

Prepared by and after
recording return to:

Donna J. Feldman, Esquire
Feldman & Mahoney, P.A.
2240 Belleair Road
Suite 210
Clearwater, Florida 33764

DECLARATION OF RESTRICTIVE COVENANTS

This DECLARATION OF RESTRICTIVE COVENANTS (“**Declaration**”) is made as of September 3, 2019 by and between **GREYHAWK VENTURE, LLC**, a Florida limited liability company, whose address is 7807 Baymeadows Road East, Suite 205, Jacksonville, Florida 32256 (“**Seller**”), and **D.R. HORTON, INC. – JACKSONVILLE**, a Delaware corporation, whose address is 4220 Race Track Road, St. Johns, Florida 32259 (“**DR Horton**”), with reference to the following facts:

A. Concurrent herewith, Seller is conveying to DR Horton certain real property located in unincorporated Clay County, Florida (“**County**”), consisting of platted lots (“**Lots**”), which are specifically described in **Exhibit “A”** attached hereto (collectively, the “**Property**”) within what is known as the Greyhawk subdivision (“**Subdivision**”), all pursuant to that certain Lot Purchase Agreement with an Effective Date of July 6, 2017, as assigned and amended (the “**Purchase Agreement**”).

B. As a condition to conveying the Property to DR Horton, Seller requires DR Horton to execute, deliver and record this Declaration as an encumbrance on the Property in order to provide public record notice of the existence and terms, conditions, covenants, restrictions and agreements affecting development of the Property, and the Property shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following limitations and restrictions, all of which are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and adjacent lands.

NOW, THEREFORE, for consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Recitals; Exhibits; Capitalized Terms. The foregoing recitals are true and correct and, together with all exhibits attached hereto, are hereby incorporated into this Declaration by this reference. All capitalized terms not defined in this Declaration shall have the meanings ascribed to them in the Purchase Agreement.

2. Zoning; Concept Plans. DR Horton acknowledges that the Community is governed by, among other land use restrictions, the Amended and Restated Development Order Conditions for the Villages of Argyle, adopted by the County as Ordinance No. 99-46, as subsequently amended and modified, and 06-33, as evidenced by Notice of Adoption of Ordinance No. 06-33 recorded in Official Records Book 2836, Page 1379, of the Public Records of Clay County, Florida, as amended hereafter, and PUD Zoning Ordinance No. 2009-49, as heretofore and hereafter amended, commonly referred to as the Argyle PUD (collectively, the “**PUD Zoning**”). DR Horton shall not seek to modify the PUD Zoning or any other entitlements, permits or approvals affecting the Subdivision, nor to re-plat or re-subdivide the Property, or any portion thereof, including, without limitation, any Lot acquired by DR Horton. DR Horton shall cooperate with Seller in providing to Seller, at no out-of-pocket cost or expense of DR Horton, periodic sales information requested by Seller and required to satisfy any reporting requirements under the PUD Zoning.

3. Impact Fees and Other Development-Related Charges. Impact fee credits for impact fees that are required to be paid to the County to obtain building permits and/or certificates of occupancy for single-family homes within the Subdivision (each an “**Impact Fee Credit**”) may be or become available as to the Subdivision. To the extent that Impact Fee Credits are available or become available to Seller prior to the time that DR Horton would be required to pay the associated impact fee to the County, then DR Horton shall not pay the same to the County but shall, instead, pay Seller or such third party as directed by Seller or as to which recorded documentation evidences a requirement for payment to a third party for the associated Impact Fee Credit in the amount then charged by the County for the associated impact fee in exchange for an assignment or allocation of such Impact Fee Credit to DR Horton in a form which will be accepted by the County in satisfaction of the associated impact fee. Seller shall notify DR Horton within fifteen (15) days after the Effective Date of any Impact Fee Credits which exist or which Seller anticipates will exist. DR Horton shall be responsible for paying for the Impact Fee Credits in such amount and at such time as required in any applicable Impact Fee Credit agreements to which the Property is subject. DR Horton shall not make any impact fee payment directly to the County without first notifying Seller that DR Horton intends to pay the same, and receiving written notification from Seller that no associated Impact Fee Credit is available. Notwithstanding the foregoing, DR Horton hereby acknowledges and agrees that it is DR Horton’s sole responsibility to pay, at DR Horton’s sole cost and expense, all impact fees and development-related charges required for the construction of any improvements thereon. In any event, DR Horton shall not be required to pay impact fees for any Lot more than once, pay impact fees in an amount in excess of the impact fee rate then-being charged by the County, nor delayed by such process in obtaining building permits and/or certificates of occupancy, as applicable.

