

AVIVA POOLS LIMITED WARRANTY

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO EITHER THE TENNESSEE UNIFORM ARBITRATION ACT OR THE FEDERAL ARBITRATION ACT (UNITED STATES), AS APPLICABLE

Explore Industries USA, Inc. ("**Manufacturer**") provides the following standard limited warranties (each as defined below and, collectively, the "**Limited Warranty**") to the original retail purchaser or Authorized Transferee (as defined in Section F(8) below) (as applicable, the "**Retail Purchaser**") of its Aviva Pools® products listed below in new condition for residential application (each a "**Product**" and, collectively, the "**Products**") on the following terms:

A. POOL LIMITED WARRANTIES

1. **POOL STRUCTURAL LIMITED WARRANTY.** Subject to the exclusions and conditions listed herein, Manufacturer warrants the structural soundness of its Fiber-Reinforced AQ Shield™ and Vipoxy® vinyl ester resin composite pool shell (the "**Pool**") against water loss caused by (a) defects in manufacturing workmanship and materials or (b) osmosis for the lifetime of the Retail Purchaser of the Pool (but in no event less than 35 years from the Pool Delivery Date (as defined below) so long as the Pool is owned by the Retail Purchaser (the "**Pool Structural Limited Warranty**").

2. **POOL SURFACE LIMITED WARRANTY.** Subject to the exclusions and conditions listed herein, Manufacturer warrants the surface of the Pool against excessive pigmentation change caused by defects in manufacturing workmanship and materials for a period beginning on the date the Pool is delivered to the Retail Purchaser (the "**Pool Delivery Date**") and ending on the date that is ten (10) years from the Pool Delivery Date so long as the Retail Purchaser owns the Pool (the "**Pool Surface Limited Warranty**"). This Pool Surface Limited Warranty is accepted by the Retail Purchaser with the understanding that, with exposure to the elements and time, some color and surface degradation may occur. While necessary chemicals for the Pool may be obtained from any company, Manufacturer recommends that only chemicals purchased from Manufacturer or its affiliates be used in accordance with the pool chemistry guidelines. The use of improper or incorrect chemicals voids the Pool Surface Limited Warranty.

B. SPA LIMITED WARRANTIES

1. **SPA STRUCTURAL LIMITED WARRANTY.** Subject to the exclusions and conditions listed herein, Manufacturer warrants the structural soundness of its Vipoxy® vinyl ester resin composite spa shell (the "**Spa**") against water loss caused by defects in manufacturing workmanship and materials for a period beginning on the date the Spa is delivered to the Retail Purchaser (the "**Spa Delivery Date**") and ending on the date that

is five (5) years from the Spa Delivery Date so long as the Retail Purchaser owns the Spa.

2. **SPA SURFACE LIMITED WARRANTY.** Subject to the exclusions and conditions listed herein, Manufacturer warrants the surface of the Spa against excessive pigmentation change caused by defects in manufacturing workmanship and materials for a period beginning on the Spa Delivery Date and ending on the date that is five (5) years from the Spa Delivery Date so long as the Retail Purchaser owns the Spa (the "**Spa Surface Limited Warranty**"). This Spa Surface Limited Warranty is accepted by the Retail Purchaser with the understanding that, with exposure to the elements and time, some color and surface degradation may occur. While necessary chemicals for the Spa may be obtained from any company, Manufacturer recommends that only chemicals purchased from Manufacturer or its affiliates be used in accordance with the spa chemistry guidelines. The use of improper or incorrect chemicals voids the Spa Surface Limited Warranty.

C. TANNING LEDGE LIMITED WARRANTIES

1. **TANNING LEDGE STRUCTURAL LIMITED WARRANTY.** Subject to the exclusions and conditions listed herein, Manufacturer warrants the structural soundness of its Vipoxy® vinyl ester resin composite tanning ledge shell (the "**Tanning Ledge**") against water loss caused by defects in manufacturing workmanship and materials for the lifetime of the Retail Purchaser of the Tanning Ledge (but in no event less than 35 years from the Tanning Ledge Delivery Date (as defined below) so long as the Retail Purchaser owns the Tanning Ledge.

