

THIS INSTRUMENT PREPARED BY AND
UPON RECORDING, PLEASE RETURN TO:

Jarrett D. Bingemann, Esquire
AKERMAN LLP
420 South Orange Avenue, 12th Floor
Orlando, Florida 32801
Telephone: 407-423-4000

DECLARATION OF RESTRICTIVE COVENANTS
(FLORIDA – PEACE RIVER LANDING)

THIS DECLARATION OF RESTRICTIVE COVENANTS (this “**Declaration**”) is executed as of September 7, 2023 (the “**Effective Date**”), by DHIR-SOUTHWEST FLORIDA I, LLC, a Delaware limited liability company (“**Declarant**”).

RECITALS:

A. Declarant is the current owner of those certain single-family residential lots situated in Charlotte County, Florida, legally described on **Exhibit A** attached hereto and incorporated herein (the “**Restricted Lots**”), and either has or will in the future construct homes thereon (such Restricted Lots, and any homes now or hereafter thereon, are collectively referred to as the “**Restricted Homes**”, and each referred to as a “**Restricted Home**”, whether or not the such Restricted Homes are detached single-family residential or attached single-family residential).

B. The Restricted Homes are in a single-family residential development commonly known as “**Peace River Landing**”. This Declaration does not in any manner encumber title to any lot, home, or other property that is not a Restricted Home.

NOW THEREFORE, for good and valuable consideration, Declarant declares that the Restricted Homes are and shall be held, transferred, sold, conveyed, occupied, and enjoyed subject to the following terms, covenants and restrictions, as well as any other matters previously filed of record to the extent the same are valid and subsisting and are not abrogated or superseded herein:

1. **Ownership and Use**. For a period of time commencing on the date this Declaration is filed in the Real Estate Records of Charlotte County, Florida (the “**Official Records**”), and continuing until the seventh (7th) anniversary of the Effective Date (the “**Restrictive Covenant Term**”), the Restricted Homes shall be subject to the following restrictions (collectively, the “**Restrictions**”):

(a) No Restricted Home shall be occupied by the owner of such Restricted Home. All Restricted Homes shall be used for rental purposes only, pursuant to a bona fide third party lease between the owner of the Restricted Home and the primary occupant or occupants of such Restricted Home.

(b) Regardless of the fact that the Restricted Homes are constructed on individually platted lots, no Restricted Home may be conveyed separately from all other

Restricted Homes. The foregoing restriction on conveyances shall not prohibit the leasing of Restricted Homes in accordance with subparagraph (a) above.

Nothing in this Section 1 is intended to prevent ownership of all of the Restricted Homes by a partnership, corporation, limited liability company, trust, or other business entity that may be established under the laws of the State where the Restricted Homes are situated or other applicable law (an “**Entity**”), as long as a Controlling Interest in the Entity is not vested in, owned by, or held by, directly or indirectly, or beneficially or otherwise, any persons who are occupants of a Restricted Home pursuant to a lease in accordance with Section 1(a) above. “**Controlling Interest**” means the possession, directly or indirectly, of more than ten percent (10%) of the ownership interest in the Entity, or if less, the power to direct or cause the direction of the management and policies of the Entity, whether through the ownership of voting securities, by contract or otherwise.

2. **Term.** The terms, covenants, conditions and restrictions set out in this Declaration will run with and bind the Restricted Homes for the Restrictive Covenant Term, and are for the sole benefit of the Benefited Parties (hereinafter defined).

3. **Special Provisions.** Notwithstanding anything to the contrary in this Declaration, Declarant hereby agrees to promptly enter into a termination of this Declaration as to all Affected Homes (as defined below) prior to the expiration of the Restrictive Covenant Term, if and only if, (i) a Triggering Event (as defined below) occurs as to such Affected Homes, and (ii) Declarant fails to exercise the ROFO (as defined below) in accordance with the terms of this Declaration. As used herein, a “**Triggering Event**” shall occur when: (a) a local, state or federal governmental authority with jurisdiction over the Restricted Homes (a “**Governmental Authority**”) enacts legislation that completely prohibits any form of rental of the Restricted Homes or any portion thereof (the Homes as to which Prohibiting Legislation applies, the “**Affected Homes**”) to consumers and the operation of such Affected Homes as rental properties (the “**Prohibiting Legislation**”); and (b) such Prohibiting Legislation is effective and binding on such Affected Homes for a period of thirty (30) days following the effective date (such date, the “**Legislation Effective Date**”) of the Prohibiting Legislation (such thirty (30) day period being the “**Tolling Period**”), and such Prohibiting Legislation has not been repealed or suspended or is otherwise subject to any moratorium that delays the Legislation Effective Date of such Prohibiting Legislation during the Tolling Period. For the avoidance of doubt, a Triggering Event shall not occur if legislation is enacted that places limitations or restrictions on the rental of the Restricted Homes, but shall only be applicable if Prohibiting Legislation is enacted and effective. Owner (as defined below) shall provide written notice to Declarant promptly after obtaining knowledge that a Triggering Event has occurred or is otherwise being contemplated by any Governmental Authority.

