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**WHEN RECORDED RETURN TO:**

Towne Development, Inc.  
c/o Kevin G. Kiesel  
706 East Bell Road, Suite 212  
Phoenix, AZ 85022

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS**

**FOR**

**CAVIADA, A PLANNED COMMUNITY**

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THIS Declaration of Covenants, Conditions, Restrictions and Easements for Caviada, a planned Community, (hereinafter collectively termed the **“Declaration”**) is made as of the 24 day of **October, 2016**, by HBT of Lone Mountain LLC, an Arizona limited liability company (hereinafter collectively termed (**“Declarant”**)).

**INTRODUCTION**

- A. Declarant is the owner of fee title to that certain real property situated in the City of Phoenix, Arizona which is more particularly described in Exhibit A (the **“Property”**). The Declarant desires to submit the Property to a planned Community form of ownership in accordance with the Arizona Planned Community Act and this Declaration.
- B. Declarant has constructed or will construct on the Property certain improvements as shown on the Plat referred to below.
- C. Declarant intends that all Owners, Occupants, First Mortgagees and other Persons acquiring an interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is Recorded in furtherance of establishing a planned Community, and for establishing rules for the use, occupancy, management, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Community and the quality of life for the Owners, Occupants and Lessees.
- D. Declarant and/or the Association may, without obligation, seek approval by the Federal Housing Administration (hereinafter termed **“FHA”**), the Veterans Administration (hereinafter termed **“VA”**) and by any other governmental agencies or financial institutions whose approval Declarant deems necessary or desirable.
- E. The Property shall be subject to all terms and provisions of this Declaration, as well as the Articles, Bylaws, Rules and Architectural Guidelines of the Association established herein in order to cause the Declaration to run with the Property and to be binding upon the Property and the Owners thereof from and after the date of the recording of this Declaration, Declarant hereby makes all conveyances of the Property, whether or not so provided therein, subject to the Declaration herein set forth, and by accepting deeds, leases, easements or other grants or conveyances to any portion of the Property, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by all of the Declaration (including but not limited to the obligation to pay Assessments) hereinafter set forth except to the extent such personas are specifically excepted herefrom.

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

**ARTICLE 1  
DEFINITIONS**

Capitalized terms used in this Declaration but not otherwise defined in this Declaration shall have the meanings specified for such terms in the Arizona Planned Community Act, A.R.S. §33-1801, et. seq. as amended from time to time. The following words, phrases or terms used in this Declaration shall have the following meanings:

1.1 “**Architectural Guidelines**” shall mean the Architectural and landscaping Guidelines and additional standards promulgated by the Design Review Committee from time to time as provided in **Article 9**.

1.2 “**Architectural Review Committee**” shall mean the committee of the Association to be created and appointed pursuant to **Article 9**.

1.3 “**Articles**” means the Articles of Incorporation of the Association, as amended from time to time.

1.4 “**Assessment**” shall mean Regular Assessments, Special Assessments and Enforcement Assessments as defined in **Article 7** and any cost, fees or attorneys’ fees due from Owner pursuant to this Declaration.

1.5 “**Assessment Lien**” shall mean the lien created and imposed by the Arizona Planned Community Act and this Declaration to secure the payment of Assessments, attorneys’ fees and costs, as well as other fees and charges owed to the Association pursuant to this Declaration.

1.6 “**Association**” shall mean Caviada Neighborhood Association, the Arizona non-profit corporation organized by Declarant to administer and enforce this Declaration and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns.

1.7 “**Association Land**” shall mean such part or parts of Property, together with the buildings, structures and Improvements hereon, and their real property which the Association may at any time own in fee or in which the Association may at any time have a leasehold interest, for as long as the Association is the owner of the fee or leasehold interest.

1.8 “**Association Rules**” shall mean rules adopted by the Association pursuant to this Declaration, as amended from time to time.

1.9 “**Board**” shall mean the Board of Directors of the Association.

1.10 “**Bylaws**” shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

1.11 “**City**” shall mean the City of Phoenix, Arizona.

1.12 “**Collection Costs**” means all costs, fees, charges and expenditures (including, without limitation, demand fees, lien fees, attorneys’ fees, court costs, filing fees and recording fees) incurred by the Association in collection and/or enforcing payment of Assessments, monetary penalties, late fees, attorneys’ fees and costs, interest or other amounts payable to the Association pursuant to this Declaration.

1.13 “**Common Area**” means all portions of the Property owned by the Association, including all improvements located thereon.

1.14 “**Common Expenses**” shall mean the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Lots, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws and Articles.

1.15 “**Community**” means the residential Community known as Caviada and includes the Property, together with the Lots, Common Area and all other Improvements located thereon.

1.16 “**Community Documents**” or “**Governing Documents**” means this Declaration and the Articles, Bylaws, and Rules, as amended from time to time.

1.17 “**Declarant**” shall mean HBT of Lone Mountain LLC, an Arizona limited liability company, and the successors and assigns of Declarant’s rights and powers hereunder.

1.18 “**Declaration**” shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Caviada, a planned Community, as amended or supplemented from time to time.

1.19 “**Development Rights**” means any right or combination of rights to do any of the following:

1.19.1 Create easements and Common Area within the Community;

1.19.2 Make the Community part of another Community or planned Community;

1.19.3 Amend the Declaration during the Period of Declarant Control to comply with the Planned Community Act or any other applicable law or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Lot Owner; or

1.19.4 Amend the Declaration during the Period of Declarant Control to comply with the rules or guidelines in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments.

1.20 “**Enforcement Assessment**” means an assessment levied pursuant to **Article 7**.

1.21 **“FHA”** means the Federal Housing Administration.

1.22 **“FHLMC”** means the Federal Home Loan Mortgage Corporation.

1.23 **“First Mortgage”** means any mortgage or deed of trust on a Lot with first priority over any other mortgage or deed of trust on the same Lot.

1.24 **“First Mortgage”** means the holder of any First Mortgage. **“Eligible First Mortgagee”** shall mean any First Mortgagee who has requested notice of those certain matters referred to in **Article 14**.

1.25 **“FNMA”** means the Federal National Mortgage Association.

1.26 **“Identifying Number”** means the number or symbol shown on the Plat that identifies a particular Lot.

1.27 **“Improvement”** means any physical structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Community, including, but not limited to, buildings, private drives, paving, fences, walls, sculptures, signs, landscaping, hedges, plants, trees and shrubs of every type and kind, lighting fixtures, sprinkler and irrigation systems, parking areas and sidewalks.

1.28 **“Invitee”** means any person whose presence within the Community is approved by or is at the request of a particular Owner, Lessee or Occupant, including, without limitation, family members, guests, employees and contractors.

1.29 **“Lease”** means any agreement, written or oral, for the leasing, rental or occupancy of the Unit (whether or not money is exchanged) for more than thirty (30) days in any calendar year to anyone other than: (1) the Owner, (2) the Owner’s spouse, (3) the Owner’s or the Owner’s spouse’s children or parents, or (4) any individuals living with the Owner who are maintaining a common household with the Owner.

1.30 **“Lessee”** means any Person who is the tenant or lessee under a written lease of a Lot.

1.31 **“Lot”** shall mean any area of real property, with or without Improvements thereon, within the Property designated as a Lot on the Plat.

1.32 **“Member”** means a Person or entity who is or becomes a member of the Association.

1.33 **“Membership”** shall mean a Membership in the Association and the corresponding rights, privileges and responsibilities of the Owners and Declarant pursuant to **Article 2** here.

1.34 **“Occupant”** means a Person, other than the Owner, in possession of the Lot at the request of or with the consent of the Owner.

1.35 **“Owner”** or **“Lot Owner”** means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Lot Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation, or a lessee or tenant of a Lot. Lot Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract subject to A.R.S. § 33-741, et seq. Lot Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, et.seq. the Trustor shall be deemed to be the Lot Owner.

1.36 **“Property”** means the land described on Exhibit A attached hereto, together with all Improvements situated thereon and all easements and rights appurtenant thereto.

1.37 **“Period of Declarant Control”** means the time period commencing on the date this Declaration is Recorded and ending on the day the Declarant no longer owns any Lots.

1.38 **“Person”** means a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.39 **“Plat”** means the Final Plat for Caviada recorded on September 7, 2016 as Book 1288 of Maps, Page 24, in the records of the County Recorder of Maricopa County, Arizona, and any amendments, supplements or corrections thereto.

1.40 **“Purchaser”** means any Person (other than the Declarant) who becomes a Lot Owner, except for (1) a Person who purchases a Lot and then leases it to the Declarant for use in connection with the sale of other Lots, (2) a Person who, in addition to purchasing a Lot, is assigned any Special Declarant Right, or (3) an Affiliate of Declarant.

1.41 **“Recording”** means placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona and **“Recorded”** means having been so placed of public record.

1.42 **“Regular Assessment”** means the assessment levied against the Lots pursuant to **Article 7**.

1.43 **“Rules”** means the rules and regulations adopted by the Board of Directors, as amended from time to time.

1.44 “**Single Family**” shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling.

