

*Mary Louise Garcia* Mary Louise Garcia

**RESTRICTIVE COVENANT AND AGREEMENT**

(Conventional or FHA/VA Contract of Sale)

STEWART/CC/224/ 01128- 60559

GF# 0128-5-1001 / ClearCC / Stewart / 224

This Restrictive Covenant and Agreement ("Agreement") is made this 18<sup>th</sup> day of May, 2018, by Simon D. Banini and Genevieve H Banini 5932 Cambridge Drive North Richland Hills, TX 76180 (and Speight Construction, Ltd.d/b/a Sandlin Homes of 5137 Davis Blvd., North Richland Hills, TX 76180 ("Builder").

**RECITALS:**

WHEREAS, Owner is the current owner of the following described property situated at 5932 Cambridge Drive North Richland Hills, TX 76180 (the "Property"), and more particularly described as follows:

**LEGAL DESCRIPTION:**

Lot 20, in Block 1, of Cambridge Place, an addition to the City of North Richland Hills, Tarrant County, Texas, according to the Map or Plat thereof recorded in/under Clerk's File No. D215041218, Map/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 provided an express limited warranty on the Improvements; and

WHEREAS, to the fullest extent permitted by applicable law, Owner desires to and does hereby waive and release any implied warranties given by, through or under Builder relating to the construction of all improvements in the Property (the "Improvements") including but not limited to any implied warranty of good and workmanlike construction and further stipulates that this Agreement **SHALL RUN WITH THE LAND.**

NOW, THEREFORE, for Ten 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 arising in contract, warranty, tort, statutory or otherwise) (the "Dispute"), including, but not limited to, (a) any and all controversies, disputes or claims arising under, or relating 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 in which the Property is located, 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. Notwithstanding anything herein to the contrary, BUYER AND SELLER WAIVE THE REMEDIES OF

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**SPECIFIC PERFORMANCE AND RESCISSION AND THE RIGHT TO RECOVER PROFESSIONAL FEES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ENGINEERING FEES, AND EXPERT AND CONSULTING WITNESS FEES FOR ANY CAUSE OF ACTION IN ANY WAY ARISING OUT OF THIS WARRANTY OR THE CONSTRUCTION OF THE IMPROVEMENTS.** The mediation and, if necessary, the arbitration shall be conducted pursuant to the 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, 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 (to the extent practicable). If the parties are unable to agree on the appointment of a mediator and/or arbitrator then the mediation or arbitration, or both 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 Agreement and such rules or procedures, the provisions of this Agreement 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 or arbitrator, or both. It is stipulated and agreed that the filing of a petition requesting appointment of a mediator 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;
- b. All applicable claims, causes of action, remedies and defenses that would be available in court shall apply;
- c. The proceeding shall be conducted by a single arbitrator selected by a process designed to ensure the neutrality of the arbitrator;
- d. The parties shall be entitled to conduct reasonable and necessary discovery;
- e. The arbitrator shall render a written award and, if requested by any party, a reasoned award;
- f. The Owner 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
- g. 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; and
- 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 county in which the Property is located.

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/or arbitration.

If Owner or Builder file 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.

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The requirement that the parties submit any disputes between them to mediation and, if that does not resolve the dispute, binding arbitration is absolute and enforceable despite there being no signature by either party on this page of the Agreement. The parties, by their signatures at the end of this Agreement, agree to arbitration as if their signatures appeared on the page where arbitration is made part of the agreement.

