

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (hereinafter "Declaration") is made by **Perry Homes, LLC**, a Texas limited liability company (hereinafter "Declarant" or "Seller"), as follows:

RECITALS

- A. Property Street Address:
1120 Ramsey Lock, San Antonio, TX 78245
(hereinafter "Property," consisting of the real property and all improvements thereon).
- B. Purchaser: Brodie Reddish and Taylor Mackenzie Reddish
(hereinafter collectively, "Purchaser" whether one or more).
- C. Property Legal Description:

Lot 40, Block 57, of ARCADIA RIDGE PHASE 3 UNIT 9B, a subdivision in Bexar County, Texas, according to the map or plat thereof recorded in Volume 20003, Page 1117, of the Plat Records of Bexar County, Texas.
- D. Closing Date: August 28, 2024
(hereinafter "Closing Date").
- E. On the Closing Date, Seller will sell and convey the Property to Purchaser.
- F. The Earnest Money Contract through which Purchaser is purchasing the Property from Seller ("Contract") contains certain covenants, conditions, and restrictions pertaining to arbitration, jury waiver, attorney's fee, and limitation of remedies, which covenants, conditions, and restrictions are to be binding upon Purchaser, Purchaser's heirs, successors, and assigns, and to run with title to the Property.
- G. Declarant makes this Declaration for the purpose of subjecting the Property to certain restrictive covenants. Purchaser joins herein to evidence Purchaser's acceptance of the Property subject to this Declaration, and Purchaser's agreement to the terms and conditions hereof.

NOW, THEREFORE, Declarant hereby subjects the Property to the covenants, conditions and restrictions more particularly described below.

1. **Recitals.** The Recitals set forth above are incorporated herein as a substantive part of this Declaration.
2. **Successors and Assigns; Covenants Running with the Property.** The benefits of this Declaration shall inure to the benefit of Declarant, its successors and assigns, and the burdens and obligations of this Declaration shall be binding upon Purchaser, Purchaser's heirs, successors, and assigns (including, without limitation, any future owner of, holder of any legal or equitable interest in, or occupier of the Property), all of the foregoing described parties being hereinafter referred to collectively as the "Parties" or individually as a "Party", and the burdens and obligations of this Declaration shall be deemed to be covenants that run with title to the Property. BY ACCEPTANCE OF A DEED TO THE PROPERTY OR ANY PORTION THEREOF, OR BY OCCUPANCY OF THE PROPERTY OR ANY PORTION THEREOF, PURCHASER AND THE HEIRS, SUCCESSORS, AND ASSIGNS OF PURCHASER (INCLUDING, without limitation, any future owner of, holder of any legal or equitable interest in, or occupier of the Property) IRREVOCABLY ACKNOWLEDGE AND AGREE TO ABIDE BY THE TERMS AND PROVISIONS OF THIS DECLARATION.
3. **Term.** Except as provided below, this Declaration shall have a term of fifteen (15) years (the "Covenant Period") commencing on the Closing Date. At the conclusion of the Covenant Period, the Declaration shall automatically expire and be of no further force or effect, except as to arbitration and/or legal proceedings which are in progress at the time of its expiration; in those instances, the Declaration shall survive only as to the proceedings in progress until they are concluded by entry of a final, non-appealable arbitration award or judgment.
4. **ALTERNATIVE DISPUTE RESOLUTION.** The Parties acknowledge it is the policy of the State of Texas to encourage the peaceable resolution of disputes through alternative dispute resolution procedures. The Parties accordingly agree as follows:
 - A. **SCOPE.** The Parties acknowledge the Alternative Dispute Resolution Section of the Contract, also set forth in this Declaration, applies to all claims, disputes, or causes of action brought by, through, or under Purchaser, or a Party, their dependents or other occupants of the Property, subsequent purchasers (all of whom the Contract is intended to directly benefit, all of whom are third-party beneficiaries to the Contract with Seller, and/or all of whom Purchaser agrees are to be bound by the terms and conditions of the Contract,

including, but not limited to mediation, arbitration and trial to the court without a jury in this Paragraph 4), whether sounding in contract, tort, or otherwise, including claims for emergency or interim relief, including but not limited to, those arising in connection with: (i) the Contract, including the negotiation, formation, subject matter, breach, cancellation or termination hereof and/or any amendments or addenda or notices hereto; (ii) the development, design, construction, preparation, maintenance or repair, of improvements to the Property; (iii) marketing or sale of the Property; (iv) any representations or warranties, express or implied, relating to the Contract or the Property; (v) any transaction, event, dealing, or relationship between Purchaser, or a Party, and Seller, including any subsequent agreement or alleged agreement between Purchaser, or a Party, and Seller; (vi) any violations of any statute including, but not limited to, consumer protection, disclosure, or similar statutes or regulations; (vii) any personal injury or property damage claim; and/or (viii) any other agreement, transaction, occurrence or event giving rise to a dispute over breach of legal duties, rights or obligations which involve Purchaser, or a Party, and Seller (a "Dispute").

