

*Mary Louise Nicholson*  
MARY LOUISE NICHOLSON  
COUNTY CLERK

GF NO.: 15798 2867243

**RESTRICTIVE COVENANT AND AGREEMENT**

This Restrictive Covenant and Agreement (this "Agreement") is made this 28<sup>th</sup> day of May, 2024 by **DON ERROL HUBBARD** (hereinafter referred to as "Owner", whether one or more) and **MATTAMY TEXAS LLC, A DELAWARE LIMITED LIABILITY COMPANY** (hereinafter referred to as "Builder").

RECITALS

WHEREAS, Owner is the current owner of the following described property **4513 WARD STREET, NORTH RICHLAND HILLS, TEXAS 76180** (the "Property"), and more particularly described as follows:

**LOT 30R, BLOCK 16, OF AMENDING PLAT CITY POINT ADDITION, AN ADDITION TO THE CITY OF NORTH RICHLAND HILLS, TARRANT COUNTY, TEXAS, ACCORDING TO THE AMENDING MAP OR PLAT THEREOF RECORDED IN INSTRUMENT NO. D223121068, PLAT RECORDS, TARRANT COUNTY, TEXAS.**

WHEREAS, Owner purchased the Property and Improvements (hereinafter defined) from Builder; and

WHEREAS, the undersigned acknowledge that it is the policy of the State of Texas to encourage the peaceable resolution of disputes through alternative dispute resolution procedures; and

WHEREAS, Owner acknowledges that Builder has given an express written limited home warranty on the Improvements; and

WHEREAS, Owner desires to release any implied warranties given by, through or under Builder relating to the construction of all improvements on the Property (the "Improvements"), including but not limited to, any implied warranty of good and workmanlike construction to the extent it may exist in Texas and further stipulates that this Agreement SHALL RUN WITH THE LAND.

NOW, THEREFORE, for Fifty Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby acknowledge, agree and stipulate the following:

1. The parties specifically agree that they have entered into a transaction that involves interstate commerce and that any dispute (whether contract, warranty, tort, statutory or otherwise) (the "Dispute"), including, but not limited to, (a) any and all controversies, disputes or claims arising under, or related to, any contract and any amendments thereto between Builder and Owner, the Property or Improvements, or any dealings between the Owner and Builder; (b) any controversy, dispute or claim arising by virtue of any representations, omissions, promises or warranties alleged to have been made by Builder or Builder's representative; and (c) any personal injury or property damage alleged to have been sustained by Owner on the Property or in the subdivision, 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. In no event shall Owner be initially required to pay arbitration costs and fees in excess of those that would have been incurred in filing suit in a court of law and effecting service of process. The arbitrator may award to the prevailing party, if any, as determined by the arbitrator, all or any portion of its costs and fees. "Costs and fees" may include reasonable expenses of mediation and/or arbitration, including arbitrator's fees, administrative fees, travel expenses and out-of-pocket expenses such as copying and telephone, court costs, witness fees and reasonable attorney's fees. The mediation and, if necessary, the arbitration shall be conducted pursuant to any procedures set forth in the applicable warranty documents. If there is any conflict between this Agreement and such procedures, the provisions of this Agreement shall control. Furthermore, 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, then the parties agree to work together in good faith to select a mediator and, if all Disputes are not resolved by mediation, an arbitrator in the county where the subject property is located. If the parties are unable to agree on the appointment of a mediator and/or arbitrator, either party may petition a court of general jurisdiction in the subject county to appoint a mediator and/or arbitrator. It is stipulated and agreed that the filing of a petition requesting

appointment of a mediator and/or arbitrator shall not constitute a waiver of the right to enforce binding arbitration. In any arbitration proceeding between the parties:

- a. All applicable Federal and State law (including Chapter 27 of the Texas Property Code) shall apply;
- a. All applicable claims, causes of action, remedies and defenses that would be available in court shall apply;
- b. The proceeding shall be conducted by a single arbitrator selected by a process designed to ensure the neutrality of the arbitrator;
- c. The parties shall be entitled to conduct reasonable and necessary discovery;
- d. The arbitrator shall render a written award and, if requested by any party, a reasoned award;
- e. The Owner shall not be required to pay any unreasonable costs or fees and the arbitrator shall have the right to apportion costs and fees in an equitable manner in the arbitration award; and
- f. 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.

