

Mary Louise Nicholson

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

After recording, return to:

Crowley Creekside Homeowner's Association, Inc.  
c/o Essex Association Management, L.P.  
Attention: Ron Corcoran  
1512 Crescent Drive, Suite 112  
Carrollton, Texas 75006

STATE OF TEXAS

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KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF TARRANT

§

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### **FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CREEKSIDE**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CREEKSIDE (this "Amendment") is made and entered into by ONE CREEKSIDE, L.P., a Texas limited partnership (the "Declarant"), as of the 30<sup>th</sup> day of January, 2019 (the "Effective Date").

### **RECITALS**

WHEREAS, on March 30, 2005, Declarant executed that certain Declaration of Covenants, Conditions and Restrictions for Creekside dated March 30, 2005 and recorded as Instrument No. D205060912 in the Official Public Records of Tarrant County, Texas (the "Declaration"), which Declaration encumbers the real property described therein with the covenants, conditions and restrictions set out therein;

WHEREAS, notwithstanding anything to the contrary contained in the Declaration, including, without limitation, in Section 9.4 of the Declaration, under the Texas Residential Property Owners Protection Act (Chapter 209 of the Texas Property Code), the Declaration may be amended by a vote of sixty-seven percent (67%) of the total votes allocated to property owners entitled to vote on the amendment of the Declaration;

WHEREAS, Declarant holds all Declarant rights reserved under the Declaration and holds at least sixty-seven percent (67%) of the total votes allocated to property owners entitled to vote on the amendment to the Declaration, and pursuant to its rights as Declarant and holder of such sixty-seven percent (67%) of the total votes allocated to property owners entitled to vote on the amendment to the Declaration, Declarant desires to amend and modify certain covenants, conditions and restrictions set forth in the Declaration, as more specifically provided in this Amendment.

NOW, THEREFORE, the Declarant does hereby amend the Declaration as follows:

1. Defined Terms. Unless otherwise defined in this Amendment or the context otherwise requires, each term used in this Amendment with its initial letter capitalized which has been specifically defined in the Declaration shall have the same meaning herein as given to such term in the Declaration.

Amendments. (a) The following is added following the now last sentence of Section 2.1(c):

“Builders shall notify the Declarant and the Association at least ten (10) days in advance of any special sales or promotional events. No use of Common Area is permitted by any Builder for marketing or sales purposes within the express prior written consent of Declarant or the Board of the Association.”

(b) The following is added as new additional language to the end of Section 2.2(d) of the Declaration:

“Pets shall be kept on a leash or otherwise confined inside a fenced area whenever outside the residence. PETS SHALL NOT BE ALLOWED TO ROAM, BARK OR HOWL. Pets shall be registered, licensed and inoculated as required by law and must be properly tagged for identification. ***It is the Owner’s responsibility to keep the front of their Lot clean and free of pet debris and to pick up and properly dispose of their pet’s waste wherever deposited.*** Notwithstanding anything contained herein to the contrary, the Board in its sole discretion and without incurring any further duty or obligation to owners and occupants within the Property may decide to take no action and refer complaining parties to the appropriate municipal or governmental authorities for handling and final disposition.”

(c) Section 2.2 is hereby modified and amended to add the following as a new Sections 2.2(n), (o), (p), (q), (r), (s), and (t) thereof:

“(n) Leasing. No lease of any home on a Lot shall be for a duration of less than twelve (12) months, and each Owner is required to provide a copy of such its lease to the Association prior to tenant’s occupancy of the home on a Lot. In no event may homes located on more than ten percent (10%) of the Lots within the Property be subject to leases.

“(o) Permanent Structures. No permanent structures may be constructed on any Lot without the prior written consent and approval of the ACC, including without limitation (i) children’s playhouses and play sets, (ii) dog houses, (iii) greenhouses, (iv) gazebos, (v) pools, spas, and other water features, (vi) cabanas or pergolas, and (vii) buildings for storage of lawn maintenance equipment. Permanent structures that exceed the height of the fence line around the rear yard of any Lot shall be placed in the rear yard area behind and screened from the street by the primary residence constructed on such Lot.

