

When Recorded Return To:

D.R. Horton, Inc.
12351 South Gateway Park Place, Suite D-100
Draper, Utah 84020
Attention: Krisel Travis

13165600
01/08/2020 01:56 PM \$40.00
Book - 10882 Pg - 6719-6725
RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
D.R. HORTON INC
12351 SOUTH GATEWAY PARK PLACE
SUITE D-100
DRAPER UT 84020
BY: STP, DEPUTY - WI 7 P.

DRIVEWAY EASEMENT

This DRIVEWAY EASEMENT agreement ("Agreement") is made and entered into as of January 2, 2020, by D.R. HORTON, INC., a Delaware corporation ("D.R. Horton"), as owner of both the benefitted and burdened parcels that are the subject of this Easement.

RECITALS

WHEREAS, D.R. Horton is the current owner of the property which is known as Lot 42 in that certain subdivision plat of Millpoint P.U.D. on file with the Office of the Recorder of Salt Lake County, Tax Parcel No. 14-28-303-077, located at 3196 S Lucky Penny Ave., Magna, Utah ("Lot 42");

WHEREAS, D.R. Horton is the current owner of the property which is known as Lot 43 in that certain subdivision plat of Millpoint P.U.D. on file with the Office of the Recorder of Salt Lake County, Tax Parcel No. 14-28-303-078, located at 3194 S Lucky Penny Ave., Magna, Utah ("Lot 43," together with Lot 42, the "Lots" and each, a "Lot");

WHEREAS, D.R. Horton, as the owner of the Lots, intends to hereafter construct a private driveway on and over the southerly portion of Lot 42 and Lot 43 for the purpose of providing a means of residential access from Lucky Penny Avenue to one single-family residence on Lot 42 and one single-family residence on Lot 43, all as more specifically described below (the "Driveway");

WHEREAS, D.R. Horton desires to set forth the rights and obligations of the owner of Lot 42 ("Lot 42 Owner") and the owner of Lot 43 ("Lot 43 Owner") (each, an "Owner," and together, the "Owners") with respect to the use, maintenance and improvement of the Driveway; and

NOW, THEREFORE, in consideration of the benefits granted and derived herein, the receipt and sufficiency of which are acknowledged, D.R. Horton hereby makes and enters into this agreement and grants the rights as more fully set forth below:

EASEMENT

1. **Grant and Creation of Easement.** D.R. Horton as the Owner of the Lots hereby creates, declares, grants and impresses upon those certain portions of Lot 43 described on EXHIBIT A and shown on EXHIBIT B attached to this Agreement (“Driveway Easement Area”) a perpetual private non-exclusive easement (“Easement”) over, under, and across the Driveway Easement Area for the purpose of using, maintaining, repairing, and replacing the Driveway located within (or to be located by D.R. Horton within) the Driveway Easement Area. In the event of any discrepancy between the Legal description on EXHIBIT A and the depiction on EXHIBIT B, the former shall control.

2. **Scope of Easement.** The Easement may be used by the Lot 42 Owner, and its successors in interest, as well as its authorized agents, tenants, occupants, contractors, invitees, licensees and other representatives for the sole purpose of providing pedestrian and vehicular ingress and egress from Lucky Penny Avenue to the single-family residence and related appurtenances on Lot 42. The Lot 43 Owner, and its respective successors in interest, as well as its authorized agents, tenants, occupants, contractors, invitees, licensees and other representatives shall not have any right to park on or otherwise obstruct any portion of the Driveway Easement Area.

3. **Maintenance and Repair.** Except as otherwise provided herein, the Owners shall each share equally and jointly in the cost of maintaining the Driveway Easement Area free of waste and in a safe and clean condition, and in a paved or asphalted condition, in good repair, free from major cracks and potholes (“Road Standard”). Either Owner may propose reasonable repairs or maintenance work to the Driveway Easement Area by delivering written notice to the other Owner at the address on file with the Salt Lake County Assessor’s office. Unless otherwise mutually agreed by the Owners, neither of the Owners shall be responsible for sharing the costs of any work that is not necessary to maintain the Road Standard and is not the subject of at least two competitive bids. Any work that exceeds the Road Standard or otherwise is not performed or approved as required, shall be at the sole cost and expense of the Owner choosing to undertake such work. Each Owner shall be solely responsible for the portion of any driveway or related facilities that is used by only its Lot and is situated outside of the Driveway Easement Area. Notwithstanding anything to the contrary herein, to the extent the repair or maintenance arises out of the gross negligence or intentional misconduct of the other Owner, or its authorized agents, tenants, occupants, contractors, invitees, licensees and other representatives, or is caused by abnormal and nonstandard usage (i.e. intensive activity and heavy vehicles associated with construction on one of the Lots), the Owner responsible for the damage shall promptly pay all costs associated with the repair or maintenance.