Owner and Builder agree that notwithstanding anything to the contrary, the rights and obligations set forth in this Agreement shall survive the closing of the sale of the Property and/or Improvements from Builder to Owner. The waiver or invalidity of any portion of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement. Owner and Builder further agree (1) that any Dispute involving Builder's directors, officers, employees, and agents shall be resolved as set forth herein and not in a court of law; and (2) that Builder shall have the option to include its subcontractors and suppliers as parties in the mediation and arbitration.

If Owner or Builder files a proceeding in any court to resolve any such controversy, dispute or claim, 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 claim, dispute or controversy, and the court shall, upon motion of any party to the proceeding, direct that such controversy, dispute or claim be arbitrated in accordance herewith. Inasmuch as this Agreement provides for mandatory arbitration of Disputes, if any party commences litigation in violation of this Agreement, such 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.

2. OWNER AND BUILDER ACKNOWLEDGE THAT THE RESIDENTIAL CONSTRUCTION LIABILITY ACT (the "RCLA") APPLIES TO CONSTRUCTION DEFECTS AND ANY DISPUTES OR CLAIMS REGARDING CONSTRUCTION DEFECTS IN CONNECTION WITH THE IMPROVEMENTS. OWNER AND BUILDER UNDERSTAND THAT THE RCLA CONTAINS PROVISIONS TO EXPEDITE THE RESOLUTION OF CLAIMS. OWNER AND BUILDER ALSO ACKNOWLEDGE AND AGREE THAT A REQUEST FOR WARRANTY PERFORMANCE SHALL NOT BE CONSTRUED AS A NOTICE OF CONSTRUCTION DEFECT UNDER THE RCLA, AND THAT ANY NOTICE UNDER THE RCLA SHALL BE SEPARATELY SENT TO BUILDER IN THE MANNER REQUIRED BY THE RCLA. OWNER AND BUILDER ACKNOWLEDGE THAT THE RCLA CONTROLS

TO THE EXTENT OF ANY CONFLICT BETWEEN THE RCLA AND ANY OTHER LAW, INCLUDING THE DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, SUBCHAPTER E, CHAPTER 17, TEXAS BUSINESS & COMMERCE CODE (the "DTPA"), AS PROVIDED BY THE RCLA AND THE DTPA.

3. OWNER, BY SIGNING THIS AGREEMENT, ACKNOWLEDGES THAT HE/SHE/THEY HAS/HAVE REVIEWED AND UNDERSTANDS THE PROVISIONS CONTAINED HEREIN.

4. Owner hereby agrees, acknowledges and stipulates that THE ONLY EXPRESS WARRANTY GIVEN BY BUILDER TO OWNER RELATING TO THE PROPERTY AND/OR IMPROVEMENTS IS THAT EXPRESS WRITTEN LIMITED HOME WARRANTY PROVIDED BY BUILDER (the "Limited Warranty"). OWNER AGREES AND UNDERSTANDS THAT BY SIGNING THIS AGREEMENT THEY ARE WAIVING ANY CLAIM OR CAUSE OF ACTION UNDER ANY THEORY OF IMPLIED WARRANTY OF GOOD AND WORKMANLIKE CONSTRUCTION AND THAT ANY SUCH IMPLIED WARRANTY, TO THE EXTENT IT EXISTS IN TEXAS, IS EXPRESSLY REPLACED BY THE TERMS OF THE LIMITED WARRANTY INCORPORATED BY REFERENCE INTO THIS AGREEMENT. OWNER ACKNOWLEDGES THAT THE TERMS OF SUCH LIMITED WARRANTY

ARE CLEAR, SPECIFIC AND SUFFICIENTLY DETAILED TO ESTABLISH THE ONLY STANDARDS OF CONSTRUCTION WHICH BUILDER IS OBLIGATED TO MEET. OWNER ACKNOWLEDGES THAT THEY HAVE RECEIVED AND REVIEWED SUCH WARRANTY, AND OWNER AGREES TO DELIVER A COPY OF THE LIMITED WARRANTY TO ANY SUBSEQUENT PURCHASER OF THE PROPERTY

5. In the event that the reasonable cost of repair necessary to repair a construction defect or defects in or related to the Improvements that are the responsibility of Builder exceeds 30% of the then current fair market value of the Improvements, as determined without reference to the construction defect(s), Builder may elect to repurchase the Property in accordance with Section 27.0042 the Texas Property Code. This right of election shall survive the completion of the Contract between Owner and Builder and the delivery of the deed to the Property from Builder to Owner, and shall be binding on Owner's successors and assigns.

