



## RWC DETACHED GARAGE WARRANTY PROGRAM MEMBERSHIP AGREEMENT

**Insured through Western Pacific Mutual Insurance Company, A Risk Retention Group**

NOTICE: This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guarantee funds are not available for your risk retention group.

Residential Warranty Company, LLC (RWC), Western Pacific Mutual Insurance Company, A Risk Retention Group (WPMIC) and the Builder (Member), intending to be legally bound, in consideration of the mutual promises contained herein, covenant and agree as follows:

### **A. Membership, Registration and Terms.**

1. Member has applied for membership in WPMIC and registration as a member of the RWC Detached Garage Warranty Program and represents that all information supplied in connection with its application is true and correct.
2. Member certifies that it is properly licensed and approved to do business in accordance with all governmental requirements of the areas in which it builds and will remain so licensed and approved for the entire term of this Agreement.
3. RWC and WPMIC have accepted Member as a registered member of the RWC Detached Garage Warranty Program and as a member/insured of WPMIC.
4. Member has paid its initial membership fee. All membership/registration fees (initial and annual) are set by RWC at its discretion and are nonrefundable.
5. Member agrees to abide by all of the rules and regulations applicable to the Program as issued by RWC or WPMIC from time to time.
6. The term of this Agreement shall be for twelve (12) months dating from the date of execution by RWC and will remain in effect until the last day of the twelfth month.
7. Prior to the expiration of the term of this Agreement, Member may apply for re-registration. Upon approval by RWC, the Member shall continue as a participating member for another one (1) year term. If Member does not reregister, the provisions of paragraphs G.3, G.5 and G.6 hereof concerning termination shall be in effect.
8. If the term of this Agreement expires prior to re-registration approval, the term of this Agreement shall continue month to month until such time re-registration approval is granted or RWC terminates the Member's registration and membership in RWC and WPMIC.
9. Members of WPMIC are entitled to voting privileges as set forth in its Articles of Incorporation and By-Laws. The Member agrees, in accordance with WPMIC's By-Laws, that by executing this Agreement it grants to the Board of Directors of WPMIC its proxy to cast the Member's vote on any business at a meeting of WPMIC's members. This proxy shall continue for the term of Member's membership in WPMIC. The Member may withdraw this proxy by voting personally at any meeting of WPMIC's members.
10. The Member shall have no liability for capital contributions to WPMIC. RWC covenants that all capital contributions and WPMIC premium payments shall be made by it from the warranty fees it collects. The Member shall have no liability for the corporate obligations of WPMIC and shall not be subject to assessments by WPMIC.

### **B. Detached Garage Warranties.**

1. For each detached garage warranted, the Member shall pay a non-refundable warranty fee, the amount and time of payment of which shall be determined by RWC. A minimum fee of \$50 shall apply, except in Texas where the minimum fee shall be \$60.
2. Member shall abide by all Program procedures established by RWC. A newly approved Member may warrant detached garages under construction and detached garages completed but not sold or put into use as of the date of initial acceptance in the RWC Detached Garage Warranty Program, provided that a list of such detached garages accompanies the Membership Application, and all such detached garages were inspected by an engineer or other accepted or approved municipal authority immediately prior to the foundation pour and installation of drywall. RWC can establish additional reasonable underwriting criteria for any such detached garages. Final inspections may be required on completed detached garages.
3. RWC will not approve a detached garage nor will WPMIC issue a warranty if the Member is not registered; is not a member in good standing; is in a probationary or suspended standing; if the detached garage is not constructed in accordance with the RWC Warranty Standards and building codes accepted by RWC; or if the detached garage was not enrolled in accordance with the procedures set forth herein.
4. RWC shall supply the Member with all applicable paperwork, including a Limited Structural Warranty book, for every detached garage enrolled in accordance with RWC's enrollment procedures. The Member shall be responsible for delivering the Limited

Structural Warranty book and executed copy of the Detached Garage Enrollment form to the Customer as well as returning the executed Detached Garage Enrollment form (signed by both Member and Customer) to RWC. Paperwork received after ten (10) days of completion of the project will be rejected or will result in a penalty charge in an amount to be determined by RWC.

