

## **SETTLEMENT AGREEMENT AND RELEASE**

THIS SETTLEMENT AGREEMENT AND RELEASE ("this Agreement") made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2004 among Nicole Stritikus ("Plaintiff"), National Home Insurance Company (A Risk Retention Group) and Home Buyers Warranty Corporation (National Home Insurance Company and Home Buyers Warranty Corporation are referred to herein as "NHIC"). Plaintiff and NHIC are collectively referred to herein as the "Parties."

### **RECITALS**

- A. On or about September 30, 2002, Build All Construction sold a new residence to Nicole Stritikus located at 433 Midridge Lane, Pelham, AL 35121, lot 17. (the "Residence"). In connection with the closing of the sale of this Residence, Build All Construction issued a limited structural warranty, HBW 307 9/1/2002, through Home Buyers Warranty Corporation (the administrator of the Home Buyers Warranty program). National Home Insurance Company is the insurer of the warranty obligations as defined within the applicable warranty referenced above.
- B. Plaintiff thereafter claimed structural damage to the Residence from what she believed to be a foundation problem as a result of unstable soils. Plaintiff submitted a claim to NHIC and sought coverage for their claim under the applicable warranty.
- C. Disputes arose among the Parties regarding their rights and obligations to one another. In June 2004, Plaintiff added NHIC to the lawsuit Cause No. CV03 7657, styled Crowe v. Build All Construction Inc., NHIC et al; In the Circuit Court of Jefferson County, Alabama (the "Litigation"). The Plaintiff and Build All asserted against one another in the Litigation and in connection with the Litigation, various claims and defenses to those claims arising out of the Parties' relationships and dealings in connection with the Residence and the Home Buyers warranty. NHIC has been given an open extension regarding the filing of an answer to the complaint. Build All Construction has answered and is presently involved in the litigation.
- D. Except as set forth herein, the Parties wish to compromise and settle, fully, finally and conclusively, any and all Claims, including but not limited to claims regarding unfair claim practices and all other disputes or controversies that have been or could have been asserted against NHIC/HBW arising out of or related to the Residence and the Home Buyers warranty as well as any and all claims against Build All Construction regarding the warranty on this home.

### **TERMS AND PROVISIONS**

NOW THEREFORE, in consideration of the promises, releases, covenants, agreements, warranties and other undertakings set forth herein, and for other good and valuable



consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Parties each, intending to be legally bound, hereby agree as follows:

1. NHIC shall pay \$91,400.00 to Plaintiff Nicole Stritikus. Such amount shall be paid within ten (10) days of all Parties' executing this agreement. The plaintiff accepts the settlement proceeds in lieu of any obligation of Build All Construction or NHIC to repair the foundation of the Residence, any obligation to perform any corrective or cosmetic work necessitated by repair of the foundation of the Residence, in full and final satisfaction of Build All Construction's and NHIC's obligations under the Home Buyers Warranty, and for and in consideration of the releases and other agreements set forth herein. Plaintiff does hereby release, acquit and forever discharge National Home Insurance Company (A Risk Retention Group) and Home Buyers Warranty Corporation, their agents, servants, employees, present, former, or future shareholders, members, officers, directors, trustees, predecessors, successors and assigns, affiliates, insurers, and their attorneys from any and all claims or causes of action of any kind whatsoever, at common law, statutory or otherwise which Plaintiffs have or might have, known or unknown, now existing or that might arise hereunder, directly or indirectly attributable to the construction of the Residence or the sale of the Residence.

It is agreed that those claims alleged by the plaintiff in her pending litigation in Jefferson County, Alabama, against Build All, its officers, directors, insurers, successors and assigns in the above referenced pending litigation that extend beyond the terms of the subject Home Buyers Warranty are not released. The plaintiff hereby releases Build All, its officers, directors, insurers, successors and assigns only for claims made that are covered by the said warranty. It is understood that the pending litigation will proceed with Build All as a party defendant as to claims not covered or expressly released under the warranty.

2. The plaintiff's hereby assign to NHIC, to the extent of NHIC's \$91,400.00 payment, all claims or causes of action regarding warranty covered items it has against any person or business to the extent required by the subject warranty. This assignment is not meant to either increase or diminish the respective rights of the subscribed parties in this regard under the express terms of the subject warranty. NHIC continues to retain any rights of subrogation, against Build All Construction, its officers, directors, insurers, successors and assigns, in connection with any Claims referenced above or arising from this settlement. Any monies collected from Build All, its officers, directors, insurers, successors and assigns under the terms of the subject warranty shall be offset dollar for dollar against this assignment. The plaintiff also agrees to cooperate with NHIC in the recovery of these funds.