2. **TANNING LEDGE SURFACE LIMITED WARRANTY.** Subject to the exclusions and conditions listed herein, Manufacturer warrants the surface of the Tanning Ledge against excessive pigmentation change caused by defects in manufacturing workmanship and materials for a period beginning on the date the Tanning Ledge is delivered to the Retail Purchaser (the "**Tanning Ledge Delivery Date**") and ending on the date that is five (5) years from the Tanning Ledge Delivery Date so long as the Retail Purchaser owns the Tanning Ledge (the "**Tanning Ledge Surface Limited Warranty**"). This Tanning Ledge Surface Limited Warranty is accepted by the Retail Purchaser with the understanding that, with exposure to the elements and time, some color and surface degradation may occur. While necessary chemicals for the Tanning Ledge may be obtained from any company, Manufacturer recommends that only chemicals purchased from Manufacturer or its affiliates be used in accordance with the water chemistry guidelines. The use of improper or incorrect chemicals voids the Tanning Ledge Surface Limited Warranty.

D. WATER FEATURE LIMITED WARRANTIES

Subject to the exclusions and conditions listed herein, Manufacturer warrants its water feature enclosures (each, a "**Water Feature**") against defects in manufacturing workmanship and materials for a period beginning on the date the Water Feature is delivered to the Retail Purchaser (the "**Water Feature Delivery Date**") and ending on the date that is twelve (12) months from the Water Feature Delivery Date so long as the Retail Purchaser owns the Water Feature.

E. EXCLUSIONS TO LIMITED WARRANTY

The Limited Warranty shall not apply in connection with any of the following:

1. if the Purchase Price (as defined in Section (F)(7) below) has not been paid in full to Manufacturer or its designated sales affiliate;
2. failure to complete any of the Retail Purchaser Limited Warranty Actions listed in Section F(1);
3. if the Product is used or second quality (e.g., "seconds" or "scratch-and-dent") as designated on the original invoice issued by Manufacturer, unless Manufacturer has agreed in writing that the Pool Structural Limited Warranty applies for a specific second-quality Pool, in which case the Pool Structural Limited Warranty shall apply for such Pool, but in no case shall the Pool Surface Limited Warranty apply;
4. non-residential applications, including commercial applications;
5. damages or alterations caused or contributed to by acts of nature including but not limited to earthquake, ground movement, storm or flood, inadequate site drainage, excessive hydrostatic pressure, ground water, run-off water, underground springs, underground obstructions, tree roots or heavy water flow into the Product;
6. installation by someone other than an Aviva Pools® dealer, provided that this exclusion shall not preclude coverage under the Limited Warranty for claimed defects or damages that are unrelated to Product installation (for the avoidance of doubt: (a) Manufacturer recommends Products be installed by an Aviva Pools® dealer experienced and trained in installing them, but the Retail Purchaser is not required to use an Aviva Pools® dealer for Product installation; (b) installation by others shall not automatically void the Limited Warranty as to issues that would otherwise be covered unless such issues arose out of or are related to such installation; and (c) whether the Product is installed by others or by an Aviva Pools® dealer, Manufacturer provides no warranty on the installation itself, which warranty shall be provided by the installer, and Manufacturer is not responsible for defects or damages arising out of or related to such installation);
7. repairs or alterations by someone other than Manufacturer (for the avoidance of doubt: (a) Manufacturer recommends that repairs only be undertaken by Manufacturer, but the Retail Purchaser is not required to use Manufacturer for repairs; (b) repairs by others shall not automatically void the Limited Warranty as to items that would otherwise be covered, but Manufacturer shall have no responsibility or liability in connection with defects or damages arising out of or related to such repairs; and (c) in connection with any repairs by others for issues covered by the Limited Warranty, (i) all repair charges must be reasonable and pre-approved in writing by Manufacturer and (ii) Manufacturer provides no warranty on the repairs themselves, which warranty shall be provided by the contractor doing the repairs);
8. damages caused or contributed to by improper installation, including without limitation failure to install the Product level and/or in compliance with Manufacturer's installation guidelines and engineering specifications and all applicable codes, laws, rules and regulations, including without limitation local building codes and the then-current ANSI/APSP/ICC-5 Standards for Residential Inground Swimming Pools, with such compli-

ance to be determined by Manufacturer;