B. MEDIATION. The Parties agree that any Dispute (including any Dispute involving Seller, Purchaser, a Party, their representatives, their contractors, suppliers, manufacturers, affiliates, the developer of the Property, or any other provider of goods or services in connection with the Property) shall first be submitted to mediation. The Parties agree to split the mediation fee evenly. The Parties agree to cooperate to select a mediator in the county in which the Property is located or such other location as may be agreeable to the Parties. Unless otherwise agreed by the Parties, any mediator must have at least five (5) years of experience serving as an arbitrator or mediator and shall have technical expertise and knowledge appropriate to the subject matter of the Dispute. If the Parties fail to agree on the selection of a mediator, either Party may request the appointment of a mediator by the American Arbitration Association ("AAA"). The Parties may mutually agree in writing to waive mediation.

C. MANDATORY ARBITRATION. THE PARTIES AGREE THAT ANY DISPUTE (INCLUDING ANY DISPUTE INVOLVING SELLER, PURCHASER, A PARTY, THEIR REPRESENTATIVES, THEIR CONTRACTORS, SUPPLIERS, MANUFACTURERS, AFFILIATES, THE DEVELOPER OF THE PROPERTY, OR ANY OTHER PROVIDER OF GOODS OR SERVICES IN CONNECTION WITH THE PROPERTY), IF NOT SETTLED DURING MEDIATION, SHALL NOT BE DECIDED BY OR IN A COURT OF LAW BUT SHALL THEREAFTER BE SUBMITTED FOR FINAL RESOLUTION TO BINDING ARBITRATION AS PROVIDED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.), OR THE APPLICABLE SIMILAR STATE STATUTE IF THE FEDERAL ARBITRATION ACT DOES NOT APPLY. THE CONTRACT AND THIS DECLARATION REQUIRE MANDATORY ARBITRATION OF DISPUTES. IF ANY PARTY COMMENCES LITIGATION IN VIOLATION OF THE CONTRACT, THAT PARTY SHALL REIMBURSE THE OTHER PARTIES TO THE LITIGATION FOR THEIR COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) INCURRED IN SEEKING ABATEMENT OF SUCH LITIGATION AND ENFORCEMENT OF ARBITRATION. However, an unsuccessful motion or action to stay an arbitration proceeding based on the position that it has been commenced after expiration of limitations shall not waive any Party's right to have the underlying dispute resolved by arbitration. All decisions respecting the arbitrability of any Dispute shall be decided by the arbitrator.

i. Unless the Parties to the Dispute agree otherwise, all arbitration proceedings pursuant to this Agreement shall be administered in accordance with the rules of the AAA, applying the AAA rules, procedures, and protocols determined by the arbitrator to be most applicable to the nature of the Dispute, including, where applicable, the AAA's Home Construction Rules ("Home Construction Rules"), regardless of the amount in controversy. To the extent of any conflict between the Contract and such rules or procedures, the provisions of the Contract shall control. If for any reason the AAA is unable or unwilling to conduct the binding arbitration, either Party may petition a court of general jurisdiction in the subject county to appoint an arbitrator, and the filing of a petition requesting appointment of an arbitrator, or for a court to resolve a dispute concerning this provision, shall not constitute a waiver of the right to enforce binding arbitration.

ii. Purchaser, or other Party apart from Seller, will pay the lesser of either (i) up to Three Hundred Seventy-Five And No/100 Dollars (\$375.00) or (ii) the amount required under the Home Construction Rules fee schedule to initiate arbitration; Seller will pay all remaining filing fees. In no Dispute will Purchaser, or other Party apart from Seller, be required to pay more in filing fees, case service fees, arbitrator compensation, or other similar type fees for an arbitration proceeding conducted by a single arbitrator than the lesser of either (x) the amount payable by "Homeowner" under the Home Construction Rules fee schedule or (y) Seven Hundred Fifty And No/100 Dollars (\$750.00). Seller shall pay all other arbitrator compensation, expenses and fees of arbitration for an arbitration conducted by a single arbitrator.