2. WAIVER OF TRIAL BY JURY: IN THE EVENT THAT IT IS DETERMINED THAT THE ARBITRATION PROCEDURES OF THE FOREGOING ALTERNATIVE DISPUTE RESOLUTION AGREEMENT ARE NOT ENFORCEABLE, THE PARTIES STIPULATE AND AGREE THAT ANY AND ALL 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 AND THE RIGHT TO A TRIAL BY JURY IS HEREBY EXPRESSLY WAIVED BY OWNER AND BUILDER. THE PARTIES FURTHER AGREE THAT THE RIGHTS AND OBLIGATIONS SET FORTH IN THIS PARAGRAPH SHALL SURVIVE (1) THE TERMINATION OF THIS AGREEMENT BY EITHER PARTY; (2) THE DEFAULT OF THIS AGREEMENT BY EITHER PARTY; OR (3) ANY CLOSING AND DELIVERY OF DEED.

3. OWNER AND BUILDER ACKNOWLEDGE THAT THE RESIDENTIAL CONSTRUCTION LIABILITY ACT ("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.

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

5. Owner hereby agrees, acknowledges and stipulates that EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE ONLY WARRANTY OR WARRANTIES GIVEN BY BUILDER TO OWNER RELATING TO THE PROPERTY OR IMPROVEMENTS ARE DESCRIBED IN THE EXPRESS WARRANTY PROVIDED THROUGH STRUCTURE HOME WARRANTY (THE "LIMITED WARRANTY") A SPECIMAN COPY OF WHICH HAS BEEN PROVIDED TO OWNER BY BUILDER AND OWNER HEREBY EXPRESSLY ACKNOWLEDGES RECEIPT OF SAME. OWNER AGREES AND UNDERSTANDS THAT, PURSUANT TO THE AGREEMENT BETWEEN OWNER AND BUILDER, AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, OWNER IS WAIVING ANY CLAIM OR CAUSE OF ACTION UNDER ANY THEORY OF IMPLIED WARRANTY OF GOOD AND WORKMANLIKE CONSTRUCTION AND ANY SUCH IMPLIED WARRANTY IS EXPRESSLY REPLACED BY THE TERMS OF THE LIMITED WARRANTY INCORPORATED BY REFERENCE INTO THE CONTRACT BETWEEN OWNER AND BUILDER. 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.

6. During the first five (5) years of this agreement, should Owner discover one or more defects in the construction of the Improvements and the reasonable cost to repair such construction defect(s) 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. If the Builder elects this option, the Owner

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shall be reimbursed the total contract price and all closing costs incurred by Owner, plus reimbursement of the cost of any permanent improvements made by the Owner 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 Owner to discover, identify and present the construction defect(s) to the Builder. In return, Owner will deliver a Special Warranty Deed conveying the Property and Improvements to Builder, free and clear of all liens and claims and deliver possession of the Improvements and Property to Builder free of any casualty or damage caused by Owner, normal wear and tear excepted. 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.

7. Builder hereby transfers to Owner all rights, interests and title to all express or implied warranties on "Manufactured Products" incorporated into the Improvements. As used herein, the term "Manufactured Products" has the definition set forth in StrucSure Home Warranty. Owner hereby agrees, acknowledges and stipulates that Builder makes NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING SUCH MANUFACTURED 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.

8. 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:

- a. 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.
- b. Regular vacuuming and cleaning will help reduce mold levels. Mild bleach solutions and most tile cleaners are effective in eliminating or preventing mold growth.
- c. 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.
- d. 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.
- e. 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.
- f. 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 extended (nor does it intend to make, create or extend) any warranty or any other expectancy, either express or implied, in regard to any mold or other biological impurities.

9. Owner shall secure and maintain insurance covering risk of loss and damage to the Improvements. The parties hereby agree to waive all subrogation rights that each may have against the other for such insured losses or damage to the Improvements, its contents, or the Property, including any such loss or damage arising from the negligence or other fault of either party. If Owner receives any consideration from a third party, including, but not limited to, an assignee or subrogee, in settlement or payment for any dispute, Owner shall indemnify Builder for any claims asserted against Builder by such third party, regardless of any allegation of Builder's negligence, strict liability, breach of contract, breach of warranty or violations of the Texas Deceptive Trade Practices-Consumer Protection Act.