9. normal wear and tear, mistreatment, abnormal use of the Product, neglect, or alteration;
10. damages caused or contributed to by accident, abuse (whether chemical, accidental or deliberate), misuse or exposure to fire or hazards of nature;
11. failure to comply with any written guidelines, specifications or instructions contained in the Aviva Pools® Product Handbook provided to the Retail Purchaser, including without limitation with respect to Product maintenance and the use of proper chemicals;
12. if the Product (other than a Water Feature) is emptied to a level less than the skimmer box or by more than thirty percent (30%) of the water capacity of the Product (whichever is the lesser) without the prior written consent of Manufacturer;
13. if the Product (other than a Water Feature) is allowed to overflow with water;
14. for Spas, if the water in the Spa is heated for more than 24 hours above 38° Celsius (100° Fahrenheit);
15. failure to maintain a monthly written record of the water levels, including the levels of chlorine, free chlorine, pH, total alkalinity and calcium hardness (with calcium hardness to be tested by a pool shop at least every 6 months);
16. failure to maintain the pH level of the water between 7.2 and 7.4, the total alkalinity level between 80 to 120 parts per million, the calcium level between 80 and 120 parts per million (for claims under a Product's surface limited warranty), and/or the free chlorine level between 1 and 3 parts per million;
17. damages caused or contributed to by the water chemistry being outside of any standard operating water conditions set forth in the Aviva Pools® Product Handbook provided to the Retail Purchaser;
18. damages or alterations caused or contributed to by the use of improper or incorrect chemicals;
19. for claims under a Product's surface limited warranty, damages or alterations caused or contributed to by chlorine tablets resting on the surface of the Product;
20. failure to maintain the Product in good order and condition;
21. water loss due to failure of pipe fittings, inlet fittings, outlet fittings, solar connections, manifold, skimmer, hydrostatic valve relief, light fittings or anything connected to the Product;
22. for claims under a Product's surface limited warranty, any exposed horizontal gelcoat surface that is above the design waterline;
23. the coping (top edge around the perimeter of certain Products), which is not considered part of any Product for Limited Warranty purposes and which Manufacturer recommends be covered with concrete, pavers, tiles or other suitable covering subject to applicable conditions;
24. any equipment used in connection with the Product or any other accessories or surrounds, including without limitation waterfalls or fountains and decks, concrete, wood, masonry or other surrounds;
25. for claims under a Product's surface limited warranty, minor to moderate pig-

mentation changes, changes in color, fading of color or stains of the internal gelcoat finish of the Product or the external finish of the Product;

26. shade and/or color variances in connection with a cosmetic or surface repair, including by Manufacturer;
27. damages sustained during or as a result of installation, loading, transporting or unloading by the Retail Purchaser or a third party;
28. problems attributable to any specifications, drawings, information and/or data supplied to Manufacturer or its affiliates by or at the direction of the Retail Purchaser, whether or not accepted by Manufacturer or its affiliates;
29. any goods or components not manufactured by Manufacturer or its affiliates;
30. surface cracking and surface imperfections on the internal and external surface finish of the Product;
31. damages caused or contributed to by inadequate site drainage or incorrect deck installation;
32. damage to or failure resulting from any attachments to the applicable Product such as fittings, skimmers, piping, lighting fixtures, wiring, rails, ladders, slides or any other accessories;
33. any damage to a Water Feature caused or contributed to by standing on or jumping off of the Water Feature; or
34. any damage to a Water Feature caused or contributed to by the adhesion of tiles, cladding or any other product to the Water Feature.

