the State Mandated Pre-Litigation Procedures.

5. The requirements of the State Mandated Pre-Litigation Procedures, as described in SB 800, include, without limitation, the following: (a) *Homeowner* shall be obligated to provide the notice of claim of violation of this Warranty's Functionality Standards as described in Section 910 of the Civil Code; (b) *KB* shall be obligated to provide the builder response to claims violation and to otherwise provide documents to *Homeowner* as required by Section 912; (c) *KB* shall be obligated to provide the builder acknowledgement of claim described in Section 913; (d) *KB* shall be obligated to adhere to the consequences of its failure to acknowledge a claim as described in Section 915; (e) *KB* shall perform the inspection or inspections described in Section 916; (f) *KB* shall be obligated to provide an offer in writing to repair, if applicable under Section 917; (g) *Homeowner* shall be obligated to follow the procedures regarding its response to *KB's* offer to repair pursuant to Section 918; (h) *KB* shall be obligated to provide the offer to mediate, as applicable, pursuant to Section 919; and (i) *KB* shall be obligated to follow the timeframes for any repairs described in Section 921. All "Section" references in Subparagraph VI-B-5 refer to sections of the California Civil Code.
6. *Homeowner* acknowledges that *KB* has recommended that *Homeowner* review the entire text of these and other provisions of SB 800 (which have been provided to *Homeowner*) in order to fully understand the State Mandated Pre-Litigation Procedures incorporated in this Warranty. The *Parties* acknowledge that the short description of each *Party's* obligations described in Subparagraph VI-B-3 above is not exhaustive and the terms of the statutory State Mandated Pre-Litigation Procedures described in this Warranty and in Chapter 4 of the Civil Code shall be binding upon each *Party* in the event of a Warranty coverage dispute. As part of the State Mandated Pre-Litigation Procedures, 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.

C. MANDATORY FINAL AND BINDING ARBITRATION OF DISPUTES

1. The *Parties* understand and acknowledge that disputes concerning the repair of the *Home* and/or the coverage of such repairs under the Warranty and/or under SB 800 need to be resolved as expeditiously as possible so that the repairs can be accomplished on a timely basis. Due to the delays present at many of the courts in the State of California, which can significantly delay the resolution of a matter for years, the *Parties* agree to have any and all warranty coverage disputes, and any SB 800 claims submitted to arbitration. This is a voluntary decision of each

Party and is of mutual benefit to *KB* and *Homeowner*. *Homeowner* acknowledges that the benefits of arbitration, such as the timely and cost-effective rendering of a decision, outweigh the burdens of such a process.

2. If the *Parties* have completed all of the required State Mandated Pre-Litigation Procedures described in Subsection VI-B above but the *Parties* have still been unable to resolve the Dispute, then, if either of the *Parties* wishes to pursue the matter further, ANY AND ALL OF THE UNRESOLVED ASPECTS OF THE DISPUTE BETWEEN THE *PARTIES* SHALL BE RESOLVED SOLELY AND EXCLUSIVELY THROUGH MANDATORY FINAL AND BINDING ARBITRATION (“Arbitration”) IN ACCORDANCE WITH THE PROCEDURES SET FORTH HEREIN.
 - (a) **Selection of the Arbitrator (“Arbitrator”).** Within ten (10) days of receipt by either *Party* of a written request to resolve the Dispute between them by Arbitration, the *Parties* shall submit such Dispute to mandatory final and binding arbitration at DeMars & Associates, Ltd. (“DeMars”), or if *Homeowner* objects to DeMars, at another arbitration provider as may be mutually acceptable to the *Parties* (e.g., Judicial Arbitration and Mediation Services, Inc. [“JAMS”], American Arbitration Association [“AAA”] or similar entity providing arbitration services) (the “Arbitration Provider”). If the *Parties* are unable to agree upon an Arbitration Provider within such ten (10) day period, then any *Party* may thereafter seek to have an arbitrator appointed by the Superior Court or other similar court of competent jurisdiction for the County in which the *Home* is located under the state Code of Civil Procedure. The Arbitrator shall be a neutral and impartial retired judge or an attorney or other person with substantial experience in relevant matters.
 - (b) **Arbitration Rules and Procedures; Authority of the Arbitrator.** The Arbitration proceedings shall be conducted in accordance with the rules and procedures of the Arbitration Provider (e.g., DeMars Construction Arbitration Program for Home Warranty Disputes, the Streamlined Rules and Regulations of JAMS, or the commercial arbitration rules of AAA) so long as such rules and procedures are reasonable and fair to the *Parties* and in accordance with the general rules and procedures set forth in Section B below. The Arbitrator shall have the authority to try all issues, whether of fact or law, including, without limitation, all questions and disputes regarding arbitrability, which shall be determined in accordance with the Federal Arbitration Act. Additionally, the Arbitrator shall have the exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this agreement to arbitrate, including without limitation any claim that all or any part of this agreement to arbitrate is void or voidable. The *Parties* shall cooperate in the Arbitration proceedings.
 - (c) **Resolution of Covered Disputes by Judicial Reference.** If and to the extent the Arbitration procedures provided for herein are determined to be

