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First American Title Ins Co

**When recorded mail to:**

Towne Development, Inc.  
Attention: Kevin G. Kiesel, Vice President  
706 E. Bell Road, Suite 212  
Phoenix, AZ 85022

**ADDITIONAL DECLARATION FOR PARCEL 35A PHASE 2 OF RE-PLAT OF  
PARCELS 35A AND 36 OF ZANJERO TRAILS PHASE 1 INFRASTRUCTURE PLAT  
OF ZANJERO TRAILS PHASE 1C ACCORDING TO THE PLAT OF RECORD IN THE  
OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA,  
RECORDED IN BOOK 1430 AT PAGE 05**

**ADDITIONAL DECLARATION FOR PARCEL 35A PHASE 2 OF RE-PLAT OF PARCELS 35A AND 36 OF ZANJERO TRAILS PHASE 1 INFRASTRUCTURE PLAT OF ZANJERO TRAILS PHASE 1C ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 1430 AT PAGE 05**

**THIS ADDITIONAL DECLARATION FOR PARCEL 35A PHASE 2 OF RE-PLAT OF PARCELS 35A AND 36 OF ZANJERO TRAILS PHASE 1 INFRASTRUCTURE PLAT OF ZANERO TRAILS PHASE 1C ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 1430 AT PAGE 05** ("Additional Declaration") is made as of the 1st day of October, 2019, by **HBT OF WINDROSE LLC**, an Arizona limited liability company ("HBT"), with acknowledgment and consent of **SBH ZANJERO TRAILS, LP**, an Arizona limited partnership ("Declarant").

**BACKGROUND:**

A. HBT is current owner of certain property located in Maricopa County, Arizona, legally described on *Exhibit "A"* attached hereto and incorporated herein by reference (the "HBT Property"); and

B. The HBT Property is subject to the terms and provisions of that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Windrose at Zanjero Trails, which was recorded in the Office of the County Recorder of Maricopa County, Arizona on September 20, 2016 as Document No. 20160683439 (the "Declaration"), the terms and conditions of which Declaration are incorporated herein by reference into this Additional Declaration and shall have the same meaning and effect as set forth in the Declaration; and

C. HBT, as a Builder subject to the Declaration, desires to provide, with respect to each Dwelling Unit it constructs on the HBT Property, in its purchase agreements with its buyers ("Purchase Agreement") and in this Additional Declaration that the terms and provisions of this Additional Declaration shall be binding upon HBT's initial direct buyers from HBT ("HBT Buyers" or "HBT Buyer") and upon Subsequent Purchasers (hereinafter defined); and

D. HBT, therefore, with the acknowledgement and consent of the Declarant and in accordance with Section 11.1.3 of the Declaration, hereby declares and adopts this Additional Declaration and the warranty and dispute resolution provisions hereinafter set forth, all of which shall govern and exclusively apply to Dwelling Units constructed by or on behalf of HBT on the HBT Property. Provided, however, the provisions of this Additional Declaration relating to dispute resolution and Claims (hereinafter defined) shall not apply to disputes and claims involving Common Areas which are governed by the provisions of the Declaration.

NOW, THEREFORE, HBT hereby declares, covenants and agrees as follows:

**ARTICLE 1**  
**ALTERNATIVE DISPUTE RESOLUTION PROCECURES**  
**HOME BUILDER'S LIMITED WARRANTY**

1.1 It is HBT's intent that the Dwelling Units constructed on the HBT Property by HBT or on behalf of HBT by the Covered Parties (hereinafter defined) be of a quality that is consistent with good construction and development practices for similar properties and be free of construction defects as defined in Section 12-1361.4(a) through (c) Arizona Revised Statutes ("Construction Defects"). Therefore HBT has provided a warranty to the HBT buyers and all Subsequent Purchasers (hereinafter sometime "Claimant" or "Claimants") with the Home Builder's Limited Warranty PWC Form No. 117 Rev. 01/07, a copy of which is attached hereto as Exhibit "B" ("Home Builder's Limited Warranty" or "HBLW"). However, the definition of Construction Defects set forth in the Home Builder's Limited Warranty is hereby amended and modified as provided above in this Section 1.1. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluation of such quality, issues may arise as to whether alleged Construction Defects exists and HBT's responsibility therefor. It is HBT's intent to exercise reasonable efforts to attempt to amicably resolve all Claims regarding Construction Defects without the necessity of time consuming and costly litigation pursuant to these Alternative Dispute Resolution Procedures described below in this Article and, if required, by binding arbitration as provided for Articles 2 and 3 hereof. Accordingly, HBT and all HBT Buyers of Dwelling Units constructed on the HBT Property by or on behalf of HBT and purchased initially directly from HBT by HBT Buyers and all Subsequent Purchasers (hereinafter sometimes "Claimant" or "Claimants") are and shall be bound by dispute resolution and Claims procedures set forth below.

The Home Builder's Limited Warranty is subject to the Coverage Limitations set forth in Section IV thereof and the Exclusions from coverage set forth in Section V thereof, as well as to the other provisions of the Home Builder's Limited Warranty and the provisions of this Additional Declaration.

1.2 In the event that any Claimant claims, contends, or alleges that all or any portion of the Claimant's Dwelling Unit constructed within the HBT Property by or on behalf of HBT by the Covered Parties contains Construction Defects ("Claim" or "Claims"), then the Claimant and HBT agree to attempt to resolve such Claims concerning same as follows:

1.3 NOTICE AND OPPORTUNITY TO REPAIR.

(a) AT LEAST NINETY (90) DAYS BEFORE THE CLAIMANT INITIATES, AS CLAIMANT'S SOLE LEGAL ACTION AGAINST HBT, THE PROCEDURES FOR FINAL AND BINDING ARBITRATION PURSUANT TO THE HBLW HEREOF, THE CLAIMANT SHALL GIVE WRITTEN NOTICE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO HBT SPECIFYING IN REASONABLE DETAIL THE BASIS OF ANY CLAIM THAT THE CLAIMANT MAY HAVE AGAINST HBT ARISING OUT OF, OR RELATED TO, THE EXISTENCE OF CONSTRUCTION DEFECTS WITHIN THE DWELLING UNIT.

(b) AFTER THE RECEIPT OF THE NOTICE DESCRIBED IN SECTION 1.3(a), HBT MAY INSPECT THE CLAIMANT'S DWELLING UNIT TO DETERMINE THE NATURE AND CAUSE OF THE ALLEGED CONSTRUCTION

DEFECTS AND THE NATURE AND EXTENT OF ANY REPAIRS OR REPLACEMENTS THAT MAY BE NECESSARY TO REMEDY THE ALLEGED CONSTRUCTION DEFECTS. THE CLAIMANT SHALL INSURE THAT THE DWELLING UNIT IS MADE AVAILABLE FOR INSPECTION NO LATER THAN TEN (10) DAYS AFTER THE CLAIMANT RECEIVES HBT'S REQUEST FOR AN INSPECTION. HBT SHALL PROVIDE REASONABLE NOTICE TO THE CLAIMANT BEFORE CONDUCTING THE INSPECTION. THE INSPECTION SHALL BE CONDUCTED AT A REASONABLE TIME. HBT MAY USE REASONABLE MEASURES, INCLUDING TESTING, TO DETERMINE THE NATURE AND CAUSE OF THE ALLEGED CONSTRUCTION DEFECTS AND THE NATURE AND EXTENT OF ANY REPAIRS OR REPLACEMENTS NECESSARY TO REMEDY THE ALLEGED CONSTRUCTION DEFECTS. IF HBT CONDUCTS TESTING PURSUANT TO THIS SECTION 1.3(b), HBT SHALL RESTORE THE DWELLING UNIT TO ITS CONDITION BEFORE TESTING.

(c) WITHIN SIXTY (60) DAYS AFTER RECEIPT OF THE NOTICE DESCRIBED IN SECTION 1.1(a), HBT SHALL SEND THE CLAIMANT, IN GOOD FAITH, A WRITTEN RESPONSE TO THE CLAIMANT'S NOTICE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE RESPONSE MAY INCLUDE AN OFFER TO REPAIR OR REPLACE ANY ALLEGED CONSTRUCTION DEFECTS, TO HAVE SUCH CONSTRUCTION DEFECTS REPAIRED OR REPLACED AT HBT'S EXPENSE AND/OR TO PROVIDE MONETARY COMPENSATION TO THE CLAIMANT. THE OFFER SHALL DESCRIBE IN REASONABLE DETAIL ALL REPAIRS OR REPLACEMENTS HBT IS OFFERING TO MAKE OR PROVIDE TO THE DWELLING UNIT AND A REASONABLE ESTIMATE OF THE DATE BY WHICH THE REPAIRS OR REPLACEMENTS WILL BE MADE AND/OR MONETARY COMPENSATION WILL BE PROVIDED.