4. **Payment and Enforcement.** If an Owner expends sums for performing the work authorized hereunder to maintain the Driveway to the Road Standard, then the other Owner shall promptly tender its share of the costs at the time and in the manner required under the contract for such work, or pursuant to a separate agreement between the Owners. Any Owner who fails to timely pay its share or fulfill an obligation under this Agreement within fourteen (14) calendar days after the delivery to such Owner of written notice of the obligation, accompanied by supporting documentation, shall be deemed in default under this Agreement. Upon default,

interest on any delinquent amounts shall accrue at a rate of twelve percent (12%) per annum or, if lower, any maximum legal rate. In addition, any Owner who has incurred authorized expenses on behalf of a defaulting Owner may, after providing fourteen (14) days advance written notice of such nondefaulting Owner's intent to record a lien, may record a lien against the defaulting Owner's Lot, if the amounts are not sooner paid in full. Any such lien may be foreclosed by suit, power of sale, or any other manner permitted by applicable law. Any lien granted under this Agreement shall automatically be subordinate to any mortgage or deed of trust or any other security now or hereafter placed on the relevant Lot.

5. **Restriction and Reserved Use.** No Owner shall construct, locate, or authorize construction or location of any buildings or structures within the Driveway Easement Area, or plant any vegetation or landscaping within the Driveway Easement Area that adversely affects or interferes with the intended use of the Driveway located therein. No Owner shall back any vehicle out onto Lucky Penny Avenue or enter Lucky Penny Avenue in reverse gear.

6. **Indemnification.** Each Owner (the "Indemnifying Owner") shall defend, indemnify, and hold the other Owner harmless from and against any and all loss, damage, claims, penalties, liability, suits, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or related to the exercise of the rights granted or performance of obligations in this Agreement by the Indemnifying Owner, its employees, agents, tenants, guests, contractors, invitees or licensees; provided, however, that the Indemnifying Owner's indemnity provided herein shall not be construed as covering liability, loss, harm or damage resulting from the negligent or intentional acts of the other Owner, and its employees, tenants, guests, contractors, invitees and licensees.

7. **Reservation of Rights and Affirmative Obligations.** The Lot 43 Owner reserves all rights not expressly granted or inconsistent with the rights conveyed herein. Notwithstanding anything to the contrary contained herein, the Lot 43 Owner shall be obligated to (i) insure those portions of Lot 43 that fall within the Driveway Easement Area as part of any homeowner's insurance covering Lot 43 and any improvements thereon and (ii) shall pay when due all real property taxes with respect to same.

8. **Successors and Assigns; Covenant Runs with Land.** The benefits and burdens set forth in this instrument shall be binding upon and inure to the benefit of the Owners and their respective successor owners and permitted assigns and shall run as covenants with the land. No Owner may separately assign their interest or obligations hereunder without the prior consent of the other Owner.

9. **Amendment.** This agreement shall not be modified, amended, or terminated except by written instrument signed by all of the Owners. Any such instrument shall be recorded in the Office of the Recorder of Salt Lake County.

10. **No Merger.** By its acceptance of a deed to any of the Lots, the respective Owner acknowledges, accepts, and agrees that this instrument is effective and shall be binding upon it and

further agrees to abide by this instrument and the rights and obligations granted/stated herein. Neither this instrument nor the Easement granted herein shall fail or be extinguished merely because title to any or all of the Lots is ever vested in the same Owner. No extinguishment shall occur without a written termination or extinguishment executed by all Owners being recorded in the Office of the Recorder of Salt Lake County.

11. **Applicable Law.** This instrument shall be governed by and construed in accordance with the laws of the State of Utah. If any term of this instrument is held or made invalid by any court or law, such invalidity shall not affect the remainder of this instrument.

12. **Attorney Fees.** In the event the owner(s) hereunder retain an attorney to enforce the provisions or the terms set forth herein, the prevailing Owner shall be entitled to reimbursement for its attorney fees and costs.

[SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this instrument was executed and made on the date first above written (or, if blank, then the date this instrument is recorded).

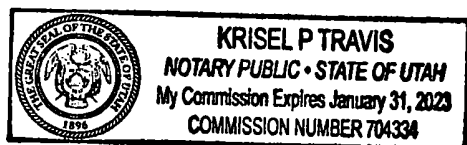
D.R. HORTON (as Lot 42 Owner and Lot 43 Owner):

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

By: *Adam R. Loser*
Name: Adam R. Loser
Title: Vice President

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged to me this 2 day of January, 2020, by Adam R. Loser, in such persons' capacity as the Vice President of D.R. Horton, Inc., a Delaware corporation.



