

#2018-0019882

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY 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:
Windmill Farms Association, Inc.
c/o Essex Association Management, LP
Attention: Ron Corcoran
1512 Crescent Drive, Suite 112
Carrollton, Texas 75006

STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF KAUFMAN §

FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WINDMILL FARMS

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WINDMILL FARMS (this "Amendment") is made and entered by EQK BRIDGEVIEW PLAZA, LLC, a Delaware limited liability company (formerly known as EQK Bridgeview Plaza, Inc., a Nevada corporation) (the "Declarant"), as of the 1st day of July, 2018.

WHEREAS, on April 10, 2014 the Declarant executed that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Windmill Farms recorded on April 16, 2014 as Document No. 2014-0006193, in Volume 4547, Page 266 of the Official Public Records of Kaufman County, Texas, as may be modified, amended and supplemented now and hereafter from time to time (as so modified, amended and/or supplemented, the "Declaration") which amended, restated and superseded the Master Declaration (as defined in the Declaration) and the Phase 1 Declaration (as defined in the Declaration);

WHEREAS, in accordance with Section 8.2 of the Declaration, for as long as Declarant owns property subject to the terms of the Declaration, the Declarant has the right at any time, in its sole discretion to amend the Declaration by any instrument in writing duly signed, acknowledged, and filed for record in Kaufman County, Texas;

WHEREAS, the Declarant owns property subject to the terms of the Declaration;

WHEREAS, 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.

2. Amendments. (a) The Declaration is hereby modified and amended effective as of April 10, 2014 (being the effective date of the Declaration) to add a new Article 9 as follows:

“
“
ARTICLE 9

“
“
DISCLAIMERS AND INDEMNITY

“ Section 9.1. Security. 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 and resident acknowledges and agrees, for himself and his guests, 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 and resident 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 and resident 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 or resident 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 and resident 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.

“ Section 9.2. Risk. Each Owner, Owners' immediate family, guests, agents, permittees, licensees and residents shall use all Common Areas at his/her own risk. All Common Areas are unattended and unsupervised. Each Owner, Owners' immediate family, guests, agents, permittees, licensees and residents is solely responsible for his/her own safety and assumes all risk of loss in connection with the use of Common Areas and related amenities and improvements within the Property. 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 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 or any improvements comprising a part thereof from time to time, and the Association, Declarant and managing agent disclaims any and all liability or responsibility for injury or death occurring from use of the Common Areas. Declarant shall have no responsibility for maintenance, repair, replacement, or improvement of the Common Area or any improvements thereon after initial construction.

“ Section 9.3 INDEMNIFICATION. The Declarant, the Association and managing agent, and their respective directors, officers, agents, members, employees, and representatives, and any member of the Board, the Architectural Control Committee and