(d) IF HBT DOES NOT PROVIDE A WRITTEN RESPONSE TO THE CLAIMANT'S NOTICE WITHIN SIXTY (60) DAYS, THE CLAIMANT SHALL BE ENTITLED TO INITIATE THE FINAL AND BINDING ARBITRATION PROCEEDINGS PROVIDED FOR IN THE HBLW HEREOF WITHOUT WAITING FOR THE EXPIRATION OF THE NINETY (90) DAYS AS REQUIRED BY SECTION 1.3(a).

(e) WITHIN TWENTY (20) DAYS AFTER RECEIPT OF HBT'S OFFER MADE PURSUANT TO SECTION 1.3(c), THE CLAIMANT SHALL PROVIDE A GOOD FAITH, WRITTEN RESPONSE. THE CLAIMANT WHO ACCEPTS HBT'S OFFER PURSUANT TO THIS SECTION 1.3(e) SHALL DO SO IN WRITING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE CLAIMANT WHO REJECTS HBT'S OFFER MADE PURSUANT TO THIS SECTION 1.3(e), SHALL RESPOND TO HBT IN WRITING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE RESPONSE SHALL INCLUDE THE BASIS OF THE CLAIMANT'S REJECTION OF HBT'S OFFER AND MAY INCLUDE A COUNTER-OFFER. WITHIN TEN (10) DAYS AFTER RECEIPT OF THE CLAIMANT'S RESPONSE, HBT SHALL MAKE A BEST AND FINAL OFFER TO THE CLAIMANT IN WRITING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. IF THE CLAIMANT FAILS TO RESPOND AS ABOVE PROVIDED FOR, SUCH FAILURE SHALL BE DEEMED A REJECTION OF HBT'S OFFER.

(f) IF HBT FAILS TO MAKE A BEST AND FINAL OFFER, OR IF THE CLAIMANT FAILS TO ACCEPT SAID OFFER, THEN THE CLAIMANT SHALL BE ENTITLED TO INITIATE THE FINAL AND BINDING MANDATORY ARBITRATION PROCEDURES PROVIDED FOR IN THE HBLW WHICH IS ADMINISTERED BY PROFESSIONAL WARRANTY SERVICE CORPORATION.

1.4 Covered Parties shall mean HBT's general contractor, HBT Construction of Arizona, Inc., and its subcontractors and their agents, vendors, suppliers, design professionals, materialmen and any of HBT's direct or indirect subsidiaries or related entities alleged to be responsible for alleged Construction Defects.

1.5 The Alternative Dispute Resolutions provisions herein and the mandatory arbitration provisions contained in Section VII of the HBLW are binding upon all Claimants unless and until the applicable Statute of Limitations and Statute of Repose bars the Claim.

## **ARTICLE 2**

### **BINDING ARBITRATION**

2.1 **Binding Arbitration.** HBT and each Dwelling Unit Owner of a Dwelling Unit located in the HBT Property acknowledge that each HBT Buyer has entered into a Purchase Agreement with HBT which provides for mandatory arbitration of Claims between the HBT Buyers and HBT, if such Claims are not resolved by the Notice and Opportunity to Repair procedures referred to in Article 1 above. Such mandatory arbitration procedures are set forth in the HBLW, a copy of which is attached as Exhibit "B", and has or will be furnished to each such HBT Buyer at the time of their entering into the Purchase Agreement with HBT. HBT and each HBT Buyer covenant and agree to abide by the HBLW. In accordance with the HBLW and the agreement of HBT and each HBT Buyer to abide by said warranty program, HBT and each HBT Buyer covenant and agree that any and all claims and/or disputes of any kind relating to Construction Defects in the Dwelling Units shall, if not resolved by personal negotiations or through Alternative Dispute Resolution Procedures provided for in Article 1 hereof, be submitted by each HBT Buyer, as applicable, to final and binding arbitration pursuant to and in accordance with the provisions of the arbitration agreement contained in the HBLW, which arbitration agreement is incorporated herein as though fully set forth. For greater certainty, if any of the above-referenced claims or disputes are not resolved by the Notice and Opportunity to Repair procedures, mandatory arbitration will proceed in accordance with Article 1 hereof and the HBLW.

2.2 **DISCLAIMER OF WARRANTIES UNDER HOME BUILDER'S LIMITED WARRANTY.** OTHER THAN THE HBLW, HBT, TO THE FULLEST EXTENT PERMITTED BY LAW, MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY DWELLING UNIT OR CONSUMER PRODUCTS OR OTHER THINGS THAT MAY BE INSTALLED OR THAT ARE CONTAINED IN OR RELATE TO THE DWELLING UNIT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION OR FITNESS FOR A PARTICULAR USE. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES BEING GIVEN BY HBT TO ANY DWELLING UNIT OWNER, BE THEY A HBT BUYER OR A SUBSEQUENT PURCHASER, AND, BY TAKING TITLE TO A DWELLING UNIT, EACH DWELLING UNIT OWNER, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS (INCLUDING SUCCESSOR OWNERS

OF THE DWELLING UNIT), SPECIFICALLY WAIVES, TO THE FULL EXTENT ALLOWED BY LAW, ANY IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE DWELLING UNIT, INCLUDING ANY IMPROVEMENTS THEREOF, OR ANY PERSONAL PROPERTY OR FIXTURES BEING PROVIDED TO THE DWELLING UNIT OWNER BY HBT AS PART OF THE DWELLING UNIT. IN PARTICULAR, BY THE DWELLING UNIT OWNER TAKING TITLE TO A DWELLING UNIT, THE DWELLING UNIT OWNER ACKNOWLEDGES AND AGREES THAT IF ANY CLAIMS AMONG THEM AND HBT RELATING TO ALLEGED DWELLING UNIT CONSTRUCTION DEFECTS ARE NOT RESOLVED BY THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES REFERRED TO ABOVE, THEN: (A) THE HOME BUILDER'S LIMITED WARRANTY AND THE PURCHASE AGREEMENT REQUIRE THAT THESE CLAIMS, WHETHER SUCH CLAIMS ARISE BEFORE OR AFTER THE CLOSE OF ESCROW, BE RESOLVED SOLELY AND EXCLUSIVELY THROUGH BINDING ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT (9 U.S.C. § 1, ET SEQ.) AND ADMINISTERED BY AN ARBITRATOR SELECTED BY MUTUAL AGREEMENT OF THE PARTIES OR AS OTHERWISE DESIGNATED BY PROFESSIONAL WARRANTY SERVICE CORPORATION (IN THIS ADDITIONAL DECLARATION "PWC") AS PROVIDED IN THE HBLW IN ACCORDANCE WITH THE RULES AND PROCEDURES SET FORTH IN THE HBLW AND WHERE NOT INCONSISTENT BY THE RULES AND PROCEDURES OF THE ARBITRATOR, AND (B) IN AGREEING TO SUBMIT SUCH DISPUTES TO BINDING ARBITRATION, HBT AND EACH DWELLING UNIT OWNER ARE GIVING UP AND WAIVING ANY RIGHTS THEY MAY POSSESS TO LITIGATE SUCH CLAIMS IN A COURT OR BY JURY TRIAL.

NOTWITHSTANDING, HOWEVER, THE FIRST FULL PARAGRAPH OF ARTICLE VII ON PAGE 9 OF THE SELLER'S HOME BUILDER'S LIMITED WARRANTY IS HEREBY MODIFIED TO DELETE DEMARS AND ASSOCIATES, LTD. AS THE DESIGNATED ARBITRATOR AND TO DELETE THE AUTHORITY OF PWC TO APPOINT THE ARBITRATION SERVICES. IN PLACE THEREOF, THE APPLICABLE PORTION OF THE SELLER'S HOME BUILDER'S LIMITED WARRANTY IS AMENDED TO PROVIDE THAT ARBITRATION SHALL TAKE PLACE IN THE PHOENIX, ARIZONA METROPOLITAN AREA AND SUBJECT TO THE OTHER PROVISIONS OF THE SELLER'S HOME BUILDER'S LIMITED WARRANTY, ARIZONA LAW SHALL APPLY TO ALL SUCH DISPUTES. THE ARBITRATION SHALL BE CONDUCTED BY A SINGLE ARBITRATOR AGREED UPON BY THE APPLICABLE BUYER(S) OF THE INDIVIDUAL PROJECT HOUSES AND HBT FROM A LIST OF THOSE ARBITRATORS WHO ARE CURRENTLY MEMBERS OF THE ARIZONA ACADEMY OF MEDIATORS AND ARBITRATORS ("AAMA"), DESIGNATED BY THE AAMA AS POSSESSING EXPERIENCE WITH CONSTRUCTION LITIGATION AND HAVING NO LESS THAN TEN (10) YEARS EXPERIENCE PRACTICING LAW IN THE STATE OF ARIZONA.