3. Within five (5) business days of receipt of the settlement proceeds specified in paragraph 1 above, the plaintiff shall dismiss the Litigation against NHIC with prejudice.
4. Plaintiff agrees that the Home Buyers warranty (AL030131) issued with respect to this Residence is hereby cancelled and shall be of no further force and effect. Plaintiff also agrees to simultaneously execute a Release Of Warranties Agreement (attached hereto as Exhibit A), and allow NHIC to file said Release of Warranties Agreement in the real property records of Pelham, Alabama.
5. Except for the performance of the promises, covenants, agreements, warranties and other undertakings set forth in this Agreement which such promises, covenants, agreements, warranties and other undertakings shall be and remain in full force and effect and shall not be released and/or discharged by this Agreement, Plaintiff and NHIC hereby each release, acquit and forever discharge one another and their respective directors, officers, affiliates, insurers, sureties, successors and assigns, from and against any and all Claims, demands, losses, costs, expenses, damages, actions, rights of indemnity, subrogation or contribution, causes of action and/or suits of any kind or nature whatsoever, whether now known or unknown, which now exist or may arise in the future, whether asserted or unasserted, which the Parties, respectively, had in the past, now have or may have in the future against one another and their respective directors, officers, affiliates, insurers, sureties, successors and assigns in connection with, arising out of or relating to the Residence, the Litigation, the Claims, the Purchase and Sale Agreement, and/or the Home Buyers Warranty Policy; provided, however, that, notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall in any respect compromise, settle, resolve, release, acquit, discharge, alter, diminish, limit or otherwise prejudice any rights, claims, causes of action and/or defenses that:
  - A. The Parties have or may have against any person or entity, other than one another;
  - B. Arise out of or related to any other project, agreement or relationship among or between the Parties, other than those pertaining to this Agreement, the Residence, the Purchase and Sales Agreement, the Home Buyers warranty, and all other Residence-related contracts, relationships, agreements and undertakings, and
6. The Parties each covenant and agree not to sue one another for any claim arising in whole or in part out of any claim that Party has released or purported to release under this Agreement.



7. The Parties each covenant and agree that nothing set forth in this Agreement shall be construed to preclude the enforcement by the Parties of the terms and provisions set forth in this Agreement and/or in any document or instrument executed and/or delivered pursuant to the terms and provisions of this Agreement.
8. The Parties each warrant and represent that no person or entity other than that party their mortgagees and attorneys has claimed or now claims any interest in the matters released and/or discharged by each under this Agreement, that each has the sole right and exclusive authority to execute this Agreement and to receive any consideration to be received hereunder by each and that each has not sold, assigned or otherwise set over or agreed to sell, assign or otherwise set over to any other person or entity any claims, demands, losses, costs, expenses, damages, actions, causes of action and/or suits which are the subject of this Agreement.
9. The Parties each acknowledge and agree that the releases and/or covenants and agreements set forth in this Agreement are being given after due access by each to documents and information relating to, and due investigation by each of the matters released and/or discharged under this Agreement. Further, the Parties each acknowledge and agree that this Agreement is not being entered into by that party in reliance upon any warranties, representations, documents, information or statements made or given to that party relating to the matters settled, undertaken, assigned, released and/or discharged under this Agreement, other than those warranties, representations, documents, information or statements directly and expressly made or given in this Agreement or its attachments.
10. The Parties each acknowledge and agree that this Agreement is entered into by each freely and voluntarily and with and upon advice of counsel.
11. The Parties each acknowledge and agree that this Agreement represents the entire agreement between and among the Parties relating to the matters released and/or discharged under this Agreement and supersedes all prior negotiations, representations or agreements, either written or oral, between and among the Parties relating in any respect to the matters released and/or discharged under this Agreement.
12. The Parties each acknowledge and agree that none of the terms or provisions of this Agreement shall be construed against any of the Parties merely because of who may have drafted such terms or provisions and that, if any of the terms or provisions of this Agreement are or should be void or unenforceable, all of the remaining terms and provisions of this Agreement are and shall be applicable to the fullest extent permitted by law.



