

CHICAGO TITLE

GF# 8009721800441

**SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE PARKVIEW LANE TOWNHOMES HOMEOWNERS ASSOCIATION, INC. f/k/a PARKVIEW TOWNHOMES HOMEOWNERS ASSOCIATION, INC.**

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE PARKVIEW LANE TOWNHOMES HOMEOWNERS ASSOCIATION, INC. f/k/a PARKVIEW TOWNHOMES HOMEOWNERS ASSOCIATION, INC. is made and entered by MEGATEL PARKVIEW ALLEN 91, LLC, a Texas limited liability company ("Declarant").

PRELIMINARY STATEMENTS

**WHEREAS**, Declarant executed that certain Declaration of Covenants, Conditions, and Restriction for The Parkview Townhomes Homeowners Association, Inc., dated July 14, 2016, and recorded as Document Number 20160804001015110 in the Official Real Property Records of Collin County, Texas (the "Original Declaration"), and executed that certain First Amendment to Declaration of Covenants, Conditions, and Restrictions for Parkview Townhomes Homeowners Association, Inc., dated May 17, 2017 and recorded as Document Number 20170522000655300 in the Official Records of Collin County, Texas (the "First Amendment", and the First Amendment and the Original Declaration are collectively, the "Declaration");

**WHEREAS**, the Development Period (as defined in the Declaration) is still in effect, and in accordance with the terms of the Declaration, including, without limitation, Section 16.4 and Section B.3.4 of the Appendix thereof, the Declarant has the right at any time and from time to time, without the joinder or consent of any other party, to unilaterally amend the Declaration by an instrument in writing duly signed, acknowledged, and filed for record in Collin County, Texas;

**WHEREAS**, Declarant has determined it is necessary to amend and clarify certain portions of the Declaration.

**NOW THEREFORE**, Declarant amends the Declaration as follows:

1. **Definitions**. Unless otherwise defined in this Amendment, all capitalized words or terms used herein shall be defined and have the meaning set forth in the Declaration as modified and amended hereby.

2. **Amendment(s)**. The Declaration is hereby modified and amended in the following respects:

(a) A new Section 1.27 is added as follows:

"1.27 'Claims' means collectively, all claims, demands, suits, proceedings, actions, causes of action (whether civil, criminal, administrative or investigative and including, without limitation, causes of action in tort), losses, penalties, fines, damages, liabilities, obligations,

costs, and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, including but not limited to, cost recovery, contribution and other claims."

(b) Section 4.2 of the Declaration is deleted, and replaced with the following:

"4.2 AS IS CONDITION; RELEASE. EACH OWNER, RESIDENT, AND THEIR GUESTS ACCEPT THE CURRENT AND FUTURE CONDITION OF THE PROPERTY AND ALL IMPROVEMENTS CONSTRUCTED THEREON AS IS AND WITH ALL FAULTS. NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, IS MADE BY DECLARANT, THE ASSOCIATION OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS AS TO THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON. EACH OWNER AND RESIDENT HEREBY RELEASE AND AGREES TO HOLD HARMLESS THE DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES (COLLECTIVELY, THE "RELEASED PARTIES"), FROM ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THE PROPERTY OR ANY IMPROVEMENTS THEREON, WHETHER BY AN OWNER, RESIDENT OR A THIRD PARTY, EVEN IF DUE TO THE NEGLIGENCE OF THE RELEASED PARTIES OR ANY ONE OF THEM. EACH OWNER AND RESIDENT FURTHER ACKNOWLEDGES THAT THE RELEASED PARTIES 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, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AND ALL SUCH WARRANTIES ARE HEREBY WAIVED AND RELEASED BY EACH OWNER AND RESIDENT."

(c) A new Section 4.4 is added to the Declaration as follows:

"4.4 INSURANCE FOR COMMON AREAS. The Association shall insure the Common Areas, and property owned by the Association, including, if any, records, furniture, fixtures, equipment, and supplies, in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insurable hazard. The Association is not required to insure any of Lot, Townhome, detached residence, automobiles, watercraft, furniture or other personal property located within a residence or on any Common Area unless specifically set forth in this Agreement. The Association shall maintain a commercial general liability insurance policy on an occurrence-based form covering the Common Area for bodily injury and property damage. All insurance maintained by the Association shall be written by an insurer with an A.M. Best rating of A-VII or higher. The insurance policies required under this Section 4.4 or otherwise will provide for blanket waivers of subrogation for the benefit of Declarant, shall provide primary coverage, not secondary, and provide first dollar coverage. Additionally, the insurance policies under this paragraph shall provide that Declarant shall receive thirty-days written notice prior to cancellation of the policy and that Declarant shall be permitted to pay any premiums to keep the Association's insurance policies in full force and effect. The Association shall cause Declarant to be named as an additional insured on all insurance required under this Section 4.4 or as

otherwise set forth herein. In addition to the other indemnities herein and without limitation, if the Association fails to name Declarant as an additional insured as set forth herein, the Association shall hold harmless, defend and indemnify Declarant for any loss, claim, damage and/or lawsuit suffered by Declarant for the Association's failure described herein. To the extent of any conflict between this Section 4.4 and a provision in Article 14 as it relates to insurance for Common Areas, this Section 4.4 shall control."

(d) A new sentence is added to the end of Section 6.2.3 of the Declaration as follows:

"By submitting any plan for approval, the submitting party expressly acknowledges that Declarant and/or the Architectural Reviewer are not 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."

(e) A new sentence is added to the end of Section 6.3.2 of the Declaration as follows:

"By submitting any plan for approval, the submitting party expressly acknowledges that the ACC and/or the Architectural Reviewer are not 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."