“(p) Basketball goals. Portable basketball goals may be allowed by written consent of the ACC, provided however, no goals may be kept in the street, in the

driveway, or within or in a manner that blocks a sidewalk, and goals may not be placed in the grass area located between the front building line and street. Portable goals must be kept in the driveway when in use and stored out of public view when not in use. Permanent basketball goals are prohibited without express consent in writing from the Reviewer. Goals must be kept in good repair at all times and may not use unsightly weights such as tires, sand bags, or rocks unless the Owner can provide written proof from the manufacturer that such weights are the recommended means of weighing down the goal.

“(q) Use of Association Name/Logo. The use of the name of the Association or the “Creekside” (the name of the subdivision), or any variation thereof, in any capacity without the express written consent of the Declarant for as long as Declarant owns any portion of the Property, and thereafter the Board, is strictly prohibited. Additionally, the use of any logo adopted by the Association or “Creekside” (the name of the subdivision), or use of any photographs of the entryway signage or other subdivision signs or monuments or Common Areas without the express written consent of the Declarant for as long as Declarant owns any portion of the Property, and thereafter the Board, is strictly prohibited.

“(r) Firearms and Weapons. Hunting and shooting are not permitted anywhere on or from the Property. No toys, weapons or firearms, including, without limitation, air rifles, BB guns, sling-shots or other item that is designed to cause harm to any person, animal or property (“Weapons”) may be used in a manner to cause such harm (whether intentionally or negligently or otherwise) to any person, animal or property. Violation of this restriction is subject to an immediate fine of up to \$1,000 per occurrence after the first notification (which may be given in writing or verbally, to the extent permitted under applicable law). The Board may adopt rules to ban the carrying and use of Weapons within Common Areas and the Property to the extent permitted under applicable law.

“(s) Drones and Unmanned Aircraft. Any Owner operating or using a drone or unmanned aircraft within the Property and related airspace must register such drone or unmanned aircraft with the Federal Aviation Administration (“FAA”), to the extent required under applicable FAA rules and regulations, and mark such drone or unmanned aircraft prominently with the serial number or registration number on the drone or unmanned aircraft for identification purposes. BY ACCEPTANCE OF TITLE TO ANY PORTION OF THE PROPERTY, EACH OWNER ACKNOWLEDGES THAT USE OF A DRONE OR UNMANNED AIRCRAFT TO TAKE IMAGES OF PRIVATE PROPERTY OR PERSONS WITHOUT CONSENT MAY BE A VIOLATION OF TEXAS LAW AND CLASS C MISDEMEANOR SUBJECT TO LEGAL ACTION AND FINES UP TO \$10,000. **IT IS YOUR RESPONSIBILITY TO KNOW AND COMPLY WITH ALL LAWS APPLICABLE TO YOUR DRONE AND/OR UNMANNED AIRCRAFT USE.**

“(t) Fireworks. Fireworks are strictly prohibited. Use of fireworks within the Property is subject to a monetary fine of \$1,000.00 for each violation. A sworn affidavit signed by a witness with legal capacity made under penalty of perjury attesting to the violation and specifying the date of approximate time of such violation which is received by the Association shall be sufficient evidence of such violation.”

(d) The following is added after the last sentence of Section 3.3(f): *“By submitting any plan for approval, the submitting party expressly acknowledges that the ACC and any constituent members thereof is/are not, or are not reviewing plans or submittals in their professional capacity (if any) as, engineers, architects, or builders for purposes of plan review, and that any approval or disapproval of any plans expressly excludes any opinion on the suitability of the plans on an engineering, architectural, or construction basis. The ACC, and any delegate, officer, member, director, employee or other person or entity exercising the ACC’s rights under this Declaration or any other documents promulgated hereunder or by or through the Association (which may include, without limitation, Declarant pursuant to its rights under 3.9 hereof) shall have no liability for its decisions made and in no event shall be responsible for: (1) errors in or omissions from the plans and specifications submitted, (2) supervising construction for the Owner’s compliance with approved plans and specifications, or (3) the compliance of the Owner’s plans and specifications with governmental codes and ordinances, state and federal laws.”*

(e) Section 3.4(e)(7) is hereby modified and amended to read in its entirety as follows:

“(7) Mailboxes. Mailboxes shall be cluster mailboxes or of such other design and construction as attached to Exhibit B hereof and approved by the ACC and the U.S. Postal Service, and in conformance with any Design Guidelines. All design, placement, and construction must be in accordance with any applicable guidelines and/or requirements of the City and/or United States Postal Service. Address numbers must remain visible at all times. In the event that any cluster mailbox installed in the Property requires maintenance, replacement or repairs, such maintenance, replacement and/or repairs shall be performed by the Association and the costs and expenses incurred by the Association in connection therewith shall be charged on a pro rata basis (based on the total number of mailbox units within such cluster mailbox) as an Individual Assessment to the Owners with mailbox units within the cluster mailbox that has been maintained, repaired and/or replaced.”