THIS HOME BUILDER'S LIMITED WARRANTY IS A WARRANTY THAT RUNS FOR A WARRANTY PERIOD OF EIGHT (8) YEARS FROM TRANSFER OF TITLE DIRECTLY FROM HBT TO THE HBT BUYER UNLESS THE DWELLING UNIT HAS BEEN USED BY HBT AS A MODEL HOME, IN WHICH CASE THE EXPRESS WARRANTY EXPIRES EIGHT (8) YEARS FROM SUBSTANTIAL COMPLETION OF EACH DWELLING UNIT ("WARRANTY PERIOD").

**ARTICLE 3**  
**NOTICE TO SUBSEQUENT PURCHASERS**

Notice is hereby given to all Persons that purchase a Dwelling Unit constructed by or on behalf of HBT from a Person other than HBT ("Subsequent Purchasers") that such Subsequent Purchasers shall be deemed upon acquisition of such Dwelling Unit to be subject to and the beneficiary of all of the terms and conditions of this Additional Declaration and of the HBLW, including, but not limited to, after compliance with provisions of Article 1 above, the warranty and mandatory binding arbitration provisions set forth herein and in Section VII of the HBLW. Nothing contained herein shall modify or extend the "Warranty Period" provided for above and defined in the HBLW.

**ARTICLE 4**  
**MISCELLANEOUS**

4.1 The terms and conditions of this Additional Declaration shall run with the HBT Property and be binding upon the HBT Property and the Owners of all Dwelling Units located thereon from and after the date of recording of this Additional Declaration, and by accepting deeds, leases, easements or other grants or conveyances to any portion of the HBT Property, the Owners of such Dwelling Units and other transferees for themselves and their heirs, executives, administrators, trustees, personal representatives, successors and assigns agree that they shall be personally bound by all of the terms and conditions of this Additional Declaration.

4.2 The terms or conditions of this Declaration may not be amended by any such Owners subject thereto without the prior express written consent of HBT duly recorded, which consent may be withheld in the sole and absolute discretion of HBT.

IN WITNESS WHEREOF, HBT has caused this Additional Declaration to be duly executed as of the day and year first written above.

**HBT OF WINDROSE LLC**, an Arizona  
limited liability company

By: Towne Development, Inc., its Sole  
Member

By:   
Kevin G. Kiesel, Vice President

STATE OF ARIZONA                     )  
   ) ss.  
COUNTY OF MARICOPA            )

On this 16 day of September, 2019, before me, the undersigned notary, personally appeared Kevin G. Kiesel, who acknowledged her/himself to be Vice President of Towne Development, Inc., an Arizona corporation, the Sole Member of HBT of Windrose LLC, an Arizona limited liability company:

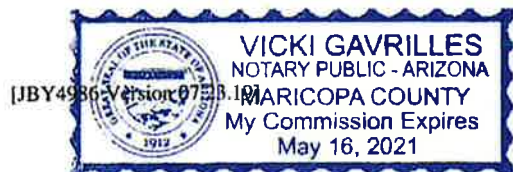
X whom I know personally;  
\_\_\_\_\_ whose identity was proven to me on the oath of  
\_\_\_\_\_, a credible witness by me duly sworn;  
\_\_\_\_\_ whose identity I verified on the basis of her/his  
\_\_\_\_\_

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Vicki Gavrilles  
Notary Public





SBH Zanjero Trails, LP, an Arizona limited partnership (hereinafter "Declarant"), herein pursuant to that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Windrose at Zanjero Trails recorded in Maricopa County, Arizona Register of Deeds Office on September 20, 2016 as Document No. 20160683439 ("Declaration") hereby acknowledges and consents to entering into and recordation of the Additional Declaration against the HBT Property and agrees that from and after the date hereof the HBT Property shall be subject to all the terms and provisions of this Additional Declaration.

**SBH ZANJERO TRAILS, LP,**  
an Arizona limited partnership

By: Sutal  
Its: Member

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

On this 23rd day of September, 2019, before me, the undersigned notary, personally appeared Sean T Walters AGS who acknowledged her/himself to be Member of ASG LLC, an Arizona limited liability company, the General Partners of SBH ZANJERO TRAILS, LP, an Arizona limited partnership:

✓  
\_\_\_\_\_ whom I know personally;  
\_\_\_\_\_ whose identity was proven to me on the oath of  
\_\_\_\_\_, a credible witness by me duly sworn;  
\_\_\_\_\_ whose identity I verified on the basis of her/his  
\_\_\_\_\_.

And s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

June M. King  
Notary Public



**Exhibit "A"**

**Legal Description of HBT Property**

Parcel 35A Phase 2 of re-plat of Parcels 35A and 36 of Zanjero Trails Phase 1 Infrastructure Plat of Zanjero Trails Phase 1C as recorded in Book 1430 at Page 05 of Maricopa County, Arizona Records.

**Exhibit "B"**

# **HOME BUILDER'S LIMITED WARRANTY**

Administered by Professional Warranty Service Corporation ("PWC")

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**THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION, WHICH MAY  
BE ENFORCED BY EITHER PARTY**

Throughout this **HOME BUILDER'S LIMITED WARRANTY**, referred to hereinafter as the "**LIMITED WARRANTY**", the words "**YOU**" and "**YOUR**" refer to the **HOMEOWNER**, including any subsequent owners, and, where applicable, a **HOMEOWNERS ASSOCIATION**. The words "**WE**", "**US**" and "**OUR**" refer to the **BUILDER**. The other words and phrases which appear in boldface uppercase type also have special meaning. Refer to the **Section IX. Definitions**, so that **YOU** will understand the terminology applicable to this **LIMITED WARRANTY**.

This **LIMITED WARRANTY** establishes an agreed method for determining when a **CONSTRUCTION DEFECT** exists and a clear understanding of **OUR** responsibilities for remedying any such **CONSTRUCTION DEFECT**. This **LIMITED WARRANTY** also helps distinguish a **CONSTRUCTION DEFECT** that is **OUR** responsibility from those minor imperfections that can reasonably be expected in a **HOME** or the **COMMON ELEMENTS**, or that result from normal wear and tear or the neglect of routine **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** maintenance responsibilities.

This **LIMITED WARRANTY** contains the procedures **YOU** must use to notify **US** of a condition in **YOUR HOME** or the **COMMON ELEMENTS** which **YOU** believe may constitute a **CONSTRUCTION DEFECT**. In the event a condition occurs in the **HOME** or the **COMMON ELEMENTS** that **YOU** believe may constitute a **CONSTRUCTION DEFECT**, **YOU** agree to submit any request for warranty performance in accordance with the procedure described in this **LIMITED WARRANTY**. Based on the information **YOU** provide and, where **WE** deem it necessary, information obtained from **OUR** onsite investigation, inspection and/or testing of the **HOME** or the **COMMON ELEMENTS**, **WE** will determine whether **WE** agree with **YOU** that the condition constitutes a **CONSTRUCTION DEFECT**. If **WE** determine that the condition reported by **YOU** is a **CONSTRUCTION DEFECT**, **WE** will remedy the condition in accordance with the remedies prescribed in this **LIMITED WARRANTY**. **WE** will make this determination in accordance with **Section II, OUR Warranty Obligations**, contained in this **LIMITED WARRANTY**.

**THIS LIMITED WARRANTY PROVIDES THAT ANY AND ALL CLAIMS AND DISPUTES BETWEEN YOU AND US WHICH YOU AND WE ARE UNABLE TO RESOLVE BY MUTUAL AGREEMENT, SHALL BE RESOLVED SOLELY AND EXCLUSIVELY THROUGH FINAL AND BINDING ARBITRATION IN ACCORDANCE WITH THE TERMS AND PROCESS DESCRIBED WITHIN THIS DOCUMENT. BY THIS AGREEMENT, BOTH YOU AND WE ARE WAIVING THE RIGHT TO LITIGATE DISPUTES IN COURT.**

To the extent permitted by law, all express or implied warranties other than this **LIMITED WARRANTY**, including any oral or written statement or representation made by **US** or any other person, and any implied warranty of habitability, merchantability or fitness for a particular purpose, are hereby disclaimed by **US** and are waived by **YOU**. **YOUR** only remedy in the event of a **CONSTRUCTION DEFECT** in or to the **HOME** or the **COMMON ELEMENTS** or to the real property on which the **HOME** or the **COMMON ELEMENTS** is situated is that provided to **YOU** under this **LIMITED WARRANTY**.