5. Member shall assign all manufacturers' warranties to the Customer.
6. If the Member fails to warrant or enroll a detached garage in accordance with the procedures set forth herein and any losses or expenses of whatever kind or nature are incurred by RWC or WPMIC, the Member will indemnify and hold them each harmless against losses or expenses, including attorney and expert witness fees, incurred in connection with the unenrolled or improperly warranted detached garage.

### **C. Representations and Sales Agreements.**

1. Member is authorized to represent to the public that it is a Member of the RWC Detached Garage Warranty Program and to use the RWC logo in its business and to represent that it is a WPMIC Member, provided that any contract language or advertising copy which makes references to RWC or WPMIC is approved by RWC in writing in advance of its use.
2. Member shall make no representations concerning RWC that are not contained in the Limited Structural Warranty book, the Detached Garage Enrollment form, or the promotional materials provided by RWC, or that are otherwise pre-approved by RWC. In this connection, Member hereby agrees to indemnify and hold RWC harmless from any unauthorized statement by Member which results in a claim that Member misrepresented the terms of the Limited Structural Warranty.
3. Member shall deliver or otherwise provide access to a sample warranty book, to be furnished by RWC at no charge, to Customer on or before the date the contract agreement is signed.
4. The following language shall be incorporated into Seller's Contract with Customer unless Member obtains the express approval of RWC for any changes in this provision:

Customer has received or otherwise has been provided access to a sample Limited Structural Warranty book and has read and understands the five year Limited Structural Warranty administered by Residential Warranty Company, LLC. Validation of an RWC Detached Garage Limited Structural Warranty is not guaranteed, but is conditioned on the satisfactory completion of any required inspections, upon Seller's compliance with all of RWC's enrollment procedures, and upon Seller remaining a member in good standing in the Detached Garage Structural Limited Warranty Program. Customer understands and agrees that, if the above warranty is validated, it is provided by the Seller in lieu of all other warranties, verbal agreements, or representations to the extent permitted by law; and Seller makes no warranty, express or implied, as to quality, fitness for a particular purpose, merchantability, habitability or otherwise, except as is expressly set forth in the Detached Garage Limited Structural Warranty program or as required by law. Customer understands and agrees that the warranties of all appliances and other consumer products installed in the detached garage are those of the manufacturer or supplier and same are assigned to Customer, effective on the date the detached garage is complete. In any event, Seller shall not be liable for any personal injury or other consequential or secondary damages and/or losses which may arise from or out of any and all defects. Customer acknowledge and understands that the Detached Garage Limited Structural Warranty includes a provision requiring all disputes that arise under the Detached Garage Limited Structural Warranty to be submitted to binding arbitration.

### **D. Detached Garage Construction and Inspection.**

1. The Member shall construct all detached garages in conformity with RWC's Warranty Standards, RWC approved building codes and all special industry standards recognized by RWC which are in force at the beginning of construction of the detached garage. In the event that a detached garage is not constructed in accordance with an RWC approved model building code, then Member shall have full responsibility for warranty claims arising from such noncompliance for the full five-year period. RWC may establish special standards, conditions and tests including requirements for escrow payments or other methods of protection with respect to some or all detached garages constructed by the Member which are high risk in the opinion of RWC.
2. RWC approved National Model Codes include:
  - (a) Building Codes
    - (1) International Building Code (IBC)
    - (2) International Residential Code (IRC)
  - (b) Mechanical Codes
    - (1) International Mechanical Code (IMC)
  - (c) Plumbing Codes
    - (1) International Plumbing Code (IPC)
  - (d) Electrical Codes
    - (1) International Building Code (IBC)
    - (2) International Residential Code (IRC)
    - (3) National Fire Prevention Code 70 (NFPA70) (NEC)
- (e) Any building, mechanical, plumbing or electrical code that has been formally adopted by the state, city or local governing body in which the warranted detached garage is located.
3. If the Member is informed by RWC that it is building in an area designated as one with active soil conditions, the Member agrees to obtain such soils investigations and reports as may be required by RWC. If such reports indicate a need for a specific foundation