1.45 “**Special Declarant Rights**” means any right or combination of rights to do any of the following:

1.45.1 Construct Improvements provided for in this Declaration or shown on the Plat;

1.45.2 Exercise any Development Right;

1.45.3 Maintain sales offices, management offices, models, and signs advertising the Community;

1.45.4 Use easements through the Common Areas for the purpose of making Improvements within the Community;

1.45.5 Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control; or

1.45.6 Exercise the rights described in **Article 2 & 3**.

1.46 “**VA**” means the Veteran’s Administration.

1.47 “**Visible From Neighboring Property**” shall mean, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing at ground level on any part of any Lot or Common Area which adjoins the Lot on which such object is located.

## **ARTICLE 2 PROPERTY SUBJECT TO THE DECLARATION; MEMBERSHIP AND VOTING**

2.1 **General Declaration.** The Declarant hereby submits the Property to the provisions of the Planned Community Act for the purpose of creating a planned community in accordance with the provisions of the Planned Community Act and hereby declares that the Property shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. The Declarant designates each Lot for separate ownership or occupancy. Declarant further declares that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Property and shall be binding upon and inure to the benefit of the Declarant and all Lot Owners, Lessees and Occupants and all other Persons having or acquiring any right, title or interest in the Community or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Community, or any part thereof, agrees to abide by all of the provisions of the Community Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association. Nothing in this Declaration shall be construed to prevent the Declarant from modifying the Plat as to any portion of the Property owned by the Declarant or from dedicating or conveying portions of the Property owned by the Declarant, including streets or roadway, for uses other than as a Lot or Common Area. As long as the Declarant owns any Lot, Declarant approval is also required for any amendment to this Declaration.

2.2 **Name of Community.** The name of the Community created by this Declaration is Caviada.

2.3 **Name of Association.** The name of the Association is Caviada Neighborhood Association.

2.4 **Disclaimer of Representations.** Declarant makes no representations or warranties whatsoever that (i) the Community will be completed in accordance with the plans for the Community as they exist on the date this Declaration is recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future.

2.5 **Membership.** Every Owner (including the Declarant) of a Lot shall be a Member of the Association. For the purposes of this Section, Lots owned by the Declarant are not subject to Assessments so long as there is a Class "B" Membership in the Association. Each such Owner (including the Declarant) shall have one Membership for each lot owned by the Member and each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable.

2.6 **Voting.** The Association shall have two classes of voting memberships, Class "A" and Class "B".

2.6.1 **Class "A".** Class "A" Members shall be all Owners, except the Class "B" Members, if any. Class "A" Members shall have one equal vote for each Membership held by such Owner and for which such Owner is paying a full Assessment.

2.6.2 **Class "B".** The Class "B" Members shall be the Declarant and any Developers who are Owners. Class "B" Members shall be entitled to three (3) votes for each Membership held by such Class "B" Member. Unless otherwise specified in this Declaration, the Bylaws or an agreement between Declarant and a Developer, the vote for each Membership held by Developers shall be exercised by the Declarant in its sole discretion and each of the Developers shall be deemed hereby to grant to Declarant a power coupled with an interest to cast such Developer's vote for each such Membership. The Class "B" Membership shall cease and be converted to Class "A" Memberships when Period of Declarant Control ends or sooner if the Declarant so states in writing their desire to do so. From and after the termination of Class B Members, whichever occurs first, the Class "B" Members shall be deemed Class "A" Members entitled to one vote for each Membership held pursuant to this Article 2; provided, however, that the Declarant shall retain the right to approve or disapprove certain actions of the Board as described in this Declaration.

2.7 **Right to Vote.** No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit, and fractional votes shall not be allowed. The Membership rights of an Owner which is a corporation, partnership, trust or other legal entity may be exercised by any officer, director,

partner or trustee or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. In the event that a Membership is owned by more than one Person such Owners shall designate in a written instrument provided to the Secretary of the Association which one of them is authorized to vote their Membership, and if such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event that more than one vote is cast for a particular Membership, and the Secretary of the Association has not been provided with a written instrument designating the Person authorized to vote the Membership, none of said votes shall be counted and all said votes shall be deemed void.

**2.8 Membership Rights.** Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles, Bylaws, Association Rules and Design Guidelines as the same may be amended from time to time.

**2.9 Transfer of Class "A" Membership.** The rights and obligations of the owner of a Class "A" Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot or Parcel, as applicable, and then only to the transferee of ownership of the Lot or Parcel. A transfer of ownership of a Lot or Parcel may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record, court order or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a lot or Parcel shall operate to transfer the Membership(s) appurtenant to said lot or Parcel to the new Owner(s) thereof.

**2.10 Suspension of Voting Rights.** Any Member who fails to pay the Regular Assessments, Special Assessments, or Enforcement Assessments authorized by this Declaration within sixty (60) days of the due date thereof, shall have all voting rights as provided herein suspended until such amounts plus any accrued interest, attorney's fees and/or collection costs are paid in full.

### **ARTICLE 3 EASEMENTS AND DEVELOPMENT RIGHTS**

**3.1 Utility Easement.** There is hereby granted and created an easement upon, across, over and under the Common Areas and the Lots for the installation, replacement, repair or maintenance of utility lines and systems, including, but not limited to, natural gas, water, sewer, telephone, electricity and cable television or other communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company, the Association or the Declarant to install and maintain the necessary utility lines, pipes, facilities and equipment on the Common Areas and the Lots, but no sewer lines, electrical lines, water lines, or other utility or service lines or facilities may be installed or located on the Common

Areas or the Lots except as initially designed, approved and constructed by the Declarant or as approved by the Board of Directors. This easement shall in no way affect any other recorded easements on the Common Areas. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, telephone, data, or fiber optic lines and cables, or other utility or service lines may be installed or located on the Common Areas except as originally installed by the Declarant or as approved by the Board or allowed by the Rules. The easements in this Section shall in no way affect any other Recorded easements on the Common Areas.

**3.2 Easements for Ingress and Egress.** There is hereby granted and created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Areas. There is also granted and created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners, Lessees, Occupants and Invitees.

**3.3 Lot Owners' Easements of Enjoyment.**

3.3.1 Every Owner, Lessee and Occupant shall have a nonexclusive right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Master Governing Documents, these Community Documents, as amended from time to time and any other applicable covenants;

(b) The right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the Property, which rules and regulations may require that guests of any Owner Lessee or Occupant entitled to use the Common Areas pursuant to this Section must be accompanied by a Member Lessee or Occupant entitled to use the Common Areas. The Rule may limit the number of guests who may use the Common Areas at any one time and may restrict the use of the Common Areas by guests to certain specified times;

(c) The right of the Association to convey the Common Areas or subject the Common Areas to a mortgage, deed of trust, or other security interest, if such action is approved by Owners entitled to cast at least two-thirds (2/3) of the votes in the Association. Any such action by the Association shall be done in the manner and subject to the limitations set forth in the Community Act;

(d) The right of the Association to grant non-exclusive easements over all or a portion of the Common Areas if the Board of Directors determines that the granting of the easement is necessary for the development or maintenance of the Common Areas or beneficial to the Owners, Lessees and Occupants;

(e) All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to the Declarant this Declaration;

(f) The right of the Board to suspend the right of an Owner or Resident to use recreational facilities within the Common Area (i) for any period during which any charge against an Owner's Lot or Parcel remains delinquent; (ii) for a period not to

exceed thirty (30) days for a single violation of this Declaration, a Tract Declaration or the Association Rules; and (iii) for successive suspension periods if any such infraction is not corrected during any prior suspension period;

(g) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility company and for such purposes and subject to such conditions as may be agreed to by the Association; and

(h) The right of the Board to impose reasonable Membership requirements and charge reasonable Membership, admission, or other fees for the use of any recreational facility situated upon the Common Area;

3.3.2 The easement of enjoyment in and to the Common Areas shall not be conveyed, transferred, alienated or encumbered separately and apart from a Lot. Such right and easement of enjoyment in and to the Common Areas shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

#### **3.4 Declarants' Rights and Easements.**

3.4.1 So long as the Declarant is marketing Lots for sale or lease in the Community, Declarant and its employees and agents shall have the right and an exclusive easement to construct, locate, relocate and maintain sales and/or leasing offices, construction trailers and storage areas and related facilities on the Common Areas. This shall include the right to enclose and lock portions of the Common Areas upon which these rights are being exercised. Declarant reserves the right to maintain model Lots, management offices, storage areas and sales and leasing offices in any Lots owned or leased by Declarant and on any portion of the Common Areas in such number, of such size and in such locations as Declarant deems appropriate. Declarant and its employees and agents shall have the right and an easement to install or post advertising, marketing or directional signs, other signs, flags, awnings, lights and banners on the Common Areas in connection with its marketing of Lots for sale or lease or to host events on the Common Areas designed to attract prospective tenants and/or purchasers to the Community.

3.4.2 Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Community that has not been represented to the Association as property of the Association. Declarant reserves the right to remove from the Community any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

3.4.3 Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over and across the Common Areas and the Lots to erect and construct the Common Areas and the Lots shown on the Plat and all other Improvements Declarant may deem appropriate and to use the Common Areas and by Lots owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Community.

3.4.4 The Declarant and its employees, agents, contractors and subcontractors shall have an easement through the Common Areas and the Lots for the purpose of assessing, testing (including invasive testing), inspecting and evaluating any potential construction defect or need for maintenance on the Community, and completing any renovations, warranty work or modifications to the Common Areas or Lots which Declarant deems necessary or desirable.

3.4.5 The Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over, and through the Common Areas as may be reasonably necessary for the purpose of performing the Declarant's obligations under the Community Act and the Community Documents and for the purpose of exercising Special Declarant Rights whether arising under the Community Act or reserved in this Declaration. The rights granted to or reserved by the Declarant in this Section 3.4 are in addition to any rights granted to or reserved by the Declarant elsewhere in the Community Documents.

3.4.6 To the extent not expressly reserved by or granted to Declarant by other provisions of this Declaration, Declarant reserves all Development Rights and Special Declarant Rights. Except as expressly set forth in this Declaration, there is no time limit within which any Development Right or Special Declarant Right must be exercised or will lapse, and there are no conditions or limitations on the exercise of any Development Right or Special Declarant Right.

3.4.7 In the event of any conflict or inconsistency between this Section 3.4 and any other provision of the Community Documents, this Section 3.4 shall control and prevail over such other provisions. The rights of the Declarant set forth in this Section 3.4 shall be enforceable by injunction, by any other remedy available at law or in equity (including, but not limited to, the right to sue for damages) and/or by any means provided in this Declaration.

**3.5 Future Easements for Utilities and Maintenance.** On behalf of all Owners, the Association may create and dedicate easements over the Common Areas for the following purposes: (1) for the benefit of all service providers for the installation, repair, replacement and maintenance of sanitary sewers, water, electric, gas and telephone lines and facilities, heating and air-conditioning facilities, cable, telephone or master television antenna or satellite lines or cables, and drainage facilities, and for ingress to and egress from the Community in connection therewith, and (2) for ingress to and egress from the Community for the benefit of all municipal, state and federal vehicles, including, without limitation, all emergency and service type vehicles as may be required from time to time to service the Community and the Owners, Lessees and Occupants including, without limitation, for U.S. Mail distribution and collection and private or municipal refuse collection. without the joinder or consent of any First Mortgagee or other Person.

#### **ARTICLE 4**

#### **USE AND OCCUPANCY RESTRICTIONS**

4.1 **Residential Use.** All Lots shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Lot, except that an Owner, Lessee or Occupant of a Lot may conduct a business activity within a Lot so long

as: (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, vibration or smell from outside the Lot; (2) the business activity conforms to all applicable zoning ordinances or requirements for the Community; (3) the business activity is conducted solely in the Lot; (4) the business activity does not involve persons coming to the Lot or the door-to-door solicitation of Owners, Lessees or Occupants; and (5) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Owners, Lessees or Occupants, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (1) such activity is engaged in full or part time; (2) such activity is intended or does generate a profit; or (3) a license is required for such activity. The leasing of a Lot by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

**4.2 Leases.** No Lot shall be leased by a Lot Owner for an initial term of less than six (6) months. No portion of a Lot which is less than the entire Lot shall be leased. The Association may establish Rules concerning the procedure to be utilized by Lot Owners that seek to rent or lease their Lots to ensure compliance with this Section. All leases must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of this Declaration and the Rules and that any violation of this Declaration or the Rules by the Lessee or the other occupants shall be in default under the lease. There shall be no subleasing of the Lots or assignment of leases. At least ten (10) days before executing a lease, the Lot Owner shall provide the Association with a copy of the proposed lease and the following information: (1) the commencement date and expiration date of the lease term; (2) the names of each of the Lessees and each other Person who will reside in the Lot during the lease term; (3) the telephone number at which the Lessee can be contacted; (4) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (5) the name, address and telephone number of a person whom the Association can contact in the event of an emergency involving the Lot. Any Owner who leases his Lot must provide the Lessee with copies of this Declaration and the Rules. A Lot Owner shall be liable for any violation of this Declaration or the Rules by the Lessees or other occupants of the Lot and their guests and invitees and, in the event of any such violation, the Lot Owner, upon demand of the Association, shall immediately take all necessary steps to correct any such violations or, if demanded by the Board of Directors, immediately take all necessary action (including, but not limited to, legal action) to remove from the Lot the Lessees and all other persons residing in the Lot pursuant to the lease. The provisions of this Section shall not apply to the leasing or subleasing of a Lot by the Declarant or the Association.

**4.3 Nuisances.** No Owner shall keep or maintain anything or shall suffer or cause any condition to exist in which impairs any easement or right of any other Owner or otherwise impairs or interferes with the use and enjoyment by other Owners of the Common Areas and their respective Lots and Units. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise therefrom, so as to render Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to the

neighborhood or to the Owners and tenants of their respective Lots. No Owner or resident shall permit anything or condition to exist upon a Lot which shall induce, breed or harbor infectious plant diseases or noxious insects. No Owner shall commit or permit any waste on the Owner's Lot. No noxious, offensive, or illegal activity shall be allowed on the Lots nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners and tenants of their respective Lots and Units. Without limiting the generality of the foregoing, no speakers, horns, sirens or other sound devices, except security devices used exclusively for security purposes, shall be located or used on a Lot. The Board in its sole discretion shall have the right to determine the existence of any such nuisance.

**4.4 Trash Containers and Collection.** No garbage or trash shall be placed or kept on the Common Areas except in covered containers of a type, size and style, which are approved by the Board of Directors. The Board of Directors shall have the right to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection which are not in conflict with the rules and regulations of the City of Phoenix, which is the provider of the trash service. No incinerators shall be kept or maintained in any Lot. All trash, garbage or rubbish must be kept in sanitary containers and must be bagged and deposited in designated trash receptacles. No rubbish, trash or garbage shall be kept on any Patio. The Rules may contain provisions governing the disposal of trash, garbage and rubbish in the Community.

**4.5 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon the Community except such machinery or equipment as is usual and customary in connection with the uses permitted by this Declaration, and except that which Declarant or the Association may require for the construction, operation and maintenance of the Common Areas.

**4.6 Animals and Pets.** No animals, livestock, or poultry shall be raised, bred, or kept on any Lot except customary (in the United States) household pets such as dogs, cats, and household birds maybe kept solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance or disturb the health, safety, welfare or quiet enjoyment of the Lots by the Owners. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal is a generally recognized household pet, or a nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained. All animals shall be kept under reasonable control at all times and in accordance with applicable laws and whenever an animal is allowed to leave a Lot, it shall be either on a leash within the control of its owner or in a cage. All pet litter must be picked up immediately wherever deposited, and placed in the trash at the Owner's Lot.

**4.7 Vehicles and Parking.** The garage is meant to be used for parking of Owner's vehicles. Parking of the Owner's vehicles in driveways and streets are discouraged. Parking in the driveway may only occur if at least two vehicles are parked in the garage. Except as otherwise restricted herein, non-commercial passenger automobiles, pick-up trucks, and SUVs with factory settings of less than  $\frac{3}{4}$  ton payload capacity may be parked on the streets for not

more than four (4) consecutive hours within a seven (7) day period, without prior Board approval. Commercial vehicle parking is prohibited except as stated below. For purposes of this Section, a commercial vehicle is a vehicle that meets one or more of the following criteria: (i) displays signage or lettering to advertise or convey information about a product or service (including, but not limited to, a commercial logo, name, phone number, or message of any kind) that is cumulatively over one hundred and forty-four (144) square inches in size, (ii) commercial utility racks or ladder racks located on the vehicle or work equipment or tool boxes stored on the vehicle that are visible from outside of the vehicle. Other vehicles and equipment (including, but not limited to, vehicles with factory settings of  $\frac{3}{4}$  ton or more payload capacity, commercial vehicles, trailers, campers, mobile homes, recreational vehicles, and boats) may only be kept on the Property subject to the Rules adopted by the Board, and the Board may completely prohibit the parking of such vehicles except for temporary parking of service or delivery vehicles during normal business hours. No motor home, recreational vehicle, travel trailer, tent trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked or maintained on any Lot or on any street within the Property so as to be Visible From Neighboring Property, the Common Areas, or the streets.

**4.8 Inoperable, Noisy, and Unsightly Vehicles.** No vehicle or equipment of any type which is abandoned or inoperable shall be parked, stored or kept on the Property or any street within or adjacent to the Property. For purposes of this Section a vehicle is abandoned or inoperable if it is not running, has a flat tire for ten (10) or more days, is up on blocks, or is not properly licensed or registered. No major vehicle repairs, maintenance, or restoration shall be done on the Property. Major repairs, maintenance, and restoration are defined as any procedure that requires more than one-half ( $\frac{1}{2}$ ) day to complete. No vehicle or equipment which is unsightly by reason of large dents or excessive rust, or which is excessively noisy may be parked, stored, kept, or operated on the Property or any street within or adjacent to the Property. If the Board determines that any vehicle is creating loud or annoying noises by virtue of its operation or that the parking of any vehicle or equipment is unsightly or detracts from the overall character of the Community, such determination shall be conclusive and final that the operation, parking or storage of such vehicle or equipment is a nuisance, and the operation, parking or storage of such vehicle or equipment will be prohibited on the Property or any street within or adjacent to the Property upon notice by the Board to the owner or operator thereof.

**4.9 Temporary Structures.** No structure of a temporary character shall be permitted on the Property, and no tent, shack, barn, trailer, dumpster, or refuse container shall be permitted on the Property either temporarily or permanently, unless such is located thereon by or with the prior written consent of the Board.

**4.10 Signs.** Except for signs which under applicable law the Association may not prohibit, no signs (including, but not limited to, "For Sale" or "For Rent" signs) shall be permitted on the exterior of a Building or in the interior of a Lot if the signs would be visible from the exterior of the Building, or on any other portion of the Community without the prior written approval of the Board of Directors.

**4.11 Lawful Use.** No immoral, improper, offensive, or unlawful use shall be made of any part of the Community. All laws, zoning ordinances, and regulations of all governmental

bodies having jurisdiction over the Community shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration.

4.12 **Time Sharing.** No Lot shall be divided or conveyed on a time increment basis or measurable chronological periods or pursuant to any agreement, plan, program or arrangement under which the right to use, occupy or possess a Lot, or any portion thereof, rotates among various Persons on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time one hundred eighty (180) consecutive calendar days or less.

4.13 **Hazardous Materials.** No Owner, Lessee or Occupant shall use or keep in a Lot or any Limited Common Element allocated to the Lot any kerosene, gasoline, or inflammable or combustible fluid or material or other hazardous materials, other than those required, in limited quantities, for normal cleaning of the Lot and the Limited Common Element.

4.14 **Construction and Sales, Period Exemption.** During the course of the construction and sale of any permitted Improvements within the Neighborhood, the provisions, covenants, conditions and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction and sale. As used herein, "sale" shall include the sale and closing of Lots.

4.15 **Garages.** No Garage shall be converted to living space or altered or used for storage of material or other purposes which would prevent the use of the Garage for the parking of the number of vehicles for which it was designed. The interior of all Garages shall be maintained and kept in a neat, clean and sightly condition, free of debris or unsightly objects. Garage doors shall be kept closed except when the opening of the door is necessary to permit ingress or egress.

4.16 **Antennas.** Unless governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors within the Property, whether attached to the Unit or structure or otherwise, unless approved by the Board. Any device covered by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, shall comply with any applicable antenna installation rules of the Association and shall be mounted, to the extent reasonably possible, so as to not be visible from neighboring Lots or Common Area.

4.17 **Declarant Approval Required.** After the expiration of the Period of Declarant Control and for so long as the Declarant owns any Lot, any action for which the consent or approval of the Board of Directors is required under this Declaration may be taken only if such action is also consented to or approved by the Declarant.

4.18 **Mineral Exploration.** No Lot or Parcel shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind, except for grading and excavation work and the removal of fill material including, but without limitation, gravel, rock and sand, in connection with the

construction of Dwellings or other Improvements which have been approved in writing by the Design Review Committee or which are being constructed by, or on behalf of, the Declarant.

4.19 **Drainage.** No Dwelling, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Property or any part thereof, or for any Lot as shown on the drainage plans on file with the County or City.

**ARTICLE 5**  
**MAINTENANCE AND REPAIR OF**  
**COMMON AREAS AND LOTS**

5.1 **Association Maintenance.** The Association shall maintain, repair, and replace all of the Common Areas and all Improvements located thereon.

5.2 **Maintenance by Owners.** Each Owner shall be responsible for the maintenance of their Lot and all improvements located thereon.

5.3 **Improper Maintenance of Lots.** In the event any portion of any Lot is so maintained as to present a public or private nuisance, or is being used in a manner which violates this Declaration, the Association Rules or the Design Guidelines or in the event the Owner or Resident of any Lot is failing to perform any of its obligations under this Declaration with respect to the maintenance, repair or replacement of the Improvements located on such Lot, the Board may, after notice and hearing, make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give written notice thereof to the Owner and Resident by mail to the mailing address of the Lot and make demand that corrective action be taken within thirty (30) calendar days of the date of the notice. If at the expiration of the said 30-day period the requisite corrective action has not been taken the Board shall be authorized and empowered to cause such action to be taken, including but not limited to the hiring of an attorney to take action on behalf of the Board, whether by informal pre-suit action or by formal legal proceedings. The costs of any action taken by the Board as set forth herein, including but not limited to incidental and taxable costs, attorney's fees, and any fines assessed against said Owner or Resident shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment lien.

5.4 **Maintenance of Party Walls, Flood Walls and Wash Areas.** Any wall or structure placed on the dividing line between Lots or immediately adjacent to the dividing line between Lots and benefitting the Owners of the adjacent Lots shall constitute a Party Wall. The rights and duties of Owners and the Association with respect to Party Walls, flood walls which line the wash and retention areas located on the Property ("**Flood Walls**"), and wash areas shall be as follows:

5.4.1 The Owners of contiguous Lots who have a Party Wall shall both equally have the right to use such wall, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

5.4.2 In the event that any Party Wall is damaged or destroyed through the act of an Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall without cost to the other adjoining Lot Owner or Owners.

5.4.3 In the event any such Flood Wall and/or a wash area located on the Property is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), it shall be the obligation of the Association to repair such Flood Wall and/or Wash Area at the Association's expense; provided, however, if such destruction or damage is caused by the act of an Owner, their agents, guests, invitees or family, such repairs shall be the Owner's obligation.

5.4.4 Each Owner shall permit the Association, when reasonably required, to enter their Lot for the purpose of repairing or maintaining a Flood Wall and/or Wash Area or for the purpose of performing installations, alterations or repairs to the property of such Owners, providing that request for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate. The Association making entry pursuant to the terms of this Section shall not be deemed guilty of trespass by reason of such entry.

5.5 **Repairs Necessitated by Owners.** In the event any Common Area or portion of a Lot maintained by the Association is damaged or destroyed by an Owner or any of his guests, tenants, licensees, or agents, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by said Owner, upon demand, to the Association and such amount shall constitute a lien on the Lot and may be collected in the same manner as Assessments.

5.6 **Easement for Maintenance.** The Association is hereby granted and does hereby reserve an easement for the purpose of ingress and egress to the various Lots and for the purpose of accomplishing any and all reasonable maintenance as described in this Article 5. The Owner of a Lot covenants and agrees to honor this easement owned and held by the Association for all of the purposes, and for all of the areas described herein, and the failure to honor and abide by all such easements shall give rises to all remedies in law or equity against the violating Owner.

## **ARTICLE 6** **THE ASSOCIATION**

6.1 **Rights, Powers and Duties of the Association.** No later than the date on which the first Lot is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Lot Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Planned Community Documents together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Planned Community Act. The Association shall have the

right to finance capital improvements in the Community by encumbering future Assessments if such action is approved by the affirmative vote of Lot Owners holding more than two-thirds (2/3) of the votes in the Association. Unless the Community Documents or The Planned Community Act specifically require a vote of the Members, the Board of Directors may act in all instances on behalf of the Association.

**6.2 Directors and Officers.** During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association, and such directors and officers do not have to be Lot Owners. The initial directors and officers of the Association shall be designated in the Articles, and such designation shall constitute the appointment of such directors and officers by the Declarant. When the Period of Declarant Control expires, the Lot Owners shall elect the Board of Directors which shall consist of at least three members, all of whom must be Lot Owners. The Board of Directors elected by the Lot Owners shall then elect the officers of the Association. For the limited purpose of determining whether a natural person is a Lot Owner and therefore eligible to serve on the Board of Directors, the spouse of a natural person who is a Lot Owner and any member, manager, shareholder, partner, director, officer or other authorized representative of a corporation, general partnership, limited partnership, limited liability company, limited liability partnership or other legal entity that is a Lot Owner shall be considered a Lot Owner. The Declarant may voluntarily surrender the right to appoint and remove the members of the Board of Directors and the officers of the Association before the expiration of the Period of Declarant Control, and in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

**6.3 Rules.** The Board of Directors, from time to time and subject to the provisions of this Declaration and the Planned Community Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use of the Lots and the Common Areas, as well as conduct in the Common Areas.

**6.4 Identity of Members.** Each Lot Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of the Lot Owners. Membership in the Association shall be mandatory. An Owner shall automatically, upon becoming an Owner, be a Member of the Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to each Lot and may not be separately assigned, transferred or conveyed.

**6.5 Personal Liability.** No director or officer of the Association, no member of any committee of the Association, no managing agent of the Association or such managing agent's employees and no other person acting on behalf of the Board of Directors shall be personally liable to any Member or to any other Person other than the Association for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence in the discharge of such person's duties and responsibilities under the Community Documents provided such person acted in good faith and without intentional misconduct.

## **ARTICLE 7**

### **ASSESSMENTS**

7.1 **Creation of Lien and Personal Obligation for Assessments.** Each Owner of any Lot, by acceptance of a deed or recorded contract of sale therefore, whether or not it shall be so expressed in such document, is deemed to covenant and agree to pay to the Association (a) Regular Assessments, (b) Special Assessments, (c) Enforcement Assessments, and (d) other charges made or levied by the Association against the Owner or Lot pursuant to this Declaration, such Assessments and charges to be established and collected as provided herein. The Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

7.2 **Purpose of Assessments.** The Assessments by the Association shall be used to promote the recreation, health, safety, and welfare of all the residents in the Property, for the improvement and maintenance of the Common Area as provided herein, maintenance and repairs of the Dwellings as provided herein, payment of taxes on the Common Area, and for the common good of the Property. Regular Assessments shall include an adequate reserve fund for maintenance, repairs and replacement of the Common Area and other improvements which the Association is responsible for maintaining.

7.3 **Regular Assessments.** The Board shall annually determine and fix the amount of the Regular Assessment against each Lot in accordance with the budget. The Board of Directors shall prepare an annual budget reflecting the estimated costs for the operating expenses necessary and desirable to administer and manage the Association, costs prudent and necessary to maintain, operate, and repair the Common Area, and the sum needed to provide adequate reserves for the items of major repair, replacements and additions to the Common Area. Not less than thirty (30) days before the beginning of the calendar year the Board shall distribute the budget and notify the Owner of each Lot in writing as to the amount of the Regular Assessment; however, failure to send the budget and written notice shall not eliminate an Owner's obligation to pay Assessments. In the event Board fails to adopt the budget, fix the amount of the Regular Assessment for a new fiscal year, or notify the Owners of such amount, the Owners shall pay to the Association the amount of the previous year's Regular Assessment until receipt of written notice of the Regular Assessment.

7.4 **Adjustment of Budget and Assessments.** If the Board of Directors determines that the Regular Assessment is inadequate to defray all Association expenses and/or insufficient to carry out all the purposes of the Governing Documents, the Board of Directors may prepare and distribute a supplemental budget and increase the amount of the Regular Assessment for the remaining months of the calendar year to sufficiently meet the Association's needs.

7.5 **Commencement of Assessments.** Notwithstanding anything herein to the contrary, assessments shall commence upon conveyance of a Lot by Declarant to an Owner.

**7.6 Uniform Rate of Assessment; Payment of Assessments.** Except as is otherwise provided herein, (such as in the case of Enforcement Assessments) Assessments shall be fixed at a uniform rate for all Lots. Assessments shall be payable in such manner, at such times, and in such installments as may be determined by the Board.

**7.7 Special Assessments.** In addition to the Regular Assessment, the Board of Directors may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Areas, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that, after the Period of Declarant Control, any Special Assessment shall also be approved by Owners representing two-thirds (2/3) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Owners.

**7.8 Enforcement Assessment.** The Association may assess against a Lot Owner as an Enforcement Assessment any of the following expenses: (1) any Collection Costs incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Owner; (2) any attorney fees (whether or not a lawsuit is filed) incurred by the Association with respect to any violation of the Community Documents by the Owner or the Owner's Lessees, Occupants or Invitees; (3) any monetary penalties levied against the Owner; or (4) any amounts (other than Assessments) which become due and payable to the Association by the Owner or the Owner's Lessees, Occupants or Invitees pursuant to the Community Documents.

**7.9 Effect of Nonpayment of Assessments; Remedies of the Association.**

(a) Any Assessment, or any installment of an Assessment, which is not paid within fifteen (15) days after the Assessment first became due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of interest established from time to time by the Board of Directors. If any Assessment, or any installment thereof, is not paid within fifteen (15) days after the Assessment first became due, the Association may assess against the delinquent Lot Owner a late fee in the amount established from time to time by the Board of Directors.

(b) The Association shall have a lien on each Lot for any Assessment levied against that Lot from the time the Assessment becomes due and for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments. The Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments may be foreclosed in the same manner as a mortgage on real estate. Fees, charges, late charges, monetary penalties and interest charged pursuant to Section 33-1242, Paragraphs 10, 11 and 12 of the Arizona Revised Statutes, other than charges for late payment of Assessments, are not enforceable as Assessments under this Section 7.7. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment of the Assessment becomes due. The Association has a lien for fees, charges, late charges (other than charges for late payment of Assessments), monetary penalties or interest charged pursuant to Section 33-1242, Paragraphs 10, 11 and 12 of

the Arizona Revised Statutes after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest from a court of competent jurisdiction and the recording of that judgment in the records of the County Recorder of Maricopa County, Arizona, as otherwise provided by law. The Association's lien for monies other than for Assessments, for charges for late payment of those Assessments, or reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments may not be foreclosed and is effective only on conveyance of any interest in the Lot. The recording of this Declaration constitutes record notice and perfection of the Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments, and no further recordation of any claim of lien shall be required. Although not required in order to perfect the Association's lien, the Association shall have the right but not the obligation, to record a notice setting forth the amount of any delinquent Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments which are secured by the Association's lien.

(c) The Association's Lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments shall have priority over all liens, other interests and encumbrances except for: (1) liens and encumbrances Recorded before the recording of this Declaration; (2) liens for real estate taxes and other governmental assessments and charges; and (3) the lien of any First Mortgage or seller's interest in a first contract for sale recorded prior to the Assessment Lien. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Lot Owner.

(d) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, monetary penalties and all other fees and charges owed to the Association in any manner allowed by law including, but not limited to: (1) bringing an action at law against the Lot Owner personally obligated to pay the delinquent amounts and such action may be brought without waiving the Assessment Lien securing any such delinquent amounts; or (2) bringing an action to foreclose the Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

**7.10 Certificate of Payment.** The Association or the Association's managing agent, upon receipt of a written request, shall furnish to a lienholder, Lot Owner or Person designated by a Lot Owner a recordable statement setting forth the amount of unpaid Assessments against his Lot. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board of Directors, and every Lot Owner. The Association or

the Association's managing agent may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

**7.11 No Exemption or Offsets.** No Owner may exempt himself from liability for payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Community Documents by waiver and nonuse of any of the Common Areas and facilities or by the abandonment of his Lot. All Assessments, monetary penalties and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments, monetary penalties and other fees and charges shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Community Documents or the Community Act.

**7.12 Working Capital Fund.** To provide the Association with operating funds, each Original Buyer (hereinafter defined) and each Subsequent Purchaser (hereinafter defined), except for transferees under Section 7.13(b)(1), (2) or (3), shall pay to the Association, immediately upon becoming the Owner of the Lot, a sum equal to two monthly installments of the Regular Assessment for the Lot. Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. The amounts paid to the Association pursuant to this Section may be used for any purpose for which Association funds may be used pursuant to Article 7.

**7.13 Reserve Contribution.**

(a) Except as provided in Section 7.13.(b), each Original Buyer and each Subsequent Purchaser, except for transferees under Section 7.13(b)(1), (2) or (3), shall pay to the Association, immediately upon becoming the Owner of the Lot, a contribution (the “**Reserve Contribution**”) to the reserves to be established pursuant to Section 7.15. The amount of the initial Reserve Contribution shall be \$300.00. The Board of Directors may from time to time thereafter increase or decrease the amount of the Reserve Contribution.

(b) No Reserve Contribution shall be payable with respect to: (1) the transfer or conveyance of a Lot by devise or intestate succession; (2) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (3) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance;

(c) All Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 7.15. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments.

**7.14 Transfer Fee.** Each Purchaser shall pay to the Association, or, at the option of the Association, to the Association's managing agent, immediately upon becoming the Owner of the Lot a transfer fee in the amount set from time to time by the Board of Directors to compensate the Association for the administrative cost resulting from the transfer of a Lot. The transfer fee is intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to mail or deliver to a purchaser under A.R.S. § 33-1260.

#### 7.15 Reserves.

(a) The Board of Directors shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Common Areas which the Association is obligated to maintain, repair and replace. The reserves may be funded from Regular Assessments, the Reserve Contributions paid pursuant to Section 7.13, the Working Capital Fund payments paid pursuant to Section 7.12 or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a separate bank account (the "**Reserve Account**") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. The Board of Directors periodically shall obtain a reserve study, which study shall at a minimum include (1) identification of the major components of the Common Areas which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (2) identification of the probable remaining useful life of the identified major components as of the date of the study; (3) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (4) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

(b) Unless the Association is exempt from Federal or State taxes, all reserves shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulation of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association.

### **ARTICLE 8** **INSURANCE**

8.1 **Insurance Requirements Generally.** The Association shall obtain and maintain in full force and effect property and casualty, liability and other insurance as hereinafter provided. All such insurance shall be obtained from responsible companies duly authorized to transact insurance business in the State of Arizona. All such insurance shall name the Association, or its authorized representative or trustee, as the insured, in its individual capacity for the benefit of the Association. To the extent reasonably available, the insurance obtained by the Association pursuant to this Article 8 shall provide the following: (i) exclusive authority to adjust losses under policies in force on property owned by the Association shall be vested in the Board of Directors; (ii) in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder be brought into contribution with insurance purchased by individual owners, occupants or their Mortgagees, and the insurance carried by the Association shall be primary; (iii) The Board of Directors shall secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against the Board of Directors or the Owners and their respective tenants, agents and guests. The Board shall review all such insurance at least annually and shall increase or decrease the amounts thereof as it deems necessary or appropriate.

**8.2 Property Insurance.** The Association shall obtain and maintain in effect a “multi-peril” type of policy or policies of property insurance covering the Common Areas, and all fixtures, improvements, and building service equipment to the extent such is a part of the Common Areas against loss or damage by fire or other hazards in an amount sufficient to cover, after application of a deductible, the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard. Such insurance coverage shall be written in the name of the Association.

**8.3 Liability Insurance.** The Association shall obtain and maintain commercial general liability insurance covering liability for bodily injury, including death, and liability for property damage occurring in, upon or about the Common Areas. Each Owner and the Association shall be insured with respect to such liability arising out of the ownership, maintenance, repair or operation of the Common Areas. The limits of liability for such coverage shall not be less than two million dollars (\$2,000,000.00) in the aggregate and one million dollars (\$1,000,000.00) per occurrence with respect to bodily injury, death or property damage. The Association shall maintain insurance covering operation of any motor vehicle or equipment owned or operated by the Association in an amount of not less than one million dollars (\$1,000,000.00) per occurrence. The Board may increase the amount of insurance if it determines that such is in the best interest of the Association.

**8.4 Directors and Officers Insurance.** The Association shall obtain and maintain (if reasonably obtainable) insurance for the protection of its officers, directors, and committee members from personal liability in the management of the Association's affairs.

**8.5 Other Insurance by the Association.** The Association shall also have the power and authority to obtain and maintain other and additional insurance coverage, as the Board deems advisable.

**8.6 Payment of Insurance Premiums and Deductibles.** The premiums for insurance maintained by the Association shall be shared equally by all Owners of Lots as a part of the Regular Assessments. The Association may adopt reasonable rules and regulations regarding the payment of the insurance deductible. To the extent an Owner is, in whole or in part, responsible for the payment of the insurance deductible, such cost shall be a lien on the Lot and collectible in the same manner as Assessments.

**8.7 Insurance Obtained by Lot Owners.** Each Lot Owner shall obtain and maintain (1) property insurance covering the Owner's Lot and all additions, alterations, and improvements whether installed by such Lot Owner or any prior Lot Owner or whether originally in such Owner's Lot; (2) liability insurance covering, to the extent not covered by the policies of liability insurance obtained by the Board of Directors for the benefit of all Lot Owners, such Lot Owner's liability for bodily injury, including death, and property damage arising out of the ownership, maintenance or use of the Owner's Lot. If requested to do so by the Board of Directors each Lot Owner shall provide the Board of Directors with a certificate of insurance evidencing such insurance coverage at least ten (10) days prior to the conveyance of the Lot to the Lot Owner, and thereafter at least thirty (30) days prior to the expiration of any policy.

**8.8 Certificate of Insurance.** An insurer that has issued an insurance policy on behalf of the Association pursuant to this Article 8 shall issue certificates or memoranda of

insurance to the Association and, on written request, to any Lot Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

## **8.9 Damage and Destruction**

8.9.1 Immediately after damage or destruction to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes and zoning regulations.

8.9.2 Any damage to or destruction of the Common Area shall be repaired or reconstructed unless at least 75% of the total Class "A" votes and the Class "B" votes and the Declarant, as long as the Declarant owns any Property, decide within 60 days after the loss not to repair or reconstruct.

8.9.3 If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association as the case may be, within such 60-day period, then the period shall be extended for not more than 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

8.9.4 If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative Improvements are authorized, that affected property shall be cleared of all debris and ruins and maintained by the Association in a neat and attractive, landscaped condition.

**8.10 Special Assessments for Restoration.** Whenever repair or restoration is to be undertaken, the Association may levy and collect a Special Assessment from the Members in accordance with Section 7.7 to cover the costs and expense of restoration to the extent not covered by the insurance proceeds, payable over such period as the Association may determine. If repair or restoration of the Common Areas is to be undertaken, all Lot Owners should be assessed.

**8.11 Disbursement of Proceeds.** Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association if any, as applicable, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

8.12 Each Lot Owner (other than Developer) agrees that in the event of the partial loss, damage or destruction of any Improvement on a Lot Owner 's Lot involving less than total

destruction of such Improvement, the Lot Owner shall proceed promptly to repair or to reconstruct the damaged Improvement in a manner consistent with the original construction. In the event that an Improvement is totally destroyed and the Owner determines not to rebuild or to reconstruct the Improvement, the Lot Owner shall clear the affected Lot of all debris and return the land to substantially the same condition existing prior to the beginning of construction of the Improvement thereon, provided that, at a minimum, the Lot shall be grassed and maintained in a neat and tidy manner, free of debris. The Board may impose more stringent requirements regarding the standards for rebuilding or reconstructing Improvements on each Lot and the standard for returning the Lot to its natural state in the event the Lot Owner decides not to rebuild or reconstruct.

## **ARTICLE 9 ARCHITECTURAL REVIEW**

9.1 **Architectural Review.** No building, fence, wall, tower, awning, roof, patio, balcony, structure, or other improvements of any kind or character shall be constructed, erected, placed or maintained on a Lot, nor shall any exterior addition, change or alteration to a Lot that is or would be Visible From Neighboring Property be constructed, erected, placed or maintained, until plans and specifications showing the nature, kind, color, shape, height, materials, location, and other physical attributes of the same shall have been submitted to and approved in writing by the Architectural Review Committee. The Committee may consider any factors it deems relevant, including, but not limited to, the harmony of the external design and location in relation to surrounding structures and topography, the burden that a new or expanded structure will place on the Common Area, and how the proposed structure will affect the tranquility of the resort. Notwithstanding anything herein to the contrary, the Architectural Review Committee may condition approval of an addition or alteration of a structure on the Owner assuming future maintenance of the structure.

9.1.1 The architectural review and control performed by the Architectural Review Committee shall extend only to the Lots.

9.1.2 The Architectural Review Committee may not grant approval for any improvement, structure, or alteration that is otherwise in violation of this Declaration. Any approval of improvement, structure, or alteration that is in violation of this Declaration is null and void.

### **9.2 Architectural Review Committee.**

9.2.1 The Architectural Review Committee ("**Committee**") shall initially consist of members appointed by the Declarant. After the Period of Declarant Control ends, the Committee shall consist of at least three (3) Members of the Association (one member must also be a Board member), and the number of Members on the Committee shall be determined from time to time by the Board of Directors. No Member whose right to vote has been suspended is eligible to serve on the Architectural Review Committee.

9.2.2 Any member of the Committee may at any time resign from the Committee by giving written notice thereof to the Board.

9.2.3 Any member of the Committee may be removed from the Committee, with or without cause, by the Board of Directors.

9.2.4 Vacancies on the Committee caused by whatever reason may be filled by the Board of Directors.

9.3 **Plans and Specifications.** Plans and specifications showing the nature, kind, shape, color, size of materials and location of such improvements, alterations and the like shall be submitted in writing to the Committee for approval as to the quality of workmanship and design and harmony of the external structures, topography and finished grade elevation and the impact on the nature of the resort. No permission or approval shall be required to repaint in accordance with the color scheme previously approved by the Committee or to rebuild in accordance with the plans and specifications previously approved by the Committee. Whenever any plans and specifications are submitted in writing to the Committee pursuant to the provisions of this Section, such plans and specifications shall be deemed disapproved for purposes of this Section if the committee fails to approve said plans and specifications within sixty (60) days after the date of submission to them.

9.4 **Architectural Guidelines.** The Committee may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by majority vote at a meeting or by unanimous written consent, rules and regulations, to be known as "Architectural Guidelines". The Architectural Guidelines shall set forth the standards and procedures for the Committee to review plans and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use within the Property.

9.5 **Review Fee and Construction Deposit.** The Committee shall have the right to charge a design review fee and collect a refundable construction deposit. Such fee and deposit shall be payable at the time the application for approval is submitted to the Committee. The amount of the design review fee and construction deposit shall be established by the Committee in the Architectural Guidelines, and may be increased from time to time. The Committee shall have the authority to use the services of an architect or consultant chosen by the Committee, and to use the design review fee to pay the reasonable fees of the architect or consultant. The construction deposit will be retained by the Association for the purposes of assuring the prompt completion of the work in accordance with the Architectural Guidelines and any other Association Rules adopted by the Board, and for the purpose of repairing any Common Area damaged by the Owner or the Owner's agents. If such violations or damage occur, the Association may levy reasonable monetary penalties against the construction deposit, including forfeiture of the entire deposit, after notice and an opportunity to be heard, or use any amounts of the deposit as the Board deems necessary to repair the damage caused. If the cost of repair exceeds the amount of the deposit, the Owner shall be responsible for the difference. Said amount, if unpaid, shall be collected in the same manner as Assessments. The Owner shall have no right to demand and the Association shall have no obligation to pay the construction deposit until after the completion of construction to the satisfaction of the Committee, after which time any unused portion of the construction deposit will be returned to the Owner who paid the construction deposit.

9.6 **Appeal.** Any Owner whose architectural submission has been denied may appeal the decision to the Board in accordance with procedures to be established by the Board. In the event the decision of the Committee is overruled by the Board on any issue or question, the prior decision of the Committee shall be deemed modified to the extent specified by the Board and, for purposes of this Declaration, such decision, as so modified, shall thereafter be deemed the decision of the Committee.

9.7 **Waiver.** The approval of the Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Committee under the Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specification or matter subsequently submitted for approval.

9.8 **Liability.** Neither the Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (c) the development of any Property, provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions of this Section, the Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Committee.

9.9 **Variances.** The Committee or the Board may grant variances to the Architectural requirements of this Article and to the Architectural Guidelines upon a showing of hardship or if a variance is in the best interests of the Association.

## **ARTICLE 10**

### **ALTERNATIVE DISPUTE RESOLUTION PROCEDURES**

10.1 **General.** It is Declarant's intent that all Improvements constructed on the Property by Declarant be of a quality that is consistent with good construction and development practices for similar properties and be free of construction defects. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluation such quality, issues may arise as to whether an alleged construction defect exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Construction Defects" (as defined on Page 12 of the "**Home Builder's Limited Warranty**" or "**HBLW**" and as modified by the definition of Construction Defects in Arizona Revised Statutes Section 12-1361.4) (PWC Form No. 117) Rev. 01/07), a copy of which is attached hereto as Exhibit B) amicably, and without the necessity of time consuming and costly litigation pursuant to the Alternative Dispute Resolution Procedures described below in Section 10.2.1 and, if required, by mandatory binding arbitration as provided for in Articles 11 and 12 hereof. Accordingly, the Association and Declarant and all Lot Owners are and shall be bound by the claim resolution procedures set forth below and in Articles 11 and 12 hereof.

10.2 **Compliance with Applicable Laws.** In the event that the Association and/or any Lot Owner (each or collectively “**Claimant**”) claim, contend, or allege that all or any portion of a Lot, Common Area, and/or any other Improvements constructed within the Property by or on behalf of Declarant contain Construction Defects, then the Claimant and Declarant agree as follows:

IN THE EVENT THAT THE ASSOCIATION HAS ALLEGED CLAIMS FOR CONSTRUCTION DEFECTS AGAINST THE DECLARANT WHICH HAVE NOT BEEN RESOLVED BY PERSONAL NEGOTIATIONS, THEN AS A CONDITION PRECEDENT TO THE ASSOCIATION INITIATING A MANDATORY BINDING ARBITRATION ACTION AGAINST THE DEVELOPER AS PROVIDED FOR IN SECTION 11.1 BELOW, THE ASSOCIATION MUST FIRST COMPLY WITH ALL THE TERMS, CONDITIONS AND PROVISIONS OF THE ARIZONA HOME OWNERS’ DWELLING ACT, ARIZONA STATUTES SECTIONS 33-2001, 33-2002 AND 33-2003, AND THE ASSOCIATION MUST ALSO COMPLY WITH ALL THE TERMS, CONDITIONS AND PROVISIONS OF ARIZONA’S CONTRACTOR REPAIR ACT, ARIZONA STATUTES SECTIONS 12-1361, 12-1362 AND 12-1363.

ALL OF THE LOT OWNERS SHALL ALSO BE BOUND BY ALL OF THE TERMS, CONDITIONS AND PROVISIONS OF ARIZONA’S CONTRACTOR’S REPAIR ACT, ARIZONA STATUTES SECTIONS 12-1361, 12-1362 AND 12-1363, PRIOR TO INITIATING THE MANDATORY BINDING ARBITRATION PROVISION SET FORTH IN ARTICLE 11 BELOW AND IN EXHIBIT B HERETO, WHICH ARBITRATION PROVISIONS SAID LOT OWNERS, IF THEY ARE AN ORIGINAL BUYER, HAVE AGREED TO ABIDE BY AND BE SUBJECT TO PURSUANT TO THEIR PURCHASE CONTRACT (HEREINAFTER DEFINED) AS WELL AS BY VIRTUE OF THEIR TAKING TITLE TO THEIR LOT SUBJECT TO THE TERMS OF THIS DECLARATION. LOT OWNERS WHICH ARE SUBSEQUENT PURCHASER HAVE AGREED TO ABIDE BY AND BE SUBJECT TO THE FOREGOING ARBITRATION PROVISIONS BY VIRTUE OF THEIR TAKING TITLE TO THEIR LOT SUBJECT TO THE TERMS OF THIS DECLARATION.

10.3 **Lot Owners’ Approval of Construction Defect Action by Association.** In addition to first complying with the Arizona Home Owners’ Dwelling Act and the Arizona’s Contractor Repair Act, the Association shall not commence an action involving mandatory binding arbitration with the Developer in connection with any alleged Construction Defect without the written approval of at least sixty-seven and two thirds percent (67-2/3%) of the Lot Owners, excluding any Lot Owner who would be a defendant in such proceedings. The Association shall not use reserve funds to pay legal fees, court costs or other costs or expenses incurred in the arbitration proceeding.

**ARTICLE 11**  
**DISCLAIMER OF WARRANTIES; HOME BUILDER’S LIMITED WARRANTY;**  
**MANDATORY BINDING ARBITRATION**

11.1 **Warranty.** Declarant, the Association, and each Lot Owner acknowledge that each Purchaser of a Lot from Declarant (“**Original Buyer**”) has entered into a Purchase

Contract, Deposit Receipt and Escrow Instructions (“**Purchase Contract**”) with Declarant which provides for mandatory binding arbitration of claims and disputes between the Original Buyer and Declarant, if such claims and disputes are not resolved through the repair terms, conditions and provisions referred to in Section 10.2 above. Such mandatory binding arbitration terms, conditions and provisions are set forth in the HBLW and, a copy of which is attached as Exhibit B which has been furnished to the Association and has or will be furnished to each such Original Buyer at the time of their entering into the Purchase Contract with Declarant. The Association, Declarant and each Lot Owner covenant and agree to abide by and be subject to the HBLW. In accordance with the HBLW and the agreement of the Association and each Lot Owner to abide by and be subject to said warranty program, the Association and each Lot Owner covenant and agree that any and all claims and/or disputes of any kind relating to Construction Defects in the Property, to the extent of the Association’s and/or such Lot Owner’s interest and standing, shall, if not resolved by personal negotiations or as provided for in Article 10.2 hereof shall, subject to the provisions of Section 10.3 hereof, be submitted by the Association and/or each Lot Owner, as applicable, to final and mandatory 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.

11.2 **Warranty Period.** With respect to the Common Areas, the Association acknowledges and agrees that the warranty period under the HBLW shall run for a period of eight (8) years from the date of the Close of Escrow between the first Lot Owner and the Declarant. Notwithstanding the provisions of Article I of the HBLW to the contrary, the HBLW eight (8)-year warranty period for all Lot Owners with respect to their Lot and the Improvements thereon, other than any Common Areas, shall run from the date of the Close of Escrow of the Original Buyer (hereinafter defined) of the Lot.

11.3 **HBLW’s Warranty Limitations and Arbitration Under the HBLW.** OTHER THAN THE HBLW, DECLARANT, TO THE FULLEST EXTENT PERMITTED BY LAW, MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY LOT OR IMPROVEMENTS CONSTRUCTED THEREON, THE PROPERTY, OR CONSUMER PRODUCTS OR OTHER THINGS THAT MAY BE INSTALLED OR THAT ARE CONTAINED IN OR RELATE TO THE IMPROVEMENTS OR THE PROPERTY, 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 DECLARANT TO THE ASSOCIATION OR LOT OWNERS, AND, BY TAKING TITLE TO A LOT, EACH LOT OWNER, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS (INCLUDING SUCCESSOR OWNERS OF THE LOT), 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 LOT, INCLUDING ANY IMPROVEMENTS THEREON, ALL COMMON AREAS AND IMPROVEMENTS, OR ANY PERSONAL PROPERTY OR FIXTURES BEING PROVIDED TO THE LOT OWNER BY DECLARANT AS PART OF THE IMPROVEMENTS. IN PARTICULAR, BY THE LOT OWNER TAKING TITLE TO A LOT, THE ASSOCIATION AND EACH LOT OWNER ACKNOWLEDGE AND AGREE IF ANY CLAIMS OR DISPUTES AMONG THEM

RELATING TO ALLEGED CONSTRUCTION DEFECTS ARE NOT RESOLVED BY THE DISPUTE PROCEDURES REFERRED TO ABOVE THAT (A) THE HOME BUILDER'S LIMITED WARRANTY AND THE PURCHASE CONTRACT REQUIRE THAT THESE DISPUTES BETWEEN ASSOCIATION AND/OR THE LOT OWNER AND DECLARANT, WHETHER SUCH DISPUTES ARE BASED ON CONTRACT, TORT, STATUTE, OR EQUITY, AND WHETHER SUCH DISPUTES 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 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, ASSOCIATION, DECLARANT AND EACH LOT OWNER ARE GIVING UP ANY RIGHTS THEY MAY POSSESS TO LITIGATE SUCH DISPUTES IN A COURT OR BY JURY TRIAL.

