

  
MARY LOUISE NICHOLSON  
COUNTY CLERK

**RESTRICTIVE COVENANT AND CONFIRMATION OF  
DISPUTE RESOLUTION AGREEMENT GOVERNING PROPERTY**

This Restrictive Covenant and Confirmation of Dispute Resolution Agreement Governing Property ("Confirmation") is executed this 12<sup>th</sup> day of January, 2024 by **Cherry Ratliff and Remmick Howard** (collectively "the Original Buyer(s)") of **817 Topaz Trail, Azle, TX 76020** and **MEARSTONE PROPERTIES L.P.**, a Texas limited partnership of **5816 Boat Club Road, Fort Worth, Texas 76179** (hereinafter referred to as "Builder").

RECITALS

WHEREAS, the Original Buyers are the Current Buyer(s) of the following described property (the "Property") situated at **817 Topaz Trail, Azle, TX 76020** and legally known as:

**Lot 21, Block B, STONE EAGLE ADDITION, an Addition to the City of Azle, Tarrant County, Texas, according to plat filed for record under Clerk's File No. D222146730, Deed Records of Tarrant County, Texas.**

The Original Buyer(s) purchased the Property from Mearstone Properties, L.P., a Texas limited partnership.

WHEREAS, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby acknowledge, agree and stipulate that, they have had the opportunity to review and consider the Dispute Resolution Agreement (the "Dispute Resolution Agreement") contained within the purchase Agreement and/or other documents associated with the acquisition of the Property, including but not limited to the express limited warranty provided by Builder and/or a third-party warranty provider as set forth at length as follows (*Italics Added*):

DISPUTE RESOLUTION:

**MEDIATION-BINDING ARBITRATION:** The parties agree that any dispute or claim arising under, or relating to, this Contract, any amendments thereto, the Property, Improvements, or any dealings between the Buyer and Seller or their representatives, shall first be submitted to mediation and, if not settled during mediation, shall thereafter be submitted to binding arbitration as provided by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.) or, if applicable, by similar state statute, and not by or in a court of law. All decisions respecting the arbitrability of any dispute shall be decided by the arbitrator. Any cost or fee associated with filing a claim for arbitration is to be paid by the party filing same. The Parties agree to split the mediation fee and the arbitrator's fees with all participating parties. The arbitrator has no authority to apportion to the prevailing party any portion of costs and fees. The mediation and, if necessary, the arbitration shall be conducted pursuant to the procedures set forth in any applicable Third-Party Warranty documents. If there is any conflict between this Contract and the Third-Party Warranty on these procedures, the provisions of this Contract shall control as to the Seller and Buyer dispute or claims. If the mediator and/or arbitrator designated in any applicable warranty documents cannot conduct the mediation or arbitration for any reason, or if no mediator and/or arbitrator is designated, the parties agree to work together in good faith to select a mediator and, if all disputes are not resolved by mediation, an arbitrator. If the parties are unable to agree on the appointment of a mediator and/or arbitrator, then the mediation and arbitration shall be conducted by the American Arbitration Association ("AAA") in accordance with its applicable rules and procedures provided, however, if there is any conflict between this Contract and such rules or procedures, the provisions of this Contract shall control. If for any reason the AAA is unable or unwilling

to conduct the mediation or the binding arbitration, or both, either party may petition a court of general jurisdiction in the subject county to appoint a mediator and/or arbitrator, or both. It is agreed that the filing of a petition requesting appointment of a mediator or arbitrator, or for a court to resolve a dispute under this provision, shall not constitute a waiver of the right to enforce binding arbitration.