(f) Section 8.9 of the Declaration is deleted and replaced with the following:

"8.9 LIMITATION OF LIABILITY; INDEMNIFICATION; AND WAIVER OF SUBROGATION. 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 Documents. 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 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 WHATSOEVER 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."

(g) A new Section 13.11 and subparts are added to the Declaration as follows:

"13.11 ASSOCIATION'S INSPECTION OBLIGATION.

13.11.1 Contract for Services. In addition to the Association's general maintenance obligations set forth in this Declaration, the Association shall, at all times and part of its annual budget, contract with (subject to the limitations otherwise set forth in this Declaration) or otherwise retain the services of independent, qualified, licensed individuals or entities to provide the Association with inspection services for the Common Area and the Areas of Common Responsibility for which the Association is responsible.

13.11.2 Schedule of Inspections. Such inspections shall take place at least once every two (2) years. The inspectors shall provide written reports of their inspections to the Association promptly following completion thereof. The written reports shall identify any items of maintenance or repair that either require current action by the Association or will need further review and analysis. The Board shall report the contents of such written reports to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. Subject to the provisions of the Declaration below, the Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.

13.11.3 Notice to Declarant. During the Development Period, the Association shall, if requested by Declarant, deliver to Declarant ten (10) days advance written notice of all such inspections (and an opportunity to be present during such inspection, personally or through an agent) and shall provide Declarant (or its designee) with a copy of all written reports prepared by the inspectors.”

(h) Article 17 of the Declaration is deleted and replaced with the following:

**“ARTICLE 17  
DISPUTE RESOLUTION**

**17.1 AGREEMENT TO ENCOURAGE RESOLUTION OF DISPUTES WITHOUT LITIGATION.**

17.1.1 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 subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 17.2 in a good faith effort to resolve such Claim.

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

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

(ii) Claims relating to the design or construction of Improvements on the Common Areas or Lots, other than matters of aesthetic judgment under Article 11, which will not be subject to review.

17.1.3 Not Considered Claims. The following will not be considered “Claims” for purposes of this Article 17 unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 17.2:

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

(ii) 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 Restrictions;

(iii) 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 Restrictions; and

(iv) any action by the Association to enforce the Restrictions.

**17.2 CLAIMS REGARDING COMMON AREAS.**

17.2.1 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 17.1.2 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 17.3, initiating the mandatory dispute resolution procedures set forth in this Article 17, or taking any other action to prosecute a Claim related to the Common Areas, the Association or an Owner, as applicable, must:

(i) 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 17.3, 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 17.3, 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.

(ii) 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 17.3, initiate the mandatory dispute resolution procedures set forth in this Article 17, 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 17.3, 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.

(iii) 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.

### 17.3 NOTICE

(i) 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 Restrictions 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 17.4, 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 17.4 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 17.4, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. Section 17.4 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 17.5 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 17.5 is required without regard to the monetary amount of the Claim.

(ii) 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 17.2.1(ii) 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 17.3(ii) is a condition precedent to the assertion of any Claim. Should the Association fail to provide the information required by this Section 17.3(ii) 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 17.3(ii). Furthermore, should the Association fail to provide information required by this Section 17.3(ii) 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.

17.4 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 residence, 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.

17.5 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 17.5.

17.6 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.

**17.7 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 17.7.

**17.7.1 Governing Rules.** If a Claim has not been resolved after Mediation as required by Section 17.5, the Claim will be resolved by binding arbitration in accordance with the terms of this Section 17.7 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 17.7, this Section 17.7 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:

**17.7.2 Exceptions to Arbitration; Preservation of Remedies.** No provision of, nor the exercise of any rights under, this Section 17.7 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: (i) exercising self-help remedies (including set-off rights); or (ii) 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.

**17.7.3 Statute of Limitations.** All statutes of limitations that would otherwise be applicable shall apply to any arbitration proceeding under this Section 17.7, 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.

**17.7.4 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 17.7 but subject to Section 17.8 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 (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (ii) conclusions of law that are erroneous; (iii) an error of federal or state law; or (iv) 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.

**17.7.5 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 17.7. 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.

**17.8 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.

**17.9 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.

**17.10 PERIOD OF LIMITATION.**

17.10.1 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 (including, but not limited to a Townhome) 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.

17.10.2 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 (including, but not limited to a Townhome) 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.

17.11 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 17 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.

17.12 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."

Except as expressly modified by the terms and provisions of this Second Amendment, each and every of the terms and provisions of the Declaration are unchanged and continued in full force and effect. All of the capitalized terms used in this Second Amendment, unless otherwise defined herein, shall have the same meaning as assigned to such terms in the Declaration.

**[SIGNATURE ON FOLLOWING PAGE]**



EXECUTED this 14 day of ~~February~~ <sup>August</sup>, 2018.

**DECLARANT:**

**MEGATEL PARKVIEW ALLEN 91, LLC**  
a Texas limited liability company

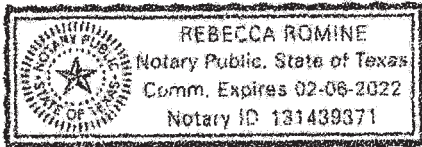
By: Megatel Holdings, LLC  
a Texas limited liability company  
Its: Sole Member

By: [Signature]  
Name: Zach Ipour  
Its: Co-President and Member

STATE OF TEXAS           §  
COUNTY OF DALLAS    §

BEFORE ME, the undersigned authority, on this day personally appeared Zach Ipour, the Co-President and Member of Megatel Holdings, LLC, a Texas limited liability company, the sole member of Megatel Parkview Allen 91, LLC, a Texas limited liability company, known to me to be the person whose name is affixed 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 limited liability companies, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14 day of August, 2018.



[Signature]  
Notary Public in and for the State of Texas



[Signature]