(f) Section 5.2(b) is hereby modified and amended to read in its entirety as follows:

“(b) Class B. The Class B Member shall be the Declarant who shall be entitled to fifteen (15) votes for each Lot owned by Declarant. Subject to the conditions set forth in the remainder of this paragraph, the Class B membership shall be converted to Class A membership upon the earlier of (i) the total votes outstanding in the Class A membership equaling the total votes outstanding in the Class B membership, (ii) September 30th, 2055, or (iii) the recording in the Records of Tarrant County, Texas of a notice signed by Declarant terminating the Class B membership. In determining the number of Lots owned by Declarant for the

purpose of Class B membership status hereunder, the total number of Lots covered by this Declaration, including all Lots annexed thereto in accordance with Section 8.1 herein, shall be considered. In the event the Class B membership has previously lapsed as provided in (i) above, but annexation of additional property restores the ratio of Lots owned by Declarant to the number required for Class B membership status, such Class B membership shall be reinstated until it expires pursuant to the terms hereof.”

(g) Section 6.2(b) is hereby modified and amended to add the following after the now last sentence of such Section 6.2(b):

“The Declarant may, but is not obligated to, lend funds to the Association to enable it to defray its expenses or cover any shortfall in the operating budget of the Association, and, at the Declarant’s sole discretion, funds provided for the purpose of offsetting a deficit of the Association may be treated as a loan, provided the terms of such loans are on reasonable market conditions at the time.”

(h) Section 6.3(e) is hereby modified and amended to replace “...twenty percent (20%)...” with “...fifty percent (50%)...”.

(i) The first sentence of Section 6.4 is hereby modified and amended to read in its entirety as follows: “*The Association may impose special assessments (“**Special Assessments**”) to make capital improvements, to satisfy indemnity obligations, to pay insurance deductibles, to fund unanticipated or unbudgeted costs or expenses of the Association (whether for operation or administrative purposes, or otherwise), or for any other reason permitted under applicable law.*”

(j) Section 6.4 is hereby modified to add the following as an additional sentence at the end of such Section: “*Without limiting the foregoing, the Association may levy as an individual Special Assessment against one or more (but less than all) Owner(s) any fees charged by the Association or its managing agent for inspection services, processing of certified mail (fees for return receipt requested included), hearing requests, pool or gate keys or job requests, or other expenses relate to facilitating requests or demands made by such Owner(s).*”

(k) The following is added after the now last sentence of Section 6.5(c): “*The Association or its managing agent may report any Owners delinquent in payment of assessments, late fees, transfer fees or other charges under this Declaration to any credit reporting agency.*”

(l) Section 6.5(e) of the Declaration is hereby modified and amended to add the following as a new sentence at the end of such Section: “*Nothing contained herein shall limit or deny the Association or its managing agent’s right to collect from any owner the Association and/or managing agent’s actual costs and expenses incurred related to services provided in connection with a transfer of interests in a Lot to such Owner.*”

(m) The following is added after the last sentence of Section 6.5(i): “*For as long as Declarant owns any portion of the Property, and thereafter the Board, may increase the working capital contribution to be made pursuant to this Section 6.5(i) upon the acquisition of record title to a Lot by any Owner, provided that such increase shall apply only to title transfers from and after the increase is determined to be made by Declarant or the Board, as applicable.*”

(n) Section 7.4 is hereby modified and amended to read in its entirety as follows:

**“Each Owner, and Owners’ immediate family, guests, agents, permittees, and licensees shall use all Common Areas at his/her own risk. All Common Areas are unattended and unsupervised. Each Owner and Owners’ immediate family, guests, agents, permittees, and licensees shall be individually responsible for his/her own safety and assumes all risk of loss associated with its use of the Common Area and/or any streets or other rights-of-way within the Property, and use by its family members, guest, agents, permittees, and licensees. NEITHER THE ASSOCIATION NOR THE DECLARANT, NOR ANY MANAGING AGENT ENGAGED BY THE ASSOCIATION OR DECLARANT, SHALL HAVE ANY LIABILITY TO ANY OWNER OR THEIR FAMILY MEMBERS, INVITEES OR GUESTS, OR TO ANY OTHER PERSON OR ENTITY, ARISING OUT OF OR IN CONNECTION WITH THE USE, IN ANY MANNER WHATSOEVER, OF THE COMMON AREA, STREETS, RIGHTS-OF-WAY OR ANY IMPROVEMENTS COMPRISING A PART THEREOF FROM TIME TO TIME, AND EACH OWNER BY ACCEPTANCE OF A DEED TO ANY LOT RELEASES THE DECLARANT, ASSOCIATION AND ANY MANAGING AGENT FROM ANY AND ALL LIABILITY RELATED TO THE USE OF THE COMMON AREA, STREETS OR OTHER RIGHTS-OF-WAYS WITHIN THE PROPERTY.**

“The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner acknowledges and agrees, for himself and his immediate family, guests, agents, permittees, and licensees, that Declarant, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each Owner acknowledges and accepts his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each Owner further acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the Owner relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.”

(o) Section 8.4 is hereby modified and amended to read in its entirety as follows:

**“Section 8.4 Specific Declarant Rights to Amend Declaration.** Declarant, without joinder of the Board, the Association, or the other Owners may amend this Declaration:

“(a) to correct any errors or to cause the Declaration to be in compliance with any City or other governmental requirement (including any requirements imposed by the Federal Housing Administration, the Veterans Administration, the Department of Housing and Urban Affairs, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association); and

“(b) for as long as Declarant is a Class B Member or owns any portion of the Property:

- “(i) To create Lots, easements, and Common Areas within the Property.
- “(ii) To subdivide, combine, or reconfigure Lots.
- “(iii) To convert Lots into Common Areas and Common Areas back to Lots.
- “(iv) To modify the construction and use restrictions of Article 3 of this Declaration.
- “(v) To merge the Association with another property owners association.
- “(vi) To comply with the requirements of an underwriting lender.
- “(vii) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.
- “(viii) To enable any reputable title insurance company to issue title insurance coverage on the Lots.
- “(ix) To enable an institutional or governmental lender to make or purchase mortgage loans on the Lots.
- “(x) To change the name or entity of Declarant.
- “(xi) To change the name of the addition in which the Property is located.
- “(xii) To change the name of the Association.
- “(xiii) For any other purpose, provided the amendment has no material adverse effect on any right of any Owner.”

(p) Section 9.4 is hereby modified and amended to read in its entirety as follows:

**“Section 9.4 Amendment of Declaration.** These Covenants may be amended by Declarant as provided in Section 8.4. In addition, the Declaration may be amended at any time and in any respect with the approval of least sixty-seven percent (67%) of the total votes allocated to Owner (both classes taken together) entitled to vote on the amendment to the Declaration of the Lots; provided, however, that no such amendment shall be effective unless joined in by Declarant

until such time as Declarant no longer owns a Lot. In addition, so long as the Class B membership provided for in Section 5.2(b) exists, any amendment of these Covenants may, at Declarant's discretion, require the prior approval of HUD or VA.”

(q) Section 9.8 is hereby modified and amended to read in its entirety as follows:

“9.8 INDEMNIFICATION. No Declarant or managing agent of the Association, or their respective directors, officers, committee chairs, committee members, agents, members, employees, or representatives, or any member of the Board or the ACC or other officer, agent or representative of the Association (collectively, the “**Leaders**”), shall be personally liable for the debts, obligations or liabilities of the Association. The Leaders shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance or malfeasance, misconduct, bad faith, intentional wrongful acts or as otherwise expressly provided in the Declaration or governing documents of the Association. The Leaders shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and **THE ASSOCIATION INDEMNIFIES EVERY LEADER, AS A COMMON EXPENSE OF THE ASSOCIATION, AGAINST CLAIMS, EXPENSES, LOSS OR LIABILITIES (TO THE EXTENT NOT COVERED BY INSURANCE PROCEEDS) TO OTHERS BY ANY CONTRACT OR COMMITMENT, AND BY REASONS OF HAVING SERVED AS A LEADER, INCLUDING ATTORNEY’S FEES, REASONABLY INCURRED BY OR IMPOSED ON THE LEADER IN CONNECTION WITH ANY ACTION, CLAIM, SUIT, OR PROCEEDING TO WHICH THE LEADER IS A PARTY. A LEADER IS NOT LIABLE FOR A MISTAKE OF JUDGMENT, NEGLIGENT OR OTHERWISE. A LEADER IS LIABLE FOR HIS WILLFUL MISFEASANCE, MALFEASANCE, MISCONDUCT, OR BAD FAITH. THIS RIGHT TO INDEMNIFICATION DOES NOT EXCLUDE ANY OTHER RIGHTS TO WHICH PRESENT OR FORMER LEADERS MAY BE ENTITLED. THE ASSOCIATION MAY MAINTAIN GENERAL LIABILITY AND DIRECTORS’ AND OFFICERS’ LIABILITY INSURANCE TO FUND THIS OBLIGATION. ADDITIONALLY, THE ASSOCIATION MAY INDEMNIFY A PERSON WHO IS OR WAS AN EMPLOYEE, TRUSTEE, AGENT, OR ATTORNEY OF THE ASSOCIATION, AGAINST ANY CLAIM OR LIABILITY ASSERTED AGAINST HIM AND INCURRED BY HIM IN THAT CAPACITY AND ARISING OUT OF THAT CAPACITY. ADDITIONALLY, THE ASSOCIATION MAY INDEMNIFY A PERSON WHO IS OR WAS AN EMPLOYEE, TRUSTEE, AGENT, OR ATTORNEY OF THE ASSOCIATION, AGAINST ANY CLAIM OR LIABILITY ASSERTED AGAINST HIM AND INCURRED BY HIM IN THAT CAPACITY AND ARISING OUT OF THAT CAPACITY.** Any right to indemnification provided herein shall not be exclusive of any other rights to which a director, officer, agent, member, employee and/or representative, or former director, officer, agent, member, employee and/or representative, may be entitled. The Association shall

have the right to purchase and maintain, as a Common Expense, directors', officers', and ACC or its members', insurance on behalf of any Person who is or was Leader against any liability asserted against any such Person and incurred by any such Person in such capacity as a director, officer, agent, member, employee and/or representative, or arising out of such Person's status as such. **SEPARATE AND APART FROM ANY OTHER WAIVER OF SUBROGATION IN THIS DECLARATION, THE ASSOCIATION WAIVES ANY AND ALL RIGHTS OF SUBROGATION WHATESOEVER IT MAY HAVE AGAINST DECLARANT REGARDLESS OF FORM, AND TO THE EXTENT ANY THIRD-PARTY MAKES A CLAIM, SUIT, OR CAUSE OF ACTION AGAINST DECLARANT FOR OR ON BEHALF OF THE ASSOCIATION BY WAY OF A SUBROGATION RIGHT, THE INDEMNITY PROVISIONS HEREIN APPLY TO ANY SUCH SUBROGATION CLAIM, SUIT, CAUSE OF ACTION, OR OTHERWISE."**

(r) Section 9.12 is hereby deleted in its entirety and replaced with a new Article 10 Dispute Resolution, as set forth on Schedule 1 attached hereto.

2. No Other Effect. Except as expressly modified, amended and supplemented by this Amendment, the terms and provisions of the Declaration are not amended, modified or supplemented, and the Declaration, as modified, amended and supplemented hereby, is hereby amended as provided herein.

3. Severability. Invalidation of anyone provision of this Amendment by judgment or court order shall in no way affect any other provision of this Amendment or the remainder of this Amendment which shall remain in full force and effect. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Amendment a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

4. Headings. The headings contained in this Amendment are for reference purposes only and shall not in any way affect the meaning or interpretation of this Amendment.

REMAINDER OF PAGE LEFT BLANK - SIGNATURE PAGE FOLLOWS

EXECUTED to be effective as of the date written above.

**DECLARANT:**

**ONE CREEKSIDE, L.P.,**  
a Texas limited partnership

By: Pars Investments, Inc.  
a Texas corporation,  
Its General Partner

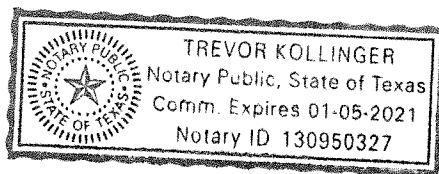
By:   
Mehrdad Moayed  
President

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on this 25 day of February, 2019, by Mehrdad Moayed, the President of Pars Investments, Inc., a Texas corporation, the General Partner of **ONE CREEKSIDE, L.P.**, a Texas limited partnership, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and as the act and deed of said corporation and limited partnership, and in the capacity therein stated.