6. Owner and Builder hereby agree, acknowledge and stipulate that all manufacturer warranties on equipment and consumer products incorporated into the Improvements such as air conditioners, heating units, water heaters, refrigerators, ranges, dishwashers and other appliances or equipment shall be assigned to Owner. Owner hereby agrees, acknowledges and stipulates that Builder makes NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING SUCH EQUIPMENT OR CONSUMER PRODUCTS AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF USE FOR A PARTICULAR PURPOSE, AND ANY OTHER WARRANTIES TO THE FULLEST EXTENT PERMITTED BY STATE OR FEDERAL LAW.

7. Builder has exercised reasonable care in assuring that the Property and Improvements are free of harmful molds and other undesirable organisms; however, even utilizing modern materials, techniques and designs, any construction project can experience a problem with molds and other biological impurities if proper maintenance procedures are not implemented. Such maintenance is a responsibility of Owner. The Owner can take positive steps to reduce or eliminate the occurrence of mold growth in the home, and thereby minimize any possible adverse effects that may be caused by mold. These steps include the following:

Before bringing items into the home, check for signs of mold. Potted plants (roots and soil), furnishings, or stored clothing and bedding material, as well as many other household goods, could already contain mold growth. Once mold is brought into the home, its spores can spread to other areas of the home.

- a. Regular vacuuming and cleaning will help reduce mold levels. Mild bleach solutions and most tile cleaners are effective in eliminating or preventing mold growth.
- a. Keep the humidity in the home low. Ventilate kitchens and bathrooms by opening the windows, using exhaust fans, or running the air conditioning to remove excess moisture in the air. Promptly clean up and dry spills, condensation, and other sources of moisture. Promptly replace any materials that cannot be thoroughly dried, such as drywall or insulation.
- b. Inspect for leaks on a regular basis. Look for discolorations or wet spots. Repair any leaks promptly. Inspect condensation pans (refrigerators and air conditioners) for mold growth. Take notice of musty odors, and any visible signs of mold.
- c. Should mold develop, thoroughly clean the affected area with a mild solution of bleach. First, test to see if the affected material or surface is color safe. Porous materials, such as fabric, upholstery or carpet should be discarded. Should the mold growth be severe, call on the services of a qualified professional.

Electronic air filters that may assist in effective air filtration and dehumidifiers to maintain humidity levels are available at additional cost from numerous vendors.

Whether or not a home experiences mold growth depends largely on how it is maintained. The Builder has not made, created, or invited (nor does it intend to make, create or invite) any warranty or any other expectancy, either express or implied, in regard to any mold or other biological impurities.

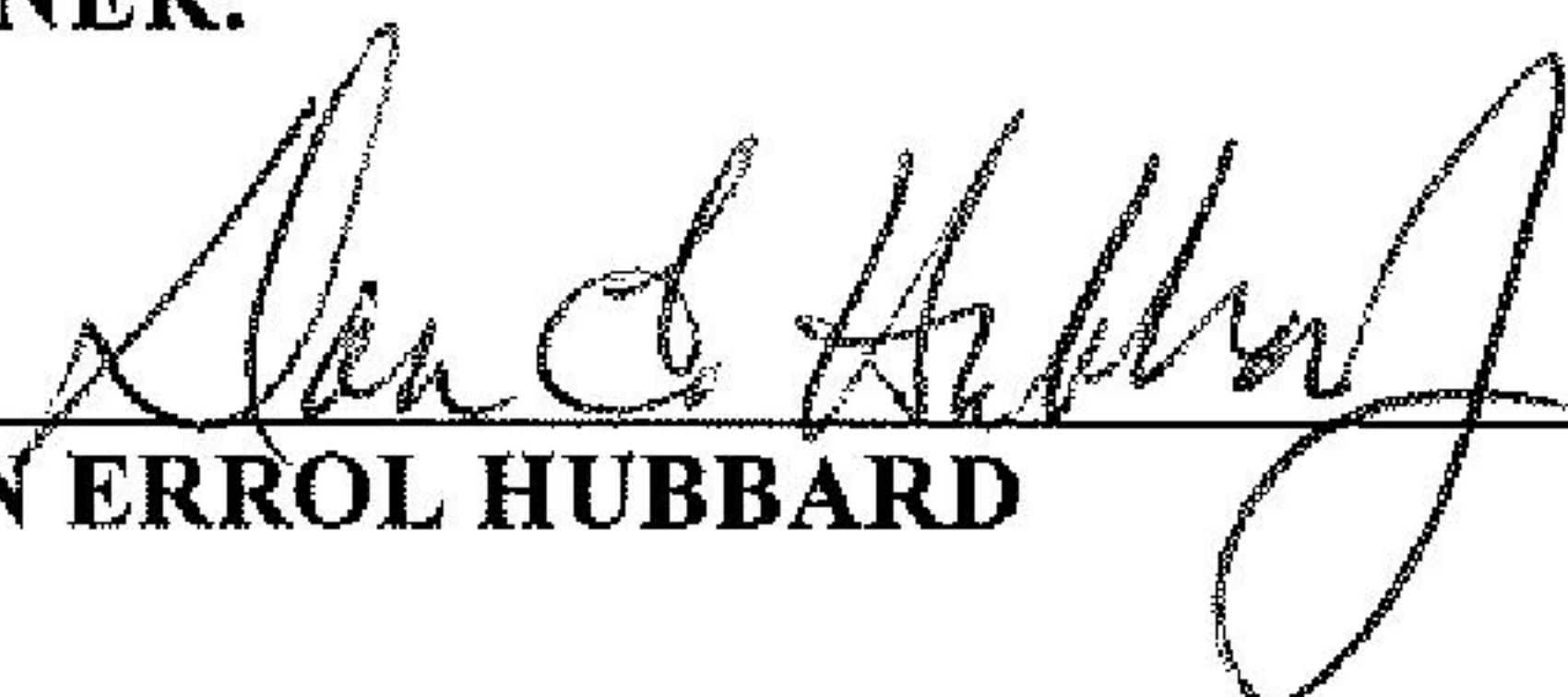
8. Owner and Builder agree that this Agreement shall be filed of record in the appropriate real property records of the County in which the Property is located.

