

12560213
6/21/2017 3:20:00 PM \$99.00
Book - 10569 Pg - 9827-9832
Gary W. Ott
Recorder, Salt Lake County, UT
RICHARDS LAW PC
BY: eCASH, DEPUTY - EF 6 P.

WHEN RECORDED RETURN TO:
RICHARDS LAW, PC
2040 E. Murray-Holladay Rd., Suite 106
Salt Lake City, UT 84117

**AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CREEKSIDE AT THE HIGHLANDS**

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTONS FOR CREEKSIDE AT THE HIGHLANDS is made on the date evidenced below by Creekside Subdivision, LLC as Declarant ("Declarant") pursuant to the Original Declaration (as defined below).

RECITALS

- A. Whereas, a Declaration of Covenants, Conditions and Restrictions for Creekside at the Highlands was recorded in the office of the County Recorder of Salt Lake County, Utah on September 18, 2015 as Entry No. 12134821 in the records of the County Recorder (as may be amended from time to time, the "Original Declaration").
- B. Whereas, under Article VII of the Original Declaration the Declarant maintains administrative control of the Association.
- C. Whereas, under Article XI of the Original Declaration the Declarant may unilaterally amend the Original Declaration during the Declarant control period.
- D. Whereas, this amendment shall be applicable to the property legally described on the attached Exhibit A (which shall include all Phases).

NOW THEREFORE, Declarant hereby declares as follows:

Article VII, Section 7.4 is amended in its entirety as follows:

7.4 Dispute Resolution; Mandatory Binding Arbitration.

- (a) Statement of Intent. In addition to any other requirement under Utah law as it relates to actions against a Developer/Declarant of an Association, this Section supplements and provides additional procedures and processes for resolving disputes.
- (b) Every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Unit that Owner is purchasing or any aspect of the Project; all prior to purchasing a Unit. Moreover, if any warranty has

been provided, it identifies the only items that are warranted by the Declarant. Having had the ability to inspect prior to purchasing a Unit, having received a written warranty if any warranty is provided, and having paid market price for a Unit in the condition it and the Units and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Units for years, unfairly prejudicing those Owners who must or want to sell their Unit during any period when litigation is pending. For this reason, the Owners by purchasing a Unit and the Declarant agree and acknowledge that claims and disputes shall not be pursued through court action, but shall be asserted and resolved only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners, as set forth herein. In addition, the Association and the Owners agree that they take ownership and possession of the Units, Common Areas, and Limited Common Areas AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims any warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

- (c) To the fullest extent permitted by law, all claims and disputes of any kind that any Owner or the Association may have involving the Declarant, or any agent, employee, executing officer, manager, affiliate or owner of the Declarant, or any engineer or contractor involved in the design or construction of the Project, which arises from or is in any way related to a Unit, Building, Common Areas and Facilities, Limited Common Areas and Facilities, or any other component of the Project (a "Dispute"), shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving claims and disputes between or involving the Declarant and any Owner or between or involving the Declarant and the Association. Arbitration proceedings shall not be commenced unless the Pre-Arbitration Requirements set forth in Section (d) below have been satisfied in full. Without in any way limiting the foregoing, Disputes subject to binding arbitration shall include:
- i. Any allegation that a condition in any of the Units, Buildings, Common Areas and Facilities, Limited Common Areas and Facilities is a construction defect;
 - ii. Any disagreement as to whether an alleged construction defect has been corrected;
 - iii. Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;

- iv. Any disagreement as to the enforceability of any warranties alleged to be applicable to the subject matter of any Dispute;
- v. Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;
- vi. Any alleged violations of consumer protection, unfair trade practice, or other statutes;
- vii. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;
- viii. Any allegation that any condition existing in the Project or created by the Declarant, including construction-related noise, dust, and traffic, is a nuisance;
- ix. Any disagreement concerning the issues that should be submitted to binding arbitration;
- x. Any disagreement concerning the timeliness of performance of any act to be performed by Declarant;
- xi. Any disagreement as to the payment or reimbursement of any fees associated with binding arbitration;
- xii. Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of the Units, Buildings, Common Areas and Facilities, Limited Common Areas and Facilities.