In any arbitration proceeding between the parties the following material terms shall apply:

- a) The arbitrator shall have no authority to award any remedy or damage not provided by this Contract, Federal law or State law;
- b) All applicable claims, causes of action, remedies and defenses as available in court shall apply, including temporary and permanent restraining orders;
- c) The proceeding shall be conducted by a single arbitrator selected by a process designed to ensure the neutrality of the arbitrator;
- d) Subject to relevance and discovery reasonably calculated to lead to the discovery of admissible evidence, proper objections, confidentiality and other privileges, the parties shall voluntarily produce documents related to the claims and disputes, and the parties shall be entitled to conduct reasonable and necessary discovery as limited by the arbitrator but in no event shall any party be entitled to more than 6 hours of total deposition time, 10 requests for production and disclosures under Tex. Rule of Civ. Pro. 194; no interrogatories shall be allowed;
- e) The arbitrator shall render a written award and, if requested by any party at any time, a reasoned award, even if after the written award is issued;
- f) No party shall be required to pay any unreasonable costs, expenses or arbitrator's fees;
- g) Judgment upon any such award may be entered in any court having jurisdiction, subject to the terms and conditions herein and the Federal Arbitration Act;
- h) If the proceeding pertains to a construction defect, as that term is defined in Chapter 27 of the Texas Property Code (§27.001(4)), then the arbitration shall be conducted in the same county as the Property, absent agreement of the parties or the arbitrator's determination that such location is inconvenient;
- i) Any arbitration shall be private and confidential, and no publication or disclosure of such arbitration or facts surrounding same shall be made to any third-party, except for necessary testimonial witnesses, experts and counsel. The final award of the arbitrator shall not be payable until 60 days after such award, and such award shall not be sought to be confirmed in any court until 90 days after such award, with or without objection by any party and regardless of the terms and conditions of the award. If the award requires repairs of construction defects, such repairs are not required to be commenced until 90 days after the award is confirmed but shall be completed within 120 days after the award is finally confirmed..

Buyer and Seller agree that notwithstanding anything to the contrary, the rights and obligations set forth in this mediation-arbitration agreement shall survive (1) the termination of this Contract by either party; (2) the default of this Contract by either party; or (3) any closing and delivery of deed. The waiver or invalidity of any portion of this mediation-arbitration agreement shall not affect the validity or enforceability of the remaining portions of this mediation-arbitration agreement and/or the Contract. Buyer and Seller further agree (1) that any dispute involving Seller's directors, officers, partners, employees and agents shall be resolved as set forth herein and not in a court of law; and (2) that Seller shall have the option to include its subcontractors, suppliers, and vendors as parties in the alternative dispute resolution procedures set forth in this Contract. This Contract requires mandatory arbitration of disputes; if any party commences litigation in violation of this 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.

Buyer and Seller expressly agree that this Contract is being entered into for the benefit of any third-party and/or subsequent owner that owns, inhabits or resides in the Improvements, Property or dwelling and is therefore subject to this requirement to arbitrate any and all claims concerning this Contract, the Property, Improvements or dwelling.

Buyer further agrees that if Buyer sells the Property or Improvements, Buyer agrees to inform the subsequent purchaser(s) of this requirement to arbitrate in accordance with this Contract and, as part of any sales agreement, agrees to require the subsequent purchaser(s) to arbitrate any and all claims that may arise between Buyer, Seller or subsequent purchaser(s) relating to or arising under, in whole or in part, to this Contract, the Property or Improvements.

**B. WAIVER OF TRIAL BY JURY:** If it is determined that the arbitration provisions of the alternative dispute resolution agreement are not enforceable, the parties agree that any disputes 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 right to a trial by jury is hereby expressly waived by Buyer and Seller. The parties also agree that the rights and obligations set forth in this paragraph shall survive the termination of this Contract by either party, default of this Contract by either party, or Closing and delivery of deed.

**C. Re-Purchase Option:** Pursuant to § 27.0042 of the Texas Property Code, should the Buyer discover, during the first five (5) years after Closing, one or more defects in the construction of the Improvements that exceed in the aggregate one percent (1%) of the fair market value of the Improvements, upon receipt of written notice and an opportunity to inspect the defects, the Seller may elect to repurchase the Improvements and Property. If the Seller elects this option, the Buyer shall be reimbursed the original sales price set forth herein and all closing costs incurred

by the Buyer, plus reimbursement of the cost of any permanent improvements made by the Buyer to the Improvements and the Property, reasonable moving expenses to vacate the Improvements, and reasonable and necessary attorney's fees and inspection costs incurred by the Buyer to discover, identify and present the construction defects to the Seller, and as otherwise set forth in Chapter 27. In return, the Buyer will deliver a Special Warranty Deed conveying the Improvements and Property to the Seller, free and clear of all liens and claims and deliver possession of the Improvements and Property free of any casualty or damage caused by the Buyer, normal wear and tear excepted.

