

Below is a rebuttal from DSH Housing Group-West LLC (Respondent) to the testimony provided by Clyde Gephart & Christine Wallace ("Claimants").

As Claimants own testimony states, Claimants signed their purchase agreements in person at Respondent's place of business. Respondent's agreements are two sided and in triplicate (Exhibit 9). Even the front of the agreement under TERMS AND CONDITIONS states, "All monies received are subject to the Refund Policy on the back of this agreement." By signing the front they attested to the fact that they knew all terms and conditions set forth on the front **and** back, which they had in their hands. The agreement by its own definition does not require their initials on the back since they came in to Respondent's office. In the BUYER'S OFFER it states, "By my signature(s) below, I offer to make the above-described purchase on the terms and conditions of this agreement, **including the reverse side of this document which I acknowledge receiving**. I understand that all monies tendered to Seller are subject to the refund policy stated in this agreement..."

The fact that Claimants state they only first heard about the refund policy on 4 Oct 07, just over two months after signing their agreements, is a complete fallacy. It is not "hidden on the back" as Claimants would like to believe. In two separate sections on the front of the agreement it discusses the fact that all deposits are subject to the refund policy on the back of the agreement. And the fact that Claimants were at Respondent's place of business, had the physical two-sided triplicate agreement in their hands, and still signed it more than shows their understanding of said agreement in its entirety. Also no contingencies were listed on the agreements.

Attached is a voided original agreement (Exhibit 9) similar to that which Claimants signed at Respondents place of business. As is clearly observable, the agreement, front and back, are one document presented in triplicate on two sided paper proving that none of the descriptions made by Claimants are accurate. The fact that Claimants were physically shown the entire agreement and attested to the fact that they acknowledged receiving the reverse side of the agreement by signing the front, disproves any and all statements made by Claimants in their testimony that it was "never shown" or "they were not shown any of the terms hidden on the reverse side of their agreements" or "hidden on the back of their agreements". This also raises question about other statements made by Claimants and their validity to this case. Statements such as, "...the Business employed deceptive, predatory, misleading, and unconscionable sales and business practices..." Respondent respectfully disagrees.

As stated above, initials are not required on the back of the agreement in order to make it valid. However any time a potential Buyer is faxed a copy of the agreement it is a company policy, since the agreement does not actually require it, to insist that the back be initialed in order to prove that they received it. When a Buyer is in person, and has the physical agreement in their hands, it is obvious they have had the opportunity to see both the front and back of the agreement. Which is why, based on the agreements own verbiage, initials are not required. There is such a case which Claimants included in their testimony as Exhibit 1. Ms. Mary Winsor, aka Mary Meryweather, was faxed a copy of the front of the agreement for her signature. It is apparent that the back of the agreement was never faxed to Ms. Winsor for her review. Respondent has been in communication with Ms. Winsor to resolve her request and refund her money. This case is in no way similar to that of Claimants case as Ms. Winsor was not in

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Respondents offices, was not shown the physical contract which is a two sided triplicate document, but only faxed a copy of the front.

At no point in time were Claimants' initial agreement #s 11297 and 11298 contingent upon financing. Like Mr. Harris' first Settlement Offer (Respondent's Exhibit 4) stated, "...the contingency wording added to Purchase Agreement #11034 was never accepted by Seller." The fact that Mark Gibson's initials, located in the far right section of the agreement next to pricing, appeared on the front of the agreement merely means that it was reviewed by a general manager for correct pricing and/or verbiage. Due to this contingency that was never agreed upon by Seller, it was never accepted and that contingency is not valid.

Another point to clarify, which Claimants agreed to and understood by signing the agreement, is under ENTIRE CONTRACT: "...THIS AGREEMENT SUPERSEDES ALL PRIOR NEGOTIATIONS, ORDERS, OFFERS, AGREEMENTS AND/OR REPRESENTATIONS, WHETHER ORAL OR WRITTEN. This agreement may only be modified or superseded by written agreement signed by all Parties." The fact that Claimants added verbiage to the agreement, therefore modifying it, without Respondents' written agreement, again deems the contingency never accepted or in force. Respondents' company policy is that if a customer returns an agreement with modifications, that agreement is void. If any prior agreements were accepted, those agreements would remain in effect.