- iii. Arbitration shall be conducted by a single arbitrator. In any Dispute subject to this Paragraph 4.C, the Parties agree the arbitrator may not consolidate the claims of Purchaser (or parties with claims by, through, under or derivative of Purchaser) with claims of others and may not otherwise preside over any form of a representative or class proceeding unless required by law.
- iv. Any arbitrator must have at least five (5) years of experience serving as an arbitrator or mediator and shall have technical expertise and knowledge appropriate to the subject matter of the Dispute. All mediation and arbitration fees and expenses are subject to being awarded by the arbitrator to the prevailing Party, to the same extent that court costs may be awarded under applicable law.
- v. The arbitration award or decision is final and may be confirmed, entered and enforced as a judgment in a court having jurisdiction, subject to appeal only in the event of the arbitrator's manifest disregard of the law, no evidence to support the award, or such other grounds for appeal of arbitration awards that exist by statute, common law, regulation, or the applicable rules of the administrator.
- vi. Any arbitration shall be administered by the office of the administrator that is closest to the Property, and the arbitration proceedings shall be conducted in the locale where the Property is located.
- vii. In any arbitration proceeding, all provisions and limitations of the Contract shall be given full force and effect, including, without limitation, all limitations on liability and damages. In addition, applicable Federal and State law (including Chapter 27 of the Texas Property Code) shall apply; all applicable claims, causes of action, remedies and defenses as available in court shall apply as defined or limited in the Contract, including, without limitation all provisions in this "General" Section V; the Parties shall be entitled to conduct reasonable and necessary discovery as agreed to by the Parties or as allowed by the AAA; the arbitrator shall render a written award and, if requested by any Party, a reasoned award, even if after the written award is issued; the Purchaser shall not be required to pay any unreasonable costs, expenses or arbitrator's fees and the arbitrator shall have the right to apportion the cost of any such items in an equitable manner in the arbitration award; and any award rendered in the proceeding shall be final and binding and judgment upon any such award may be entered in any court having jurisdiction.

D. TRIAL TO THE COURT WITHOUT A JURY. IF MANDATORY ARBITRATION UNDER THE CONTRACT OR THIS DECLARATION IS NOT ENFORCED, THE PARTIES AGREE THAT ANY DISPUTE BETWEEN THEM SHALL BE RESOLVED BY A COURT OF COMPETENT JURISDICTION IN THE COUNTY WHERE THE PROPERTY IS LOCATED WITHOUT THE USE OF A JURY. THE PARTIES ACKNOWLEDGE THAT THE RIGHT TO A TRIAL BY JURY IS A CONSTITUTIONAL RIGHT THAT MAY BE KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY WAIVED BY PURCHASER AND ANY PARTY WITH CLAIMS BY, THROUGH, UNDER, DERIVATIVE OR AS SUCCESSOR TO PURCHASER, INCLUDING, WITHOUT LIMITATION, ANY FUTURE OWNER OF, HOLDER OF ANY LEGAL OR EQUITABLE INTEREST IN, OR OCCUPIER OF THE PROPERTY ("PURCHASER PARTY") AND THAT THE CONTRACT CONTAINED SUCH A WAIVER THAT IS BINDING ON THE PARTIES. IN ADDITION, PURCHASER PARTY VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT PURCHASER HAS TO SEEK A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING DIRECTLY OR INDIRECTLY OUT OF, OR IN ANY WAY RELATED TO, A DISPUTE. PURCHASER ACKNOWLEDGES AND FULLY UNDERSTANDS THAT THE EFFECT AND CONSEQUENCES OF THIS WAIVER WILL PREVENT PURCHASER PARTY FROM HAVING THE ABILITY TO HAVE A JURY HEAR AND DECIDE ANY LEGAL OR FACTUAL DISPUTES AND PROCEEDINGS ARISING DIRECTLY OR INDIRECTLY OUT OF, OR IN ANY WAY RELATED TO, A DISPUTE. As valuable consideration for Purchaser Party's promises in this Paragraph, as well as all other valuable consideration that is provided for in the Contract, Seller reciprocally agrees to unconditionally waive its rights, to the fullest extent permitted by applicable law, to have a trial by jury in any legal proceeding arising directly or indirectly out of, or in any way related to a Dispute. In any Dispute subject to this Paragraph, the Parties agree not to request a court to consolidate the claims of Purchaser (or parties with claims by, through, under or derivative of Purchaser) with claims of others or otherwise preside over any form of a representative or class proceeding. In the event of litigation, the Contract may be filed by either Purchaser or Seller as a written consent to trial by the court.