F. OTHER CONDITIONS

The following shall apply in connection with the Limited Warranty:

1. REQUIRED RETAIL PURCHASER ACTIONS UNDER LIMITED WARRANTY. To obtain Limited Warranty services, the Purchase Price (as defined in Section (F)(7)) must have been paid in full to Manufacturer or its designated sales affiliate and the Retail Purchaser must: (a) have registered the Product(s) for the Limited Warranty online on the Aviva Pools® website (<https://avivapools.com>) prior to any Limited Warranty services and within six (6) months of delivery of the Product(s); (b) notify Manufacturer in writing within seven (7) days of becoming aware of a potential Limited Warranty claim, which notice shall include a detailed description and pictures of the claimed issue or condition; and (c) provide Manufacturer and/or its affiliates, agents or subcontractors a reasonable opportunity to inspect the Product(s) and the installation or use thereof and records kept in connection therewith (collectively, the "**Retail Purchaser Limited Warranty Actions**"). The Manufacturer mailing address, warranty department address and warranty telephone number for purposes of the foregoing are as follows:

Aviva Pools Warranty Department
2901 Leisure Island Way,
Knoxville, TN 37914 | (865) 281-1604

2. INSTALLERS. IT IS THE SOLE RESPONSIBILITY OF THE RETAIL PURCHASER TO CONFIRM THE STANDING OF THE PRODUCT INSTALLER AND TO VERIFY THAT THE INSTALLER IS QUALIFIED, LICENSED AND/OR INSURED AND IN COMPLIANCE WITH APPLICABLE FEDERAL, STATE, PROVINCIAL AND LOCAL REQUIREMENTS. INSTALLERS, INCLUDING WITHOUT LIMITATION THOSE THAT ARE AVIVA POOLS® DEALERS, ARE INDEPENDENTLY OWNED AND OPERATED THIRD-PARTY BUSINESSES AND ARE NOT OWNERS OR AGENTS (IN FACT OR LAW) OF MANUFACTURER OR ITS AFFILIATES. MANUFACTURER PROVIDES NO WARRANTY ON INSTALLATION AND MANUFACTURER AND ITS AFFILIATES SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY ACTS OR OMISSIONS OF INSTALLERS, INCLUDING WITHOUT LIMITATION INSTALLERS THAT ARE AVIVA POOLS® DEALERS, OR ANY DAMAGES RESULTING FROM THOSE ACTS OR OMISSIONS.

3. THIRD-PARTY CHARGES. If a third-party service provider charges the Retail Purchaser for labor and/or parts to resolve an issue not covered by the Limited Warranty (such as, but not limited to, improper installation), Manufacturer is not responsible for these charges. In addition, Manufacturer shall have no liability or responsibility for any charges by third-party service providers, whether or not such charges were to address issues that are covered by the Limited Warranty, if such charges have not been pre-approved in writing by Manufacturer.

4. DEALER OR INSTALLER WARRANTIES. If any warranties are issued by the dealer or other third party installing the Products, these are independent from the Manufacturer Limited Warranty and Manufacturer and its affiliates shall have no liability or responsibility in connection with such warranties.

5. DAMAGES LIMITATION. THE LIMITED WARRANTY DOES NOT COVER, AND IN NO EVENT SHALL MANUFACTURER OR ITS AFFILIATES HAVE ANY LIABILITY FOR, ANY INSTALLATION, REMOVAL OR REINSTALLATION COSTS, TRAVEL, LODGING OR TRANSPORTATION COSTS, LOSS OF TIME OR USE OF THE PRODUCT, INCONVENIENCE, WATER LOSS, DAMAGE TO ANIMALS OR PROPERTY (INCLUDING WITHOUT LIMITATION DAMAGE TO STONE, TILE, COPING, FIXTURES, PLUMBING, DRAINS, SKIMMERS OR SKIMMER COVERS, FENCING, DRIVEWAYS, SIDEWALKS, PATIOS, LANDSCAPING, PLANTS, GRASS, TREES, PATIOS OR DWELLINGS) OR SIMILAR LOSS OR EXPENSE INCURRED BY RETAIL PURCHASER OR ANY THIRD PARTY, OR ANY OTHER INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND ALLEGEDLY ARISING FROM ANY DEFECT OR BREACH OF WARRANTY OR CONDITION OR IN CONNECTION WITH ANY REPLACEMENT OR REPAIR HEREUNDER, WHETHER ANY SUCH CLAIM OR DAMAGES BE BASED UPON WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHERWISE. IN NO EVENT SHALL MANUFACTURER'S TOTAL LIABILITY HEREUNDER EXCEED THE ORIGINAL PURCHASE PRICE (AS DEFINED BELOW) PAID TO MANUFACTURER FOR THE PRODUCT. SOME STATES OR PROVINCES DO NOT ALLOW EXCLUSION OR LIM-

TATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO THE RETAIL PURCHASER WITH RESPECT TO THE LIMITED WARRANTY. IT IS EXPRESSLY AGREED THAT THIS LIMITED WARRANTY DOES NOT FAIL OF ITS ESSENTIAL PURPOSE.

6. DISCLAIMER OF IMPLIED WARRANTIES AND CONDITIONS. OTHER THAN THE EXPRESS LIMITED WARRANTY HEREIN, WHICH MAY NOT BE ALTERED IN ANY MANNER WITHOUT THE EXPRESS WRITTEN CONSENT OF MANUFACTURER, NEITHER MANUFACTURER NOR ANY OF ITS AFFILIATES MAKES ANY WARRANTY, REPRESENTATION OR CONDITION, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS OR ANY RELATED SERVICE, ADVICE OR CONSULTATION. **IMPLIED WARRANTIES AND CONDITIONS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED TO THE DURATION OF THE LIMITED WARRANTY OR CONDITION FOR THE PRODUCT COVERED THEREBY. SOME STATES OR PROVINCES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO THE RETAIL PURCHASER. ALL IMPLIED WARRANTIES AND CONDITIONS, WHETHER STATUTORY OR OTHERWISE, ON PRODUCTS OR SALES NOT COVERED BY THE LIMITED WARRANTY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, NON-INFRINGEMENT AND TITLE, ARE HEREBY EXPRESSLY DISCLAIMED BY MANUFACTURER AND ITS AFFILIATES AND WAIVED TO THE FULLEST EXTENT ALLOWED BY LAW AND WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. ANY PRODUCTS NOT COVERED BY THE LIMITED WARRANTY AND ANY SERVICE, ADVICE OR CONSULTATION ARE PROVIDED "AS IS," WITH ALL FAULTS AND WITHOUT WARRANTY OR CONDITION OF ANY KIND, AND ANY WARRANTIES AND CONDITIONS IN CONNECTION THEREWITH IMPLIED BY ANY COURSE OF DEALING OR USAGE ARE EXPRESSLY DISCLAIMED AND EXCLUDED.**

7. EXCLUSIVE REMEDIES. If the Limited Warranty is applicable, Manufacturer shall, at its option, either repair or replace the defective Product, or may refund the Purchase Price, or a portion thereof, in its sole discretion, which repair, replacement or refund may be effected directly by Manufacturer or through a Manufacturer affiliate at the discretion of Manufacturer. Any such warranty replacement or repair shall only be warranted until the conclusion of the original warranty term. In the event Manufacturer chooses to repair a Pool, Spa or Tanning Ledge, it will repair it so that it can retain water. Neither Manufacturer nor its affiliates shall be responsible for any cost to refill the water in the Product or chemically condition such water. The Retail Purchaser is responsible for draining and bracing the Product, and for removing all hydrostatic (ground water) from around the Product. Limited Warranty repairs may (a) require modification to the Product, including without limitation modification to the length, width, depth or texture of the Product; (b)