Enclosed with this **LIMITED WARRANTY** is a Limited Warranty Validation Form. The Limited Warranty Validation Form is a part of the **LIMITED WARRANTY** and provides the dates on which the warranty coverage period begins and expires. It is important that this form be retained with the **LIMITED WARRANTY**.

**WE** have contracted with **PWC** for certain administrative services relative to this **LIMITED WARRANTY**. **PWC's** sole responsibility is to provide administrative services as set forth herein. Under no circumstances or conditions is **PWC** responsible for fulfilling **OUR** obligations under this **LIMITED WARRANTY**.

There may be instances where an additional **PWC** administered Builder's Limited Warranty is issued together with this **LIMITED WARRANTY**. If both of these warranties are issued to **YOU**, **YOU** agree to request warranty performance under either warranty relative to warrantable issues on the **HOME** or the **COMMON ELEMENTS**. **YOU** may not collect twice relative to the same issue.

If any provision of this **LIMITED WARRANTY** is determined to be unenforceable, such a determination will not affect the remaining provisions. If this **LIMITED WARRANTY** or any provision herein is determined to be

unenforceable as to a **HOMEOWNERS ASSOCIATION** or a specific **HOMEOWNER**, such a determination will not affect the enforceability of this **LIMITED WARRANTY** or such provision as to any other **HOMEOWNERS ASSOCIATION** or any other **HOMEOWNER**. Any dispute as to the enforceability of any provision of this **LIMITED WARRANTY**, including any dispute as to the scope or enforceability of the arbitration provision contained herein, shall be determined by binding arbitration as provided for in this **LIMITED WARRANTY**.

## I. Warranty Coverage

Coverage under this **LIMITED WARRANTY** is expressly limited to **CONSTRUCTION DEFECTS** which occur during the **WARRANTY PERIOD** indicated on the Limited Warranty Validation Form and which are reported by **YOU** in accordance with the notification requirements of **Section VI. Procedure to Request US To Perform Under This LIMITED WARRANTY**. **OUR** obligations under this **LIMITED WARRANTY** apply to workmanship actually performed and materials actually installed in the **HOME** or the **COMMON ELEMENTS**. Any failure by **US** to complete construction of the **HOME** or **COMMON ELEMENTS**, where such failure is apparent and obvious, is not covered by this **LIMITED WARRANTY** and is not a **CONSTRUCTION DEFECT**.

During the **WARRANTY PERIOD** indicated on the Limited Warranty Validation Form, **WE** warrant that the **HOME** and the **COMMON ELEMENTS** will be free of **CONSTRUCTION DEFECTS**. **OUR** obligation to perform under this **LIMITED WARRANTY** requires that **WE** must receive written notice from **YOU** of the alleged **CONSTRUCTION DEFECT** as soon as reasonably possible after **YOU** become aware of a **CONSTRUCTION DEFECT** but not later than thirty (30) days after the expiration of the coverage. Telephonic or face-to-face discussion is not a substitute for required written notice and will not protect **YOUR** rights under this **LIMITED WARRANTY** (see **Section VI. Procedure to Request US To Perform Under This LIMITED WARRANTY**).

## II. OUR Warranty Obligations

Upon **OUR** timely receipt of written notice from **YOU** alleging a **CONSTRUCTION DEFECT** during the **WARRANTY PERIOD**, **WE**, or parties acting on **OUR** behalf, will, where **WE** deem it necessary, inspect, investigate and/or test (including destructive testing) the condition alleged to be a **CONSTRUCTION DEFECT**. If **WE** determine that a **CONSTRUCTION DEFECT** exists, **WE**, or parties acting on **OUR** behalf, will (1) repair or replace the **CONSTRUCTION DEFECT**, (2) pay to **YOU** the actual amount it would cost **US** to repair or replace the **CONSTRUCTION DEFECT**, or (3) pay to **YOU** an amount equal to the diminution in fair market value caused by the uncorrected **CONSTRUCTION DEFECT**. Subject to the limitations described in **Section IV. Coverage Limitations**, if the **HOME** is rendered temporarily uninhabitable by a **CONSTRUCTION DEFECT** or by work necessary to repair a **CONSTRUCTION DEFECT**, **WE** shall pay the reasonable cost for **YOUR** alternate shelter until the **HOME** is restored to a habitable condition. Additionally, in connection with **OUR** remedy of a **CONSTRUCTION DEFECT**, and subject to the limitations described in **Section IV. Coverage Limitations**, **WE** shall repair, replace or pay the reasonable cost for:

- Those surfaces, finishes and coverings that are part of the **HOME** and that are damaged directly by a **CONSTRUCTION DEFECT** or that are damaged in the course of **OUR** repair of a **CONSTRUCTION DEFECT**.
- Home furnishings, carpet or personal property damaged directly by the **CONSTRUCTION DEFECT**.

The decision to repair, replace, or to make payment in lieu of repair or replacement is at **OUR** or **OUR** authorized representative's sole discretion. These remedies are **OUR** only obligations under this **LIMITED WARRANTY**.

**A. Standards By Which the Existence of a CONSTRUCTION DEFECT Will Be Determined:**

The following factors will be considered in determining whether a condition constitutes a **CONSTRUCTION DEFECT**. If **WE** dispute the existence of a **CONSTRUCTION DEFECT** and that dispute is submitted to binding arbitration, the parties agree these same factors will be considered by the arbitrator:

1. Any performance standards, tolerances or guidelines contained in documents provided to **YOU** by **US** at or prior to closing on the **HOME** or, in the case of a **HOMEOWNERS ASSOCIATION**, prior to transferring title or control to all the **COMMON ELEMENTS**. In the absence of a specific standard, tolerance or guideline in the documents for a condition occurring during the first year of the **WARRANTY PERIOD**, the Residential Construction Performance Guidelines published by the National Association of Home Builders, in effect at the time of construction of the **HOME** or, in the case of the **HOMEOWNERS ASSOCIATION**, at the time of construction of the **COMMON ELEMENTS**, shall apply. If no specific standard, tolerance or guideline is contained in any of the documents identified above, generally accepted local building practices and standards shall apply;
2. Consideration as to whether the condition:
  - materially affects the structural integrity of the **HOME** or **COMMON ELEMENTS**; or
  - has an obvious and material negative impact on the appearance of the **HOME** or **COMMON ELEMENTS**; or
  - jeopardizes the life or safety of the occupants of the **HOME** or the users of the **COMMON ELEMENTS**; or
  - results in the inability of the **HOME** or a **COMMON ELEMENT** to provide the functions that can reasonably be expected in such a **HOME** or **COMMON ELEMENT**.
3. Consideration as to whether a condition is the result of normal wear and tear. Conditions that are normal wear and tear, or that are caused by normal wear and tear are not **CONSTRUCTION DEFECTS**;
4. Consideration as to whether the condition was caused by, or in any way resulted from, the failure of the **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** to perform normal or routine maintenance. Any condition that is determined to be a **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** maintenance issue, or any condition that results from improper or inadequate **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** maintenance, is not a **CONSTRUCTION DEFECT**;
5. Consideration as to whether the condition was caused by persons or entities other than **US** or someone acting on **OUR** behalf. Damage caused by persons or entities other than **US** or someone acting on **OUR** behalf is not a **CONSTRUCTION DEFECT**. For example, a large, visible scratch on marble tile in the entry foyer that was not noted in the pre-closing walk through inspection, but was reported after furniture was moved into the **HOME**, will not be considered a **CONSTRUCTION DEFECT**;
6. Recognition that any condition resulting directly or indirectly from or worsened by changes, additions, alterations or other actions or omissions by persons or entities other than **US** or someone acting on **OUR** behalf, will not be considered a **CONSTRUCTION DEFECT** (this includes, for example, changes to the topography, drainage or grade of the property);
7. Any **Exclusions** contained in this **LIMITED WARRANTY**.

### III. Homeowner Maintenance Obligations

Maintenance of the **HOME** and the **COMMON ELEMENTS** is **YOUR** responsibility. All homes and common elements require periodic maintenance to prevent premature deterioration, water intrusion, and to ensure adequate performance of the **SYSTEMS**. **WE** will make a "Homeowner Maintenance Manual" or similar publication available to **YOU** upon request. Whether from this document or others that are readily available to **YOU**, **YOU** must understand and perform the maintenance that the **HOME** and **COMMON ELEMENTS** require. **WE** are not responsible for **HOME** or **COMMON ELEMENTS** maintenance issues or for damage that results from **YOUR** failure to maintain the **HOME** or the **COMMON ELEMENTS**.