- E. The waiver or invalidity of any portion of this Paragraph 4 shall not affect the validity or enforceability of the remaining portions of this Paragraph 4 and/or the Contract. Purchaser and Seller further agree (i) that any Dispute involving Seller's directors, members, managers, officers, partners, employees and agents shall be resolved as set forth herein; and (ii) that Seller shall have the option to include its subcontractors, suppliers, manufacturers, and vendors, or the developer, as parties in the alternative dispute resolution procedures set forth in the Contract.

The Parties also agree that the rights and obligations set forth in this Paragraph 4 shall survive the Contract's termination, breach, default, or cancellation by either Party, and shall survive closing and delivery of the warranty deed. This Paragraph 4 shall not be superseded by the doctrines of merger or waiver. Purchaser is advised of the opportunity to consult with counsel and to provide such counsel, for review and examination, a copy of the Contract.

5. **Attorneys' Fees.** Any Party to the Contract (or heirs, executors, administrators, partners, successors, assigns, legal representatives, or affiliates of a Party) who is the prevailing party in any proceeding arising out of or related to the Contract, this Declaration or in any related transaction(s) shall be entitled to recover reasonable attorneys' fees, expenses (including expert witness fees), mediation costs, arbitration costs and court costs from the non-prevailing party. A Party will be the prevailing party for purposes of this provision only if the Party recovers all relief sought. A Party who is a defendant will be a prevailing party for purposes of this Paragraph if the claimant does not recover all relief sought. For purposes of this provision: (i) a "claimant" means a person seeking recovery of damages or equitable relief, whether as a plaintiff, counterclaimant, cross-claimant, or third-party claimant; and (ii) a "defendant" means any person from whom, at the time of submission of the case to the fact-finder, a claimant seeks the recovery of damages or equitable relief.
6. **LIMITATIONS; NO SPECIFIC PERFORMANCE FOR PURCHASER; SELLER'S OPTION TO INVOKE REMEDY.**

- A. Any action or claim, regardless of form, which arises from or relates to the Contract, the Property or the improvements, or the dealings between Purchaser and Seller, is barred unless it is brought by a Party not later than two (2) years from the date the cause of action accrues. The Parties agree that it shall be presumed that any such action accrued on the Closing Date unless proven otherwise. The Parties expressly waive any limitations periods longer than two (2) years. The Parties agree and understand that, to the extent allowed by law, any damages that Purchaser or Purchaser Party may recover from Seller are strictly limited to the damages allowed under the Texas Residential Construction Liability Act, and that in no event shall damages exceed the Purchase Price (unless specifically authorized by Seller under Paragraphs 7.E or 7.F. Under no circumstances shall either Party be liable for any special, indirect, consequential damages or mental anguish, unless specifically authorized elsewhere in the Contract, and in no event shall Seller be liable to Purchaser or Purchaser Party on account of any damages arising from Force Majeure.
- B. Under no circumstances shall Seller be liable to Purchaser for any economic or non-economic damages as the result of Purchaser's refusal to provide Seller access to the Property to commence and/or complete repairs pursuant to either the Perry Homes Express Limited Warranty or otherwise offered by Seller to Purchaser, including when Seller offers to perform repairs, but Purchaser disagrees with the scope of the repairs offered by Seller.
- C. PURCHASER AND PURCHASER PARTIES SHALL NOT BE ENTITLED TO, AND WAIVE, DISCLAIM AND RELINQUISH, ANY AND ALL INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR SPECIAL DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES, CLAIMS OF MENTAL ANGUISH, OR INCREASED COSTS DUE TO FLUCTUATION IN MARKET CONDITIONS, WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- D. PURCHASER AND PURCHASER PARTIES SHALL NOT BE ENTITLED TO, AND WAIVE, DISCLAIM AND RELINQUISH, THE REMEDY OF SPECIFIC PERFORMANCE. The Contract does not convey real property rights in the Property to Purchaser. In no event shall Purchaser or Purchaser Party be entitled to file a *lis pendens* or otherwise cloud the title to the Property. Notwithstanding any default by Seller, Seller shall be entitled to seek an injunction (or other appropriate remedy) plus reasonable attorney's fees, to which Purchaser or Purchaser Party specifically concedes and stipulates, to remove any such cloud on title. Likewise, Seller shall not be entitled to, and waives, the remedy of specific performance (except as provided in Paragraph 6.E).
- E. **Seller's Rescission Option.** At any time after the initiation of a Dispute (as defined in Paragraph 4) after closing, Seller may elect, in its sole discretion, rescission as the sole remedy for resolution of the Dispute, by delivering written notice to the other Party Purchaser, or the agent or attorney of