**LIMITATION OF CLAIMS & REMEDIES.** To the fullest extent permitted by law, neither Seller, its subcontractors, nor its respective affiliates shall be liable to Buyer or its affiliates for any special, indirect, consequential, incidental, punitive or exemplary damages, whether or not foreseeable, arising out of or in connection with this Contract, regardless of whether liability is based on breach of contract, breach of warranty (express, statutory, or implied), tort (including negligence, fraud, and strict liability), or other bases of liability, such excluded damages shall include, but not be limited to, mental anguish, diminution of value, loss of opportunity, loss of goodwill, loss of use of property or capital, loss of benefit-of-the-bargain, cost to complete or cover, additional interest or any other financing costs or claims of Buyer, or any other form of indirect or special damages, whether or not foreseeable, and whether or not the released party is aware of, or has been advised of, the possibility of such damages.

**WAIVER OF SUBROGATION.** The parties agree that after occupancy or Closing, whichever comes first, Buyer shall secure and maintain insurance covering risk of loss and damage to the Improvements. The parties further mutually agree that with respect to any loss or damage that may occur to the Property, Improvements, personal property, persons, third-parties, or any other loss by reason of fire, the elements, or any other cause, regardless of the cause or origin, including negligence of the Parties, their agents, officers, subcontractors and/or employees, the party carrying such insurance and suffering said loss, hereby releases the other from any and all claims with respect to such loss. The parties further mutually agree that their respective insurance companies shall have no right of subrogation against the other party or other party's insurance carrier on account of any such loss as all rights of subrogation are hereby waived and disclaimed. To the extent that Buyer's carrier in carrier's name or in Buyer's name makes any claim or asserts a cause of action against Seller for subrogation, Buyer agrees to defend, indemnify and hold Seller harmless, including attorney's fees, from any such claim or cause of action, including but not limited to negligence of Seller or Seller's subcontractors. Nothing contained in this paragraph shall be deemed to modify or otherwise affect releases of either party from liability for claims elsewhere herein contained.

It is my/our desire to impose these warranties and alternative dispute resolution requirements on the Property, regardless of who the issuer of such warranty is and I/we agreed to the alternative dispute resolution procedures contained herein for the Property on or about **January 12, 2024** and hereby create the covenant contained herein to bind any and all subsequent purchasers to the terms and conditions of the original Dispute Resolution Agreement and applicable Warranty.

These covenants do not relate to nor shall they, in any way, operate to release any warranties of title given in connection with the conveyance of the Property.

The undersigned agrees that this document shall be filed of record in the appropriate real property records of **Tarrant** (County), Texas and **SHALL RUN WITH THE LAND.**

  
Cherry Ratliff

  
Remmick Howard

Address: 817 Topaz Trail  
Azle TX 76020

BUILDER:

Mearstone Properties, L.P., a Texas limited partnership  
BY: MEARSTONE PROPERTIES GP, L.L.C.,  
a Texas limited liability, General Partner

BY: Addison White  
Addison White, Vice President

STATE OF TEXAS

COUNTY OF TARRANT

This instrument was sworn to, subscribed and acknowledged on 12 of January 2024 by Cherry Raliff and Remmick Howard.

Kristi Thomas  
Notary Public, State of Texas  
My Commission Expires: 1/26/2024  
(SEAL)



STATE OF TEXAS

COUNTY OF TARRANT

This instrument was acknowledged before me this 12th of January 2024 by Addison White, Vice President of MEARSTONE PROPERTIES GP, L.L.C., a Texas limited liability company, General Partner of MEARSTONE PROPERTIES, L.P., a Texas limited partnership, on behalf of said limited partnership.

Kristi Thomas  
Notary Public, State of Texas  
Notary's commission expires: 01/26/2024  
(SEAL)



AFTER RECORDING, RETURN TO:  
MEARSTONE PROPERTIES, L.P  
5816 BOAT CLUB ROAD  
FORT WORTH, TEXAS 76179