13. The Parties each agree that this Agreement shall take effect as a sealed instrument, shall be binding upon and inure to the benefit of each of the Parties and the respective successors and assigns of each of the Parties and this Agreement.
14. The Parties each warrant and represent that the execution and delivery of this Agreement by each, and the performance and observance of the terms and provisions of this Agreement by each, are within the powers of each and have been duly authorized by all actions necessary to be taken by each and that this Agreement is the legal and binding obligation of each enforceable in accordance with the terms and provisions set forth herein.
15. The Parties each agree that each shall absorb its own respective attorneys' fees and expenses, arbitration costs and expert witness fees and expenses with respect to these Claims.
16. The Parties each agree that each shall execute and deliver forthwith to each other, upon request therefor, any documents or instruments reasonably required to confirm or carry out the intent of this Agreement.
17. The Parties each agree that, if it is determined that any provision of this Agreement or any other document being executed in connection herewith is found for any reason to be invalid or unenforceable, such provision shall be deemed to have been severed from the remainder of this Agreement or any other such document. Such invalidity or unenforceability shall not affect the validity or enforceability of all other provisions of this Agreement and of any document being executed in connection herewith.
18. The Parties each agree that, if any dispute and/or controversy between NHIC and Plaintiffs or their successors or assigns arises in respect to this Agreement and/or the breach by any of the Parties of any promises, covenants, agreements, warranties and/or other undertakings set forth in this Agreement and/or in any document or instrument executed and/or delivered pursuant to the terms and provisions of this Agreement, such dispute and/or controversy shall be resolved by arbitration in accordance with the arbitration provisions of the HBW warranty. Nothing contained herein should be construed as a waiver of the rights of any party under the arbitration agreement contained in the HBW warranty.
19. The Parties each acknowledge and agree that this Agreement may be executed in any number of counterpart copies, that each of such counterpart copies shall be deemed to be an original for all purposes and that all of such counterpart copies shall together constitute one and the same agreement. Further, the Parties each acknowledge and agree that no waiver, modification or amendment of any of the terms or provisions of this Agreement shall be binding upon any of the Parties unless such waiver,

modification or amendment shall be in writing and executed by all of the Parties.

20. The parties agree that even though the warranty is being released on this home, nothing contained herein shall be construed as terminating the arbitration agreement contained in the warranty or impairing any rights of any person or entity to enforce that agreement at any time.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed under seal as of the day, month and year first above written.

*Nicole Stritikus*

Name: Nicole Stritikus

Date Executed: July 21, 2004

THE STATE OF ALABAMA

§  
§  
§

COUNTY

AMIE THON *A.T.H.*  
Notary Public - Oakland County, MI  
Acting in Oakland Co., MI  
My Commission Expires 2/18/2005

BEFORE ME, the undersigned authority, on this date personally appeared Nicole Stritikus, known to me to be the person whose signature is subscribed to the foregoing Agreement, that she executed the same for the purposes and consideration therein expressed and as her voluntary act and deed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 21<sup>st</sup> day of July, 2004.

*A.T.H.*

Notary Public in and for the state of ~~Alabama~~ Michigan

[S E A L]

*Amie Thon*

[Printed Name of Notary]

My Commission Expires:

2-18-05

AMIE THON  
Notary Public - Oakland County, MI  
Acting in Oakland Co., MI  
My Commission Expires 2/18/2005