With regard to Claimants misunderstanding about Respondents "factories", it is simply just that: A misunderstanding. Respondent is in fact a Dealer, and has never claimed to own any factories. Respondent often refers to them as "our factories" because of a private label contractual agreement Respondent has with factories:

1. They are under contract to build our homes
2. They build our homes to our specification level
3. They build our homes with our own option package
4. All our homes they build are custom built to customers specifications on a pre sold only basis

Therefore our homes are factory direct to the customer. All of the time spent between Respondents sales representatives and home specialists with our factories, along with other standard out of pocket expenses, more than justifies Mr. Harris' second Settlement Offer (Respondent's Exhibit 7). This offer appeased Claimants' belief that the agreement was contingent upon financing in an offer to compromise. Even this act of good faith, which was far beyond our contractual duties, was not accepted by Claimants.

It is obvious that Claimants are construing and misrepresenting the facts of this case in order to justify their position in trying to escape a valid agreement. As Claimants own testimony states, their appraisal would not account for the amount necessary to pay for the land and build the homes Claimants requested. This is not due to any fault of Respondent, but Claimants' choice of land and homes. Claimants deposits were transferrable towards the purchase of any homes from Respondent as the original Settlement Agreement offer states. Respondent stands ready to perform per the valid agreement. Respondent expects its customers, who signed an agreement, to perform as well. Claimants are not performing as they committed in the valid agreements signed by both parties.

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Respondent has made several good faith efforts in an attempt to resolve this matter with Claimants, and Claimants have been unwilling to accept any of these offers.

Respondent asserts again that per the agreement it is entitled to liquidated damages in this case as Claimants are rescinding their agreement. The cash purchase price is \$79,277, per home, 20% of that amount is \$15,855.40 and after allowing for \$2500.00 previously received, leaves \$13,355.40 per home owing to Respondent before fees and costs. However Respondent is willing to forego liquidated damages in another act of good faith in order to resolve this case.

For the foregoing reasons, Respondent respectfully reasserts its entitlement to a decision and order denying Claimants' requested relief.



Dave Higbee

Date

President

DSH Housing Group-West LLC



VICTOR L. HARRIS
CHIEF OPERATING OFFICER AND GENERAL COUNSEL

September 27, 2007

Via CMRR #7006 0810 0002 7591 0211 & email: gep@aimweb.com; cwloveusa.com & cw@adtrap.com
Chyde Gephart & Christine Wallace
725 N. Royal Crest Cir. Unit 251
Las Vegas, NV 89169

Re: Purchase Agreement #11297 & #11298 dated 21 Jul 2007 &
Purchase Agreement # 11034 dated 21 Aug 2007
DSH Housing Group-West ("Seller")

Mr. Gephart and Ms. Wallace:

I am writing on behalf of Seller in response to your refund request on the above-referenced Agreements. Your contract provides two avenues for partial refunds of monies received. First, if the contract is cancelled within five days of its effective date, a partial refund is due. Second, if the contract has written on the front "contingent upon financing" or substantially similar words, then a partial refund may be due if no financing is obtained within six months.

Neither of these avenues appears to apply to your situation, as the contingency wording added to Purchase Agreement #11034 was never accepted by Seller. A true and correct copy of the original Agreements referenced above, are enclosed for your review.

Please consider the following options:

1. Seller stands ready to perform as agreed in the Agreement, for up to one year from the date of the Agreement;
2. As an offer of compromise and settlement, Seller will retain the \$5,000 deposit as transferable credit on your account for two (2) years from the date of settlement, in exchange for a Settlement Agreement which is enclosed;
3. You may pursue arbitration of this issue as provided in the Agreement, in which case Seller will pursue liquidated damages of 20% of the cash purchase price and other damages as provided in the Agreement.

If you choose the first option, please contact your sales representative or home specialist to continue preparations for ordering your home. If you choose option 2, please execute and return the enclosed Settlement Agreement.