unenforceable in whole or material part preventing their use, the Dispute shall be submitted for resolution to general judicial reference (“Judicial Reference Proceedings”) as provided herein.

- (i) Selection of the Referee (“Referee”). Within ten (10) days of the issuance of a court order declaring the Arbitration procedures to be unenforceable for any reason, the *Parties* shall submit the Dispute to judicial reference with JAMS, AAA or similar entity providing judicial reference services (the “Reference Provider”) pursuant to California Code of Civil Procedure Sections 638(c) and 641-645, or any successor statutes. If the *Parties* are unable to agree upon a Reference Provider within such ten (10) day period, then any *Party* may thereafter seek to have a Referee appointed by the Superior Court for the County in which the *Home* is located, pursuant to the California Code of Civil Procedure Sections 638 and 640, or any successor statutes. The Referee shall be a neutral and impartial retired judge with substantial experience in relevant matters from JAMS, AAA or other qualified Reference Provider. The proposed Referee may be challenged for any of the grounds listed in Section 641 of the California Code of Civil Procedure or any successor statutes.
- (ii) Judicial Reference Rules and Procedures; Authority of the Referee. The Judicial Reference Proceedings shall be conducted in accordance with rules and procedures of the Reference Provider (e.g., the Streamlined Rules and Regulations of JAMS or the commercial arbitration rules of AAA) so long as such rules and procedures are reasonable and fair to the *Parties* and in accordance with the general rules and procedures set forth below. The Referee shall have the authority to try all issues, whether of fact or law. Additionally, the Referee shall have the exclusive authority to resolve any dispute regarding the validity, scope and enforceability of this judicial reference provision. The *Parties* shall cooperate in the Judicial Reference Proceedings.
- (iii) Additional Arbitration General Rules and Procedures Also Applicable to Judicial Reference. Except as provided otherwise in the paragraphs in Subsection VI-C.3, in the event of Judicial Reference Proceedings, the below provisions in Subsection VI-C.3 shall apply to Judicial Reference Proceedings, and the respective references to Arbitration Provider, Arbitration, and Arbitrator, shall be replaced with Reference Provider, Judicial Reference Proceedings, and Referee, as applicable.

- 3. *Homeowner* and *KB* agree that in addition to the rules and procedures of the Arbitration Provider, in all events, the following additional general rules and proceedings shall govern the required Arbitration:

- (a) Delivery of *Homeowner* claims(s) and documents. Prior to submitting any Dispute to Arbitration, *Homeowner* shall deliver to *KB* a detailed written description of *Homeowner*'s claim(s), together with any documents upon which *Homeowner* intends to rely at the Arbitration which support *Homeowner*'s claim(s); further, if requested by *Homeowner*, *KB* shall provide a description of its responses to the *Homeowner*'s claims to date;
- (b) Costs of Arbitration; Attorneys' Fees. Any fee to initiate the Arbitration shall be paid by *KB*, with the costs and fees, including ongoing costs and fees, if any, to be paid as agreed by the *Parties*, or if the *Parties* do not agree, then the costs and fees shall be paid as determined by the Arbitrator. Each *Party* shall bear its own attorneys' fees at its sole cost and expense. Provided, however, in the event of Judicial Reference Proceedings, any fee to initiate Judicial Reference Proceedings shall be paid by the initiating *Party*;
- (c) Notwithstanding any provision to the contrary contained in this Warranty, pursuant to California Code of Civil Procedure Section 1284.3, under no circumstances shall a consumer (defined in the code and including, without limitation, *Homeowner*) who is a *Party* to the Arbitration, in any appeal thereof, be required to pay the fees and costs incurred by an opposing *Party* such as *KB* (including, without limitation, fees and costs of the Arbitrator, provider organization, attorney or witnesses) if such consumer does not prevail in the Arbitration. The *Parties* accept and agree that any Arbitration under this Warranty shall comply with such rule. Furthermore, in the event the *Homeowner* is found by the Arbitrator in an Arbitration to be an "indigent consumer," as defined by Civil Procedure Code Section 1284.3, *KB* shall pay all fees and costs charged for the Arbitration by the arbitration company beyond the Arbitrator's fee. The intent of this section is to relieve the *Homeowner* from the burden of any fee shifting provisions and to relieve any "indigent consumer" of only those fees and costs specifically exempted by the aforementioned statute. Provided, however, this paragraph shall not apply to Judicial Reference Proceedings;
- (d) Neutral and Impartial Arbitrator. The Arbitrator shall be independent and impartial and shall not have any relationship to the *Parties* or any interest in the community or neighborhood in which the *Home* is located. Any person being considered to serve as the Arbitrator shall, within fifteen (15) days from the date of notification that the individual has been selected as a candidate to serve as the Arbitrator, disclose in writing to the *Parties* any information which might cause his or her impartiality to be questioned. The Arbitrator shall be appointed within forty-five (45) days from the receipt by any *Party* of a written request to resolve the Dispute, unless the *Parties* agree otherwise;
- (e) Location and Commencement of the Arbitration. The Arbitration shall be commenced in a prompt and timely manner and may be conducted in the

Home unless otherwise agreed to by the *Parties*. The Arbitration shall commence in accordance with the rules and procedures agreed to by the *Parties* or as designated by the Arbitrator. Regardless of the location of the Arbitration, the Arbitrator shall, at a minimum, be required to inspect the *Home* as part of the Arbitration unless otherwise agreed to by the *Parties*;

- (f) Mediator. The Arbitrator may act as a mediator to attempt to resolve the Dispute before commencing any formal Arbitration proceedings;
- (g) Conduct of the Proceedings. The Arbitrator shall apply California substantive law and shall have the power to provide all recognized remedies available pursuant to SB 800, with such potential damages limited pursuant to Section 944 of the California Civil Code. Except as otherwise provided in Subsection VI-C. of this Warranty, the Arbitrator shall conduct the Arbitration in accordance with California law (including, without limitation, the rules of evidence). The Arbitrator may issue any remedy or relief which the state courts could issue if presented the same circumstances and the Arbitrator shall follow and otherwise employ the standards for issuing such relief as defined by California law. The Arbitrator may require one or more pre-hearing conferences. A stenographic record of the Arbitration may be made, provided that the record shall remain confidential except as necessary for post-hearing motions (and in the case of Judicial Reference Proceedings, any appeals). The Arbitrator's statement of decision shall contain findings of fact and conclusions of law. The Arbitrator shall have the authority to rule on any post-hearing motions in the same manner as a trial judge. Upon filing the statement of decision with the clerk of any court of the State of California having jurisdiction, or with the judge if there is no clerk, judgment may be entered on it. The statement of decision by the Arbitrator, and any judgment entered on it, is binding upon the *Parties*. Provided, however, in the case of Judicial Reference Proceedings, the statement of decision by the Referee, and any judgment entered on it, may be appealed in the same manner and subject to the same rules as if rendered by the court;
- (h) Discovery. All *Parties* shall be entitled to conduct any discovery as provided in the California Code of Civil Procedure and the Arbitrator shall oversee discovery and may enforce any discovery orders in the same manner as any trial court judge, with rights to regulate discovery and to issue and/or enforce subpoenas, protective orders or other limitations on discovery available under state law. If relevant to the Dispute, all *Parties* are entitled to reasonable site inspections, visual inspections, destructive testing and other discovery mechanisms commonly employed in such disputes. No *Party* to the Arbitration shall attempt to take the deposition of any past or present chairman of the board of directors, director, president or chief executive officer, chief operating officer, treasurer or chief financial officer, in the order listed above, of *KB* as named in the Agreement or any of its affiliates, subsidiaries or related entities nor shall

any *Party* attempt to compel the appearance of such a person at any proceedings, unless: (i) such person is personally involved in and has direct and unique personal knowledge of or unique information about the matter in dispute, which knowledge and information is not available from or through any other person; (ii) such *Party* has used its best efforts to obtain such knowledge or information through alternative and less burdensome and intrusive discovery methods; and (iii) such knowledge or information is material and necessary for the *Party's* prosecution or defense of the matter in dispute and is not sought to harass or annoy;