4. Cooperative Marketing. DR Horton is required by the terms of the Purchase Agreement to pay Seller a marketing fee (“**Marketing Fee**”) on the sale of each Lot improved with a home or construction and sale of a home on a third party lot within the Subdivision (whether such home is constructed on a Lot purchased by DR Horton pursuant to this Agreement, on a lot purchased from a third party, or on a lot owned by a third party). The Marketing Fee shall consist of an amount equal to one percent (1.0%) of the total price of the Lot/home contract or home contract if DR Horton constructs a home on a third party lot. The Marketing Fee shall be paid at the closing of the sale of the Lot with home or home as applicable. DR Horton shall direct the closing agent who closes on the sale of a Lot by DR Horton to a third party to deduct the Marketing Fee due to Seller from that sale from DR Horton's proceeds at the closing, and to pay the Marketing Fee directly to Seller. DR Horton will instruct the closing agent to prepare a written statement by DR Horton to Seller identifying the Lot, the date of closing on the sale of the Lot to a third party and the final contract sales price as shown on

the HUD-1 settlement statement or final Closing Disclosure (as applicable), to be executed by DR Horton and delivered to Seller for Seller's reliance, solely for the purpose of verifying the amount of Marketing Fee due from the sale, if any. In the event that DR Horton conveys any Lot to a third party prior to constructing a single-family residence thereon, DR Horton shall include a provision in the instrument of conveyance that creates a covenant, running with title to the Lot and enforceable by Seller against DR Horton's successors in title to the Lot, that imposes on those future owners of the Lot the obligation to pay the Marketing Fee to Seller as provided in this subsection.

5. Restriction on Resale; Right of Repurchase.

(a) Triggering Events; Time for Election. Seller shall have the repurchase rights set forth in this Section as to the Lots acquired by DR Horton in the following events (each a "**Triggering Event**"): (i) DR Horton desires to sell any Lot prior to its construction of a home thereon and without having entered into a non-contingent written contract to construct a home thereon for the intended purchaser as to such Lot; or (ii) a default by DR Horton under the Agreement. Notwithstanding the foregoing, Seller's repurchase right shall not apply to any Lot on which DR Horton has obtained a building permit and paid all permit and impact fees required to be paid to commence construction of improvements on such Lot. As to (i) above, DR Horton shall give Seller written notice of its intention to sell any Lot to a third party together with the terms of such sale, and Seller shall have fifteen (15) days to elect by written notification to DR Horton whether Seller desires to repurchase the Lot in accordance with this Section. As to (ii) above, Seller shall have sixty (60) days from the date on which the default occurs, and any applicable cure period has passed, to elect by written notification to DR Horton whether or not to purchase all or any of the Lots owned by DR Horton. If Seller does not notify DR Horton in writing within the applicable time period of its election to purchase the applicable Lot, Seller shall be deemed to have waived its right only as to the applicable Lot and the applicable Triggering Event; provided, however, if the Triggering Event is the sale by DR Horton of a Lot in accordance with subsection (i) above, then Seller's waiver or deemed waiver shall be conditioned upon the successor in interest to DR Horton assuming in writing at the closing of such sale all of DR Horton's continuing obligations under the Agreement as to such Lot, including, without limitation, payment of the Marketing Fee, indemnification obligations, construction activities, purchase of impact fee credits, and otherwise, with such instrument running to the direct benefit of Seller.