### IV. Coverage Limitations

Surfaces, finishes and coverings in the **HOME** which require repair due to damage caused by a **CONSTRUCTION DEFECT**, or such damage caused in the course of **OUR** repair of a **CONSTRUCTION DEFECT**, shall be repaired and restored to approximately the same condition as existed prior to the **CONSTRUCTION DEFECT**, but not necessarily to a like new condition. When repairing or replacing surfaces, finishes and coverings, the repair or replacement will attempt to achieve as close a match with the original surrounding areas as is reasonably possible, but an exact match cannot be guaranteed due to such factors as fading, aging and unavailability of the same materials.

Home furnishings, carpet or personal property damaged by a **CONSTRUCTION DEFECT** shall be repaired or replaced at market value of the item at the time of damage. "Market value" shall mean the amount it would cost to repair or replace the damaged item with material of like kind and quality, less allowance for physical deterioration and depreciation, including obsolescence.

Alternate shelter during such time as the **HOME** is uninhabitable due to a **CONSTRUCTION DEFECT** or uninhabitable during work to repair a **CONSTRUCTION DEFECT**, shall be limited to those shelter costs expressly pre-approved by **US** or **OUR** designated representative.

### V. Exclusions

A. This **LIMITED WARRANTY** does not cover:

1. Any loss or damage resulting, either directly or indirectly, from the following causes, or occurring in the following situations:
  - a. Fire (unless caused by a **CONSTRUCTION DEFECT**);
  - b. Lightning;
  - c. Explosion (unless caused by a **CONSTRUCTION DEFECT**);
  - d. Riot and Civil Commotion;
  - e. Smoke (unless resulting from a **CONSTRUCTION DEFECT**);
  - f. Hail;
  - g. Aircraft;
  - h. Falling Objects;
  - i. Vehicles;
  - j. Floods;
  - k. Earthquake;
  - l. Landslide or mudslide originating on property other than the site of the **HOME** or the **COMMON ELEMENTS** or other property developed by the **BUILDER**;
  - m. Mine subsidence or sinkholes;
  - n. Changes in the underground water table not reasonably foreseeable by the **BUILDER**;

- o. Volcanic eruption; explosion or effusion;
  - p. Wind including:
    - (i). Gale force winds;
    - (ii). Hurricanes;
    - (iii). Tropical storms;
    - (iv). Tornadoes;
    - (v). Rain or water intrusion or moisture within the **HOME** resulting from any wind forces described in p. (i) – (iv) above.
  - q. Insects, animals or vermin;
  - r. Changes to the grading of the ground, or the installation or alteration of improvements such as drain or gutter outlets by anyone other than **US** or **OUR** agents, or subcontractors which results in surface drainage towards the **HOME**, or other improper drainage that permits water to pond or become trapped in localized areas or against the foundation;
  - s. Changes, additions, or alterations made to the **HOME** or the **COMMON ELEMENTS** by anyone after the **WARRANTY PERIOD** begins, except those made or authorized by **US**;
  - t. Any defect in material or workmanship supplied by anyone other than **US** or **OUR** agents, or subcontractors, including any loss or damage to the **HOME** or the **COMMON ELEMENTS** resulting from material or workmanship supplied by anyone other than **US** or **OUR** agents, or subcontractors;
  - u. Improper maintenance, negligence or improper use of the **HOME** or the **COMMON ELEMENTS** by **YOU** or anyone other than **US** that results in rot, dry rot, moisture, rust, mildew or any other damage;
  - v. Dampness or condensation due to **YOUR** failure to maintain adequate ventilation;
  - w. Damage resulting from the weight and/or performance of any type of waterbed or other furnishings which exceeds the load-bearing design of the **HOME** or the **COMMON ELEMENTS**;
  - x. Normal wear and tear or normal deterioration of materials;
  - y. Economic damages due to the **HOME'S** or the **COMMON ELEMENTS'** failure to meet expectations of the **HOMEOWNER** or **HOMEOWNERS ASSOCIATION**.
2. Any loss or damage resulting from the actual, alleged or threatened discharge, dispersal, release or escape of **POLLUTANTS**. **WE** will not cover costs or expenses arising from the uninhabitability of the **HOME** or the **COMMON ELEMENTS** or health risk due to the proximity of **POLLUTANTS**. **WE** will not cover costs, or expenses resulting from the direction of any governmental entity to test, clean-up, remove, treat, contain or monitor **POLLUTANTS**;
  3. Any loss or damage resulting from the effects of electromagnetic fields (EMF's) or radiation;
  4. Any damage to personal property that does not result from a **CONSTRUCTION DEFECT**;
  5. Any **CONSEQUENTIAL OR INCIDENTAL DAMAGES**;
  6. Any **CONSUMER PRODUCTS**;
  7. Any **CONSTRUCTION DEFECT** as to which **YOU** have not taken timely and reasonable steps to protect and minimize damage after **WE** or **OUR** authorized representative have provided **YOU** with authorization to prevent further damage;
  8. Any damage to the extent it is incurred after or as a result of **YOUR** failure to notify **US** in the manner and time required under this **LIMITED WARRANTY**;
  9. Any costs or obligations paid or incurred by **YOU** in violation of **Section VI. C.** below;
  10. Any non-conformity with local building codes, regulations or requirements where the condition does not meet the definition of a **CONSTRUCTION DEFECT**. While **WE** acknowledge **OUR** responsibility



to build in accordance with applicable building codes, this **LIMITED WARRANTY** does not cover building code violations in the absence of a **CONSTRUCTION DEFECT**;

11. Any deviation from plans and specifications where the condition does not meet the definition of a **CONSTRUCTION DEFECT**.
- B. **OUR LIMITED WARRANTY** does not cover any **CONSTRUCTION DEFECT** which would not have occurred in the absence of one or more of the excluded events or conditions listed in the Exclusions above, regardless of:
1. The cause of the excluded event or condition;
  2. Other causes of the loss or damage; or
  3. Whether other causes acted concurrently or in any sequence with the excluded event or condition to produce the loss or damage.

## **VI. Procedure to Request US To Perform Under This LIMITED WARRANTY**

If **YOU** become aware of a condition that **YOU** believe is a **CONSTRUCTION DEFECT** under this **LIMITED WARRANTY**, **YOU** have the following responsibilities:

### **A. Notification**

**YOU** must notify **US** in writing as soon as reasonably possible after **YOU** become aware of a condition that **YOU** believe may constitute a **CONSTRUCTION DEFECT**, but in no event may **YOUR** written notice of a **CONSTRUCTION DEFECT** or **YOUR** written request for warranty performance be received by **US** later than thirty (30) days after this **LIMITED WARRANTY** has expired. This extended period for providing notice of a **CONSTRUCTION DEFECT** shall not operate to extend the **WARRANTY PERIOD**.

If the written notice is received by **US** more than thirty (30) days after the expiration of this **LIMITED WARRANTY**, **WE** shall have no obligation to remedy the **CONSTRUCTION DEFECT**. Because of the importance of this written notice requirement, **WE** recommend that notice always be sent by Certified Mail, return receipt requested, in order to establish a record.

### **B. Cooperate With US**

**YOU** must give **US** and any third parties acting on **OUR** behalf reasonable help in inspecting, investigating, testing (including destructive testing), monitoring, repairing, replacing or otherwise correcting an alleged **CONSTRUCTION DEFECT**. Help includes, but is not limited to, granting reasonable access to the **HOME** or **COMMON ELEMENTS** for the forgoing purposes. If **YOU** fail to cooperate or provide **US** reasonable access to the **HOME** or **COMMON ELEMENTS**, **WE** will have no further obligation under this **LIMITED WARRANTY**.

### **C. Do Not Make Voluntary Payments**

**YOU** agree not to make any voluntary payments or assume any obligations or incur any expenses for the remedy of a condition **YOU** believe is a **CONSTRUCTION DEFECT** without prior written approval from **US**, or other parties authorized to act on **OUR** behalf. **WE** will not reimburse **YOU** for costs incurred where **YOU** did not obtain prior written approval.

However, **YOU** may incur reasonable expenses in making repairs in an **EMERGENCY CONDITION** without prior written approval, provided the repairs are solely for the protection of the **HOME** or **COMMON**

**ELEMENTS** from further damage or to prevent an unsafe living condition and provided **YOU** notify **US** as soon as is reasonably possible. To obtain reimbursement for repairs made during an **EMERGENCY CONDITION**, **YOU** must provide **US** with an accurate written record of the repair costs.