(d) Pre-Arbitration Requirements. An Owner or the Association may only pursue a claim against the Declarant, to the extent allowed herein or by law after the following efforts of dispute resolution have been completed: (1) Right to Cure: the Owner shall provide to the Declarant a written Notice of Claim (defined below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get the builder or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any formal arbitration proceedings; (2) if the dispute is not resolved within the 180-day Right to Cure period, the parties agree to mediate the dispute prior to taking further action or commencing arbitration. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this section shall immediately apply again and any pending action or proceedings, including any mediation or arbitration, shall be stayed during the 180-day period.

(e) "Notice of Claim" shall mean and include the following information: (1) an explanation of the nature of the claim, (2) a specific breakdown and calculation of any alleged damages, (3) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (4) photographs of any alleged condition, if applicable, (5) samples of any alleged defective conditions or materials, (6) all efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (7) the names, phone


numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

- (f) If a claim or dispute has not been resolved after satisfying and complying with the above-described "Pre-Arbitration Requirements," then the claimant (Owner or Association) shall have the right to proceed with binding arbitration; however, the Association shall not pursue or commence binding arbitration unless such action is first approved by a majority of the Total Votes of the Association after first obtaining a written opinion from legal counsel advising the Association of the likelihood of success on the merits of the claims, the anticipated costs and legal fees, the anticipated expert witness fees, and the likelihood of recovery if the Association prevails. The written opinion from legal counsel, addressing these topics, must be provided to all Owners before the formal vote on whether to proceed with binding arbitration. The binding arbitration shall be conducted by a member of the American Arbitration Association's Panel of Construction Arbitrators, or by a different arbitrator or arbitration service provider if mutually approved by the parties. The binding arbitration shall be conducted according to the rules and procedures set forth in the Construction Industry Arbitration Rules promulgated by the American Arbitration Association. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.
- (g) Each party shall bear its own attorney fees and costs (including expert witness costs) for the arbitration. The arbitrator shall not award attorney fees or expert witness fees to the prevailing party. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties.
- (h) If any Owner, the Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party, or a bar to the right of any other party, to seek arbitration of that or any other Dispute and such court shall, upon motion of any party to the proceeding, stay the proceeding before it and direct that such Dispute be arbitrated in accordance with the terms set forth herein.
- (i) The Association and each Owner waives any right to subrogation against the Declarant and any builder and engineer in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, the engineer, and builder, and their officers, employees, owners, and representatives. To the full extent permitted by law, the Association and Owners hereby release Declarant, the Project engineer, and builder, their respective officers, employees, owners, and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or

otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or builder, their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the builder, and any of their officers, employees, owners, or representatives from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

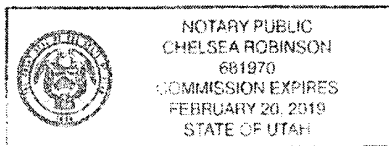
IN WITNESS WHEREOF, Declarant has executed this instrument the 14th day of June, 2017.

DECLARANT
CREEKSIDE SUBDIVISION, LLC


By: Shon Rindlisbacher
Its: managing member

STATE OF UTAH)
)ss:
County of Salt Lake)

This document was acknowledged before me on this 14 day of June 2017 by Shon Rindlisbacher





Notary Public

EXHIBIT A

Legal Description

Lots 101 through 126 and Common Area parcel, (27 total lots) CREEKSIDE AT THE HIGHLANDS PHASE 1 subdivision, according to the official plat thereof recorded with the office of the Salt Lake County Recorder, state of Utah.

First Parcel: 20352540040000

Lots 201 through 211 and Common Area parcel (12 total lots), CREEKSIDE AT THE HIGHLANDS PHASE 2 subdivision, according to the official plat thereof recorded with the office of the Salt Lake County Recorder, state of Utah.

First Parcel: 20352510170000

Lots 1 through 301 through 339, and Common Area parcel (41 total lots) CREEKSIDE AT THE HIGHLANDS PHASE 3, subdivision, according to the official plat thereof recorded with the office of the Salt Lake County Recorder, state of Utah.

First Parcel: 20352550090000