If a Triggering Event occurs and remains in full force and effect following the Tolling Period and the then-owner of the Restricted Homes (“**Owner**”) wishes to terminate this Declaration as to any Affected Homes, then Declarant shall have an ongoing right of first offer (the “**ROFO**”) to purchase, at its election, either (a) all of the Restricted Homes and any common areas conveyed by Declarant in the deed for the Restricted Homes, or (b) all of the Affected Homes (as selected, the “**Property**”), from Owner until the expiration of the Restrictive Covenant Term (the “**ROFO Period**”) pursuant to the following terms: (i) Owner shall provide Declarant with

written notice that the Triggering Event has occurred and the Tolling Period has expired (the “**ROFO Trigger Notice**”); (ii) the ROFO Trigger Notice shall include the proposed purchase price for the Property (based upon Owner’s proposed “Fair Market Value” thereof) and other economic and material non-monetary terms of the proposed sale (collectively, the “**ROFO Sale Terms**”); (iii) Declarant shall then have fifteen (15) days after receiving the ROFO Trigger Notice to notify Owner in writing of Declarant’s election to purchase the Property in accordance with the conditions of the ROFO Trigger Notice (a “**Notice of Exercise**”), subject to the Agreed Adjustments (defined below); and (iv) if Declarant does so elect to exercise its right to purchase the Property, upon delivery of a Notice of Exercise, Declarant and Owner shall promptly cooperate, each acting reasonably in good faith, to proceed to negotiate and execute an agreement relating to the sale of the Property in substantially the same form of the purchase agreement pursuant to which Declarant sold the Property to Owner or its predecessor-in-interest following the Notice of Exercise, subject to changes to reflect the ROFO Sale Terms and other necessary changes to address property and deal specific matters (a “**ROFO Sale Contract**”); provided, however, in all circumstances, the ROFO Sale Contract shall provide for the following (the “**Agreed Adjustments**”): (x) Declarant shall have a due diligence/inspection period that is fifteen (15) days from the date the parties execute the ROFO Sale Contract, and (y) the closing shall be no sooner than fifteen (15) days after the end of the due diligence/inspection period. Notwithstanding the foregoing, if Declarant objects to Owner’s proposed Fair Market Value, such value shall be adjusted, and the time periods set forth in this paragraph extended, to allow for the determination of Fair Market Value as follows:

(a) If Declarant objects in writing to the Fair Market Value set forth in Owner’s ROFO Trigger Notice within five (5) days of receipt, within ten (10) days thereafter, the parties shall each engage one certified residential real estate appraiser with a minimum of seven (7) years’ experience in the valuation of single family residences similar to the Property (each, an “**Appraiser**”) for purposes of determining the fair market value of the Property (“**Property FMV**”). All fees and expenses of each such Appraiser shall be the responsibility of the party that engaged such Appraiser. Each such Appraiser shall determine Property FMV in good faith and deliver its calculation of Property FMV not later than the first Business Day that is at least fifteen (15) days after their engagement date; provided, that both Appraisers shall agree on a date on which to both deliver their calculations and Property FMV shall be determined as of such date (the “**FMV Determination Date**”) except as otherwise provided herein. If the higher of the two calculations of Property FMV submitted by the two Appraisers is not more than One Hundred Ten Percent (110%) of the lower calculation, then Property FMV shall be the average of the Property FMV calculations of the two Appraisers.

(b) If the higher of the two calculations of Property FMV is more than One Hundred Ten Percent (110%) of the lower calculation, then the two Appraisers shall jointly select a third Appraiser who (i) meets the requirements for the Appraisers outlined above, (ii) is independent of, and not affiliated with, the first two Appraisers, and (iii) who is not affiliated with, and who has not provided any significant services within the two (2) years preceding the date of the Property FMV Determination Date to either party or any affiliated entity of either party (an “**Independent Appraiser**”). If the two Appraisers are unable to agree upon a third Appraiser by the fifteenth (15th) day immediately following the date on which they have both delivered a calculation of Property FMV pursuant to subsection (a)

above (the “**Initial Calculation Date**”), the third Appraiser shall be selected as follows: Each of the first two Appraisers will suggest two (2) potential third Appraisers, each of whom shall be an Independent Appraiser. Each of the first two Appraisers shall be entitled to veto one (1) of the other Appraiser’s two (2) suggested Appraisers. The third Appraiser will then be chosen from the remaining two (2) suggested names by a fair and random process. The third Appraiser shall be selected no later than fifteen (15) days after the Initial Calculation Date and engaged pursuant to a customary engagement letter no later than twenty (20) days after the Initial Calculation Date. All fees and expenses of the third Appraiser shall be shared equally by the parties. The final Property FMV shall be the average of the two of the three Property FMV calculations delivered pursuant to subsection (a) and subsection (b) that are closest in amount.