9. Owner and Builder further stipulate that this Agreement SHALL RUN WITH THE LAND.

10. By execution of this Agreement, (i) Owner acknowledges that the Improvements have been completed in accordance with the contract between Owner and Builder or that any discrepancies or differences have been approved and accepted by Owner and (ii) Owner has accepted the Property and Improvements and hereby releases Builder from all claims and liabilities relating to the Property or Improvements except for Builder's obligations arising under the express Limited Warranty.

11. Owner and Builder agree, acknowledge, and stipulate that, except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, officers, directors, shareholders, representatives, successors and assigns.

**OWNER:**

  
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**DON ERROL HUBBARD**

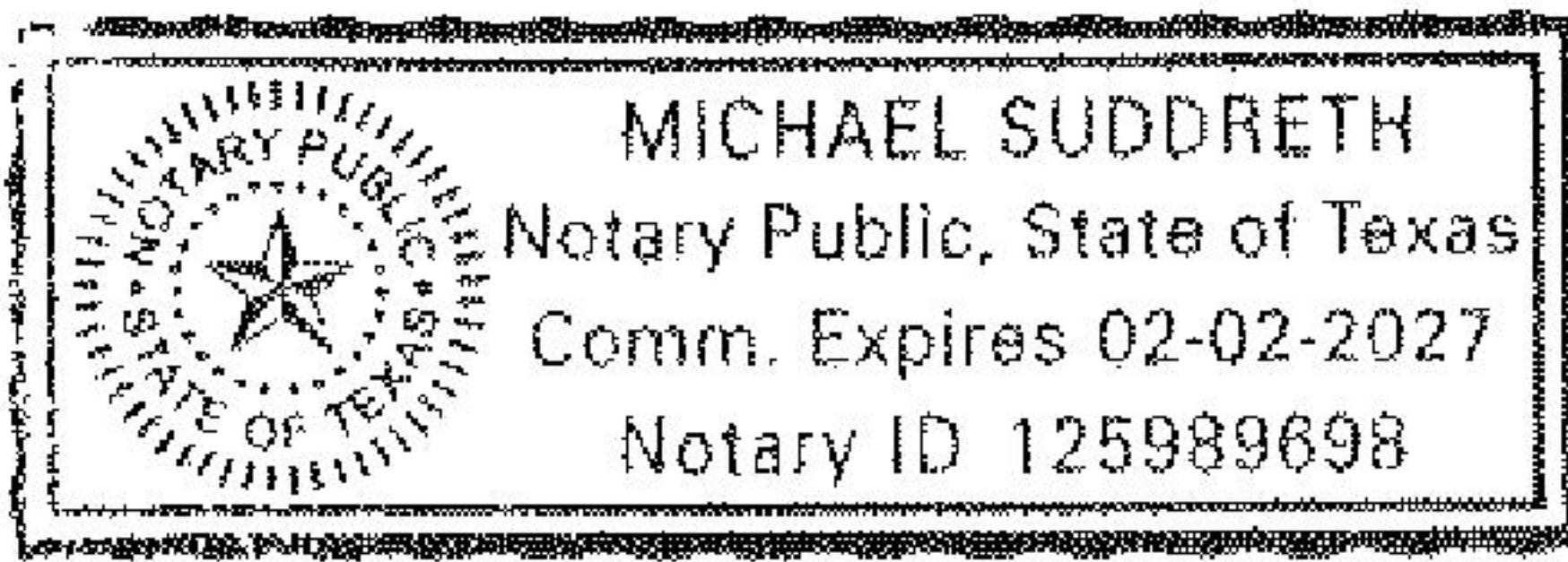
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ACKNOWLEDGMENT

