

**RECORDING REQUESTED BY
AND WHEN RECORDED, RETURN TO:**

D. R. Horton, Inc.
Attn: Corporate Legal
1341 Horton Circle
Arlington, Texas 76011

ENT 30187:2021 PG 1 of 6
Andrea Allen
Utah County Recorder
2021 Feb 17 03:48 PM FEE 40.00 BY DA
RECORDED FOR Cottonwood Title Insurance Agency, Inc.
ELECTRONICALLY RECORDED

Tax Parcel No(s): 67:039:0010; 58:036:0109; 58:036:0142; 58:036:0124 and 58:036-0131

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is executed as of this 17th day of February 2021 (the "Effective Date"), by D.R. Horton, Inc., a Delaware corporation ("Declarant"), whose address is c/o 1341 Horton Circle, Arlington, Texas 76011 Attention: Corporate Legal.

RECITALS:

A. Declarant is the owner of that certain parcel of land situated in Utah County, Utah, which is legally described in Exhibit "A" attached hereto and incorporated herein for all purposes (the "Property").

B. Declarant desires to impose certain restrictions on the Property.

NOW THEREFORE, for good and valuable consideration, Declarant declares that the Property is and shall be held, transferred, sold, conveyed, occupied, and enjoyed subject to the covenants and restrictions set forth in this Declaration and same shall run with title to, and be binding upon the Property, and inure to the benefit of the Property all as and to the extent, and upon the terms and conditions, more particularly set forth below:

1. **Recitals.** The foregoing recitals are true and correct and, by this reference, are hereby incorporated into this Declaration.

2. **Prohibition on Condominium Regime.** Commencing on the Effective Date and continuing through the thirtieth (30th) anniversary of the Effective Date (the "Condominium Restrictive Covenant Term"), the Property, and any and all portions of the Property, shall be subject to the following restrictions (the "Condominium Prohibition Restrictive Covenant"):

(a) No condominium regime, cooperative, condominium map, condominium plat, condominium plan, declaration of condominium ownership, condominium declaration, condominium association, public report or filing, or any other document or instrument creating or purporting to create, or causing the Property to be subject to the Utah Condominium Ownership Act, *Utah Code Ann. § 57-8-1, et*

seq., or any successor statute or otherwise, cooperative, or other common interest ownership structure involving separate ownership, or right to use, of individual residential units therein or timeshare interests in individual or groups of residential units or otherwise, shall be filed, recorded, or published with respect to the Property, and any condominium regime, cooperative, condominium map, condominium plat, condominium plan, declaration of condominium ownership, public report or filing, or any other document or instrument attempting to create or convert the Property to a condominium regime, cooperative or other common interest ownership structure involving separate ownership, or right to use, of individual residential units therein or timeshare interests in individual or groups of residential units which is filed, recorded, or published during the Condominium Restrictive Covenant Term shall be void;

(b) No stock cooperative or any other transfer of ownership interests in residential units to a residential purchaser, or other device for the purpose of creating fractionalized ownership, may be made effective as to the Property; and

(c) No dwelling unit located on the Property may be conveyed separately from all other dwelling units located on the Property (other than for rental by lease for residential purposes only).

Nothing in this Section 2 is intended to prevent ownership of the Property by a partnership, corporation, limited liability company, trust, or other business entity that may be established under applicable law so long as the ownership of the entity (other than incidental amounts) is not vested, directly or indirectly, in its entirety in persons who are occupants of the Property, or any portion thereof. The Condominium Prohibition Restrictive Covenant is expressly intended to prohibit the conversion of any multifamily development on the Property to a condominium regime, cooperative, or other common interest ownership structure during the Condominium Restrictive Covenant Term.

3. **Prohibited Commercial Uses.** None of the Property shall be used, occupied, or operated for any of the following uses or purposes (collectively, the “Prohibited Commercial Uses”):

(a) any bar, pub, nightclub, music hall, dance hall, or disco (except for bars that are part of a restaurant which derive more than 50% of their total revenues from sales other than alcoholic beverages);

(b) billiard or bingo parlor;

(c) flea market;

(d) massage parlor, adult video store, or any sexually oriented adult entertainment business;

(e) any business growing, cultivating, distributing, or selling medical or recreational marijuana or cannabis;

(f) any business selling paraphernalia for use with medical or recreational marijuana or cannabis or illicit drugs;

(g) sales or display of pornographic materials;

(h) any gas station or car wash;

(i) any oil/lube shop;

(j) any automobile repair or body shop; and

(k) any use which is illegal or dangerous, constitutes a nuisance, or is inconsistent with a multi-family apartment project, or is not permitted for the Property by any ordinances, codes, orders or laws affecting the Property ("Applicable Laws") as of the Effective Date.