(c) Any determination of Property FMV pursuant to subsection (a) and subsection (b) shall be final, conclusive and binding on the parties.

Notwithstanding the foregoing, if (i) (a) Declarant was entitled to exercise its ROFO but failed to timely provide Owner with a Notice of Exercise as provided above, and (b) Owner does not close on the sale of the Property within a period of six (6) months following the date of the ROFO Trigger Notice on the terms set forth in such ROFO Trigger Notice, or (ii) within such six (6) month period, Owner proposes to sell the Property on materially different terms or for less than 85% of the sales price set forth in the ROFO Trigger Notice, such ROFO right shall be reinstated, Declarant shall again have the ROFO with respect to such Property during the ROFO Period, and Owner shall be required to follow the procedure provided herein once again for the sale of the applicable Property to a third party.

For the avoidance of doubt, the ROFO and the mechanism set forth in this Declaration shall apply to each sale of any portion of the Property (including a proposed sale of an individual Restricted Home) during the ROFO Period, and the parties shall be subject to the foregoing with respect to each proposed sale of all or any portion of the Property.

3. **Amendment.** This Declaration may only be amended (including, without limitation, an amendment that terminates this Declaration) by the recording of a written instrument in the Official Records, executed and acknowledged by all of (a) D.R. Horton, Inc., a Delaware corporation (“**DHI**”), or its successors or assigns, and (b) the owner of the Restricted Homes at the time of any such amendment or termination (all of the foregoing being collectively referred to herein as the “Benefited Parties”, and individually, a “**Benefited Party**”).

4. **Enforcement and Nonwaiver.** Each Benefited Party, without the joinder of the other, shall have the right to enforce all of the provisions of this Declaration. Such right of enforcement includes both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of this Declaration is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by each Benefited Party, without the joinder of the other. The Benefited Parties’ failure to enforce any provision of this Declaration at any time will not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Declaration.

5. **Attorneys' Fees.** If a Benefited Party prevails in any action to enforce this Declaration, then such prevailing party will be awarded reasonable attorneys' fees, court costs, expert witness fees, and other litigation related expenses, and other costs of enforcement from the non-prevailing party or parties.

6. **Construction.** The provisions of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any covenant, restriction, or other provision or portion hereof will not affect the validity or enforceability of any other covenant, restriction, or provision. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular. All captions and titles used in this Declaration are intended solely for convenience of reference and will not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs or sections hereof. This Declaration runs with title to the Restricted Lots.

7. **Governing Law.** This Declaration and all rights and obligations created hereby shall be governed by and construed in accordance with the laws of the State where the Restricted Homes are located.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the undersigned has executed this Declaration to be effective as of the Effective Date.

Signed, sealed and delivered
in the presence of:

Robert M. Fawcett
Print Name: Robert M. Fawcett

Christopher White
Print Name: Christopher White

DECLARANT:

DHIR-SOUTHWEST FLORIDA I, LLC,
a Delaware limited liability company

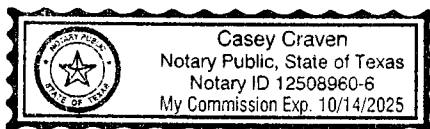
By: D.R. Horton, Inc.,
a Delaware corporation,
its authorized agent

By: *Bill W. Wheat*
Name: Bill W. Wheat
Title: Chief Financial Officer

STATE OF Texas)
COUNTY OF Tarrant)

The foregoing instrument was acknowledged before me this 14th day of August, 2023, by means of ☒ physical presence or ☐ online notarization, by Bill W. Wheat, as CFO of D.R. Horton, Inc., a Delaware corporation, the authorized agent for **DHIR-SOUTHWEST FLORIDA I, LLC**, a Delaware limited liability company, on behalf of said entities, who ☒ is personally known to me or ☐ has produced _____ as identification.

Notary Stamp



Casey Craven
Notary Public, State of Texas
Commission No. 12508960-6
My Commission Expires: 10-14-2025

Exhibit A

Legal Description

Lots 1 through 66, inclusive, Peace River Landing, a subdivision according to the map or plat thereof, as recorded in Plat Book 25, Pages 2A through 2D, of the Public Records of Charlotte County, Florida.