design, the Member agrees to construct the foundation according to the design of a registered professional engineer to take into account the conditions disclosed by the soil tests. In the states of Alabama, Louisiana, Mississippi, Oklahoma, and Texas, as well as any other designated area, if foundations are being poured, engineered foundations are required on all detached garages regardless of soil tests. An engineered foundation shall be defined as: "a site specific design generated and sealed by a professional engineer who is registered in the state in which the detached garage is located." The foundation must be inspected by the engineer or his authorized representative; must conform with all accepted engineering practices for the area; and address specific parameters including, but not limited to, soil conditions (vegetation, fence lines, trails, tracks, slopes, and cut and filled sections), drainage, time of construction, climate conditions, and structural requirements.

4. If RWC deems it appropriate, the Member shall cooperate in additional periodic inspections and procedures. RWC shall recognize private governmental inspection departments meeting RWC's criteria. It shall be the Member's responsibility to have every detached garage inspected and to pay all fees for the inspections and various certificates as may be required by RWC.
5. The Member represents and warrants to RWC and WPMIC that it has followed the standards and procedures set forth herein and agrees to indemnify and hold them harmless from any loss or expense, including, but not limited to, attorney and expert fees, arising from a breach of these representations and warranties.
6. By enrolling a detached garage for warranty coverage, Member warrants and certifies that it has investigated the soil conditions under and around the detached garage and complied with the requirements of paragraph D.3.
7. **Utah Members Only:** Member is not authorized to enroll detached garages in the RWC Program in the counties of Washington and Iron, Utah.

#### **E. Warranty Obligations.**

1. The Member shall, at its own expense, perform all obligations as set forth in the RWC Detached Garage Warranty Program and this Agreement which include meeting the Warranty Standards upon notice from the Customer without the necessity of RWC intervention. In consideration of the fee structure granted, Member agrees to reimburse RWC and WPMIC for all costs and losses which either incurs, including, but not limited to, inspection, counsel and expert fees relating to coverage during Year 1 of a warranty on a detached garage, regardless of whether Member has breached its obligations hereunder.
2. If the Member fails or refuses to perform its warranty obligations under the RWC Detached Garage Warranty Program for any reason, WPMIC will perform the Member's obligations. If WPMIC fulfills the Member's obligations or if WPMIC or RWC incurs any loss, cost or expense including, but not limited to, inspection, attorney and expert fees by reason of Member's failure to perform hereunder, or by reason of a dispute between the Member and the Customer, Member shall, upon demand, and regardless of whether Member is held liable to Customer, reimburse WPMIC and RWC for all expenses incurred in so performing or by reason of such failure or dispute, including, but not limited to, cost of materials, labor, architect fees, engineering fees, attorney fees, expert fees, incidental expenses including lodging, transportation and related expenses from the Member and cost of collection of such reimbursement. In addition, Member shall indemnify and hold harmless WPMIC and RWC against any and all expenses, including attorney fees, incurred by them as a result of Member's failure or refusal to perform or delay in performance. In addition, Member shall pay interest to RWC or WPMIC, as appropriate, at the rate of eighteen percent (18%) per annum on all sums due to RWC or WPMIC hereunder if such sums are not paid within 30 days of demand by RWC or WPMIC.
3. During Years 2 through 5 under the RWC Detached Garage Warranty Program covering a particular detached garage, WPMIC represents that it will perform its obligations with respect to Designated Structural Elements as set forth and defined in the RWC Detached Garage Warranty Program without the right of subrogation against the Member provided that:
  - (a) the defect or symptoms of the subsequent occurrence of a defect first arose after the expiration of Year 1 under the RWC Detached Garage Warranty Program in effect for that detached garage; and
  - (b) the Member did not attempt to conceal or cosmetically repair the defect or symptoms of the subsequent occurrence of a defect during Year 1; and
  - (c) the defect did not arise from the Member's failure to construct the detached garage in compliance with RWC Warranty Standards; and
  - (d) the defect does not arise from Member's failure to adhere to Member's responsibilities hereunder.

