

PART FIVE: COMMUNITY DEVELOPMENT

ARTICLE 17

EXPANSION OF THE COMMUNITY

The Community may be developed in phases. The Declarant or the Association may expand the initial property submitted to the Declaration as set forth in this Article.

17.1. Expansion by Declarant.

From time to time, the Declarant may submit to the terms of this Declaration all or any portion of the property described in Exhibit "B" by recording a Supplement describing the additional property to be submitted. The Declarant may record such a Supplement without the consent of any Person except the owner of such property, if not the Declarant.

The Declarant's right to expand the Community under this section expires when all property described in Exhibit "B" has been submitted to this Declaration or 10 years after this Declaration is recorded, whichever is earlier. Until then, the Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by the Declarant.

Nothing in this Declaration shall require the Declarant or any successor to submit additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever. The Declarant may submit different parcels of property to this Declaration at different times. The Declarant gives no assurances as to the boundaries of the parcels that may be submitted to this Declaration, to the order in which the Declarant may submit parcels of property to this Declaration, or to whether buildings erected on any additional property submitted to this Declaration will be compatible with other buildings in the Community in terms of architectural style, quality of construction, principal materials employed in construction, size, or price.

17.2. Expansion by the Association.

The Association also may submit additional property to this Declaration by recording a Supplement describing the additional property. Any Supplement which the Association records must be approved by Members entitled to cast more than 50% of the total votes in the Association and by the owner of the property to be submitted. In addition, during the Development and Sale Period, the Declarant's consent is required. The Association's President and Secretary, the owner of the property, and the Declarant, if the Declarant's consent is required, shall sign the Supplement.

17.3. Additional Covenants and Easements.

Any Supplement that the Declarant records may impose additional covenants, restrictions and easements on the property described in such Supplement. Such provisions may be included in a Supplement submitting new property to this Declaration or may be set forth in a separate Supplement applicable to property previously submitted to this Declaration. If someone other than the Declarant owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Declaration as it applies

to the property described in the Supplement, in order to reflect the different character and intended use of such property.

17.4. Effect of Filing a Supplement.

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

ARTICLE 18 ADDITIONAL RIGHTS RESERVED TO THE DECLARANT

This Article reserves various rights to the Declarant, in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the Declarant's development and sale of property in the Community, to enable the Declarant to respond to Owners' concerns, and to protect various property rights and other interests of the Declarant.

18.1. Special Development Rights.

In addition to the rights specifically reserved to the Declarant under Article 17 with respect to expanding the Community, the Declarant reserves the right, during the Development and Sale Period to:

- (a) subdivide and replat any property that it owns, and create Units, Common Areas, Limited Common Areas, and roadways, within any portion of Heritage Trails that it owns;
- (b) grant or reserve easements over any portion of Heritage Trails that it owns;
- (c) combine any Unit or Units which it owns in order to create larger or additional Units, Common Areas, and/or Limited Common Areas;
- (d) adjust the boundaries of any portion of the Community that it owns;
- (e) cause the Association to convey or reconvey portions of any Common Area or Limited Common Area which is not improved with structures as necessary to make minor adjustments in boundary lines between such Common Area or Limited Common Area and adjacent properties;
- (f) amend this Declaration or any Supplement to withdraw property from the Community and the coverage of this Declaration, provided that such property has not been improved with a dwelling. Any such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal; and
- (g) authorize any Builder to exercise any of the above rights with respect to property owned by such Builder.

18.2. Marketing and Sales Activities; Capture and Use of Images.

(a) Notwithstanding anything in the Governance Documents to the contrary, during the Development and Sale Period the Declarant and its designees or assigns may construct, use, and maintain upon portions of the Common Area and other property they own, such facilities and activities as, in the Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Units. Such permitted facilities and activities shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, information centers, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Declarant and its employees, agents, and designees may park vehicles in designated parking areas. The rights described in this Section 18.2 shall specifically include the right of the Declarant and its designees to use Common Area facilities at no charge and to restrict use or access to such facilities by the Association, its Members and others so long as they are being used for the purposes described in this Section 18.2. The Declarant may authorize Builders to use similar privileges. There shall be no limit on the number or location of such facilities, except as otherwise restricted by applicable zoning or other applicable law.