Notary Public, State of Texas

[SEAL]



## **SCHEDULE 1**

### ARTICLE 10

#### **DISPUTE RESOLUTION.**

##### 10.1 **Agreement to Encourage Resolution of Disputes without Litigation.**

10.1.1 **Bound Parties.** Declarant, the Association and its officers, directors, and committee members, Owners, residents, and all other parties subject to this Declaration (“**Bound Party**”, or collectively, the “**Bound Parties**”), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Property without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in Section 10.2, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 10.2 in a good faith effort to resolve such Claim.

10.1.2 **Claim(s).** As used in this Article 10, the term “Claim” or “Claims” will refer to any claim, grievance or dispute arising out of or relating to:

(A) Claims relating to the rights and/or duties of Declarant, the Association or an Owner under the Declaration; or

(B) Claims relating to the design or construction of improvements on the Common Areas or Lots, other than matters of aesthetic judgment under Article 3, which will not be subject to review.

10.1.3 **Not Considered Claims.** The following will not be considered “Claims” for purposes of this Article 10 unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 10.2:

(A) any legal proceeding by the Association to collect assessments or other amounts due from any Owner;

(B) any legal proceeding by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the provisions of this Declaration;

(C) any legal proceeding which does not include Declarant or the Association as a party, if such action asserts a Claim which would constitute a cause of action independent of the Declaration; and

(D) any action by the Association to enforce the Declaration.

##### 10.2 **Claims Regarding Common Areas.**

10.2.1 **Claim by the Association – Common Areas.** The Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation or administrative proceedings: (i) in the name of or on behalf of any Owner (whether one or more); or (ii) pertaining to a Claim, as defined in Section 10.1.2 above, relating to the design or construction of a residence (whether one or more). In the event the Association or an Owner asserts a Claim related to the Common Area, as a precondition to providing the Notice defined in

Section 10.3, initiating the mandatory dispute resolution procedures set forth in this Article 10, or taking any other action to prosecute a Claim related to the Common Areas, the Association or an Owner, as applicable, must:

(A) Independent Report on the Condition of the Common Areas. Obtain an independent third-party report (the "Common Area Report") from a licensed professional engineer in the same area of engineering practice of which the engineer is qualified which: (A) identifies the Common Areas subject to the Claim including the present physical condition of the Common Areas; (B) describes any modification, maintenance, or repairs to the Common Areas performed by the Owner(s) and/or the Association; (C) provides specific and detailed recommendations regarding remediation and/or repair of the Common Areas subject to the Claim. For the purposes of this Section, an independent third-party report is a report obtained directly by the Association or an Owner and paid for by the Association or an Owner, as applicable, and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Association or an Owner in the Claim. As a precondition to providing the Notice described in Section 10.3, the Association or Owner must provide at least ten (10) days prior written notice of the inspection to each party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Common Area Report, the specific Common Areas to be inspected, and the date and time the inspection will occur. Each party subject to a Claim may attend the inspection, personally or through an agent. Upon completion, the Common Area Report shall be provided to each party subject to a claim. In addition, before providing the Notice described in Section 10.3, the Association or the Owner, as applicable, shall have permitted each party subject to a Claim the right, for a period of ninety (90) days, to inspect and correct, any condition identified in the Common Area Report.

(B) Owner Meeting and Approval. Obtain approval from Members holding eighty five percent (85%) of the votes in the Association to provide the Notice described in Section 10.3, initiate the mandatory dispute resolution procedures set forth in this Article 10, or take any other action to prosecute a Claim, which approval from Members must be obtained at a special meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (A) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (B) a copy of the Common Area Report; (C) a copy of any proposed engagement letter, with the terms of such engagement between the Association and an attorney to be engaged by the Association to assert or provide assistance with the claim (the "Engagement Letter"); (D) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which it may be liable if it is not the prevailing party or that the Association will be required, pursuant to the Engagement Letter or otherwise, to pay if the Association elects to not to proceed with the Claim; (E) a summary of the steps previously taken, and proposed to be taken, to resolve the Claim; (F) an estimate of the impact on the value of each Lot and Improvements if the Claim is prosecuted and an estimate of the impact on the value of each Lot and Improvements after resolution of the Claim; (G) an estimate of the impact on the marketability of each Lot and Improvements if the Claim is prosecuted and during prosecution of the Claim, and an estimate of the impact on the value of each Lot and Improvements during and after resolution of the Claim; (H) the manner in which the Association proposes to fund the cost of prosecuting the Claim; and (I) the impact on the finances of the Association, including the impact on present and projected reserves, in the event the Association is not the prevailing party. The notice required by this paragraph must be prepared and signed by a person other than, and not