other officer, agent or representative of the Association (collectively, the "Indemnified Parties"), shall not be personally liable for the debts, obligations or liabilities of the Association. The Indemnified Parties 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 Documents. The Indemnified Parties shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association. **THE ASSOCIATION, AS A COMMON EXPENSE OF THE ASSOCIATION, SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM ANY AND ALL EXPENSES, LOSS OR LIABILITY TO OTHERS, INCLUDING ATTORNEY'S FEES, REASONABLY INCURRED BY OR IMPOSED ON THE INDEMNIFIED PARTY IN CONNECTION WITH AN ACTION, SUIT, OR PROCEEDING TO WHICH THE INDEMNIFIED PARTY IS A PARTY BY REASON OF BEING OR HAVING BEEN AN INDEMNIFIED PARTY HEREUNDER OR ON ACCOUNT OF ANY CONTRACT OR COMMITMENT ENTERED INTO BY ANY INDEMNIFIED PARTY IN ITS CAPACITY HEREUNDER (TO THE EXTENT NOT COVERED BY INSURANCE PROCEEDS) AGAINST EXPENSES. IN ADDITION, EACH INDEMNIFIED PARTY SHALL BE INDEMNIFIED AND HELD HARMLESS BY THE ASSOCIATION, AS A COMMON EXPENSE OF THE ASSOCIATION, FROM ANY EXPENSE, LOSS OR LIABILITY TO OTHERS (TO THE EXTENT NOT COVERED BY INSURANCE PROCEEDS) BY REASONS OF HAVING SERVED AS SUCH DIRECTOR, OFFICER, AGENT, MEMBER, EMPLOYEE AND/OR REPRESENTATIVE AND IN SUCH CAPACITY AND AGAINST ALL EXPENSES, LOSSES AND LIABILITIES, INCLUDING, BUT NOT LIMITED TO, COURT COSTS AND REASONABLE ATTORNEYS' FEES, INCURRED BY OR IMPOSED UPON SUCH INDEMNIFIED PARTY IN CONNECTION WITH ANY PROCEEDING TO WHICH SUCH PERSON MAY BE A PARTY OR HAVE BECOME INVOLVED BY REASON OF BEING SUCH DIRECTOR, OFFICER, AGENT, MEMBER, EMPLOYEE AND/OR REPRESENTATIVE AT THE TIME ANY SUCH EXPENSES, LOSSES OR LIABILITIES ARE INCURRED SUBJECT TO ANY PROVISIONS REGARDING INDEMNITY CONTAINED IN THE ASSOCIATION DOCUMENTS, EXCEPT IN CASES WHEREIN THE EXPENSES, LOSSES AND LIABILITIES ARISE FROM A PROCEEDING IN WHICH SUCH INDEMNIFIED PARTY IS ADJUDICATED GUILTY OF WILLFUL MISFEASANCE OR MALFEASANCE, MISCONDUCT OR BAD FAITH IN THE PERFORMANCE OF SUCH PERSON'S DUTIES OR INTENTIONAL WRONGFUL ACTS OR ANY ACT EXPRESSLY SPECIFIED IN THE ASSOCIATION DOCUMENTS AS AN ACT FOR WHICH ANY LIMITATION OF LIABILITY SET FORTH IN THE ASSOCIATION DOCUMENTS IS NOT APPLICABLE; PROVIDED, HOWEVER, THIS INDEMNITY DOES COVER LIABILITIES RESULTING FROM SUCH INDEMNIFIED PARTY'S NEGLIGENCE. AN INDEMNIFIED PARTY IS NOT LIABLE FOR A MISTAKE OF JUDGMENT, NEGLIGENT OR OTHERWISE. AN INDEMNIFIED PARTY IS LIABLE FOR HIS OR HER WILLFUL MISFEASANCE, MALFEASANCE, MISCONDUCT, OR BAD FAITH. THIS RIGHT TO INDEMNIFICATION DOES**

NOT EXCLUDE ANY OTHER RIGHTS TO WHICH PRESENT OR FORMER INDEMNIFIED PARTIES MAY BE ENTITLED. 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 MAY MAINTAIN AS A COMMON EXPENSE 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 LIABILITY ASSERTED AGAINST HIM AND INCURRED BY HIM IN THAT CAPACITY AND ARISING OUT OF THAT CAPACITY. Any insurance policies obtained by the Association shall name the Declarant and the managing agent as "additional insured" on such policies.

"ADDITIONALLY, THE ASSOCIATION MAY INDEMNIFY A PERSON WHO IS OR WAS AN EMPLOYEE, TRUSTEE, AGENT, OR ATTORNEY OF THE ASSOCIATION, AGAINST ANY LIABILITY ASSERTED AGAINST HIM AND INCURRED BY HIM IN THAT CAPACITY AND ARISING OUT OF THAT CAPACITY."

(b) The Declaration is hereby modified and amended effective as of April 10, 2014 (being the effective date of the Declaration) to add a new Article 10 – Dispute Resolution, as set forth on Schedule 1 attached hereto.

3. 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.

4. 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.

5. 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:

EQK BRIDGEVIEW PLAZA, LLC,
a Delaware limited liability company

By: [Signature]

Name: BL Lemke

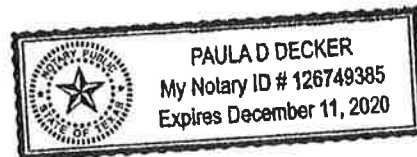
Title: Vice President

STATE OF TEXAS §

COUNTY OF Dallas §

This instrument was acknowledged before me on the 9th day of August, 2018, by Paula D. Decker the of EQK BRIDGEVIEW PLAZA, LLC, a Delaware limited liability company, on behalf of said entity and in the capacity herein stated.

Paula D. Decker
Notary Public, State of Texas



SCHEDULE 1

**ARTICLE 10
DISPUTE RESOLUTION**

[see attached]

SCHEDULE 1

ARTICLE 10 DISPUTE RESOLUTION

10.1 **INTRODUCTION & DEFINITIONS.** The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. The provisions of this Article 10 shall be specifically enforceable under applicable law in any court having jurisdiction thereof. Notwithstanding anything contained in the Documents, this Article 10 may only be amended with the prior written approval of the Declarant, and Owners holding 100% of votes in the Association. As used in this Article only, the following words, when capitalized, have the following specified meanings:

10.1.1. "Claim" means:

a. Claims relating to the rights and/or duties of Declarant, the Association, any managing agent engaged by the Declarant or the Association, or the Architectural Control Committee, under the Documents.

b. Claims relating to the acts or omissions of the Declarant, the Association or a Board member or officer of the Association during Declarant's control and administration of the Association, and any claim asserted against the Architectural Control Committee.

c. Claims relating to the design or construction of the Property, including Common Area, Improvements, or any other structures or improvements located on the Lots.