- (i) Joinder of Additional Parties. Either *Party* may join as a party to the Arbitration any third party, including but not limited to, a contractor, supplier, subcontractor, vendor, engineer, architect or design professional, involved in a common question of fact or law. All *Parties* shall cooperate in good faith to ensure that necessary and appropriate third parties are included in the Arbitration;
- (j) Waiver of Jury Trial. **The Arbitration shall proceed without a jury, and the *Parties* acknowledge and agree that they are waiving any and all rights to a jury trial;**
- (k) No Punitive Damages. The Arbitrator shall not have the authority or discretion to award punitive damages, but, the Arbitrator shall have the power to provide all recognized remedies available in California law or in equity for any cause of action that is the basis of the Arbitration;
- (l) Written Award and Findings. 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, 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. When the Arbitrator is prepared to make the award, the Arbitrator shall first so inform the *Parties*, who shall have ten (10) days to attempt to resolve the matter by a binding agreement between them. If the *Parties* resolve the matter within the ten (10) day period, the Arbitrator shall not make any award. If the *Parties* do not so resolve the matter, the Arbitrator shall make the award on the eleventh day following the Arbitrator's notice of being prepared to make the award; and
- (m) Conflicts in Rules and Procedures. In the event of any conflict between Subsection VI-C. and the rules and procedures (e.g., DeMars Construction Arbitration Program for Home Warranty Disputes, the Streamlined Rules and Regulations of JAMS, or the commercial arbitration rules of AAA) of the Arbitration Provider, the terms of Subsection VI-C. shall prevail.

4. The *Parties* acknowledge that: (1) *KB* and *Homeowner* will be bound by the results of any Arbitration which takes place, (2) neither *Party* shall have the right to refuse to accept the results of Arbitration and (3) the *Parties* cannot initiate legal action in state or federal courts after the final and binding Arbitration Decision has been issued.
- D. Application of the Federal Arbitration Act. The *Parties* acknowledge and agree that the dispute resolution procedures set forth herein are in accordance with the philosophy of the Federal Arbitration Act (9 U.S.C. Sections 1 through 16) which is designed to encourage the use of alternative methods of dispute resolution in order to avoid costly and potentially lengthy traditional court proceedings. Any person interpreting this Warranty (including, without limitation, an Arbitrator or Referee) shall follow the federal court rulings which provide, without limitation, that the Federal Arbitration Act (i) is a congressional declaration of a liberal federal policy favoring alternative dispute resolution procedures, notwithstanding substantive or procedural state policies to the contrary; (ii) requires that federal and state courts rigorously enforce such alternative dispute resolution procedures; (iii) requires the scope of the alternative dispute resolution procedures to be interpreted broadly in favor of such procedures; and (iv) requires disputes over whether an issue is to be resolved by alternative dispute resolution procedures to be resolved in favor of such procedures. Specifically, this Paragraph is to be interpreted in accordance with the philosophy espoused in *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 115 S. Ct. 834 (1995), and other federal court rulings.
- E. **STATUTE OF LIMITATIONS** – A demand for Arbitration must be filed within the time periods prescribed by the applicable statutes of limitations under California law, including the statutes of limitations set forth in Sections 941 (a) through (e) of the Civil Code. Nothing contained in this Warranty shall extend any statute of limitations applicable to a particular Warranty claim. *Homeowner* acknowledges and agrees that *KB*, by adopting the Functionality Standards and other obligations set forth in SB 800, the California Civil Code and in other provisions set forth herein, did not intend to create and has not created any separate or additional contractual statute of limitations based on such standards. *Homeowner* agrees to be bound solely and exclusively by the duration of Warranty coverage periods set forth in the Functionality Standards of this Warranty.
- F. Disputes to be Resolved Independently. Notwithstanding the definition of “*Homeowner*” set forth in the defined terms, *Homeowner* and *KB* acknowledge and agree that it is in their best interests that the dispute resolution procedures set forth in this Warranty be utilized independently of any actions (including actions brought pursuant to alternative dispute resolution procedures) involving disputes between *KB* and any other buyer(s) or owner(s) of other properties (including, without limitation, owner(s) of other properties in the neighborhood in which the *Home* is located, if applicable). Accordingly, *Homeowner* knowingly waives any right to participate in any form of “class,” “joint” or “representative” litigation (including in any “private attorney general capacity”) or dispute resolution procedures against *KB*. The *Parties* make this agreement on the grounds that they wish to assure, in advance, that any dispute by or between *Homeowner* and *KB* will not be combined with any dispute between or among *KB* and any other buyer(s) or owner(s) of other properties. The *Parties* agree to this provision on the additional grounds that: (i) the *Home* is unique from other properties, and any potential