**ARTICLE 12**  
**NOTICE TO SUBSEQUENT PURCHASERS**

Notice is hereby given to all Persons that purchase a Lot with Improvements thereon constructed by or on behalf of Declarant from an Owner thereof, other than from the Declarant (herein a **"Subsequent Purchaser"**) that the Purchase Contract entered into between the Declarant, as seller, and the first Lot Owner, as buyer (herein an **"Original Buyer"**), contains an acknowledgement by the Original Buyer that said Original Buyer has received a copy of and is governed by the Declarant's 8-year express Home Builder's Limited Warranty and which is attached hereto as Exhibit B. Articles 10 and 11 hereof and the Home Builder's Limited Warranty contain, among other terms, provisions for notice, right to cure procedures and mandatory arbitration of construction defect disputes relating to Improvements constructed on all of the Lots located on the Property by the Declarant and its general contractor, HBT Construction of Arizona, Inc. Subsequent Purchasers shall be deemed upon acquisition of a Lot with Improvements thereon constructed by or on behalf of Declarant to be subject to and the beneficiary of said HBLW and all of the provisions therein provided for, including, but not limited to, after compliance with provisions of Article 10 above, the mandatory binding arbitration provisions in Section VII of the HBLW.

**ARTICLE 13**  
**GENERAL PROVISIONS**

**13.1 Enforcement.**

(a) The Association may enforce the Community Documents in any manner provided for in the Community Documents or by law or in equity, including, but not limited to:

- (1) imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Lot Owner or other violator. A Lot Owner shall be responsible for payment of any fine levied or imposed against a Lessee

- or Occupant of the Owner's Lot or by any Invitee of the Lot Owner or any Lessee or Occupant;
- (2) suspending a Lot Owner's right to vote;
  - (3) suspending any Person's right to use any facilities within the Common Areas; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;
  - (4) suspending any services provided by the Association to a Lot Owner or the Owner's Lot if the Lot Owner is more than fifteen (15) days delinquent in paying any assessment or other charge owed to the Association;
  - (5) exercising self-help or taking action to abate any violation of the Community Documents provided, however, that judicial proceedings must be instituted before any items of construction can be altered or demolished;
  - (6) requiring a Lot Owner, at the Lot Owner's expense, to remove any Improvement installed or constructed in such Owner's Lot or in any Limited Common Element allocated to the Owner's Lot in violation of this Declaration and to restore the Lot or the Limited Common Element to its previous condition and, upon failure of the Lot Owner to do so, the Board of Directors or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass and all costs incurred by the Association shall be paid to the Association by the Lot Owner upon demand by the Association;
  - (7) without liability to any person, prohibiting any contractor, subcontractor, agent, employee or other invitee of a Lot Owner who fails to comply with the terms and provisions of the Community Documents from continuing or performing any further activities of the Community;
  - (8) filing a suit at law or in equity to enjoin a violation of the Community Documents, to compel compliance with the Community Documents, to recover monetary penalties or money damages or to obtain such other relief as to which the Association may be entitled;
  - (9) recording a written notice of a violation of any restriction or provision of the Community Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the legal description of the Lot against which the notice is being recorded; (ii) a brief description of the nature of the violation; and (iii) a statement of the specific steps which must be taken by the Lot Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Lot Owner and to any subsequent purchaser of the Lot that there is a violation of the provisions of the Community Documents.

(b) The Association shall not be obligated to take any enforcement action if the Board of Directors determines, in its sole discretion, that because of the strength of possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable

to the Association, or other facts deemed relevant by the Board of Directors, enforcement action would not be appropriate or in the best interests of the Association.

(c) A Lot Owner may enforce the Community Documents in any manner provided for in this Declaration or at law or in equity, except that a Lot Owner may not exercise any remedy provided to the Association by this Declaration or enforce payment of any Assessments or other amounts payable to the Association pursuant to the Community Documents.

(d) All rights and remedies of the Association under the Community Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Community Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Community Documents in the future. If any enforcement is initiated by the Association to enforce any provision of the Community Documents or otherwise arising out of the Community Documents, the Association shall be entitled to recover all attorney fees, whether or not suit was filed and the same shall be collectable as an assessment and a lien on the Lot.

13.2 **Severability.** Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

13.3 **Amendment.**

(a) Except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights, the Declaration, including the Plat, may be amended with the affirmative, written consent of at least sixty-seven percent (67%) of the Lot Owners.

(b) Except to the extent expressly permitted or required by the Community Act, an amendment to this Declaration shall not create or increase Special Declarant Rights, increase the number of Lots or change the boundaries of any Lot, the Allocated Interest of a Lot, or the use as to which any Lot is restricted, in the absence of unanimous consent of the Lot Owners. Any amendment to this Declaration adopted by the Lot Owners during the Period of Declarant Control must be approved in writing by the Declarant. After the expiration of the Period of Declarant Control, an amendment to this Declaration shall not amend or delete any provisions of Articles 10, 11 and 12 or this Section 13.3(b).

(c) An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless the Declarant approves the amendment in writing. No amendment to Articles 10, 11 and 12, Section 13.3(b) or this Section 13.3(c) shall be effective unless the Declarant approves the amendment in writing even if the Period of Declarant Control has expired.

(d) During the Period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to: (1) comply with the Planned Community Act or any other applicable law if the amendment does not adversely affect the rights of any Lot Owner; (2) correct any error or inconsistency in the Declaration if the amendment does not adversely

affect the rights of any Lot Owner; or (3) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including without limitation, the Department of Veterans Affairs, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(e) Any amendment adopted by the Lot Owners pursuant to Section 13.3(a) shall be signed by the President or Vice President of the Association and shall be Recorded within thirty (30) days after the adoption of the amendment. Any amendment made by the Declarant pursuant to Section 13.3(d) or the Planned Community Act shall be executed by the Declarant and shall be Recorded.

**13.4 Notices.** All notices, demands, statements or other communications required to be given to or served on the Association, a Lot Owner or the Declarant under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered in any manner approved in writing by the Association, Lot Owner and the Declarant, or if no specific delivery method has been approved, delivered personally or sent by United States mail, postage prepaid, addressed or emailed to the Association, Lot Owner or the Declarant, at the mailing or email address which the Association, Lot Owner or the Declarant shall designate in writing and file with the Association or, if no such address is designated by a Lot Owner, at the mailing or email address of the Lot of such Owner. The Association, a Lot Owner or the Declarant may change their mailing or email address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the entity or person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. A notice given by email shall be deemed to have been received by the entity or person to whom the notice was emailed on the first business day after the email was sent. If a Lot is owned by more than one person, notice to one of the Owners shall constitute notice to all Owners of the same Lot. Each Lot Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address. The initial mailing address of the Association and Declarant for purposes of giving notice to them is 706 East Bell Road, Suite 212, Phoenix, Arizona 85054. Their initial email address is [KKiesl@HBTAZ.com](mailto:KKiesl@HBTAZ.com).

**13.5 Gender.** The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, or men or women, shall in all cases be assumed as though in each case fully expressed.

**13.6 Topic Headings.** The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or of this Declaration. Unless otherwise specified, all references in this Declaration to Articles or Sections refer to Articles or Sections of this Declaration.

**13.7 Survival of Liability.** The termination of membership in the Association shall not relieve or release any former Owner or Member from any liability or obligation incurred under,

or in any way connected with, the Association during the period of such ownership or membership, or impair any rights or remedies which the Association may have against such former Owner or Member arising out of, or in any way connected with, such ownership or membership and the covenants and obligations incident thereto.

13.8 **Construction.** In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws or the Association Rules, the provisions of this Declaration shall prevail.

13.9 **Joint and Several Liability.** In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Lot Owners set forth in, or imposed by, the Community Documents shall be joint and several.

13.10 **Guests and Tenants.** Each Lot Owner shall be responsible for compliance by his agents, tenants, guests, invitees, licensees and their respective servants, agents, and employees with the provisions of the Community Documents. A Lot Owner's failure to insure compliance by such Persons shall be grounds for the same action available to the Association or any other Lot Owner by reason of such Lot Owner's own noncompliance.

13.11 **Attorneys' Fees.** In the event the Declarant, the Association or any Lot Owner employs an attorney or attorneys to enforce a lien or to collect any amounts due from a Lot Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Community Documents, the prevailing party in any such action shall be entitled to recover from the other party his reasonable attorneys' fees incurred in the action.

13.12 **Number of Days.** In computing the number of days for purposes of any provision of the Community Documents, all days shall be counted including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the next day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

**IN WITNESS WHEREOF**, the Declarant has executed this Declaration as of the date first written above.

**HBT OF LONE MOUNTAIN LLC**, an Arizona  
limited liability company

By: Towne Development, Inc., an Arizona  
corporation, its Sole Member

By:   
Kevin G. Kiesl, Vice President



**EXHIBIT A**

**LEGAL DESCRIPTION**

TRACTS A through D, inclusive, and LOTS 1 through 20, inclusive, of CAVIADA, according to the PLAT of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 1267 of Maps, Page 8.

## 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**.



**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