Thank you for the opportunity to respond. I remain

Sincerely yours,
DSH MANAGEMENT SERVICES, LLC


Victor L. Harris
CHIEF OPERATING OFFICER AND GENERAL COUNSEL

Encl.

Exhibit 4

SETTLEMENT AGREEMENT

This Agreement dated September 27, 2007 is by and between **Clyde Gephart and Christine Wallace** whose address is 725 N. Royal Crest Cir. Unit 251, Las Vegas, NV 89169 ("Buyer"), and **DSH Housing Group-West LLC** ("Seller"), collectively referred to as the "Parties".

RECITALS

Buyer executed Purchase Agreement #11297 & 11298 dated on or about 21 Jul 2007 and Purchase Agreement #11034 dated on or about 21 Aug 2007, and other documents related to the Purchase Agreements, together with a payment for the purchase of a Manufactured Home, as well as other prior and subsequent communications (the "Transaction").

Issues arose during the Transaction concerning completion and other details of the transaction, and the Parties desire to resolve any and all issues concerning the Transaction without either of them admitting any liability to the other.

NOW, THEREFORE, based upon the above recitals and in consideration of the following covenants, it is hereby agreed as follows:

CONSIDERATION

1. Seller shall maintain a \$5,000 non-refundable, transferable credit on Buyer's account for a period of two years from the date of this agreement, which credit shall be applied toward the purchase of a home from Seller. If Buyer or Buyer's assignee does not conclude a home purchase with Seller within this time, the credit is forfeited.

2. Buyer and Seller agree to mutually rescind the Purchase Agreements effective the date of this Agreement.

RELEASE

3. Except for the rights and obligations expressly created by this Agreement, the Parties hereby release, acquit and forever discharge each other from any and all claims, causes of action, demands, or complaints that either of them ever had, now has or hereafter may acquire against each other, their employees, representatives, officers, managers, members, directors, shareholders, partners, affiliates¹ and insurers based on or arising, in whole or in part, out of this Transaction.

GENERAL PROVISIONS

4. The Parties have not sold, assigned, transferred, hypothecated, pledged or encumbered, or otherwise disposed of, in whole or in part, voluntarily or involuntarily, any or property subject to or any claims released pursuant to this Agreement.

5. In entering and making this Agreement, the Parties assume the risk of any mistake of fact or law. If the Parties, or any of them, should later discover that any fact they relied upon in entering this Settlement Agreement is not true, or that their understanding of the facts or law was incorrect, the Parties shall not be entitled to seek rescission of this Agreement by reason thereof. This Agreement is intended to be final and binding upon the Parties regardless of any mistake of fact or law.

6. This Agreement shall be binding upon and for the benefit of the Parties and their respective parent companies, subsidiaries, officers, directors, partners, employees, heirs, conservators, successors, devisees and assigns.

7. Neither the payment of consideration referred to herein, nor the performance of any covenants contained herein, nor anything contained or incorporated herein shall be deemed, nor shall the negotiation, execution and performance of this Agreement constitute, any admission or concession of liability or wrongdoing on the part of any Party, or any other form of admission with respect to any matter, thing or dispute whatsoever. Any such liability or wrongdoing is expressly denied.

8. Each Party warrants that: they are represented by or have had the opportunity to be represented by competent counsel with respect to this Agreement; they have been fully advised by said counsel with respect to its rights and obligations and with respect to the execution of this Agreement; and they authorize and direct their respective attorneys to execute such papers and to take such other action as is necessary and appropriate to effectuate the terms of this Agreement.

9. Each Party warrants that no promise, inducement or agreement not expressed herein has been made in connection with this Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes and replaces all prior negotiations or proposed agreements, written or oral.

10. This Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by an authorized representative of each of the Parties.

¹ Seller's affiliates include all entities associated with DSH Enterprises LP, including but not limited to DSH Interests LLC, DSH Management Services LLC, DSH Housing Group and subsidiaries, DSH Distribution Services LLC, Quality Wholesale Homes & Furnishings LLC, Factory Wholesale Homes LLC, DSH Homes Direct LLC, Quality Home Transport LLC, First Quality Mortgage LLC, Superior Manufactured Home Services LLC, DSH Home Furnishings LLC, DH Investment Properties LLC, and Forever Homes, Inc.