4. **City Requirements.** With respect to the Prohibited Commercial Uses, if the Applicable Laws provide for more stringent restrictions with respect to the use of the Property, then the Applicable Laws will control.

5. **Inurement.** The terms, covenants, conditions, restrictions, charges, and encumbrances set out in this Declaration will run with and bind the Property, and will inure to the benefit of and be enforceable by Declarant and its respective legal representatives, successors, and assigns. Nothing contained herein shall create any rights in the general public or any person or entity other than Declarant and its respective legal representatives, successors, and assigns.

6. **Amendment.**

(a) This Declaration may be amended only by the recording of a written instrument in the Official Records of Utah County, Utah, executed and acknowledged by (i) Declarant (or its successors or assigns) and (ii) the owners of at least fifty-one percent (51%) of the Property, based on acreage. If a property owners association is formed for all or any portion of the Property (which may only be done after the expiration of the Condominium Restrictive Covenant Term), then the board of directors of such association may execute such amendment for the owners of the portions of the Property under the association's jurisdiction.

(b) Notwithstanding the foregoing or anything else to the contrary contained herein, prior to the expiration of the Condominium Restrictive Covenant Term, Section 2 of this Declaration may not be amended, revised, terminated, or otherwise altered or changed in any way except by written instrument recorded in the Official Records of Utah County, Utah, executed and acknowledged by D.R. Horton, Inc., unilaterally and without the consent or joinder of any other party.

7. **Enforcement and Nonwaiver - Generally.** Except as otherwise provided herein, Declarant, DHI Communities, Inc., a Delaware corporation, and their permitted assignees (collectively, the "Horton Benefited Parties"), will each have the right to enforce all of the provisions of this Declaration. Such right of enforcement will include 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 the Horton Benefited Parties. The Horton 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.

8. **Enforcement – Condominium Prohibition.** The Condominium Prohibition Restrictive Covenant shall benefit each of the Horton Benefited Parties. Each of the Horton Benefited Parties may enforce the Condominium Prohibition Restrictive Covenant, including enforcement by action for injunctive relief and suit for damages.

9. **Attorneys' Fees.** If a Horton Benefited Party prevails in any action to enforce this Declaration, then such prevailing party will be entitled to recover 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.

10. **Construction.** 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.

11. **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 of Utah.

12. **Reaffirmation of Restriction.** Until this Declaration is duly terminated, any entity or person acquiring title or any other interest in or to the Property shall be deemed conclusively and automatically to reconvey, ratify, confirm and reaffirm each and every grant of obligation, term and provision set forth herein affecting that property as a prerequisite to acquiring said title or other interest. Said reconveyance, ratification, confirmation and reaffirmation shall occur automatically by virtue of acquisition of title or any other interest, in or to any of said premises and need not be set forth expressly or separately in any other instrument.

13. **Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of the breach of any provisions of this Declaration shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Declaration.

14. **Severability.** This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Declaration or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Declaration and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

15. **Non-merger.** Notwithstanding any applicable law or legal concept or theory, no interest, right, benefit, obligation, term, provision or covenant contained herein or established hereby shall be deemed to merge with any other interest, right, benefit, obligation, term, provision or covenant contained herein or established hereby. Notwithstanding any applicable legal principle or theory including, but not limited to, the principle generally known as "merger," the ownership of the entirety of the lands defined as the "Property" by the same party at the same time shall not result in or cause the termination of this Declaration.

[Signature Page Follows.]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the Effective Date.

DECLARANT:

D.R. HORTON, INC.,
a Delaware corporation

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

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF TEXAS)

COUNTY OF TARRANT)

On February 12, 2021, before me, Carolyn Hastings, Notary Public, personally appeared Bill W. Wheat who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Carolyn Hastings*



EXHIBIT "A"

LEGAL DESCRIPTION

All of Lot 1, NORTSHORE PLAT F-2 SUBDIVISION, according to the official plat thereof recorded February 4, 2021 as Entry No. 21985:2021, Map No. 17520 in the official records of the Utah County Recorder.

Tax Id No.: 58-036-0109, 58-036-0124, 58-036-0131, 58-036-0142 and 67-039-0010