STATE OF Texas

COUNTY OF Dallas

This instrument was acknowledged before me this 28<sup>th</sup> day of May, 2024 by **DON ERROL HUBBARD.**



*[Handwritten Signature]*  
 Notary Public, State of Texas

Unofficial Copy

**BUILDER:**

**Mattamy Texas LLC,  
a Delaware limited liability company**

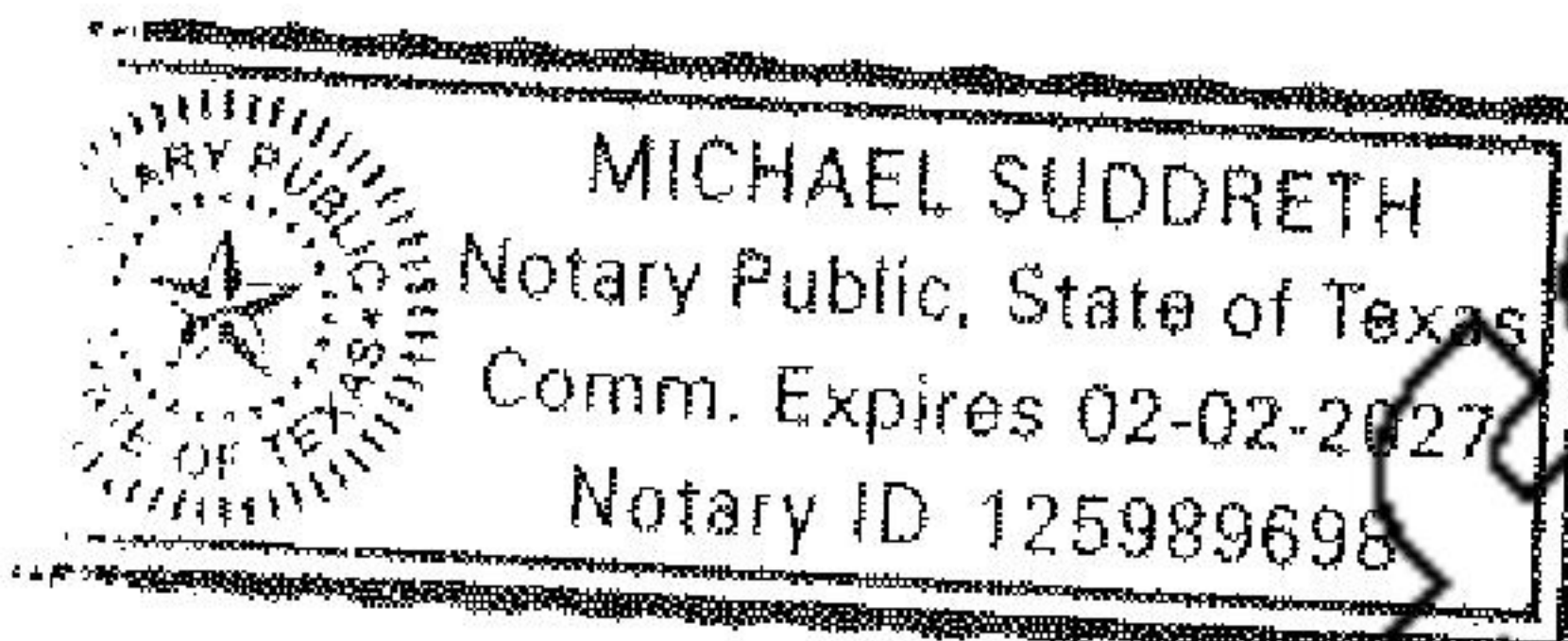
By: \_\_\_\_\_  
Name: Casey Johnson  
Title: V.P.

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF Dallas

This instrument was acknowledged before me on the 28<sup>th</sup> day of May, 2024 by -  
Casey Johnson, as V.P. for Mattamy Texas LLC,  
a Texas limited liability company, on behalf of said entity and in the capacity herein stated.



\_\_\_\_\_  
Notary Public, State of Texas