

THIS INSTRUMENT PREPARED BY:

Sarah Outlaw McLaughlin, Esq.

Hand Arendall Harrison Sale LLC

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411-172800400L2STATE OF ALABAMA
COUNTY OF BALDWIN**FIRST AMENDMENT TO DECLARATION OF CONDITIONS, COVENANTS
AND RESTRICTIONS OF DIAMANTE SUBDIVISION**

THIS FIRST AMENDMENT TO DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS (this "Amendment") is made this 16th day of July, 2020 (the "Effective Date"), by 68V DIAMANTE 2017, LLC, an Alabama limited liability company ("Declarant").

WITNESSETH:

WHEREAS, on October 11, 2018, Declarant recorded that certain Declaration of Conditions, Covenants and Restrictions of Diamante Subdivision (the "Subdivision") at Instrument Number 1726237 (the "Declaration"), regarding certain real property located in Baldwin County, Alabama and described on that subdivision plat for Diamante Subdivision, Phase One, recorded at Slide 2652E, all in the Office of the Judge of Probate of Baldwin County, Alabama (the "Public Records");

WHEREAS, Declarant is the owner of all of that certain property shown on the plat of subdivision for Diamante Phase Two recorded at Slide 2730-C and 2730-D, as amended by the plat recorded at Slide 2734-D and 2734-E, all in the Public Records (the "Phase 2 Plat");

WHEREAS, Section 10.02 of the Declaration permits Declarant to amend the Declaration to annex any or all of the Additional Property, which includes all of the property shown on the Phase 2 Plat (the "Phase 2 Property");

WHEREAS, Section 10.03 of the Declaration permits Declarant to amend the Declaration in any manner that Declarant deems necessary and appropriate prior to Turnover (as that term is defined in the Declaration), and as of the Effective Date, Turnover has not occurred; and

WHEREAS, Declarant desires to amend the Declaration in accordance with the terms and conditions hereof.

Amendment:

NOW THEREFORE, Declarant, as the declarant under the Declaration, hereby amends the Declaration as follows:

1. Capitalized Terms. Capitalized terms used herein unless otherwise defined herein shall have the meaning ascribed to such terms in the Declaration.

2. Recitals. The foregoing recitals are true and correct in all material respects and form an integral part of this Amendment, the same as if said recitals were included in the numbered paragraphs hereof.

3. Annexation of Phase 2 Property. The Phase 2 Property, including any improvements located thereon and hereafter constructed, is hereby annexed and subjected to the provisions of the Declaration, and such property shall be held, sold, transferred, conveyed, used, and occupied subject to the covenants, conditions, restrictions, easements, and terms set forth in the Declaration, as amended hereby. Upon the recording of this Amendment, each lot shown on the Phase 2 Plat shall be a "Lot" and all common areas shown on the Phase 2 Plat shall be "Common Area," as those terms are defined in the Declaration.

4. Restrictions Against Clearing. The southern ten (10') feet of Lots 87, 88, and 121 through 128 as shown on the Phase 2 Plat (collectively, the "Affected Lots: Clearing") are subject to a prohibition against clearing or otherwise removing any trees from within such area, which is depicted on the Phase 2 Plat as the "10' No Clear Zone." The Owners of the Affected Lots: Clearing may not cut or otherwise remove any trees from within such "10' No Clear Zone."

5. Amendment Regarding Drainage. Notwithstanding anything contained in the Declaration to the contrary, upon commencing construction of a House, the Owners of Lots 122 through 125 (collectively, the "Affected Lots: Drainage") as shown on the Phase 2 Plat shall make good faith, commercially reasonable efforts to mitigate excess stormwater from draining onto the property located to the south of the Affected Lots: Drainage. In no way limiting the foregoing, the Owners of the Affected Lots: Drainage shall not be required to install or construct any additional drainage system or otherwise implement any other drainage plan apart from those approved by the City of Daphne, Alabama in connection with the development of the Subdivision.

6. Continued Effectiveness. All of the applicable terms, conditions and provisions of the Declaration, as hereby supplemented and amended, are in all respects hereby ratified and reaffirmed, and the Declaration and this Amendment shall be read, taken, and construed as one and the same instrument. References in the Declaration and all exhibits thereto shall be deemed to be references to the Declaration as amended by this Amendment.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Declarant has executed this Amendment by and through its duly authorized representative as of the date first set forth above.

DECLARANT:

68V Diamante 2017, LLC, an Alabama limited liability company

By: 68 Ventures, LLC, an Alabama limited liability company, as its Manager

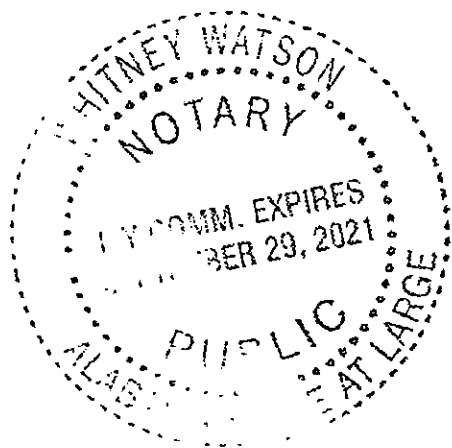
By: 
Nathan L. Cox
As Its Manager

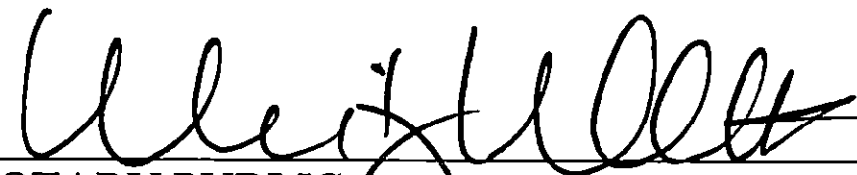
STATE OF ALABAMA :
COUNTY OF BALDWIN :