#### **D. Sign A Release**

When **WE** or a third party acting on **OUR** behalf have completed repairing, replacing or paying **YOU** as to any **CONSTRUCTION DEFECTS** and related damage covered by this **LIMITED WARRANTY**, **YOU** may be requested to sign a full release of **OUR** obligation for the **CONSTRUCTION DEFECTS**. The release shall be applicable to the **CONSTRUCTION DEFECTS** and shall not prevent **YOU** from notifying **US** should **YOU** become aware of a subsequent **CONSTRUCTION DEFECT**.

#### **E. If YOU Disagree With US**

If **YOU** believe **WE** have not satisfactorily responded to **YOUR** request for warranty performance or satisfactorily worked with **YOU** to resolve any other claim or dispute between **YOU** and **US**, **YOU** should provide written notice to **PWC** requesting Mediation. Upon **PWC's** receipt of written notice from **YOU**, **PWC** may review and mediate **YOUR** request. **PWC** may communicate with **YOU**, **US**, and any other individuals or entities that **PWC** believes may possess relevant information. If after forty-five (45) days, **PWC** is unable to successfully mediate **YOUR** claim or dispute, or at any earlier time when **PWC** determines that **YOU** and **WE** are at an impasse, **PWC** will notify **YOU** that **YOUR** request remains unresolved and that **YOU** may elect to initiate binding arbitration. Binding arbitration as described in the following section is the sole remedy for the resolution of disputes between **YOU** and **US**.

## **VII. Binding Arbitration Procedure**

Following commencement of the **WARRANTY PERIOD**, any claim, controversy or dispute (hereafter collectively referred to as "dispute") between **YOU** and **US**, or parties acting on **YOUR** or **OUR** behalf, including **PWC**, and any successor, or assign of either **YOU** or **US**, which relates to or arises from this **LIMITED WARRANTY**, or the design or construction of the **HOME** or the **COMMON ELEMENTS**, or the sale of the **HOME** or transfer of title to the **COMMON ELEMENTS**, will be resolved solely by binding arbitration and not through litigation in court before a judge or jury. This agreement to arbitrate is intended to inure to the benefit of, and be enforceable by, **OUR** contractor, subcontractors, agents, vendors, suppliers, design professionals, materialmen, and any of **OUR** direct or indirect subsidiaries or related entities alleged to be responsible for any **CONSTRUCTION DEFECT**. Disputes subject to binding arbitration include, but are not limited to:

- A. Any disagreement that a condition in the **HOME** or the **COMMON ELEMENTS** is a **CONSTRUCTION DEFECT**;
- B. Any disagreement as to the method or scope of repair required to correct a **CONSTRUCTION DEFECT** or whether a **CONSTRUCTION DEFECT** has been corrected in compliance with this **LIMITED WARRANTY**;
- C. Any alleged breach of this **LIMITED WARRANTY**;
- D. Any alleged violation of consumer protection, unfair trade practice, or any other statute;
- E. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and any other claims arising in equity or from common law;
- F. Any dispute concerning the interpretation of this arbitration provision or the arbitrability of any issue;

- G. Any dispute concerning the timeliness of **OUR** performance and/or **YOUR** notifications under this **LIMITED WARRANTY**;
- H. Any dispute as to the payment or reimbursement of the arbitration filing fee;
- I. Any dispute as to whether this **LIMITED WARRANTY**, or any provision hereof, including, but not limited to, this arbitration clause and any waiver hereunder, is enforceable;
- J. Any other claim arising out of or relating to the sale, design or construction of **YOUR HOME** or the **COMMON ELEMENTS**, including, but not limited to any claim arising out of, relating to or based on any implied warranty or claim for negligence or strict liability not effectively waived by this **LIMITED WARRANTY**.

The arbitration shall be conducted by DeMars and Associates, Ltd. ([www.demarsassociates.com](http://www.demarsassociates.com)) pursuant to its Construction Arbitration Program ("CAP"), or by such other neutral, independent arbitration service that **PWC** shall appoint. If **YOU** object to the arbitration service appointed by **PWC**, **YOU** must so inform **PWC**, in writing, within ten (10) days of **YOUR** receipt of **PWC's** written notice informing **YOU** of the appointed arbitration service. **PWC** will then appoint an alternative neutral arbitration service provider. If **YOU** object to this alternative provider and if **YOU** and **WE** are unable to agree on another alternative, then either party may, pursuant to the applicable provisions of the Federal Arbitration Act (9 U.S.C. § 1, et seq.), apply to a court of competent jurisdiction to designate an arbitration service provider, which designation shall be binding upon the parties. Selection of the arbitrator shall be the responsibility of the appointed arbitration service. The rules and procedures of the arbitration service, including its rules and procedures pertaining to its selection of the arbitrator who will conduct the arbitration, that are in effect at the time the request for arbitration is submitted will be followed unless the parties expressly agree otherwise. **PWC** will obtain and provide to **YOU** and **US**, upon request, the rules and procedures of the arbitration organization appointed to administer the arbitration. The arbitration service finally appointed or designated as aforesaid shall administer the arbitration of any and all disputes required to be joined under the law.

This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by and interpreted under the Federal Arbitration Act now in effect and as it may be hereafter amended (the "FAA") to the exclusion of any inconsistent state law, regulation or judicial decision. The award of the arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

Each party shall bear its own attorney's fees and costs (including expert's costs) for the arbitration. If **YOU** initiate the arbitration request, the arbitration filing fee and other fees charged by the arbitration service shall be divided and paid equally by **YOU** and **US**, unless **YOU** and **WE** have otherwise agreed in writing to a different allocation. If **WE** initiate the request for arbitration, **WE** shall pay the entire arbitration filing fee as well as all other fees charged by the arbitration service.

As part of any arbitration award, the arbitrator may, at his/her discretion, direct that **WE** reimburse **YOU** some or all of the arbitration filing fee and other arbitration fees **YOU** paid to the arbitration service, but under no circumstances shall **YOU** be required to reimburse **US** any portion of the arbitration filing fee and other arbitration fees **WE** paid.

Arbitration filing fees and other arbitration fees vary among arbitration service providers. Before submitting a Binding Arbitration Request Form, **YOU** may contact **PWC** to obtain information on the fees charged by the appointed arbitration service provider. The arbitration service's filing fee and other arbitration fees in effect at the time arbitration is requested shall apply.

The process for initiating arbitration is described below.

**Step 1** The Initiating Party Completes A Binding Arbitration Request Form And Mails It To PWC Along With Their Share Of The Arbitration Filing Fee. A Binding Arbitration Request Form is attached to this **LIMITED WARRANTY**. **YOUR** Binding Arbitration Request Form must be received by **PWC** no later than ninety (90) days after the **WARRANTY PERIOD** expires. Please Note that while **YOU** have ninety (90) days after the **WARRANTY PERIOD** expires to file for arbitration, this time period does not extend the **WARRANTY PERIOD** for **CONSTRUCTION DEFECTS**. Additionally, no investigation, inspection, testing, repair, replacement, or payment, nor any promise of same by **US** under this **LIMITED WARRANTY**, nor any dispute resolution efforts, shall extend the term of this **LIMITED WARRANTY** or extend or toll any statutes of limitations or any of **YOUR** rights or remedies.

**Step 2** The Arbitration Service Will Arrange For The Arbitration. The arbitrator or arbitration organization will notify **YOU** and **US** of the time, date and location of the arbitration hearing. If the dispute involves the allegation of a **CONSTRUCTION DEFECT** or **OUR** performance under this **LIMITED WARRANTY**, most often the hearing will be conducted at the **HOME** or, if applicable, the location of the **COMMON ELEMENTS**. Other disputes between **YOU** and **US** that are subject to arbitration, but which do not include a **CONSTRUCTION DEFECT** claim, may be scheduled for hearing at the **HOME** or another location within the county where the **HOME** is located. In scheduling the hearing the arbitrator will set a time and date that is reasonably convenient to all the parties.

**Step 3** The Arbitration Hearing. The parties at the arbitration hearing will include the arbitrator, **YOU**, **US** and/or a third party designated by **YOU** or **US** or acting on **YOUR** or **OUR** behalf. Any party to the proceeding may be represented at the hearing. All persons who are parties to the arbitration, as well as representatives and witnesses, are entitled to attend hearings.

After evidence is presented by **YOU**, **US** or **YOUR** or **OUR** representatives, a decision will be rendered by the arbitrator. The decision is final and binding on **YOU** and **US**. The arbitrator may grant any remedy, including statutory remedies, and other relief that the arbitrator deems just and equitable and within the scope of this **LIMITED WARRANTY** or other applicable agreements.

The arbitrator will decide any dispute between the parties, as described above. Where a **CONSTRUCTION DEFECT** is alleged, the arbitrator will determine whether the alleged **CONSTRUCTION DEFECT** exists and whether it is **OUR** responsibility. If the arbitrator finds **US** responsible for a **CONSTRUCTION DEFECT**, **WE** shall be obligated to perform in accordance with **OUR Warranty Obligations** as described in Section II above.

In connection with a **CONSTRUCTION DEFECT** dispute, the arbitrator retains jurisdiction and authority to decide any dispute as to the required scope of repair and the cost to repair the **CONSTRUCTION DEFECT**. In deciding such disputes, the arbitrator considers the terms of this **LIMITED WARRANTY**, any third-party evaluations, binding bids for repair work supplied by either of the parties, any estimates of diminished fair market value, and such other information submitted by the parties and deemed relevant by the arbitrator. Except where otherwise directed by the arbitrator's award, the decision to repair, replace, or to make payment to **YOU** in lieu of repair or replacement is at **OUR** or **OUR** authorized representative's sole option. The arbitrator will also render a decision as to any other claims, disputed matters or issues stated in the Binding Arbitration Request Form.

**Step 4** **OUR Arbitration Performance Obligations.** If an arbitrator concludes that **WE** are responsible for a **CONSTRUCTION DEFECT**, **WE** will perform in accordance with the arbitrator's decision within sixty (60) days from the date of the award or such greater time as may be allowed by the arbitrator's decision. Delays caused by circumstances beyond **OUR** or **OUR** representative's control shall be excused.

**Step 5** **Disputes As To Compliance With The Award.** If there is any dispute as to **OUR** compliance with an arbitrator's award, either party shall so inform **PWC** in writing at its mailing address specified in this **LIMITED WARRANTY**. **PWC** will mediate this dispute and if it cannot be resolved, either party may request a compliance inspection arbitration to decide the question of compliance with the arbitration award. If it is determined that **WE** have not properly performed, **WE** will be obligated to immediately

comply. As with the original arbitration award, any such subsequent arbitration rulings shall be enforceable by any court of competent jurisdiction.

## VIII. General Conditions

### A. Separation of This LIMITED WARRANTY From The Contract Of Sale

This **LIMITED WARRANTY** is separate and independent of the contract between **YOU** and **US** for the construction and/or sale of the **HOME** or transfer of the **COMMON ELEMENTS**. Except as otherwise expressly provided herein, the provisions of this **LIMITED WARRANTY** shall in no way be restricted or expanded by anything contained in the construction and/or sales contract or other documents between **YOU** and **US**.

### B. Transfer to Subsequent HOMEOWNERS

This **LIMITED WARRANTY**, subject to all of its terms and conditions, including, but not limited to, its mandatory binding arbitration provision, will transfer to new owners of the **HOME** for the remainder of the **WARRANTY PERIOD**. **YOU** agree to provide this **LIMITED WARRANTY** to any subsequent purchaser of the **HOME** as a part of the contract of sale of the **HOME**. Please see the form "SUBSEQUENT HOME BUYER ACKNOWLEDGEMENT AND TRANSFER" contained at the end of this document.

### C. Transfer of Manufacturer's Warranties

**WE** assign to **YOU** all the manufacturer's warranties on all appliances, fixtures and items of equipment that **WE** installed in the **HOME**. Should an appliance or item of equipment malfunction **YOU** must follow the procedures set forth in that manufacturer's warranty to correct the problem. **OUR** obligation under this **LIMITED WARRANTY** is limited to the workmanlike installation of such appliances and equipment. **WE** have no obligation for appliances and equipment defined as **CONSUMER PRODUCTS**.

### D. Recovery Rights

If **WE** or a third party designated by **US** or acting on **OUR** behalf repairs, replaces or pays the cost to repair or replace **CONSTRUCTION DEFECT**, or other related damage to the **HOME** or the **COMMON ELEMENTS** covered by this **LIMITED WARRANTY**, or if **WE** elect to pay the diminished market value of the **HOME** in lieu of repair or replacement of a **CONSTRUCTION DEFECT**, **WE** are then entitled, to the extent of **OUR** cost or payment, to take over **YOUR** related rights of recovery from other people and entities, including but not limited to, other warranties and insurance. **YOU** have an obligation not to make it harder for **US** to enforce these rights. **YOU** agree to sign any papers, deliver them to **US**, and do anything else that is necessary to help **US** exercise **OUR** rights.

### E. General Provisions

1. If any provision of this **LIMITED WARRANTY** is determined to be unenforceable, such a determination will not affect the remaining provisions. If this **LIMITED WARRANTY** or any provision herein is determined to be unenforceable as to a **HOMEOWNERS ASSOCIATION** or a specific **HOMEOWNER**, such a determination will not affect the enforceability of this **LIMITED WARRANTY** or such provision as to any other **HOMEOWNERS ASSOCIATION** or any other **HOMEOWNER**. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this **LIMITED WARRANTY**.
2. This **LIMITED WARRANTY** and the binding arbitration process are binding on **YOU** and **US**. It is also binding on **YOUR** and **OUR** heirs, executors, administrators, successors, and assigns.
3. As may be appropriate, the use of the plural in this **LIMITED WARRANTY** includes the singular, and the use of one gender includes all genders.

## IX. Definitions

**BUILDER** means the individual, partnership, corporation or other entity which participates in the Warranty Program administered by the Professional Warranty Service Corporation and provides **YOU** with this **LIMITED WARRANTY**. Throughout this document the **BUILDER** is also referred to as "**WE**", "**US**" and "**OUR**".

**COMMON ELEMENTS** means the property as specified in the recorded Covenants, Conditions and Restrictions as common area and any other property as to which the **HOMEOWNERS ASSOCIATION** has standing under the law to make a claim. This may include, but is not limited to, streets, slopes, the structure or components of enclosure or other parts of the **HOME**, corridors, lobbies, vertical transportation elements, rooms, balconies, clubhouses or other spaces that are for the common use of the residents of the development in which the **HOME** is located. **SYSTEMS** serving two or more **HOMES**, and the outbuildings that contain parts of such **SYSTEMS** are also included in this definition.

**CONSEQUENTIAL OR INCIDENTAL DAMAGES** means any loss or injury other than:

- A. **OUR** cost to correct a **CONSTRUCTION DEFECT** including the correction of those surfaces, finishes and coverings damaged by the **CONSTRUCTION DEFECT**;
- B. **OUR** cost to repair or replace, at market value, furniture, carpet or personal property damaged by the **CONSTRUCTION DEFECT**;
- C. **OUR** cost to repair damage to the **HOME** which occurs in the course of **OUR** repair or replacement of a **CONSTRUCTION DEFECT**;
- D. The reasonable cost of the **HOMEOWNER'S** alternative shelter when the **HOME** is temporarily uninhabitable due to a **CONSTRUCTION DEFECT** and while the **HOME** is rendered uninhabitable by the work necessary to repair a **CONSTRUCTION DEFECT**.

Time **YOU** take off from work and/or **YOUR** inability to work from the **HOME** as a result of a **CONSTRUCTION DEFECT** or the repair/replacement of a **CONSTRUCTION DEFECT**, are among those damages considered "**CONSEQUENTIAL OR INCIDENTAL DAMAGE**" and are excluded under this **LIMITED WARRANTY**. Diminished fair market value of the **HOME** is also among those damages considered "**CONSEQUENTIAL OR INCIDENTAL DAMAGE**" and is excluded under this **LIMITED WARRANTY** notwithstanding that **WE** reserve the right to elect to pay **YOU** diminished fair market value in lieu of **OUR** repair, replacement or payment for the cost to repair or replace a **CONSTRUCTION DEFECT**.

**CONSTRUCTION DEFECT(S)** means a condition in the materials or workmanship used in constructing the **HOME** and/or the **COMMON ELEMENTS** that:

- materially affects the structural integrity of the **HOME** or the **COMMON ELEMENTS**; or
- has an obvious and material negative impact on the appearance of the **HOME** or the **COMMON ELEMENTS**; or
- jeopardizes the life or safety of the occupants of the **HOME** or the users of the **COMMON ELEMENTS**; or
- results in the inability of the **HOME** or the applicable **COMMON ELEMENTS** to provide the functions that can reasonably be expected in such a **HOME** or **COMMON ELEMENT**.