require the removal or sanding off of the non-skid finish of the Product, if applicable, and the reapplication thereof; and/or (c) result in a different appearance of the repaired area from the original condition of the Product, including without limitation gelcoat repairs resulting in a color or shade variance from the original gelcoat color, and Manufacturer shall have no liability in connection with any of the foregoing. IN NO EVENT SHALL THE TOTAL LIABILITY OF MANUFACTURER AND ITS AFFILIATES UNDER THE LIMITED WARRANTY EXCEED THE PURCHASE PRICE PAID TO MANUFACTURER OR ITS DESIGNATED SALES AFFILIATE, AS APPLICABLE, FOR THE COVERED PRODUCT(S) TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW. AS USED HEREIN, THE "PURCHASE PRICE" PAID TO MANUFACTURER OR ITS DESIGNATED SALES AFFILIATE MEANS EITHER (a) THE WHOLESALE PRICE PAID BY THE APPLICABLE AVIVA POOLS® DEALER IF THE RETAIL PURCHASER PURCHASED THE PRODUCT FROM A DEALER OR (b) THE RETAIL PRICE PAID BY THE RETAIL PURCHASER TO MANUFACTURER OR ITS DESIGNATED SALES AFFILIATE IF THE RETAIL PURCHASER PURCHASED THE PRODUCT DIRECTLY FROM MANUFACTURER OR ITS DESIGNATED SALES AFFILIATE, WITH THE PURCHASE PRICE IN EACH CASE BEING ONLY THAT AMOUNT PAID FOR THE SHELL OF THE PRODUCT ITSELF AND NO OTHER RELATED PRODUCTS, EQUIPMENT, COPING, SURROUNDS, LANDSCAPING OR OTHER WORK OR ASSOCIATED PROJECT COSTS. EXCEPT TO THE EXTENT EXPRESSLY PROHIBITED BY PROVISIONS OF APPLICABLE LAW THAT CANNOT BE WAIVED BY CONTRACT AND THAT ARE NECESSARILY APPLICABLE NOTWITHSTANDING A CONTRACTUAL CHOICE OF OTHER LAW, THE REMEDIES SET FORTH ABOVE CONSTITUTE THE RETAIL PURCHASER'S SOLE AND EXCLUSIVE REMEDIES, AND THE SOLE OBLIGATION AND LIABILITY OF MANUFACTURER AND ITS AFFILIATES, FOR ANY BREACH OF THE LIMITED WARRANTY OR FOR BREACH OF ANY OTHER COVENANT, "DUTY" OR OBLIGATION ON THE PART OF MANUFACTURER.

8. TRANSFER OF LIMITED WARRANTY. The Retail Purchaser may transfer the Limited Warranty within five (5) years of the date the applicable Product was originally purchased by notifying Manufacturer in writing of the change in ownership and providing Manufacturer with the name, address, telephone number and e-mail address of the new owner (the "Authorized Transferee"). Any such transfer must occur within one (1) month of the change in ownership and shall be effective when the Authorized Transferee has received the Aviva Pools® Product Handbook and Limited Warranty from Manufacturer.

9. THIRD PARTY PRODUCTS. Neither Manufacturer nor its affiliates shall have any warranty or other obligation with respect to goods or materials manufactured by third parties, and the warranty (if any) of the respective third-party manufacturer(s) will instead apply. The Retail Purchaser agrees to be bound by the terms, covenants and conditions of the respective third-party manufacturers' warranties and to look solely to such manufacturers in the event of a breach of any such warranties. The Retail Purchaser agrees that the disclaimers in Section (F)(6) above shall apply equally to any goods or materials manufactured by third parties.

10. APPLICABLE LAW; JURISDICTION AND VENUE. THIS LIMITED WARRANTY GIVES THE RETAIL PURCHASER SPECIFIC LEGAL RIGHTS, AND THE RETAIL PURCHASER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR AMONG PROVINCES. Except to the extent expressly prohibited by provisions of applicable law that cannot be waived by contract and that are necessarily applicable notwithstanding a contractual choice of other law: (a) any and all disputes, claims, liabilities, proceedings and/or causes of action (whether in contract or tort, or granted by statute) that may be based upon, arise out of or relate to this Limited Warranty, the Products, and/or the rights and obligations of Manufacturer and the Retail Purchaser in connection with the foregoing (“**Claims**”), shall be governed by and construed in accordance with the internal laws of the State of Tennessee, without regard to conflicts of law principles, and the arbitration provision in this Limited Warranty shall be governed by the Federal Arbitration Act (United States); and (b) subject to (and without limiting or waiving) the provisions of Sections F(11) through F(13) below, the Retail Purchaser and Manufacturer irrevocably agree to submit to the exclusive jurisdiction of the state or federal courts located in Knoxville, Knox County, Tennessee or, to the extent Manufacturer’s principal place of business is at any time relocated outside Knoxville, Tennessee, then in the city and county in which Manufacturer’s principal place of business is located at the time the action is initiated, for the resolution of any such Claims.