employed by or otherwise affiliated with, the attorney or law firm that represents or will represent the Association or Owner, as applicable, in the Claim. If the Claim is prosecuted by the Association, in the event Members approve providing the Notice described in Section 10.3, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

(C) Prohibition on Contingency Fee Contracts. The Association may not engage or contract with any attorney, law firm, consultant, expert or advisor on a contingency fee basis, in whole or in part, to assist in the prosecution of a Claim.

### 10.3 Notice.

10.3.1 Notice Requirements for All Claims. The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) must notify the Respondent in writing of the Claim (the “Notice”), stating plainly and concisely: (A) the nature of the Claim, including date, time, location, persons involved, and Respondent’s role in the Claim; (B) the basis of the Claim (i.e., the provision of the Declaration or other authority out of which the Claim arises); (C) what Claimant wants Respondent to do or not do to resolve the Claim; and (D) that the Notice is given pursuant to this Section. All Bound Parties agree that the provisions of Chapter 27 of the Texas Property Code shall control any Claim, and they expressly adopt and incorporate the terms of Chapter 27 of the Texas Property Code as is full set forth herein. If the Claimant is the Association, prior to proceeding with negotiations under Section 10.4, the Association shall fully comply with provisions of Chapter 27 of the Texas Property Code, but for all other Claims, the time period for negotiation in Section 10.4 below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with Section 10.4, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. Section 10.4 does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 shall not affect a Claim and the Respondent shall have all rights and remedies under Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in Section 10.5 below is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to Section 10.5 is required without regard to the monetary amount of the Claim.

10.3.2 Special Notice for Association. If the Claimant is the Association, the Notice will also include: (A) a true and correct copy of the Common Area Report; (B) a copy of the Engagement Letter; (C) copies of all reports, studies, analyses, and recommendations obtained by the Association related to the Common Area which forms the basis of the Claim; (D) a true and correct copy of the special meeting notice provided to Members in accordance with Section 10.2.1(B) above; and (E) and reasonable and credible evidence confirming that Members holding eighty-five percent (85%) of the votes in the Association approved providing the Notice. If the Claimant is the Association, providing the information identified in this Section 10.3.2 is a condition precedent to the assertion of any Claim. Should the Association fail to provide the information required by this Section 10.3.2 to the Respondent, the Respondent shall be entitled to a temporary injunction enjoining the prosecution of the Claim until such time as the Association provides the information required by this Section 10.3.2. Furthermore, should the Association fail

to provide information required by this Section 10.3.2 within one-hundred twenty (120) days after making a demand on the Respondent, the Association's Claim shall be dismissed with prejudice, and the Respondent may take such actions in law or in equity to confirm such dismissal.

10.4 Negotiation. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. At any time during the negotiation period, if the Respondent is the Declarant, the Declarant may make repairs to the Common Areas, and the Area of Common Responsibility to prevent further damage to any of these areas, the structures, or residences, whether or not such repairs would inhibit or prohibit Claimant from securing evidence of resulting damage. Within 60 days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually acceptable place and time to discuss the Claim. If the Claim involves all or any portion of the Property, then at such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the Property that is subject to the Claim for the purposes of inspecting the Property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the Property to take and complete corrective action. The Board may establish a committee comprised of three (3) Members appointed by the Board to aid in the negotiation and resolution of any Claims (the "Ombudsperson Committee") during this sixty (60) day period, and the Board may adopt Rules requiring any Claims be first heard by such Ombudsperson Committee.

10.5 Mediation. If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent will submit the Claim to mediation in accordance with this Section 10.5.