Krisel P Travis
NOTARY PUBLIC

EXHIBIT A

Legal Description of Driveway Easement Area

The Driveway Easement Area consists of that certain real property located in Magna Metro Township, Salt Lake County, Utah more particularly described as follows:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 43 OF THE MILLPOINT P.U.D. SUBDIVISION RECORDED AS ENTRY NO.12493957 IN BOOK 2017P AT PAGE 48 OF THE OFFICIAL RECORDS OF SALT LAKE COUNTY RECORDERS OFFICE, AND RUNNING THENCE NORTH 89°58'33" WEST 66.00' TO THE SOUTHEAST CORNER OF LOT 42; THENCE NORTH 0°03'140" WEST 10.00 FEET ALONG THE WEST LOT LINE FOR LOT 43; THENCE SOUTH 89°58'33" EAST 66.73 FEET TO THE WEST RIGHT OF WAY LINE FOR LUCKY PENNY AVENUE; THENCE ALONG THE SAID RIGHT OF WAY LINE SOUTH 4°54'44" WEST 6.35 FEET TO A POINT ON A 49.50 FOOT RADIUS CURVE TO THE LEFT, THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 3.68 FEET THROUGH A CENTRAL ANGLE OF 4°15'36" (HAVING A LONG CHORD OF SOUTH 2°56'51" WEST 3.68 FEET) TO THE POINT OF BEGINNING.

EXHIBIT B

Depiction of Driveway Easement Area

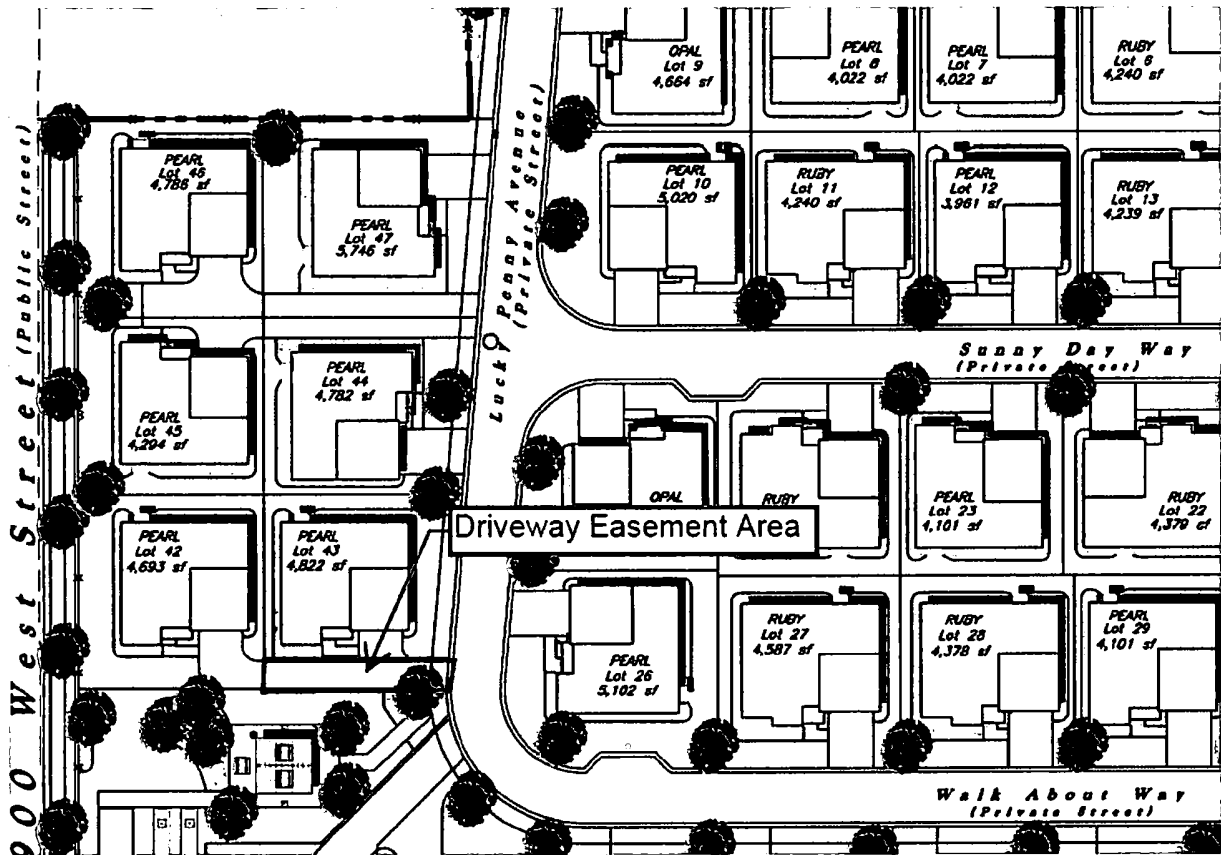


Exhibit B