problem the *Home* may suffer will not necessarily be common to other properties; (ii) it may provide *Homeowner* increased ability to control any dispute involving the *Home*; (iii) *Homeowner's* interests will not be subordinated to the interests of other parties who might otherwise become involved in these dispute resolution procedures; (iv) this approach is likely to foster faster resolution of most disputes that may arise; (v) it will help to avoid conflicts of interest among *Homeowner's* and *KB's* representatives; and (vi) it is intended to foster better communication between *Homeowner* and *KB* focused on resolving the actual issues that may arise in any dispute between them. Notwithstanding the foregoing, the limitations set forth in this paragraph shall not apply to any dispute (including a dispute brought pursuant to alternative dispute resolution procedures) for damages in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) or less per individual plaintiff or home within the dispute; provided however, *Homeowner* shall still be required to meet any legal requirements for any form of "class," "joint" or "representative" litigation or dispute resolution procedures with respect to such dispute.

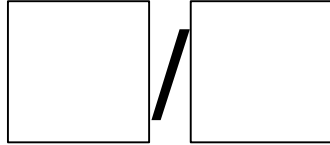
- G. Severability and Survival of Provisions. If any provision or any portion of the dispute resolution provisions set forth in this Warranty is for any reason held to be invalid, unenforceable or contrary to any public policy, law, statute and/or ordinance, then the remainder of these dispute resolution provisions shall not be affected thereby and shall remain valid and fully enforceable. *Homeowner's* acknowledgements, covenants and agreements under the dispute resolution provisions set forth in this Warranty shall survive the close of escrow and remain in full force and effect until such time as an action can no longer be brought under applicable California law.

- H. **NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY COVERED DISPUTE DECIDED BY THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THIS WARRANTY (I.E., BINDING ARBITRATION OR JUDICIAL REFERENCE) AND ARE WAIVING (I.E., GIVING UP) ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE COVERED DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE ALSO WAIVING OR LIMITING YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE DISPUTE RESOLUTION PROCEDURES SET FORTH HEREIN. IF YOU REFUSE TO SUBMIT TO THE DISPUTE RESOLUTION PROCEDURES SET FORTH HEREIN AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO DO SO UNDER THE AUTHORITY OF THE CALIFORNIA LAW OR THE FEDERAL ARBITRATION ACT. YOUR AGREEMENT TO THIS PROVISION IS VOLUNTARY.**

YOU MAKE THESE WAIVERS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY. YOU ACKNOWLEDGE THAT YOU HAVE HAD THE OPPORTUNITY TO BE ADVISED BY INDEPENDENT LEGAL COUNSEL REGARDING THESE DISPUTE RESOLUTION PROVISIONS AND THE WAIVERS SET FORTH HEREIN. YOU HAVE THE RIGHT TO BE

REPRESENTED BY COUNSEL IN ANY DISPUTE RESOLUTION PROCEDURES UNDERTAKEN PURSUANT TO THE DISPUTE RESOLUTION PROVISIONS SET FORTH HEREIN.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE THERETO.