10.6 Termination of Mediation. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, if the Association is the Claimant, it shall provide a report of the mediation to the Members of the Association, which such report shall provide the last best offer made by the Respondent, the last best offer by the Association, and the reason the Association did not accept the offer made by the Respondent. After such report is provided to the Members, the Board shall call a special meeting of the Members, at which special meeting the Members shall vote on whether to accept the last, best offer by the Respondent. If a Majority of the Members in attendance at the special meeting vote to accept the Respondent's last, best offer, the Board shall accept the Respondent's last, best offer and shall dismiss the Claim. Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this Article 10.

10.7 Binding Arbitration-Claims. All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this Section 10.7.

10.7.1 Governing Rules. If a Claim has not been resolved after Mediation as required by Section 10.5, the Claim will be resolved by binding arbitration in accordance with the terms of this Section 10.7 and the rules and procedures of the American Arbitration Association (“AAA”) or, if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent. Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance with the AAA’s “Construction Industry Dispute Resolution Procedures” and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such Rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any Claim, if the AAA has, by the time of Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this Section 10.7, this Section 10.7 will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

10.7.2 Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this Section 10.7 will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (A) exercising self-help remedies (including set-off rights); or (B) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

10.7.3 Statute of Limitations. All statutes of limitations that would otherwise be applicable shall apply to any arbitration proceeding under this Section 10.7, and to the fullest extent allowed under law, any action, lawsuit and/or claim whatsoever initiated by the Association or its assigns, regardless of form, that arises from or relates to this Declaration, the Property, the Subdivision, the Townhomes, the residence, the improvements or otherwise is barred unless it is brought not later than two (2) years and one (1) day from the date the cause of action accrues.

10.7.4 Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the applicable substantive law except as provided by this Section. The arbitrator may grant any remedy or relief that the arbitrator deem just and equitable and within the scope of this Section 10.7 but subject to Section 10.8 below (attorney’s fees and costs may not be awarded); provided, however, that for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have

the right to seek vacation or modification of any award that is based in whole, or in part, on (A) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (B) conclusions of law that are erroneous; (C) an error of federal or state law; or (D) a cause of action or remedy not expressly provided under existing state or federal law or otherwise in accordance with the terms and conditions of this Declaration. In no event may an arbitrator award speculative, consequential, special, indirect, lost profit or punitive damages for any Claim. Notwithstanding anything else contained in this Declaration, no Claimant shall be entitled to an award in connection with a Claim related to or arising in connection with a violation of Applicable Law, and the arbitrator shall not provide an award, unless the arbitrator determines that such Claim was due to a material violation of any Applicable Law and that such material violation of Applicable Law creates an imminent threat to health and safety.

10.7.5 Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in the county where the Property is located. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and applicable law. The arbitrator shall have the power to award recovery of all costs and fees, subject to the limitations in Section 10.7. Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

10.8 Allocation of Costs. Notwithstanding any provision in this Declaration to the contrary, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney's fees. For avoidance of doubt, the prevailing party in any Arbitration shall not recover any attorneys' fees, expenses, or costs. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

10.9 General Provisions. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

10.10 Period of Limitation.

10.10.1 For Actions by an Owner. The exclusive period of limitation for any of the Parties to bring any Claim, including, but not limited to, a Claim related to the design or construction of improvements on the Common Areas or Lots, shall be no later than two (2) years and one (1) day from the date that the Owner discovered or reasonably should have discovered evidence of the Claim.

10.10.2 For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim, including, but not limited to, a Claim related to the design or construction of improvements on the Common Areas or Lots, shall be no later than two (2) years and one (1) day from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim.

10.11 Approval & Settlement. The Association must levy a Special Assessment to fund the estimated costs of arbitration, including estimated attorney's fees, conducted pursuant to this Article 10 or any judicial action initiated by the Association. The Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless the Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.

10.12 LIMITATION ON DAMAGES. NOTWITHSTANDING ANY PROVISION CONTAINED IN THIS DECLARATION OR ANY OF THE ASSOCIATION DOCUMENTS TO THE CONTRARY, IN NO EVENT SHALL DECLARANT OR THE ASSOCIATION BE LIABLE FOR SPECULATIVE, CONSEQUENTIAL, SPECIAL, INDIRECT, LOST PROFIT OR PUNITIVE DAMAGES IN CONNECTION WITH ANY CLAIM, EVEN IF DUE TO THE NEGLIGENCE OF DECLARANT OR THE ASSOCIATION.