11. ARBITRATION. By purchasing a Product or making a claim under this Limited Warranty, the Retail Purchaser is agreeing that, except to the extent expressly prohibited by provisions of applicable law that cannot be waived by contract and that are necessarily applicable notwithstanding a contractual choice of other law, and subject to the provisions of this Section and Sections F(10), (12) and (13) herein, ANY AND ALL CLAIMS SHALL BE SUBMITTED TO BINDING ARBITRATION UNDER THE AUTHORITY OF THE FEDERAL ARBITRATION ACT (UNITED STATES) OR THE TENNESSEE UNIFORM ARBITRATION ACT, AS APPLICABLE, AND SHALL BE DETERMINED BY ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION PURSUANT TO ITS THEN-CURRENT COMMERCIAL ARBITRATION RULES AND PROCEDURES. The arbitration shall take place in Knoxville, Knox County, Tennessee or, if Manufacturer has relocated its principal place of business from Knoxville, Tennessee, then in the city where Manufacturer’s principal place of business is located at the time the action is initiated. The arbitrator must follow the law, may not disregard the express terms of this Limited Warranty, including without limitation the choice of law in Section F(10), and may not assess punitive or exemplary damages against Manufacturer or make any award that extends, modifies or suspends any lawful term of this Limited Warranty. A judgment may be entered upon the arbitration award by any federal, provincial or state court in the state or province where Manufacturer maintains its principal place of business or the Retail Purchaser resides at the time the action is initiated. NEITHER THE RETAIL PURCHASER NOR MANUFACTURER SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CUSTOMERS IN ARBITRATION OR ARBITRATE AS A CLASS REPRESENTATIVE, CLASS MEMBER OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. If any provision of this Section is found to be

unenforceable, such provision shall be severed and the remaining arbitration terms shall be enforced, provided that no class arbitration shall be permitted. Notwithstanding the arbitration requirements of this Section, the requirement to arbitrate shall not apply to any action for declaratory or equitable relief, including without limitation injunctive relief, brought at any time, including without limitation prior to or during the pendency of any arbitration proceedings initiated hereunder.

12. NO CLASS ACTIONS. Subject to the arbitration requirements in Section F(11), and except to the extent expressly prohibited by provisions of applicable law that cannot be waived by contract and that are necessarily applicable notwithstanding a contractual choice of other law, THE RETAIL PURCHASER AND MANUFACTURER AGREE THAT EACH MAY BRING CLAIMS (AS DEFINED IN SECTION F(10)) AGAINST THE OTHER ONLY IN THEIR INDIVIDUAL CAPACITY AND NOT IN A PRIVATE ATTORNEY GENERAL CAPACITY OR AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION, AND NEITHER WILL SEEK TO COORDINATE OR CONSOLIDATE ANY SUCH CLAIMS WITH ANY OTHER PROCEEDING. Unless both the Retail Purchaser and Manufacturer agree in writing, no arbitrator or judge may consolidate more than one person’s claims or otherwise preside over any form of a representative or class proceeding.

13. JURY WAIVER. Subject to the arbitration requirements in section F(11), and without limiting or waiving the same, EACH OF THE RETAIL PURCHASER AND MANUFACTURER ACKNOWLEDGES AND AGREES THAT SUCH PARTY HAS HAD AN OPPORTUNITY TO CONSULT WITH COMPETENT LEGAL COUNSEL AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY CLAIMS (AS DEFINED IN SECTION F(10)), THE PROVISIONS OF ANY FEDERAL, PROVINCIAL, STATE OR LOCAL LAW, REGULATION OR ORDINANCE THAT CAN BE WAIVED BY CONTRACT NOTWITHSTANDING. SOME STATES OR PROVINCES DO NOT PERMIT THE WAIVER OF A JURY TRIAL, SO THIS PROVISION MAY NOT APPLY TO THE RETAIL PURCHASER.