If the Member repairs a Designated Structural Element during Year 1, RWC must be notified. Member will remain responsible for all defects if the defect or symptoms of the defect arose in Year 1 and the Member failed to adequately repair the defect. Member must provide to RWC an inspection report from a licensed engineer showing repairs are in compliance with the plan of repair.

4. WPMIC represents that it will indemnify and hold Member harmless against the payment of any money judgment, order or decree made by an arbitrator, court or administrative agency of competent jurisdiction as a result of the breach by WPMIC of its representations contained in paragraph E.3 hereof.

## **F. Warranty Resolution.**

1. All unresolved warranty issues by the Customer against the Member arising under the RWC Detached Garage Warranty Program shall be referred to RWC for settlement in accordance with the procedures established by RWC.
2. The Member shall have a representative present if RWC performs an inspection. RWC will notify the Member in advance of the scheduled time and date.
3. The Member shall cooperate fully in the warranty resolution process including full cooperation with an investigator appointed by RWC. In this connection, Member shall, upon request, furnish RWC or its investigator with copies of the design and specifications of the construction of the detached garage, certification of drainage, soil and compaction tests, warranty or customer service files and any and all further investigations conducted by Member or its representatives.
4. The Member shall be bound by and shall comply with the decision of RWC. The Member agrees that it will not commence any arbitration proceeding or otherwise challenge RWC's decision.
5. In the event that an unresolved warranty issue between the Member and the Customer is submitted to arbitration as provided in the RWC Detached Garage Warranty Program, the Member agrees to be bound by the arbitrator's decision. Member shall have a representative present at the arbitration hearing.
6. If the Member fails to perform its obligations hereunder in a timely and good and workmanlike manner, including the restoration of repaired affected areas to their original condition as required by the RWC Detached Garage Warranty Program and subject to its terms, conditions, standards and exclusions, such failure shall be considered a failure to perform as governed by paragraph E.2 hereof.
7. The Member shall be responsible for all arbitration fees on detached garages located in any state or municipal jurisdiction which provides that no portion of such fees shall be payable by the Customer. In all other jurisdictions, where such a requirement is valid, such fees shall initially be paid by the Customer, but the arbitrator may award the cost to the Customer if he prevails.

## **G. Termination or Suspension.**

1. The Member will be considered not to be in good standing and RWC may terminate the Member's registration and membership in the RWC Detached Garage Warranty Program and in WPMIC, as well as the registration and membership of any person or organization controlling, controlled by or under common control with the Member if, in the opinion of RWC, the Member:
  - (a) falsified material information in connection with its application for initial or re-registration, detached garage enrollment, or another matter;
  - (b) has lost its license to do business or has become noncompliant with any governmental requirements of the areas in which it builds;
  - (c) did not inform RWC of a change of its ownership;
  - (d) did not inform RWC of an adverse change in its financial standing which could impair its ability to meet its obligations;
  - (e) did not meet RWC's requirements of financial strength and stability, or professional competence and ethical conduct with customers;
  - (f) develops a financial condition or claim history which RWC finds unacceptable;
  - (g) does not construct detached garages which comply with RWC approved building codes, RWC Warranty Standards, or other standards adopted by RWC (RWC shall have the right to perform any spot inspections to verify Member's compliance with this provision);
  - (h) does not have detached garages inspected as may be required by RWC or does not provide an engineer's certification or an acceptable inspection report;
  - (i) does not enroll detached garages in a timely manner;
  - (j) does not respond to a notice from a Customer or RWC in a timely fashion;
  - (k) does not cooperate in the warranty resolution process established by RWC or does not comply with a voluntary agreement with the Customer or a decision rendered by RWC or an arbitrator;
  - (l) fails to notify RWC in writing that a legal proceeding has been commenced against Member;
  - (m) furnishes a warranty to a Customer when the detached garage is not registered or properly enrolled with RWC; or
  - (n) otherwise fails to comply with the terms of this Agreement or the procedures of the Program.