10. Owner understands that the Property has been or will be graded by Builder to drain in accordance with an approved grading and drainage plan. Any future construction on the Property by Owner (including pools, spas, fences, landscaping, etc.) can disrupt the drainage and cause flooding, excessive settlement and other problems. Any changes after conveyance of the Property from Builder to Owner in grade or soil conditions and any damages or loss resulting therefrom shall be Owner's sole responsibility and Owner hereby releases Builder, its agents and employees, from any and all liability and/or damages which may arise as a result of such changes.

11. 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.

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

13. 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 described above.

14. 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.

[SIGNATURE PAGE TO FOLLOW]

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RESTRICTIVE COVENANT AND AGREEMENT (Conv/FHA/VA)  
January 2017

*[Handwritten Signature]*

Owner Simon D. Banini

*[Handwritten Signature]*

Owner Genevieve H Banini

Address: 5932 Cambridge Drive  
North Richland Hills, TX 76180

BUILDER: Speight Construction, Ltd., dba Sandlin Homes

By: *[Handwritten Signature]*

Printed Name:

Its: authorized rep

*Matt Speight*

Address: 5137 Davis Blvd., North Richland Hills, TX 76180

Unofficial Copy

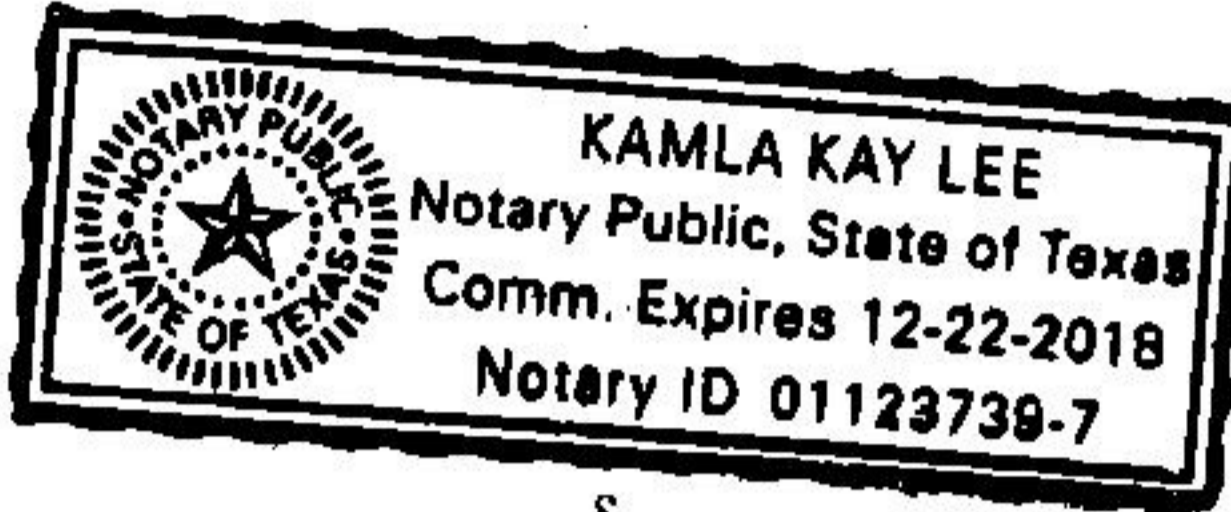
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January 2017

STATE OF TEXAS

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COUNTY OF Tarrant

This instrument was acknowledged before me on the 18<sup>th</sup> day of May, 2018 by Simon D. Barini (Owner).