14. SOLE RECOURSE. By purchasing a Product or making a claim under this Limited Warranty, the Retail Purchaser is agreeing that, except to the extent expressly prohibited by provisions of applicable law that cannot be waived by contract and that are necessarily applicable notwithstanding a contractual choice of other law: (i) THIS LIMITED WARRANTY MAY ONLY BE ENFORCED AGAINST, AND ANY CLAIMS (AS DEFINED IN SECTION F(10)) MAY ONLY BE BROUGHT AGAINST, MANUFACTURER and not against any direct or indirect parent, subsidiary or other affiliate of Manufacturer or any past, present or future equity owner, director, officer, manager, employee, incorporator, affiliate, agent, attorney, lawyer or representative of, or any financial advisor or lender to, Manufacturer or any of the foregoing (“**Released Persons**”); (ii) no Released Person shall have any liability on any basis (whether in contract or tort, at law or in equity, granted by statute or otherwise) for any Claims; (iii) the Retail Purchaser will in no event threaten or assert any Claim against any of the Released Persons, whether granted by statute or

based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization or otherwise and, to the maximum extent permitted by the governing law specified in Section F(10), the Retail Purchaser hereby waives and releases all such Claims against such Released Persons that may otherwise be available at law or in equity to avoid or disregard the entity form of Manufacturer or otherwise impose liability of Manufacturer on any Released Person; and (iv) the Retail Purchaser shall indemnify Manufacturer and each of the Released Persons from all claims, losses, injuries, damages, fees, costs, expenses, complaints and liabilities incurred or required as a result of a breach by the Retail Purchaser of any of the provisions of this Section.

15. SOLE WARRANTY; SEVERABILITY AND REFORMATION. By purchasing a Product or making a claim under this Limited Warranty, the Retail Purchaser is agreeing that this Limited Warranty is the sole warranty offered by Manufacturer or its affiliates applicable to the Products and supersedes any prior understandings, agreements or representations, whether written or oral, by or among Manufacturer and/or its affiliates and the Retail Purchaser regarding the Limited Warranty. If (but only to the extent that) any provision of this Limited Warranty is declared or found to be illegal, unenforceable or void (in whole or in part) under provisions of applicable law that cannot be waived by contract and that are necessarily applicable notwithstanding a contractual choice of other law, the Retail Purchaser and Manufacturer agree that: (i) such provision may be deemed severable and the remainder of this Limited Warranty not affected by such provision shall be enforced to the fullest extent permitted by law; (ii) it is their specific intent and request that the adjudicative body called upon to interpret or enforce the Limited Warranty modify such provision to the minimum extent necessary so as to render it legal and enforceable while preserving the intent thereof; and (iii) if such amendment is not possible, another provision that is legal and enforceable and achieves the same objectives shall be substituted therefor.

16. NO INDUCEMENT; NON-RELIANCE. By purchasing a Product or making a claim under this Limited Warranty, the Retail Purchaser is agreeing that: (a) the Retail Purchaser has not been induced to purchase any Products by any representation, warranty or condition not expressly set forth in this Limited Warranty; (b) neither Manufacturer nor any of its affiliates is making or has made any representation, warranty or condition, expressed or implied, at law or in equity, to the Retail Purchaser in respect of any Products or any other matter or thing whatsoever that is not expressly set forth herein; (c) no representative of Manufacturer has any authority, express or implied, to make any representation, warranty, condition or agreement not specifically set forth herein and the Retail Purchaser is not relying upon and has not relied upon any such other representation, warranty, condition or agreement; and (d) except to the extent expressly prohibited by provisions of applicable law that cannot be waived by contract and that are necessarily applicable notwithstanding a contractual choice of other law, the Retail Purchaser's purchase of any Products is subject only to the specific representations, warranties and conditions expres-

sly set forth in this Limited Warranty, subject to the limitations herein.

17. ASSIGNMENT. Manufacturer may assign, novate or otherwise transfer any or all of its rights and/or obligations under this Limited Warranty to an affiliate at any time and such transferee shall automatically be substituted as Manufacturer hereunder.