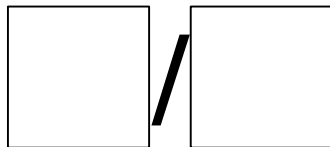


HOME OWNER'S INITIALS



SELLER'S INITIALS

- I. ***Homeowner's Consent to Use of Alternative Dispute Resolution Provisions to Resolve Disputes Involving the Master Association and/or Homeowners Association.*** *Homeowner* understands that if the *Home* is located within a Master Community and/or within a Community which is subject to a Master Association and/or a Homeowners Association with community association property (defined as any land and/or improvements which are part of a Master Community and/or a Community and subject to a Master Declaration and/or Declaration recorded on the Master Community and/or the Community, and which are owned and/or maintained by a Master Association and/or Homeowners Association of which *Homeowner* is a member), *Homeowner* will be a member of the Master Association and/or the Homeowners Association which manages the Master Community and/or the Community, as applicable. *Homeowner* also understands that a Master Declaration may include alternative dispute resolution procedures for resolving disputes that may arise between the Master Association and *Homeowner* ("Master Association Disputes"), and a Declaration may include alternative dispute resolution procedures for resolving disputes that may arise between the Homeowners Association and *Homeowner* ("Homeowners Association Disputes"), as applicable. The Master Declaration and/or Declaration alternative dispute resolution procedures may include binding arbitration and/or judicial reference in lieu of a trial by jury or a court trial. As a future member of the Master Association and/or the Homeowners Association, as applicable, *Homeowner* hereby consents and agrees to the use of such alternative dispute resolution procedures to resolve Master Association Disputes and Homeowner Association Disputes, as applicable. With respect to any Master Association and/or Homeowners Association of which *Homeowner* is a member, *Homeowner* agrees that *Homeowner's* separate interests therein are bound by the terms of the dispute resolution provisions set forth herein with respect to any dispute involving *Homeowner's* separate interests.



HOME OWNER'S INITIALS



SELLER'S INITIALS

VII.

MISCELLANEOUS

- A. 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 II-G-3 of this Warranty regarding “Manufactured Products.”
- B. To the fullest extent permitted by law, in the event any provision of this Warranty is held to be unenforceable, the other provisions hereof shall remain in full force and effect.
- C. This Warranty is the only warranty applicable to the *Home*. All other warranties, express or implied, including, but not limited to, all implied warranties of fitness, merchantability or habitability, are disclaimed and excluded.
- D. This Warranty is not an “enhanced protection agreement” as such term is defined in Section 901 of the Civil Code of California.
- E. The affirmative defenses available to *KB* as a “builder” under Section 945.5 of the Civil Code are incorporated herein for the benefit of *KB* by this reference.
- F. The original *Homeowner* acknowledges and agrees that it has been provided with complete copies of the SB 800 Documents during the sales process engaged in by such original *Homeowner* and *KB*.
- G. The original *Homeowner* acknowledges and agrees that, pursuant to California Civil Code Section 912(h), *KB* has instructed *Homeowner* of *Homeowner*’s obligation to provide documents in conjunction with the original sale to all successors in interest and/or subsequent purchasers, including, but not limited to: (a) the Warranty, which is intended to satisfy the requirement of SB 800 and the California Civil Code, (b) the Guide and/or other maintenance or preventative maintenance information, (c) maintenance and limited warranty information for Manufacturer-Warranted Products, and (d) any other documents provided in conjunction with the original sale of any portion of the *Home*. *Homeowner* and successors in interest and/or subsequent purchasers of any portion of the *Home* are hereby informed that the *Homeowner* and successors in interest and/or subsequent purchasers shall maintain full and complete copies of the documents and provide the documents to any successors in interest and/or subsequent purchasers. These documents contain important information which affect successors in interest and/or subsequent purchasers’ legal rights in connection with any portion of the *Home* and should be given to subsequent successors in interest and/or subsequent purchasers.

VIII.

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), *Homeowner* 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, fitness for a particular purpose, use, workmanship or habitability. *Homeowner* acknowledges that it has been advised to read this Warranty (including the SB 800 Documents and the Guide, which is incorporated herein by reference) and has done so prior to completing the purchase of the *Home*. *Homeowner* 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 SB 800 Documents and the Guide (which is incorporated herein by reference). *Homeowner* agrees to perform his/her obligations, which include, but are not limited to, notifying *KB* in writing when requesting service.