(b) Repurchase Closing. If Seller exercises timely its repurchase right under subsection (a) above, then Seller shall specify in its notice a closing date within thirty (30) days of the date of Seller's notice. The repurchase price shall be equal to the Purchase Price for the Lot(s) paid by DR Horton to Seller, and shall be payable in cash at the time of closing. DR Horton shall pay the costs of title insurance and documentary transfer taxes on the special warranty deed conveying such Lot(s), and Seller shall pay the cost for recording such deed. DR Horton shall convey title to the Lot(s) subject only to matters that existed at the time that DR Horton acquired the Lot from Seller. All other closing procedures set forth in this Agreement hereof shall apply to such repurchase closing.

6. Sales Reports. DR Horton shall deliver to Seller by the fifteenth (15th) day of each calendar month, a written report setting forth all Lots improved with homes that DR Horton sold and closed on the sale to a resident homebuyer during the preceding calendar month, identifying each Lot by Lot number, block and street address.

7. Covenant Running with the Land; Successors and Assigns. The parties acknowledge and agree that the terms of this Declaration specifically touch and concern the use and development of

the Property, and, therefore, that the provisions of this Declaration shall constitute covenants running with the land, burdening the Property and binding on any future owner with respect to the Property or any portion thereof (each a “**Future Owner**”), and benefiting Seller and the lands owned by Seller within the Subdivision from time to time, and such successors and assigns as to any property owned by Seller, or any portion thereof, as Seller may designate in writing by an instrument recorded in the Public Records (“**Designated Successor**”). DR Horton’s obligations under this Declaration are and shall constitute covenants running with title to the Property, binding on all Future Owners, and, except as related to conveyance of an unimproved Lot as detailed below, each reference herein to “DR Horton” shall be deemed to refer to each Future Owner. Notwithstanding the foregoing, Lots within the Property shall be deemed released automatically from the terms and scope of this Declaration upon recordation in the Public Records of a deed conveying to an individual homeowner fee simple title to such Lot improved with a home, provided that the Marketing Fee due, if any, is paid to Seller, or its Designated Successor, and any title insurance company may rely upon the foregoing in issuing title insurance free and clear of this Declaration with respect to such Lot at such time and thereafter. In the event that DR Horton conveys any Lot to a third party prior to constructing a single-family residence thereon, DR Horton shall include a provision in the instrument of conveyance that creates a covenant, running with title to the Lot and enforceable by Seller against DR Horton’s successors in title to the Lot, that imposes on the Future Owner(s) of the Lot the obligations in this Declaration; upon completion of conveyance of the Lot as evidenced by recordation of a deed from DR Horton to such Future Owner, including therein the covenant described above, then DR Horton shall be deemed released from any further obligations under this Declaration as to such Lot. Seller may assign its rights under this Declaration, in whole or in part, by recorded instrument to one or more Designated Successors; provided that Seller shall not have the right to assign its rights under this Declaration to any homeowners’ association or individual homeowners within the Subdivision.

8. No Third-Party Beneficiaries. Notwithstanding anything to the contrary set forth in this Declaration, this Declaration is for the benefit of Seller, and any Designated Successor only, and may not be relied upon, or enforced by any person or entity other than Seller or its Designated Successor(s).

9. Amendment; Waiver. This Declaration may not be modified or amended without the written consent of Seller or Seller’s Designated Successor, on the one hand, and DR Horton or any Future Owner, on the other hand. Any such amendment shall be recorded in the Public Records. The failure by Seller or Seller’s Designated Successor to enforce any covenant, condition, or restriction set forth herein shall in no event be deemed a waiver of the right to enforce the same or any other breach or violation thereof, and no waiver of any right or obligation hereunder shall be effective unless in writing signed by the party to be charged with such waiver.