RECEIVED



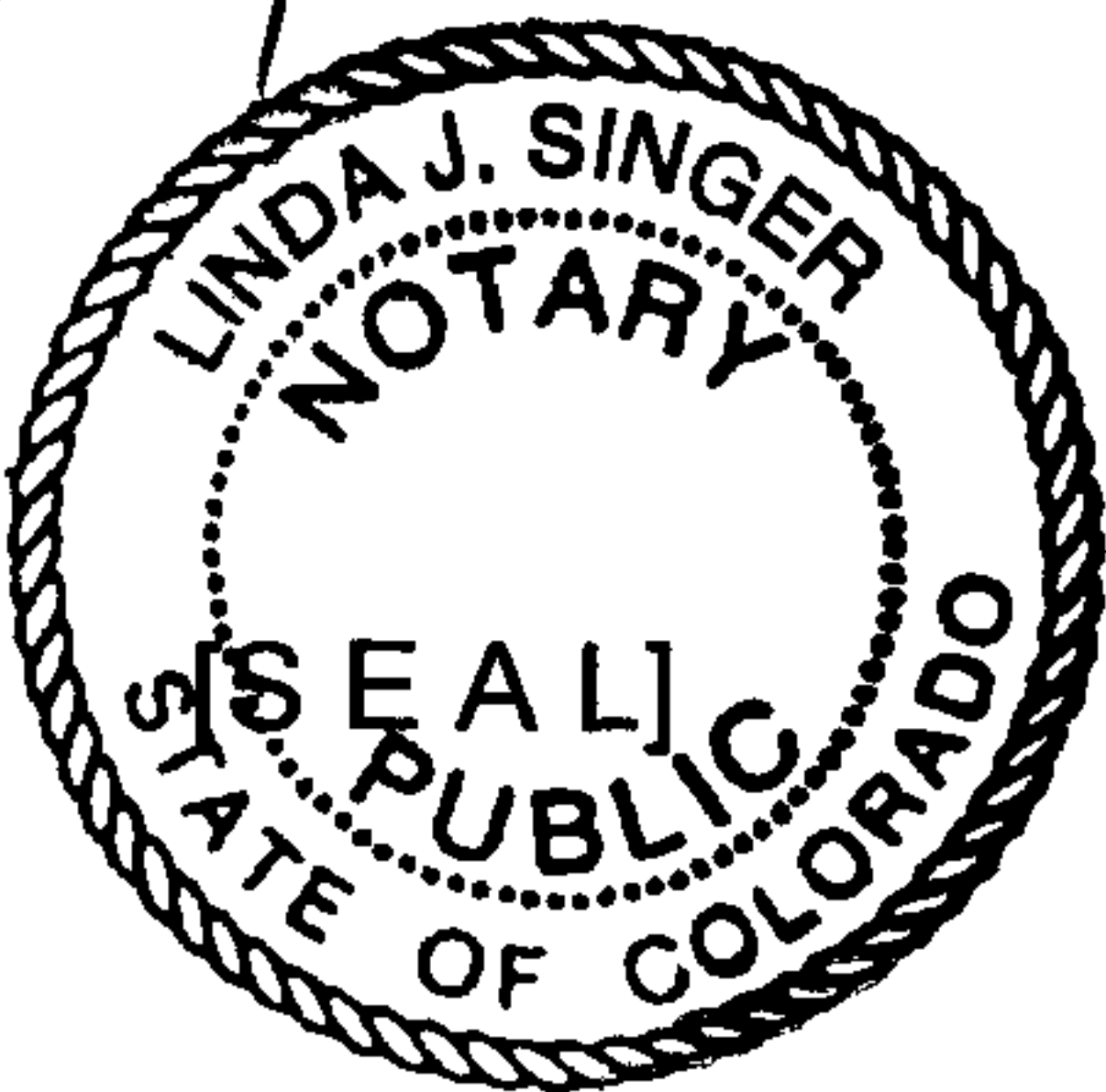
**NATIONAL HOME INSURANCE COMPANY  
(ARRG)**

By: *Mark Wright*  
Name: MARK WRIGHT  
Title: Claim Technical Manager  
Date Executed: 7/16/04

THE STATE OF Colorado §  
COUNTY OF Arapahoe §

BEFORE ME, the undersigned authority, on this date personally appeared MARK WRIGHT, known to me to be the person whose signature is subscribed to the foregoing Agreement, who acknowledged to me that he/she is the Claims Technical Manager of National Home Insurance Company and that he/she executed the same for the purposes and consideration therein expressed and as the voluntary act and deed of National Home Insurance Company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 16<sup>th</sup> day of July, 2004.



*Linda J. Singer*  
Notary Public in and for the state of  
Colorado

LINDA J. SINGER  
[Printed Name of Notary]