**CONSUMER PRODUCT** means any piece of equipment, appliance or other item that is a **CONSUMER PRODUCT** for purposes of the Magnuson-Moss Warranty Act (15 U.S.C. § 2301, *et seq.*) installed or included in the **HOME**. Examples of Consumer Products include, but are not limited to, dishwasher, garbage disposal, gas or electric cook-top, range, range hood, refrigerator or refrigerator/freezer combination, gas oven, electric oven, microwave oven, trash compactor, automatic garage door opener, clothes washer and dryer, hot water heater, solar water heater, solar water heating panels, furnace, boiler, heat pump, air conditioning unit, humidifier, thermostat, and security alarm system.

**EMERGENCY CONDITION** means an event or situation that creates the imminent threat of damage to the **HOME** or **COMMON ELEMENTS**, or results in an unsafe living condition due to a **CONSTRUCTION DEFECT** that **YOU** (or as applicable, the **HOMEOWNERS ASSOCIATION**) become aware of at a point in time other than **OUR** normal business hours and **YOU** were unable to obtain **OUR** or **OUR** authorized representative's

prior written approval to initiate repairs to stabilize the condition or prevent further damage.

**HOME** means a single family residence either attached or detached covered by this **LIMITED WARRANTY** and the land on which it sits, or a condominium or cooperative unit in a multi-unit residential structure/building covered by this **LIMITED WARRANTY**, and the land on which it sits, except to the extent such unit, structure/building or land is part of the **COMMON ELEMENTS**.

**HOME BUILDER'S LIMITED WARRANTY** means only this express warranty document provided to **YOU** by **US**.

**HOMEOWNER** means the first person(s) to whom a **HOME** (or a unit in a multi-unit residential structure/building) is sold, or for whom such **HOME** is constructed, for occupancy by such person or such person's family, and such person's(s') successors in title to the **HOME**, or mortgagees in possession and any representative of such person(s) who has standing to make a claim on that person(s) behalf, including any class representative or **HOMEOWNERS ASSOCIATION** making a claim in a representative capacity.

**HOMEOWNERS ASSOCIATION** means a profit or nonprofit corporation, unincorporated association, organization, partnership, assessment district, limited liability company, limited liability partnership or other entity of any kind that owns, manages, maintains, repairs, administers, or is otherwise responsible for and has standing to make a claim as to any part of the **COMMON ELEMENTS**.

**POLLUTANTS** means all solid, liquid, or gaseous irritants or contaminants. The term includes, but is not limited to, petroleum products, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, radon gas, and waste materials, including materials to be recycled.

**PWC** means Professional Warranty Service Corporation which administers the warranty program in which **WE** participate. As such, **PWC** assumes no other liabilities in connection with this **LIMITED WARRANTY**. The **PWC** mailing address is:

**Professional Warranty Service Corporation**  
**P.O. Box 800 Annandale, VA 22003-0800**

**SYSTEMS** means the following:

- (a) Plumbing system - gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; and water, gas and sewer services piping and their extensions to the tie-in of a public utility connection or on-site well and sewage disposal system.
- (b) Electrical system - all wiring, electrical boxes, switches, outlets, and connections up to the public utility connection.
- (c) Heating, Cooling, and Ventilation system - all duct-work; steam, water and refrigerant lines; and registers, connectors, radiation elements and dampers.

**WARRANTY PERIOD** shall commence on the date the title to the **HOME** is transferred to the first **HOMEOWNER**. Notwithstanding anything to the contrary set forth in this **LIMITED WARRANTY**, the **WARRANTY PERIOD** for the **COMMON ELEMENTS** of an individual structure/building commences on the date the title for the first **HOME** in the structure/building is transferred to the first **HOMEOWNER** or, as concerns clubhouses or outbuildings or other **COMMON ELEMENTS** not part of the **HOME**, the earlier of the date of substantial completion or the date title to these structures is transferred to the **HOMEOWNERS ASSOCIATION**. The dates the **WARRANTY PERIOD** begins and ends are indicated on the Limited Warranty Validation Form which is attached to and made part of this **LIMITED WARRANTY**.

**WE, US, OUR** means the **BUILDER**.

**YOU, YOUR** means the **HOMEOWNER** and the **HOMEOWNERS ASSOCIATION**.

### BINDING ARBITRATION REQUEST FORM

Prior to requesting binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY, the initiating party should have sent the other party a clear and specific written request outlining the claim(s) or dispute(s) that are being submitted for decision through binding arbitration. If you have taken this step and believe the other party has not satisfactorily responded in accordance with the HOME BUILDER'S LIMITED WARRANTY, fill out this form and send it to PWC along with the arbitration filing fee. Be sure to attach a copy of all pertinent correspondence between you and the other party relative to the issue.

The information you need to fill out this form can be found on the Limited Warranty Validation Form. However, if you do not know the answers to any questions, write "Don't Know." Please do not leave any item blank.

Homeowner name(s): \_\_\_\_\_

Address: \_\_\_\_\_

CITY

STATE

ZIP

Home Phone : (\_\_\_\_\_) \_\_\_\_\_ Business Phone: (\_\_\_\_\_) \_\_\_\_\_

LIMITED WARRANTY #: \_\_\_\_\_ Date Warranty Period begins: \_\_\_\_\_

Builder's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Business Phone: (\_\_\_\_\_) \_\_\_\_\_

Describe the dispute that you wish to submit to binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY. If the dispute is relative to a construction defect please include information on when the construction defect(s) first occurred or when you first noticed the construction defect. (Attach additional sheets, if necessary).

I/we are hereby requesting PWC to initiate a binding arbitration to resolve the dispute described herein above.

_____	_____	_____	_____
Signature	Date	Signature	Date

INSTRUCTIONS: Photo-copy this form and complete the fields.

Obtain the required arbitration filing fee by contacting PWC at 1-800/850-2799.

Send this Binding Arbitration Request Form and the arbitration filing fee to:

**PROFESSIONAL WARRANTY SERVICE CORPORATION**  
P. O. BOX 800  
ANNANDALE, VIRGINIA 22003-0800



## SUBSEQUENT HOME BUYER ACKNOWLEDGMENT AND TRANSFER

Any coverage remaining under the **HOME BUILDER'S LIMITED WARRANTY** applicable to the home specified on the Limited Warranty Validation Form is transferred to the subsequent homeowner.

The undersigned home buyer(s) hereby acknowledge and agree:

I/we acknowledge that I/we have reviewed, understand and agree to all the terms of the **HOME BUILDER'S LIMITED WARRANTY** document (PWC Form No. 117).

I/we understand and acknowledge that Professional Warranty Service Corporation ("PWC") is not the warrantor of the **HOME BUILDER'S LIMITED WARRANTY**.

I/we understand that I/we am/are responsible for the maintenance of the home including maintenance of the grade of the land surrounding the home, and that the Builder shall not be responsible for any defect or damage to the home which is the result of my/our failure to maintain the home.

I/we acknowledge and agree to the Binding Arbitration Procedure contained in the **HOME BUILDER'S LIMITED WARRANTY**.

Signature(s) of Subsequent Home Buyer(s): \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_ Date: \_\_\_\_\_

Print above name(s): \_\_\_\_\_

Re-issuance of the Limited Warranty Validation Form with the name(s) of the new Home Buyer(s) is not necessary for you to receive the coverage remaining under the **HOME BUILDER'S LIMITED WARRANTY**. Upon receipt of this signed form, PWC will update its records to reflect the name(s) of the new homeowner(s). If you want PWC to issue another Limited Warranty Validation Form with your name(s) on the form, please check the box below and send a check in the amount of \$20.00 made payable to "PWC" with your submission of this form.

YES, re-issue the Limited Warranty Validation Form in the above name(s) ☐ (check box) Initial \_\_\_\_\_

Address of Home: \_\_\_\_\_

Limited Warranty No.: \_\_\_\_\_

INSTRUCTIONS: Photo-copy this form. Provide information requested, sign, fill in Limited Warranty # in the space provided (this number is provided on the Limited Warranty Validation Form), and provide a telephone number where you can be reached (\_\_\_\_\_) \_\_\_\_\_. If you want the Limited Warranty Validation Form reissued in your name, enclose your check to PWC in the amount of \$20.00 (check box above and initial). To reach PWC by phone, call: 1-800/850-2799.

Mail this form and a photocopy of applicable settlement/closing documents indicating transfer of title, to:

PROFESSIONAL WARRANTY SERVICE CORPORATION P.O. BOX 800 ANNANDALE, VA 22003-0800