10.1.2. "Claimant" means any Party having a Claim against any other Party.

10.1.3. "Respondent" means any Party against which a Claim has been asserted by a Claimant.

10.2. **MANDATORY PROCEDURES.** Claimant may not initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article. As provided in Section 10.9 below, a Claim will be resolved by binding arbitration.

10.3. **CLAIM AFFECTING COMMON AREAS.** The Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation or administrative proceedings: (1) in the name of or on behalf of any Owner (whether one or more); or (2) pertaining to a Claim, as defined in Section 10.1.1 below, relating to the design or construction of Improvements on a Lot (whether one or more), including residences or any other structures. In the event the Association or an Owner asserts a Claim related to the Common Areas, as a

precondition to providing the Notice defined in Section 10.5, 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 Owner, as applicable, must:

10.3.1. Independent Report on the Condition of the Common Areas. Obtain an independent third-party report (the "Common Area Report") from a licensed professional engineer which: (1) identifies the Common Areas subject to the Claim including the present physical condition of the Common Areas; (2) describes any modification, maintenance, or repairs to the Common Areas performed by the Owner(s) and/or the Association; (3) 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 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 Owner in the Claim. As a precondition to providing the Notice described in Section 10.5, the Association or Owner must provide at least ten (10) days prior written notice of the inspection, calculated from the date or receipt of such notice, 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 10.5, 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.

10.3.2. Claim by the Association - Owner Meeting and Approval. If the Claim is prosecuted by the Association, the Association must first obtain approval from Members holding sixty-seven percent (67%) of the votes in the Association to provide the Notice described in Section 10.5, 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: (1) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (2) a copy of the Common Area Report; (3) 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"); (4) 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 proceed with the Claim; (5) a summary of the steps previously taken, and proposed to be taken, to resolve the Claim; (6) an estimate of the impact on the value of each Improvement if the Claim is prosecuted and an estimate of the impact on the value of each Improvement after resolution of the Claim; (7) an estimate of the impact on the marketability of each Improvement if the Claim is prosecuted and during prosecution of the Claim, and an estimate of the impact on the value of each

Improvement during and after resolution of the Claim; (8) the manner in which the Association proposes to fund the cost of prosecuting the Claim; and (9) 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. In the event Members approve providing the Notice described in Section 10.5, 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.

10.4. CLAIM BY OWNERS – IMPROVEMENTS ON LOTS. Notwithstanding anything contained herein to the contrary, in the event a warranty is provided to an Owner by the Declarant relating to the design or construction of any improvements located on a Lot, then this Article 10 will only apply to the extent that this Article 10 is more restrictive than such Owner's warranty, as determined in the sole discretion of the Declarant providing such warranty (if any). If a warranty has not been provided to an Owner relating to the design or construction of any improvements located on a Lot, then this Article 10 will apply. If an Owner brings a Claim, as defined in Section 10.1.1, relating to the design or construction of any improvements located on a Lot (whether one or more), as a precondition to providing the Notice defined in Section 10.5, initiating the mandatory dispute resolution procedures set forth in this Article 10, or taking any other action to prosecute a Claim, the Owner must obtain an independent third-party report (the "Owner Improvement Report") from a licensed professional engineer which: (1) identifies the improvements subject to the Claim including the present physical condition of the improvements; (2) describes any modification, maintenance, or repairs to the improvements performed by the Owner(s) and/or the Association; and (3) provides specific and detailed recommendations regarding remediation and/or repair of the improvements subject to the Claim. For the purposes of this Section, an independent third-party report is a report obtained directly by the Owner and paid for by the Owner, and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Owner in the Claim. As a precondition to providing the Notice described in Section 10.5, the Owner must provide at least ten (10) days prior written notice of the inspection, calculated from the date of receipt of such notice, to each party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Owner Improvement Report, the specific improvements 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 Owner Improvement Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in Section 10.5, the Owner 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 Owner Improvement Report.

10.5. NOTICE. Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in Section 10.6 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 10.6, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. Section 10.6 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 could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in Section 10.7 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 10.7 is required without regard to the monetary amount of the Claim.