My Commission Expires:  
9/5/07

**RECEIVED**

**Home Buyers Warranty Corporation**

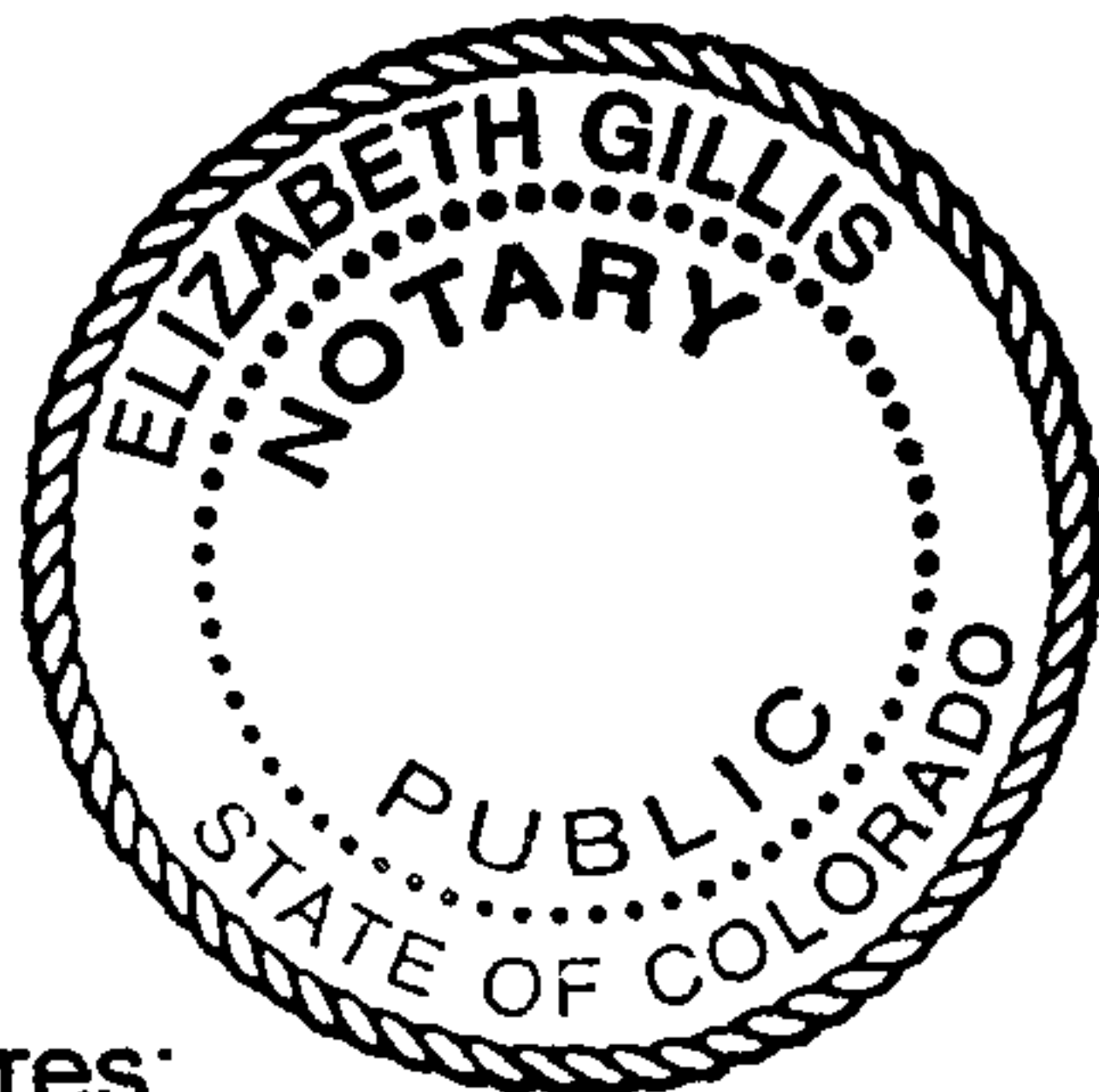
By: [Signature]  
Name: MARK LEWIS  
Title: CFO  
Date Executed: 7-16-04

THE STATE OF Colorado §  
COUNTY OF Arapahoe §

BEFORE ME, the undersigned authority, on this date personally appeared Mark Lewis, known to me to be the person whose signature is subscribed to the foregoing Agreement, who acknowledged to me that he/she is the CFO of Home Buyers Warranty Corporation and that he/she executed the same for the purposes and consideration therein expressed and as the voluntary act and deed of Home Buyers Warranty Corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 16th day of July, 2004.

[SEAL]



Elizabeth Gillis  
Notary Public in and for the state of  
Colorado

Elizabeth Gillis  
[Printed Name of Notary]

My Commission Expires:

February 23, 2008

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25369-4 05/19/2004

**RECEIVED**

**NHIC Claims**