Additionally, Member agrees to indemnify and hold RWC and WPMIC harmless from any claims or damages which are proximately caused by any of the foregoing acts or omissions by Member.

2. Member may terminate this Agreement by giving notice to RWC in writing thirty (30) days prior to the expiration date of this Agreement. Otherwise, said Agreement may continue on a month-to-month basis at the option of RWC.
3. No termination hereunder by RWC or by the Member shall in any way affect or impair the rights and obligations of RWC, WPMIC or the Member under this Agreement with respect to any detached garage warranted in the RWC Detached Garage Warranty Program prior to that termination, provided that as of the date of termination:
  - (a) all applicable enrollment forms have been received and processed by RWC, and
  - (b) full warranty payment has been received by RWC.
4. If a membership is terminated by RWC for cause, RWC at its option may also terminate the membership of any other "affiliated member". An affiliated member is defined as a member in which the terminated Member has an ownership interest of at least ten percent (10%) or in which the principals of the terminated Member serve as officers or directors. If RWC should exercise its option to terminate the membership of an affiliated member under this paragraph, it may reinstate that affiliated member as a Member if, in its sole discretion, RWC determines that the terminated Member or its principals are not in a position to control the affiliated member.
5. Whenever RWC believes that there may be reason to terminate a Member's membership hereunder, it may immediately suspend the Member by giving written notice to the Member. Such suspension may be for a period of up to sixty (60) days in order to allow RWC time to investigate the situation. No new detached garages may be enrolled or warranted in the RWC Detached Garage Warranty Program during the period of suspension. If, after completion of its investigation, RWC does not terminate the membership, the Member shall be reinstated with full rights and privileges of a participating Member provided, however, that such reinstatement shall not affect the right of RWC to suspend or terminate the Member in the future based on new or additional information.
6. During suspension or following termination, the Member shall not in any way advertise or display itself as being a member of the RWC Detached Garage Warranty Program, shall not use and shall return all materials bearing the RWC logo or any reference to the RWC Detached Garage Warranty Program, including references to WPMIC; and shall notify promptly in writing any person who is at that time under contract to construct a detached garage from Member that Member has been suspended or terminated, as the case may be, and that the RWC Detached Garage Warranty Program will not be available. Should the Member fail to take the steps set forth herein during suspension or following termination, it shall indemnify and hold harmless RWC and WPMIC against any and all expenses incurred and losses suffered including, but not limited to, attorney fees incurred by either of them as a result.
7. Termination of a Member's participation in the RWC Detached Garage Warranty Program automatically terminates membership in WPMIC, and the Member shall have no rights with respect thereto other than rights set forth in paragraphs E.3 and E.4 hereof regarding detached garages enrolled prior to the termination date.