Personalized Notary Seal

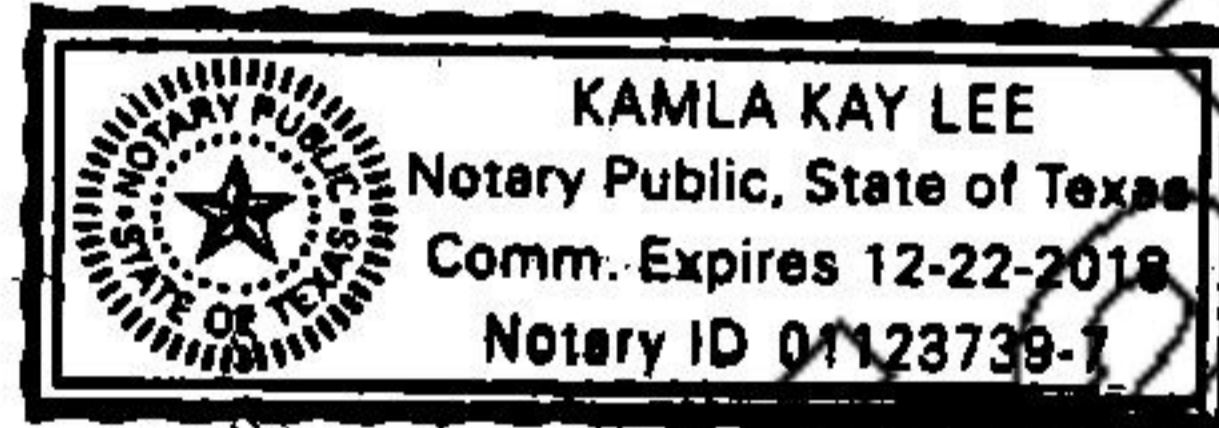
[Signature]  
Notary Public, State of Texas

STATE OF TEXAS

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COUNTY OF Tarrant

This instrument was acknowledged before me on the 18<sup>th</sup> day of May, 2018 by Genevieve H. Barini (Owner).



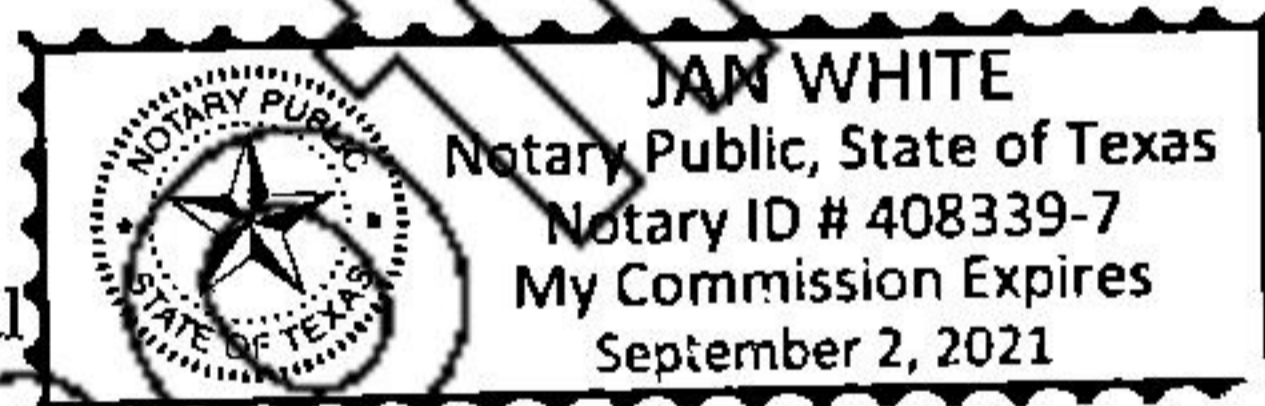
Personalized Notary Seal

[Signature]  
Notary Public, State of Texas

THE STATE OF TEXAS

COUNTY OF TARRANT

This instrument was acknowledged before me on the 18 day of May, 2018 by Matt Speight d/b/a Sandlin Homes, on behalf of said entity



Personalized Notary Seal

[Signature]  
Notary Public, State of Texas

AFTER RECORDING, RETURN TO:  
Sandlin Homes  
5137 Davis Blvd.  
North Richland Hills, TX 76180

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