KB

Homeowner

KB HOME

Print Name(s)

Signature(s)

By: _____

Name Date

Printed Name: _____

Name Date

Title: _____

Date: _____

CA May 2012

EXHIBIT I

LIMITED WARRANTY AGREEMENT

MANUFACTURER-WARRANTED PRODUCTS

COMMUNITY NAME: _____

HOMEOWNER(S): _____

LOT NUMBER: _____

This Exhibit I is part of the Warranty. The Manufacturer - Warranted Products listed below are warranted only by the respective manufacturers. *Homeowners* understand and accept that these Manufacturer - Warranted Products, whether included as a standard item or ordered as an optional item in the *Home*, are expressly excluded from *KB's* Warranty and that the listed Manufacturer - Warranted Products are only covered by the warranties provided by the respective manufacturers.

Homeowners understand that the warranties from the respective manufacturers will be provided to *Homeowners* prior to the *Commencement Date*, typically at the homeowner orientation or when options are selected at the KB Home Studios. *Homeowners* shall review and agree to comply with all respective warranty and maintenance provisions and shall provide the manufacturers' warranties, *KB's* Warranty, including, without limitation, the Homeowner Maintenance Guide, Exhibit I, Exhibit II, and all documents referenced therein, to all of *Homeowners'* successors in interest and subsequent purchasers of the *Home*.

ITEM	MANUFACTURER	ADDRESS OF MANUFACTURER REPRESENTATIVE	PHONE
Hot water heater			
HVAC unit			
Appliances (list individually if applicable)			
Flooring and carpeting			

Homeowners recognize that the items listed in this Exhibit I are NOT warranted by KB Home. Acknowledged, understood and accepted:

Homeowner 1 Signature

Date

Homeowner 2 Signature

Date

KB Authorized Representative Signature

Date

EXHIBIT II

LIMITED WARRANTY AGREEMENT

ACKNOWLEDGMENT OF RECEIPT OF LIMITED WARRANTY, CIVIL CODE MATERIALS, AND NOTIFICATION OF RECORDED NOTICES

COMMUNITY NAME: _____

HOMEOWNER(S): _____

LOT NUMBER: _____

Homeowners have received, reviewed and agree to comply with the following items provided by *KB*:

	Initials of <i>Homeowner</i>	Initials of <i>Homeowner</i>
1. New Home Limited Warranty Agreement <ul style="list-style-type: none">Acceptance of binding arbitration provision in Section VI-H and VI-I <u>INITIALED BY HOMEOWNERS</u> in the Limited WarrantyAgreement and acceptance of the Limited Warranty in Section VIII <u>SIGNED BY HOMEOWNERS</u>Homeowner Maintenance Guide (which consists of the Homeowner Maintenance Summary, Ten Most Common Mistakes Made by New Homeowners, Additional Problems to be Avoided by New Homeowners AND the Maintenance Schedule)Exhibit I, Manufacturer - Warranted ProductsExhibit II, Acknowledgment of Receipt of Limited Warranty, Civil Code Materials, and Notification of Recorded Notices		
2. A copy of the SB 800 Documents (Part 2 of Division 2 of the California Civil Code, which includes the SB 800 statutory pre-litigation process codified into law under Chapter 4 of the California Civil Code, Sections 910-938). <ul style="list-style-type: none">The first page of the statute <u>MUST</u> be <u>INITIALED BY HOMEOWNERS</u> and a copy placed in Homeowners' file.<u>Attention Homeowners - this impacts your legal rights. Homeowners have obligations to disclose and to provide warranty documents to successors in interest and subsequent purchasers of the Home.</u>		
3. A combined recorded: <ul style="list-style-type: none">Notice of Non-Adversarial Procedure,Notice to Successors In Interest, andNotice of Builder's (<i>KB</i>) Agent for Service of Process		

Acknowledged, understood and accepted:

Homeowner 1 Signature

Date

Homeowner 2 Signature

Date

KB Authorized Representative Signature

Date

KB HOME Authorized Representatives - for Homeowners' file, you **MUST** attach copies or electronic scanned images of signed and initialed: (1) entire Warranty, (2) Exhibit I, (3) Exhibit II, (4) the first page of the Homeowner Maintenance Guide, (5) the first page of the SB 800 Documents **WITH HOMEOWNERS' INITIALS**, AND (6) the combined recorded notice.