#### **H. Alternate Forms of Security.**

1. **Corporations Only:** In order to induce RWC and WPMIC to accept Member into the RWC Detached Garage Warranty Program and as a Member of WPMIC, Member represents, warrants and certifies to RWC that the "adjusted stockholder equity" of Member as of the date hereof is as stated on the most recent financial statement Member has submitted to RWC. For purposes of this Agreement, "adjusted stockholder equity" means total equity, as reflected on Member's financial statements, presented in accordance with generally accepted accounting principles, consistently applied, reduced by an amount equal to the total of loans to related parties, accounts receivable which are over ninety (90) days old and intangible assets.
2. At the request of RWC or WPMIC, Member agrees to provide a certification of its equity within fifteen (15) days of the request.
3. If Member fails to supply any certifications, or if a certification fails to disclose a minimum adjusted stockholder equity of at least eighty percent (80%) of the amount stated on the financial statement referenced in Section H.1, then RWC shall be entitled to suspend or terminate the Member's registration and membership as set forth in Section G.1. If Member's adjusted stockholder equity falls below eighty percent (80%) of the amount stated on the financial statement referenced in Section H.1., and RWC is not notified in writing within ten (10) days of that occurrence, then the undersigned hereby declare that they shall personally indemnify and hold RWC and WPMIC harmless against any and all expense and losses, including attorney's fees, incurred because of Member's failure to fulfill its obligation and responsibilities as stated in this Agreement and in the RWC Detached Garage Warranty Program.
4. If Member is required to furnish RWC with an Alternate Form of Security (such as, but not limited to, a Letter of Credit, Surety Bond, Certificate of Deposit or Escrow Agreement) as a condition of acceptance or retention of Member into the RWC Detached Garage Warranty Program and into membership in WPMIC, Member agrees that RWC or WPMIC may draw upon the full amount of the Security in the event that Member breaches any of its obligations under this Agreement or under any other prior Agreement Member has had with RWC and/or WPMIC or if Member fails to renew the Security with a replacement satisfactory in form and substance to RWC at least thirty (30) days prior to the expiration of such Security, or its replacement. In the event of

such a draw, RWC shall hold the proceeds of such Security as a deposit against Member's obligations hereunder. At such time as Member's obligations hereunder have been satisfied in full, RWC shall return any balance to Member. RWC shall not be under any obligation to pay interest to Member with respect to such amounts, and RWC's determination of reimbursement shall be final and conclusive.

#### **I. Miscellaneous Provisions.**

1. If a claim is made against the Member or WPMIC concerning a detached garage covered by the RWC Detached Garage Warranty Program, the Member shall, upon request, assign to WPMIC any rights which it may have against a supplier, manufacturer, subcontractor or other person for work performed or materials supplied in connection with such claim.
2. Whenever timely performance is called for hereunder, the time there for shall be extended to the extent performance is delayed by an event not caused by the conduct of the person obligated to perform. Such events include, but are not limited to, acts of God or the public enemy, war, riot, civil commotion or governmental conduct.
3. If a claim is made against the Member or WPMIC concerning a detached garage project covered by the RWC Detached Garage Warranty Program, escrowed monies being held by a Customer shall be considered separate and apart from and cannot affect the terms of this Agreement or the terms of the Limited Warranty.
4. This Agreement contains the entire understanding of the parties and cannot be altered or amended in any way except by a formal written instrument signed by all of the parties hereto.
5. Should legal action arise between the parties involving this Agreement, the substantially prevailing party shall be reimbursed for reasonable attorney and expert witness fees by the other party. Should any provision of this Agreement be determined by a court of competent jurisdiction to be unenforceable, that determination will not affect the validity of the remaining provisions.
6. The Member acknowledges that RWC is an administrator and not a warrantor or insurer. The Member agrees to indemnify RWC and hold it harmless from any loss or expense including attorney fees, if the Member should ever claim otherwise.
7. This Agreement shall be interpreted and enforced in accordance with the laws of the state in which the Member maintains its principal place of business.
8. This Agreement is not assignable by the Member without the prior written consent of RWC.
9. This Agreement is binding on the parties, their heirs, executors, administrators, successors and assigns.
10. All notices required hereunder must be in writing and sent by certified mail, postage prepaid, or other such form of notice deemed acceptable by RWC to the recipient at the respective address shown hereon or to whatever other address the party may designate in writing. Member must inform RWC of any change of address in writing.
11. Failure of either party to insist upon compliance with any provision of this Agreement shall not constitute a waiver of the provision.
12. Whenever appropriate, it is intended that the use of one gender herein includes all genders and the singular includes the plural.
13. The effective date of this Agreement shall be the date of execution by RWC.
14. All terms not defined herein shall have the meanings ascribed in the RWC Detached Garage Warranty Agreement book containing the Warranty Resolution Procedures and Approved Standards which are referred to herein as the "RWC Detached Garage Warranty Program".
15. This Agreement does not create an agency. Member is not an agent of RWC or WPMIC, and Member and its employees are not authorized to hold themselves out as agents of RWC or WPMIC. Member and its employees have no authority to bind or obligate RWC or WPMIC. Member agrees to indemnify and hold RWC and WPMIC harmless against any and all expenses incurred and losses suffered, including, but not limited to, attorney fees by either of them as a result of Member's violation of this provision.
16. Member agrees to maintain all terms of the Membership Agreement in confidence and not to disclose any such terms to any person or entity.