10. Notices. Notices hereunder shall be given to the parties at the addresses set forth in the preamble. If given by regular mail, the notice shall be deemed to have been given within a required time if deposited in the U.S. Mail, postage prepaid, within the time limit. For the purpose of calculating time limits which run from the giving of a particular notice, the time shall be calculated from actual receipt of the notice, unless delivered by regular mail only in which case such notice shall be deemed received within three (3) days from deposit in the U.S. Mail with postage prepaid. If any party hereto is represented by legal counsel, such legal counsel is authorized to deliver written notice directly to the other party on behalf of his or her client, and the same shall be deemed proper notice hereunder if delivered in the manner specified above.

11. Enforcement; Attorneys’ Fees. In the event of the breach of any of the provisions set

forth in this Declaration, Seller, or Seller's Designated Successor, shall be entitled to all rights and remedies available at law (except for the recovery of special, consequential or punitive damages which are hereby waived) or in equity, including, without limitation, injunctive relief for the immediate and irreparable harm that would be caused by any act or omission by DR Horton or any Future Owner to comply with the terms of this Declaration. In the event of any action for enforcement of this Declaration by Seller or its Designated Successors, such enforcing party shall be entitled, in addition to all other relief granted by the court, to a judgment for reasonable attorneys' and legal assistants' fees and costs incurred by reason of such action, and all costs of mediation, arbitration or suit at both the trial and appellate levels.

12. Governing Law and Venue. This Declaration shall be governed by and construed in accordance with the laws of the State of Florida. Venue and jurisdiction for any dispute arising under this Assignment shall be exclusively in the courts located in Clay County, Florida, or the United States District Court for the Middle District of Florida.

13. Jury Trial Waiver. The parties each knowingly, voluntarily and intentionally waive any right which either of them may have to a trial by jury with respect to any litigation or legal proceeding based upon or arising directly, indirectly or otherwise in connection with, out of, related to or from this Declaration including, by way of example but not limitation, any course of conduct, course of dealings, verbal or written statements or acts or omissions of either party which in any way relate to this Declaration. The parties have specifically discussed and negotiated for this waiver and understand the legal consequences of it.

14. Severability. In case any one (1) or more of the provisions contained in this Declaration is found to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Declaration shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein unless such unenforceable provision results in a frustration of the purpose of this Declaration or the failure of consideration.

15. Construction. The parties hereto acknowledge that they have had the benefit of independent counsel with regard to this Declaration and that this Declaration has been prepared as a result of the joint efforts of all parties and their respective counsel. Accordingly, all parties agree that the provisions of this Declaration shall not be construed or interpreted for or against any party hereto based upon authorship.

16. Time of the Essence. Time is of the essence in the execution and performance of this Declaration and each of its provisions.

17. Counterparts. This Declaration may be executed in separate counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

[Signatures begin on following page.]

[Signature page to Declaration of Restrictive Covenants]

Signed, sealed and delivered
in the presence of:

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

Witness: John E. Zolacke

Print Name: John E. Zolacke

By: John E. Zolacke

Print Name: John E. Zolacke

Title: Vice President

Witness: Deborah E. McClure

Print Name: Deborah E. McClure

STATE OF FLORIDA

COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 3 day of Sept., 2019, by John E. Zolacke, as Vice President of D.R. Horton, Inc. – Jacksonville, a Delaware corporation, on behalf of the corporation, (check one) ☒ who is personally known to me or ☐ who has produced a _____ as identification.

Deborah E. McClure
Notary Public

Printed Name: Deborah E. McClure

My Commission Expires: _____

Notary Seal:



DEBORAH E. MCCLURE
MY COMMISSION # GG 009987
EXPIRES: July 10, 2020
Bonded Thru Budget Notary Services

EXHIBIT "A"

Property

Lots 150, 151, 152, 153, 181, 182, 197, 198 and 199 of GREYHAWK UNIT 1, according to the Plat thereof as recorded in Plat Book 60, pages 50 through 61, of the Public Records of Clay County, Florida