(b) The Declarant reserves for itself and its designees the right, without the consent of or payment of compensation to any Person, to take photographs and to capture, produce, and reproduce, by any method and in any format or media, images of any structures, streetscapes, landscapes, signage, public spaces, or other elements located on Units, Common Area, or public property within the Community which are visible from public streets or Common Area, and to use such images in advertising, marketing materials, displays, presentations, and publications of any kind relating to the Community, including, without limitation, newspaper, internet, television, and other media. Each Owner, by accepting a deed to any Unit, shall be deemed to have consented to the exercise by Declarant and its designees of the rights described in this subsection (b) and to have waived any personal or proprietary right such Owner may have in connection with such images.

18.3. Right to Make Improvements, Replat.

During the Development and Sale Period, the Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area and streets and alleys within the Community for the purpose of:

(a) making, constructing, and installing any improvements indicated on recorded subdivision maps or plats of the Community and such improvements to the Common Area and to the Exhibit "B" property as it deems appropriate;

(b) exercising any rights reserved to the Declarant under this Declaration; and

(c) making repairs or correcting any condition on the Common Area or any Unit.

In addition, during the Development and Sale Period, the Declarant may replat property that it owns and convert Units it owns into Common Area.

18.4. Right to Approve Changes in Community Standards.

During the Development and Sale Period, no amendment to or modification of any Rules or Architectural Guidelines shall be effective without prior notice to and the written approval of the Declarant.

18.5. Additional Covenants and Restrictions.

During the Development and Sale Period, no one other than the Declarant may record any additional covenants or restrictions affecting any portion of the Community without the Declarant's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

18.6. Exclusive Rights to Use Name of Development.

No Person other than the Declarant or a Declarant Affiliate shall use the name "Heritage Trails" or any derivative of such name, or any logo or depiction associated with Heritage Trails, in any printed or promotional material or any Internet website without the Declarant's prior written consent. However, Owners may use the name "Heritage Trails" in printed or promotional matter where such term is used solely to specify that particular property is located within the Community, and the Association shall be entitled to use the word "Heritage Trails" in its name.

18.7. Technology Systems.

The Declarant reserves for itself and its respective successors and assigns, a perpetual right and easement over those portions of Units lying within 10 feet of the boundaries on any Unit to install and operate such Technology Systems as the Declarant, in its discretion, deems appropriate to serve any portion of the Community. Such right shall include, without limitation, the Declarant's right to select and contract with companies licensed to provide telecommunications, cable television, and other Technology Systems services in the region. The Declarant also has the right to charge or authorize any provider to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable. Notwithstanding the above, there is no guarantee or representation that any particular Technology System will be made available.

18.8. Easement to Inspect and Right to Correct.

The Declarant reserves for itself, the Builders, and others it may designate, the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within the Community, including Units, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of such Owner's Unit.

18.9. Right to Notice of Design or Construction Claims.

Neither the Association, any Owner, or any other Person shall initiate the dispute resolution procedures under Article 19, nor retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless the Declarant and any Builder involved in the design or construction have been first notified in writing, by certified mail, and given an opportunity to meet with the Association and/or the Owner of any affected Unit to discuss the concerns, conduct their own inspection, and take action to remedy any problem in accordance with this section. Any notice to the Declarant under this section shall include a description of

the alleged defect in design or construction ("**Defect**"), a description of any damage suffered as a result of the Defect, the date on which the Defect was discovered, and dates and times during ordinary business hours that the Declarant and any Builder may meet with the Owner or the affected Unit or representative of the Association to conduct an inspection.

Nothing in this section shall obligate the Declarant or any Builder to inspect, repair, replace, or cure any alleged Defect. However, if the Declarant or Builder elects to repair any alleged Defect, it will so notify the Association (if the alleged Defect involves Common Area) or the Owner of the affected Unit (if the alleged Defect is in a Unit) within 30 days after conducting such inspection and the Association or Owner shall permit the Declarant and Builder, and their respective contractors, subcontractors, and agents, access as needed during ordinary business hours to make such repairs as they deem appropriate which, once begun, shall be completed within a reasonable time, subject to the nature of the repair and unforeseen circumstances. All applicable statutes of limitations shall be tolled during the period of inspection and cure under this Section 18.9, not to exceed the earlier of: (i) 120 days after the date the Declarant receives written notice of the alleged Defect in accordance with this section; or (ii) the Declarant's delivery to the claimant of written notice that the Declarant does not intend to take any action or further action to remedy the alleged Defect.

In the event there is any dispute as to the adequacy of the proposed repairs to resolve the alleged Defect or as to whether repairs that the Declarant, any Builder, or their respective contractors or subcontractors have performed have remedied the Defect, the Declarant may appoint a third-party inspector who is knowledgeable and experienced in construction of the type at issue to inspect the alleged Defect and make a determination as to whether any proposed solution is adequate or as to whether the Defect has been remedied.