THIS AGREEMENT is among Residential Warranty Company, LLC (RWC), c/o Residential Warranty Corporation of Pennsylvania, with offices at 5300 Derry Street, Harrisburg, PA 17111, Western Pacific Mutual Insurance Company, a Risk Retention Group (WPMIC), with offices at 9265 Madras Ct., Littleton, CO 80130 and \_\_\_\_\_  
(Company Name: indicate whether a corporation, partnership, individual or other)

\_\_\_\_\_  
(Complete Address of Company)

MEMBER: \_\_\_\_\_  
Member Company Name (print or type)

\_\_\_\_\_  
Date of Execution by Member

By \_\_\_\_\_  
Signature and Title of Principal or Corporate Officer

\_\_\_\_\_  
RWC Registration Number  
(If Presently Registered)

By \_\_\_\_\_  
Proprietor/Spouse

RESIDENTIAL WARRANTY COMPANY, LLC (RWC)

\_\_\_\_\_  
Date of Execution by RWC

By \_\_\_\_\_

WESTERN PACIFIC MUTUAL INSURANCE COMPANY (WPMIC)  
A Risk Retention Group

By \_\_\_\_\_  
Kathleen D. Foley, Secretary

**By signing this area you are agreeing to act in the capacity of a Surety and are acknowledging and agreeing to the Surety agreement.**

**NOTE: You are signing this Surety Agreement in an individual capacity, not as an officer of the company. Therefore, please do not use a title.**

SURETY:

ADDRESS:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Street Address

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Social Security Number

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Social Security Number

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City, State, Zip

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Signature

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
City, State, Zip

## **SURETY AGREEMENT, An Explanation and Its Applicability**

The success of RWC is based on its management of risks. This is the reason for RWC's stringent membership criteria — better Members represent lower risk.

**The Surety Agreement does not add any additional liability beyond the terms of the Warranty and Membership Agreement.** The purpose of the Surety Agreement is simple: the Member which provides the RWC warranty is making certain representations and commitments. If it does not honor its commitment, another entity or individual(s) agrees to do so. If the RWC Member does what it says it will do, the Surety Agreement will not have any impact.

As stated in the warranty, the Member's obligation ends after the initial one-year period. However, the Member's (i.e. corporation or surety) responsibilities may extend past the first year if the Member breaches any of its obligations under the Warranty, the Membership Agreement, or any Addenda signed by the Member. **Liability is limited to Member's liability to RWC and WPMIC.**

Regarding exchange, etc. of collateral or changes to the terms of Member Obligations, the purpose of this language is to prevent WPMIC's involvement in disputes among sureties and Members.

The Surety Agreement is binding upon heirs and assigns. This is reiterating that if responsibility passes to heirs and assigns, the original commitment to the warranty will be honored.

If RWC requests a Surety Agreement and the corporate officers do not want to provide such an agreement, an Alternate Security may be acceptable, provided it is approved by RWC.

### **SURETY AGREEMENT**

To induce RESIDENTIAL WARRANTY COMPANY, LLC (RWC) to accept Member into the RWC Detached Garage Warranty Program and intending to be legally bound, the undersigned (each jointly and severally, if more than one) agrees to act as unconditional surety to RWC and to Western Pacific Mutual Insurance Company, A Risk Retention Group (WPMIC), with respect to all of Member's duties and obligations pursuant to the foregoing Membership Agreement (Agreement), including interest due on late payments or reimbursements by Member and any costs, legal fees and expenses incurred by RWC or WPMIC in the enforcement of any of the foregoing (Member Obligations).