Exhibit 4



VICTOR L. HARRIS
CHIEF OPERATING OFFICER AND GENERAL COUNSEL

December 18, 2007

SCANNED

Vic CMRR# 7006 0810 0002 7587 5495 & email: cwloveusa.com

Clyde Gephart & Christine Wallace
725 N. Royal Crest Cir. Unit 251
Las Vegas, NV 89169

Re: Purchase Agreement #11297 & dated 21 Jul 2007 & #11034 dated
21 Aug 2007; DSH Housing Group-West ("Seller")
Our File No. 1110-059

Mr. Gephart and Ms. Wallace:

This letter further responds to your concerns regarding the above-referenced contracts and in BBB Consumer Complaint Case #22046943. It's my understanding that the primary dispute is whether or not the agreements were contingent on financing as claimed.

For purposes of compromise and settlement only, let's assume that the contracts were conditioned upon financing. In the case of failed financing, your contract provides for a \$1,000.00 handling fee in addition to out-of-pocket costs on each contract. The out-of-pocket costs on each contract was \$970. Thus, assuming these Agreements were contingent on financing, Buyer would be entitled to a \$1,060.00 total refund, which is \$1,970.00 each retained on each contract. Please find enclosed a Settlement Agreement as well as Seller's check in the amount of \$1060.00. Negotiation of the check is acceptance of the Settlement Agreement terms. If you would care to resolve this matter on these terms, please sign and return the enclosed Settlement Agreement.

If you desire to proceed with arbitration, Seller is amenable to that as well. Simply return the check and notify the BBB of your desire to proceed.

Thank you for your time and attention to this matter.

Sincerely yours,
DSH MANAGEMENT SERVICES LLC



Victor L. Harris
CHIEF OPERATING OFFICER AND GENERAL COUNSEL

Enclosure: Settlement Agreement & check

cc: Better Business Bureau

SETTLEMENT AGREEMENT

This Agreement dated December 18, 2007 is by and between Clyde Gephart & Christine Wallace whose address is 725 N. Royal Crest Cir., Unit 251, Las Vegas, NV 89169 ("Buyer"), and DSH Housing Group-West LLC ("Seller"), collectively referred to as the "Parties".

RECITALS

Buyer executed Purchase Agreement #11297 dated 21 Jul 2007 & #11034 dated 21 Aug 2007, and other documents related to the Purchase Agreements, together with a payment for the purchase of a Manufactured Home, as well as other prior and subsequent communications (the "Transaction").

Issues arose during the Transaction concerning completion and other details of the transaction, and the Parties desire to resolve any and all issues concerning the Transaction without either of them admitting any liability to the other.

NOW, THEREFORE, based upon the above recitals and in consideration of the following covenants, it is hereby agreed as follows:

CONSIDERATION

1. Seller shall tender the total sum of \$1,060.00 to Buyer upon receipt of this original, executed Agreement, which is the total amount of money ever to be paid by or on account of Seller concerning this Transaction.
2. Buyer and Seller agree to mutually rescind the Purchase Agreements effective the date of this Agreement.

RELEASE

3. Except for the rights and obligations expressly created by this Agreement, the Parties hereby release, acquit and forever discharge each other from any and all claims, causes of action, demands, or complaints that either of them ever had, now has or hereafter may acquire against each other, their employees, representatives, officers, managers, members, directors, shareholders, partners, affiliates¹ and insurers based on or arising, in whole or in part, out of this Transaction.