If the Association or any Owner fails to comply with this Section 18.9, neither the Declarant nor any Declarant Affiliate or Builder shall be liable for any general, special, or consequential damages, costs, or diminution in value that might have been avoided had the Declarant been given the notice and opportunity to repair described in this section. Nothing herein and no action taken by the Declarant or any Builder pursuant to this Section shall be construed as an admission that an alleged Defect actually exists or as an admission of liability for any alleged Defect or otherwise create liability for the Declarant or Builder.

18.10. Right to Transfer or Assign the Declarant's Rights.

Any or all of the Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part, temporarily or permanently, to other Persons. However, such a transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a recorded instrument the Declarant signs. The foregoing sentence shall not preclude the Declarant from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to the Declarant in this Declaration where the Declarant does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless necessary to evidence the Declarant's consent to such exercise.

18.11. Termination of Rights.

Except as otherwise specified above, the rights contained in this Article shall not terminate until the earlier of: (a) termination of the Development and Sale Period; or (b) the Declarant's recording of a written statement that all sales activity has ceased.

ARTICLE 19

DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

From time to time, disputes may arise between Owners or between an Owner and the Association, the Declarant, or others involved in the Community. This Article commits the parties to any such dispute to work together in an attempt to resolve the dispute without litigation, in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Association's membership before the Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.

19.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) ***Bound Parties.*** The Declarant, the Association, and their respective officers, directors, trustees and committee members, Owners, other Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (each a "**Bound Party**" and collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community 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) (as modified by subsection (c)), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 19.2 in a good faith effort to resolve such Claim, and then subject to the provisions of Section 19.3 and 19.4, if applicable.

(b) ***Claims.*** As used in this Article, the term "**Claim**" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of Improvements within the Community, other than matters of aesthetic judgment under Article 5, which shall not be subject to review and shall not be subject to this Article;

except as otherwise provided in subsection (c).

(c) ***Exceptions.*** The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 19.2:

- (i) any suit by the Association to collect assessments or other amounts due from any Owner;
- (ii) any suit 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 Part Two of this Declaration (relating to creation and maintenance of Community standards);
- (iii) any suit that does not include the Declarant or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any suit which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 19.2;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 19.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article; and

(vi) any suit by the Association to enforce the Governing Documents where the Association has given the violator notice and either a hearing or an opportunity to cure the violation, or both, prior to the Association filing suit; and

(vii) any suit by the holder of a deed of trust recorded prior to this Declaration and encumbering any portion of the Community to enforce the terms of such deed of trust or such holder's rights under this Declaration.

19.2. Dispute Resolution Procedures.

(a) **Notice.** The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Denton County or the Dallas-Fort Worth metropolitan area. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate, subject to the approval requirements set forth in Section 19.3, if applicable, and the mandatory arbitration provisions in Section 19.4, if applicable, and subject to the terms of any written agreement entered into between the Owner and a Builder or other Bound Party requiring the Claim to be submitted to binding arbitration.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Bound Party shall pay an equal share of the mediator's fees.

(d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this Section 19.2, but subject to the provisions of Section 19.3 and 19.4, if applicable.

19.3. Initiation of Litigation or Arbitration by Association.

Litigation involving the Association can create a significant financial burden and exposure for the Association and its Members in terms of legal fees and costs as well as potential liability to third parties, interfere with the resale and refinancing of Units, and create uncertainty and tension within the Community, all of which can negatively impact property values and marketability of Units and impose financial burdens on Owners for their share of the costs. Litigation of certain types of disputes may be quite protracted, causing such impacts to continue for an extended period of time. Therefore, this Section imposes the following requirements that must be met prior to the Association initiating litigation (with certain exceptions as specified in subsection (a) below), in order to ensure that the membership is fully informed and supports the initiation of proceedings and requires binding arbitration of certain types of disputes in an effort to minimize the costs and time involved in resolving such disputes:

(a) **Membership Approval.** In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative or arbitration proceeding unless first approved by a vote of Members entitled to cast at least 67% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

(i) initiated during the Declarant Control Period unless the Declarant, by written notice to the Association, elects to have the proposal to initiate judicial or administrative proceedings be approved by the Members hereunder, in which case such approval shall be required;

(ii) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;

(iii) initiated to challenge *ad valorem* taxation or condemnation proceedings;

(iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies entered into by the Association; or

(v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

(b) ***Information to be Provided to Members.*** Prior to any vote required under subsection (a):