Surety consents that RWC or WPMIC may, at its sole option, without in any way affecting Surety's liability hereunder: (a) exchange, surrender or release any or all collateral security or any guaranty or surety held by RWC or WPMIC for any of the Member Obligations; (b) renew, extend, modify, supplement, amend, release, alter or compromise the terms of any or all of the Member Obligations; and (c) waive any of RWC or WPMIC's rights, remedies, benefits or security against Member or any other surety.

CONTINUING SURETY. This Surety Agreement shall be a continuing one and shall be binding upon Surety regardless of how long before or after the date hereof any of the Member Obligations were or are incurred.

EXTENT OF SURETY'S LIABILITY. Surety's liability hereunder shall be for the full amount recoverable by RWC from Member under the Membership Agreement and warranty and for the full amount recoverable by WPMIC from Member under the Membership Agreement and warranty, including, but not limited to, claim payments, costs of repairs, interest due on late payments or reimbursement by Member, and any costs, legal fees and expenses incurred by RWC and/or WPMIC in the enforcement of any Member Obligation and in the enforcement of this Surety Agreement.

UNCONDITIONAL LIABILITY. Surety's liability hereunder is absolute and unconditional and shall not be reduced, diminished, released or affected in any way by reason of: (a) any failure of RWC or WPMIC to obtain, retain, or preserve, or the lack of enforcement of, any rights against any person, firm or entity (including, without limitation, any other Surety) or in any property (including, without limitation, collateral security for any of the Member Obligations); (b) the invalidity or unenforceability of any such rights which RWC or WPMIC may attempt to obtain; (c) any delay in enforcing or any failure to enforce such rights, even if such rights are thereby lost; or (d) any delay in making demand on the Member or any other Surety for performance or payment of any part or all of the Member Obligations.

WAIVERS. Surety hereby waives all notices of any character whatsoever with respect to this Surety Agreement and the Member Obligations, including without limitation: notice of the present existence or future incurring of any Member Obligations; the amount, terms and conditions thereof; and any defaults thereon. The death, incapacity or legal incompetence of any Surety shall in no way affect the liability hereunder of that or any other Surety.

SATISFACTION. In the event that the Member Obligations are satisfied in full by Member or any other Surety, RWC and WPMIC shall return this Agreement to Surety marked "satisfied" upon the express written request of Surety and then only upon the latter of ninety-one (91) days from the date of the last payment on the Member Obligations, or five (5) years from the final enrollment of the last enrolled detached garage.

PAYMENT OF COSTS AND ATTORNEY FEES. In addition to all other liabilities of Surety hereunder, Surety also agrees to pay to RWC and WPMIC on demand all costs and expenses (including reasonable attorney fees and legal expenses) which may be incurred in the enforcement of any of the Member Obligations or this Surety Agreement.

NOTICES TO RWC OR WPMIC BY SURETY. Any notice to RWC or WPMIC by Surety pursuant to the provisions hereof shall be sent certified mail, return receipt requested to the addresses set forth in the Agreement.

MISCELLANEOUS. This Agreement shall be binding upon Surety and Surety's heirs, executors, administrators, successors, assigns and other legal representatives, and shall inure to the benefit of RWC, WPMIC and their representatives, successors and assigns. The rights and remedies of RWC and WPMIC under this Surety Agreement are cumulative and shall be in addition to any other rights and remedies available to them, at law or in equity, all of which may be exercised singly or concurrently. In the event that this Agreement is preceded or followed by any other guaranty or surety agreement(s), all rights granted RWC or WPMIC in such agreement(s) shall be deemed to be cumulative. If any provision of this Agreement shall for any reasonable cause be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, but this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein. Surety intends this to be a sealed instrument and to be legally bound hereby. All issues arising hereunder shall be governed by the laws of the Commonwealth of Pennsylvania.