GENERAL PROVISIONS

4. The Parties have not sold, assigned, transferred, hypothecated, pledged or encumbered, or otherwise disposed of, in whole or in part, voluntarily or involuntarily, any or property subject to or any claims released pursuant to this Agreement.
5. In entering and making this Agreement, the Parties assume the risk of any mistake of fact or law. If the Parties, or any of them, should later discover that any fact they relied upon in entering this Settlement Agreement is not true, or that their understanding of the facts or law was incorrect, the Parties shall not be entitled to seek rescission of this Agreement by reason thereof. This Agreement is intended to be final and binding upon the Parties regardless of any mistake of fact or law.
6. This Agreement shall be binding upon and for the benefit of the Parties and their respective parent companies, subsidiaries, officers, directors, partners, employees, heirs, conservators, successors, devisees and assigns.
7. Neither the payment of consideration referred to herein, nor the performance of any covenants contained herein, nor anything contained or incorporated herein shall be deemed, nor shall the negotiation, execution and performance of this Agreement constitute, any admission or concession of liability or wrongdoing on the part of any Party, or any other form of admission with respect to any matter, thing or dispute whatsoever. Any such liability or wrongdoing is expressly denied.
8. Each Party warrants that: they are represented by or have had the opportunity to be represented by competent counsel with respect to this Agreement; they have been fully advised by said counsel with respect to its rights and obligations and with respect to the execution of this Agreement; and they authorize and direct their respective attorneys to execute such papers and to take such other action as is necessary and appropriate to effectuate the terms of this Agreement.

¹ Seller's affiliates include all entities associated with DSH Enterprises LP, including but not limited to DSH Interests LLC, DSH Management Services LLC, DSH Housing Group and subsidiaries, DSH Distribution Services LLC, Quality Wholesale Homes & Furnishings LLC, Factory Wholesale Homes LLC, DSH Homes Direct LLC, Quality Home Transport LLC, First Quality Mortgage LLC, Superior Manufactured Home Services LLC, DSH Home Furnishings LLC, DH Investment Properties LLC, and Forever Homes, Inc.

Exhibit 7

Additional Terms and Conditions of Purchase Agreement:

1. **Payment Terms:** If the Cash Purchase Price is not paid in full with the execution of this Agreement, Buyer agrees to pay 50% of the Cash Purchase Price prior to placing the home order with the factory. The balance must be paid and received 7 days before "Offline", which is the date when the home is ready to ship from the factory.
 - a. **Handling Charge.** Buyer agrees to pay a handling charge of 2% of the unpaid balance for any non-compliance with Payment Terms.
 - b. **Security / Security Interest.** Buyer agrees that before the home is ordered from the factory; Buyer will execute a limited power of attorney allowing Seller to record title to the home, together with a promissory note, deed of trust and/or other document(s) required by Seller as security for this transaction. Buyer agrees to pay an additional \$250 security document fee for any promissory note, deed of trust or other security agreement required by Seller, together with any filing fees. Seller reserves to itself and Buyer grants to Seller a security interest in the goods that are the subject matter of this Agreement, to secure to Seller the full payment of the purchase price and any claim for damages on account of breach by Buyer. If Buyer takes delivery of the goods before it has paid in full, Buyer takes such goods subject to Seller's security interest.
 - c. **Finance Charges:** If no other arrangements are mutually agreed, Buyer agrees to pay interest on any unpaid balance, beginning at Offline, at the rate of 1 3/4% per month (18% per annum), or the highest legal interest rate up to 1 3/4% per month, but in no event less than 1% per month (12% per annum).
 - d. **Default.** Buyer shall be in default upon 15 days following Offline if there are no agreed alternate payment arrangements satisfactory to Seller. Seller may auction or re-sell the home then seek damages from Buyer as set forth in paragraph 8 below.
 - e. **Changes After Factory Confirmation.** Customer understands that, after the customer's signed specifications are submitted to the factory for construction, any changes in specifications are subject to a \$200 per item change fee in addition to the per item costs, if the change can be made at all.
2. **Financing:** If this Agreement is contingent upon financing, **which must be written on the front of this Agreement**, Buyer agrees to make application for a loan within five (5) business days, and to use good faith best efforts to obtain a loan in an amount sufficient to finance the unpaid balance. If Buyer cannot obtain required financing within a reasonable time, Seller may seek financing for Buyer, and if obtained, this condition shall be satisfied. If a binding commitment for a loan cannot be obtained within 180 days or other period agreed in writing, then either party may terminate this Agreement. In the event of rescission due to failure of this condition, Buyer shall be entitled to a refund of monies paid, less any out-of-pocket costs incurred by Seller plus a \$1,000.00 processing charge.
3. **Delivery and Placement:** If Seller has included delivery/setup in the purchase price, or if Seller quotes a charge for delivery/setup to Buyer's destination, Seller will hire transport and service companies that are licensed, bonded and insured to perform such services. Seller's agreement and price quotation to transport the unit purchased is based upon Buyer's assurance that travel is along acceptable all-weather surfaced public roads, fully open and accessible, from point of origin to point of delivery, during the period required for transportation. For any on-site placement, Buyer shall execute and agree to "Conditions for On-Site Delivery." Any police escorts or special road use permits required may result in an additional charge to and will be paid by Buyer. Buyer will pay the costs for all extra labor and/or equipment Seller requires in order to deliver and place the unit purchased. Unless otherwise provided herein, Buyer is responsible for making all arrangements and paying all costs associated with home delivery and setup, and in such cases Seller is not liable for any risks, losses or damages to the home after it leaves the factory. Seller recommends that Buyer use transport and service companies that are licensed, bonded and insured to perform such services. Buyer understands that Seller recommends a concrete pier, running below the frost line, for proper placement. Cold climate installations require that electric power and heating be installed and activated as soon as possible in order to check water lines, install carpet and complete any tape and texturing.
4. **Site Preparation, Permits, Connections and Changes:** Buyer is responsible for having the home site ready for delivery and installation at Offline. Buyer is solely responsible for site preparation, obtaining permits, bids, and the selection of Contractor(s) for the site preparation of home, including without limitation: a) excavation and grading of property; b) concrete footings or foundation; c) installation of water, power, phone, gas and sewer lines, etc.; d) installation of perimeter wall/foundation or skirting; e) installation of wedges (blocking), trim band, and venting, where applicable; f) construction of steps, sidewalks, garage, etc.; g) run dryer vent from under house to exterior. Buyer understands that Seller may not be allowed by state or local ordinance to make plumbing, electrical or certain natural gas or propane connections, and that a licensed plumber or electrician may be required. Seller is not responsible for obtaining or paying for any permits, including without limitation health or sanitary permits, or any local, county, or state permits required or any impact or other similar charges by state or local authorities. Seller is not responsible for making changes to plumbing, electrical or construction changes required by special building ordinances or laws. Buyer will pay the cost of any changes needed for compliance with local, county, or state laws or zoning requirements. Buyer understands that some states may not grant the required permits where the size exceeds statutory or other legal maximum. Buyer releases the Seller and Seller's assignees, and the Manufacturer and its assigns from any and all demands, suits or counterclaims, based on the size of the unit purchased, if it exceeds any limitations which are now or may later be imposed by any state or local authorities or equivalent.