(i) the Board shall comply with Section 18.9, if applicable; and

(ii) if the Association's claim involves alleged defects in the design or construction of improvements in the Community, the Board shall engage an independent professional engineer licensed by the Texas Board of Professional Engineers to conduct an inspection and provide a report detailing the condition of such improvements, describing and providing photographs of the alleged defects in design or construction, providing the engineer's recommendations for remediation and/or repair, and providing estimated costs of such remediation and repairs, which estimates shall be obtained from qualified, independent third-party contractors holding all necessary licenses to perform the recommended work; and

(iii) the Board shall provide written notice to each Member of the meeting at which the vote is to be conducted, which notice shall be accompanied by: (A) a copy of any report required under clause (i); (B) a description of the claim, the relief sought, the anticipated duration of the proceedings, and the estimated likelihood of success; (C) a copy of a proposed engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the claim setting forth the proposed financial arrangements between the Association and such lawyer or law firm; (D) a description and estimate of the legal fees, consultant fees, expert witness fees, and court costs, which the Association may incur directly or indirectly, or for which it may be liable, as a result of pursuing the claim; (E) a description of the manner in which the Association proposes to fund such costs; (F) a summary of the steps previously taken by the Association to resolve the claim; and (G) a statement that initiating the lawsuit or arbitration proceeding to resolve the claim may affect the market value, marketability, or refinancing of a Unit while the claim is being pursued.

(c) ***Binding Arbitration.*** Notwithstanding anything to the contrary herein, any suit initiated by the Association alleging defects in construction of any improvements to the Common Areas or other structures in the Community shall be subject to binding arbitration in accordance with Section 19.4.

19.4. Mandatory and Binding Arbitration of Certain Claims.

(a) ***Agreement to Resolve Certain Claims Through Binding Arbitration.*** Notwithstanding any other provision of this Declaration, if any Claim by the Association or any Owner or group of Owners arising out of alleged defects in the Units, Common Areas or any property subject to easements in favor of the Owners, is not resolved through negotiation or mediation in accordance with Section 19.2(b) or (c), each Claimant and Respondent is deemed to agree that it shall not file suit in court but in lieu thereof shall resolve such Claim through final and binding arbitration in accordance with this Section 19.4; however, this Section 19.4 shall not limit the right of any Claimant or Respondent to exercise any self-help remedy that may be available to it or to seek ancillary or provisional 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, 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 any 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.

Each Owner and Builder, by accepting a deed to a Unit, waives any right to have a Claim within the scope of this Section 19.4 resolved by judicial proceedings, including any right to a trial by jury. This Section 19.4 is an agreement of the Bound Parties to arbitrate the Claims described in this subsection and may be specifically enforced by any Bound Party. The Bound Parties acknowledge that any Claim subject to this Section 19.4 involves a transaction in interstate commerce and shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. §1, et seq., to the exclusion of any inconsistent state law, regulation or judicial decision.

If any Bound Party commences litigation in violation of this Section 19.4, then upon any other party's written objection, the Bound Party commencing litigation shall immediately stipulate to the dismissal of that litigation without prejudice. If the Bound Party commencing the litigation fails to make that stipulation within five days after the filing of such written objection, that Bound Party shall reimburse the other parties for their costs and expenses, including reasonable attorneys' fees, incurred in seeking a dismissal or stay of that litigation if such dismissal or stay is obtained.

(b) *Statute of Limitations.* All statutes of limitations that otherwise would apply to any Claim subject to this Section 19.4 shall apply to the commencement of any arbitration proceeding under this Section 19.4.

(c) *Procedures.* Arbitration under this Section 19.4 shall be conducted in accordance with the American Arbitration Association (the "AAA") Construction Industry Arbitration Rules and Mediation Procedures and, if applicable, the rules contained in the AAA Supplementary Procedures for Consumer Related Disputes, as each are supplemented or modified by the AAA (collectively, the Construction Industry Arbitration Rules and Mediation Procedures and AAA Supplementary Procedures for Consumer Related Disputes are referred to herein as the "AAA Rules"). In the event of any inconsistency between the AAA Rules and this Section 19.4, this Section 19.4 will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, 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:

- (i) One arbitrator shall be selected by Respondent, in its sole and absolute discretion;
- (ii) One arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

(iii) 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.

(d) *Scope of Award; Modification or Vacation of Award.* The arbitrator shall resolve all Claims in accordance with applicable law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and not inconsistent with this Section 19.4, including, without limitation, subsection (f) hereof. Further, for a Claim or any portion of a Claim governed by Chapter 27 of the Texas Property Code or any successor statute, the arbitrator shall not 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