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 10.3.2 above; and (e) reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved providing the Notice. If the Claimant is not the Association and pertains to the Common Area, the Notice will also include a true and correct copy of the Common Area Report. If the Claimant is not the Association and pertains to improvements on a Lot, the Notice will also include a true and correct copy of the Owner Improvement Report.

10.6. NEGOTIATION. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. 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.

10.7. MEDIATION. If the Parties negotiate but do not resolve the Claim through negotiation within 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 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 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 thirty-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

10.8. TERMINATION OF MEDIATION. If the Parties do not settle the Claim within 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, Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this Article.

10.9. 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 10.9.

10.9.1. Governing Rules. If a Claim has not been resolved after mediation as required by Section 10.7, the Claim will be resolved by binding arbitration in accordance with the terms of this Section 10.9 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 in Denton County, Texas. 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 10.9, this Section 10.9 will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal except as provided in Section 10.9.4, but may be reduced to judgment or enforced 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:

- a. One arbitrator shall be selected by Respondent, in its sole and absolute discretion;
- b. One arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and
- c. One arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

10.9.2. Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this Section 10.9 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: (1) exercising self-help remedies (including set-off rights); or (2) 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.

10.9.3. Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this Section 10.9.

10.9.4. Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this Section 10.9 and subject to Section 10.10 below (attorney's fees and costs may not be awarded by the arbitrator); 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 (1) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (2) conclusions of law that are erroneous; (3) an error of federal or state law; or (4) a cause of action or remedy not expressly provided under existing state or federal law. In no event may an arbitrator award speculative, consequential, or punitive damages for any Claim.

10.9.5. 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 Denton County, Texas. 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. 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.

10.10. 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. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

10.11. 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.

10.12. PERIOD OF LIMITATION.

10.12.1 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 of construction defect or defective design of a Improvement, shall be the earliest of: (1) for Claims alleging construction defect or defective design, two years and one day from the date that the Owner discovered or reasonably should have discovered evidence of the Claim; (2) for Claims other than those alleging construction defect or defective design, four years and one day from the date that the Owner discovered or reasonably should have discovered evidence of the Claim; or (3) for all Claims, the applicable statute of limitations under Texas law. In no event shall this Section 10.12.1 be interpreted to extend any period of limitations under Texas law.

10.12.2 For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of the Common Areas, shall be the earliest of: (1) for Claims alleging construction defect or defective design, two years and one day from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim; (2) for Claims other than those alleging construction defect or defective design of the Common Areas, four years and one day from the date that the Association discovered or reasonably should have discovered evidence of the Claim; or (3) for all Claims, the applicable statute of limitations under Texas law. In no event shall this Section 10.12.2 be interpreted to extend any period of limitations under Texas law.

10.13. LITIGATION 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.

10.14. LIMITATION ON CONSOLIDATION OR JOINDER. No mediation, arbitration, or other action arising out of or relating to this Declaration or any other Documents shall include, by consolidation or joinder or in any other manner, the Declarant, the Association, any managing agent engaged by the Declarant, the Association, or the Architectural Control Committee as a "Respondent" in such Claim, except by written consent containing specific reference to this Declaration signed by the Declarant, the Association, any managing agent engaged by the Declarant or the Association, or the Architectural Control Committee named as Respondent, as applicable, the Claimant, and any other person or entity sought to be joined. Consent to mediation, arbitration or other proceeding involving an additional person or entity shall not constitute consent to mediation, arbitration or other proceeding to resolve a Claim not described therein or with a person or entity not named or described therein. Notwithstanding the foregoing, the Declarant if named as a "Respondent" in a Claim, may, at its option and in its sole and absolute discretion, elect to join or consolidate mediation or arbitration with a Claimant and other Claimant(s) or any other party having an interest in the proceedings. Each Owner by taking title to any Lot hereby consents to such joinder or consolidation, which may be ordered at the sole discretion or election of the Declarant.

Kaufman County
Laura Hughes
County Clerk

ORIGINAL

Instrument Number: 2018-0019882

Billable Pages: 13
Number of Pages: 14

FILED AND RECORDED - REAL RECORDS	CLERKS COMMENTS
On: 08/10/2018 at 12:19 PM	E-RECORDING
Document Number: <u>2018-0019882</u>	
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Amount: \$ <u>74.00</u>	
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STATE OF TEXAS
COUNTY OF KAUFMAN

I hereby certify that this instrument was filed on the date and time stamped hereon by me
and was duly recorded in the Official Public Records of Kaufman County, Texas.

Laura A. Hughes

Laura Hughes, County Clerk

Recorded By: Maribel Vazquez, Deputy

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED
REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER
FEDERAL LAW.

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5320 CAMP BOWIE BLVD., SUITE
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