5. **Delays:** Buyer will not hold Seller liable for delays caused by the manufacturer, accidents, weather, transportation, scheduling or any cause beyond Seller's control.
6. **Failure to Take Delivery/Storage:** Buyer agrees to take delivery at Offline, or Buyer shall arrange for home storage until ready for delivery. Buyer's failure to take delivery or make storage arrangements shall result in Seller moving the home to temporary storage, and Buyer agrees to pay transportation plus \$350 per section to place the home in storage, \$25.00 per day per section in storage charges, \$700.00 per section to tarp home after 7 days, and \$500.00 per section to block home after 10 days. BUYER ASSUMES ALL RISKS OF WASTE, LOSS OR DAMAGE DURING ANY STORAGE, INCLUDING WITHOUT LIMITATION ANY DAMAGES ASSOCIATED WITH VANDALISM, THEFT, WATER INFILTRATION OR MOLD. Buyer's failure to take delivery or arrange for storage within 15 days after Offline will constitute a breach of this Agreement, and Seller may auction or re-sell the home then seek damages from Buyer as provided in paragraph 12 below.
7. **WARRANTIES:** Seller shall give to Buyer at the time Buyer completes the final home check-out copies of any and all written warranties covering the within described unit, or any appliance or component therein, which have been provided by the manufacturer of the unit or appliance or component, respectively. **SELLER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. NO WARRANTIES, EXPRESSED OR IMPLIED, ARE MADE OR WILL BE DEEMED TO HAVE BEEN MADE BY THE SELLER ON EITHER NEW OR USED UNITS.** The terms of any manufacturer's or other 3rd party warranties are not a part of this Agreement and are not adopted by Seller.
8. **Refund Policy:** Buyer acknowledges that in case of Buyer's refusal to complete this purchase or repudiation of this contract Seller's damages are difficult to ascertain and prove, and that a "loss of the bargain" measure of damages would be inadequate. Therefore, if Buyer cancels this contract in writing within five (5) days after its execution, Seller shall be entitled to \$1500 plus its out-of-pocket costs as liquidated damages, with the balance refunded to Buyer. If Buyer cancels, defaults, breaches, seeks rescission or repudiates this contract more than five (5) days after its execution, the Seller's measure of damages includes, in addition to its direct out-of-pocket costs and incidental damages (including sales commissions), a "liquidated damages allowance" of twenty percent (20%) of the total Cash Purchase Price shown on the reverse side hereof. Further, Seller shall be entitled to retain such portion of any monies received from Buyer as equals the total of its agreed damages herein, and to recover any deficiency. If Buyer does not complete this purchase within 12 months and there is no agreed written extension, in addition to the remedies specified herein, Buyer forfeits any right to refund of any monies tendered to Seller.
9. **Limitation of Damages:** Buyer agrees that if Buyer is entitled to any damages against Seller for any reason, including without limitation delays or repairs not completed within a reasonable time or any reason attributed to the Manufacturer, Buyer's damages are limited to the lesser of either the cost of needed repairs or the reduction in the market value of the unit caused by the lack of repairs. Under no circumstances shall Seller be liable to Buyer for any consequential damages or losses for personal injuries, property damage, loss of use of property, interest on cash payments, loss of time, interest differential, profits or earnings. After Buyer's acceptance of the unit, even if the Manufacturer(s) warranty does not accomplish its purpose, it is agreed that Buyer cannot return the home to Seller and seek a refund for any reason.
10. **Dispute Resolution:** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration administered by either the American Arbitration Association in accordance with its Commercial Arbitration Rules, or any alternative arbitration service provider selected by Seller, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any arbitrator shall give full force and effect to all terms of this Agreement, including without limitation the Liquidated Damages Allowance and Limitation of Damages provisions. In any legal action or legal proceeding arising out of this Agreement, including the enforcement of any arbitration award, the prevailing party shall be entitled to reasonable attorney fees and costs. Arbitration shall not be binding on or extend to any lender or any other third party who has acquired rights arising out of any financing or consumer credit contracts and/or security agreements which may be a part of or supplement this Agreement.
11. **Model Year, Dimensions, Discontinued Models and Changes:** The descriptions appearing herein, on our web site or other documents (the "Description") are sometimes approximations based upon information available at the time of sale. Descriptions within one year of the correct model year or within 1 foot of the correct height or exterior wall length/width measurements shall not be grounds for a claim for damages or cancellation by Buyer. Buyer is responsible for any dimensions that vary from the Description due to options selected; for instance, changes in roof pitch or wall framing affect dimensions. Any subsequent changes in the model, designs, accessories and parts will not oblige either Seller or the manufacturer to make the same changes in the unit purchased in this Agreement. Buyer understands that the home model and/or options selected are available for order as of the date of this agreement. Discontinuance of or changes to the model or options by the manufacturer more than 15 days from the date of this Agreement shall not be grounds for a claim for damages or cancellation —Buyer agrees to select another model and/or options.
12. **Fees for Roll-on or Crane Set:** Seller will charge an additional fee of \$1,500.00 per section for Roll-on type set-ups (normally due to pre-existing perimeter foundation walls or basement). Buyer is responsible to arrange and pay for any crane or crane expenses required in any set-up. Buyer is responsible for welding home I-Beams to the basement I-Beams in compliance with manufacturer's specifications.