I, the undersigned Notary Public, in and for said State and said County, hereby certify that Nathan L. Cox, whose name as Manager of 68 Ventures, LLC, an Alabama limited liability company, as the Manager of 68V Diamante 2017, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Manager and with full authority, executed the same voluntarily as and for the act of said limited liability company on the day the same bears date.

Given under my hand and official notarial seal this the 16th day of June, 2020.

{SEAL}




NOTARY PUBLIC
My Commission Expires: Sept. 29, 2021

MORTGAGEE'S CONSENT AND SUBORDINATION

SMARTBANK formerly known as (f/k/a) CAPSTONE BANK ("Secured Lender"), the mortgagee under that certain Mortgage and Security Agreement, executed by 68V Diamante 2017, LLC, an Alabama limited liability company, dated May 18, 2017 and recorded in Instrument Number 1634578 of the Office of the Judge of Probate of Baldwin County, Alabama (the "Mortgage"), does hereby consent to the recording of this Amendment. Secured Lender does hereby acknowledge and agree that the Declaration, as amended by this Amendment, shall be given priority over the Mortgage, and shall be unaffected by any default, foreclosure or exercise of any other remedy under the Mortgage, the same as if this Amendment were executed, delivered and recorded prior to the execution and recording of the Mortgage.

IN WITNESS WHEREOF, Secured Lender has caused this Consent and Subordination to be executed by and through its duly authorized representative as of the 18 day of June, 2020.

SMARTBANK f/k/a CAPSTONE BANK

By: [Signature]
Name: Ed Hammel
As Its: SVP

STATE OF Alabama
COUNTY OF Baldwin

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that Ed Hammel as the SVP for SmartBank f/k/a Capstone Bank, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day, that being informed of the contents of said conveyance, s/he has executed the same voluntarily for and as the act of said entity.

Given under my hand and seal this 18th day of June, 2020.

[Signature]
Notary Public
My Commission Expires: 13 Aug 2022

MORTGAGEE'S CONSENT AND SUBORDINATION

D.R. HORTON, INC. – BIRMINGHAM, an Alabama corporation (“Secured Lender”), the mortgagee under that certain Earnest Money Mortgage, executed by 68V Diamante 2017, LLC, an Alabama limited liability company, dated May 18, 2017 and recorded in Instrument Number 1634580 of the Office of the Judge of Probate of Baldwin County, Alabama (the “Mortgage”), does hereby consent to the recording of this Amendment. Secured Lender does hereby acknowledge and agree that the Declaration, as amended by this Amendment, shall be given priority over the Mortgage, and shall be unaffected by any default, foreclosure or exercise of any other remedy under the Mortgage, the same as if this Amendment were executed, delivered and recorded prior to the execution and recording of the Mortgage.

IN WITNESS WHEREOF, Secured Lender has caused this Consent and Subordination to be executed by and through its duly authorized representative as of the 14 day of July, 2020.

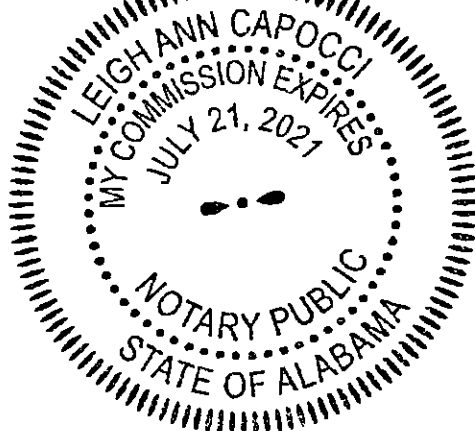
D.R. HORTON, INC. – BIRMINGHAM, an Alabama corporation

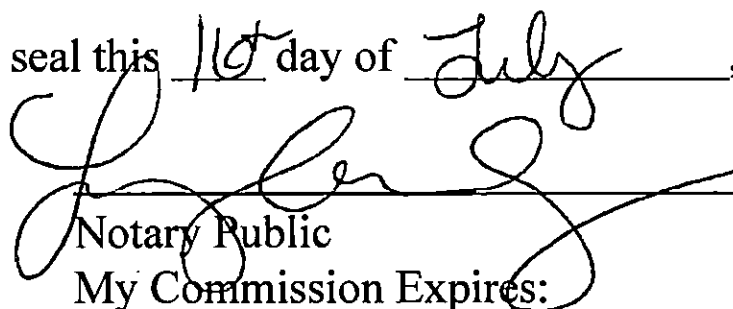
By: 
Rusty K. Gilbert
As Its Assistant Secretary

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that Rusty K. Gilbert, as the Assistant Secretary for D.R. Horton, Inc. – an Alabama corporation, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day, that being informed of the contents of said conveyance, he has executed the same voluntarily for and as the act of said entity.

Given under my hand and seal this 14 day of July, 2020.




Notary Public
My Commission Expires: