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RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
HERRIMAN
5355 W HERRIMAN MAIN ST
HERRIMAN UT 84096
BY: MBA, DEPUTY - MA 10 P.

MAINTENANCE AGREEMENT
South Hills Pod 2 Owners Association, Inc. Park

THIS MAINTENANCE AGREEMENT (the "**Agreement**") is made and entered into as of May 19, 2020 (the "**Effective Date**"), by and between **HERRIMAN CITY**, a Utah Municipality ("**City**"), and **D. R. Horton, Inc.**, a Delaware corporation, including their successors or assigns, ("**Owner**"). City and Owner may be referred to herein collectively as "**Parties**" or individually as a "**Party**."

RECITALS

A. Owner has developed a residential subdivision named South Hills Pod 2 (the "**Project**"), located at approximately 14900 South 3450 West, Herriman, Utah. As described and shown on Exhibit A.

B. A portion of the project includes landscaped area, open space, trail, and a stormwater detention basin as shown on Exhibit B attached hereto and incorporated herein by this reference (the "**Site**").

C. City has a desire to occasionally perform maintenance upkeep including placement of granular material with heavy equipment (**Maintenance**) to the Site.

D. The Parties agree to allow public use of the Site for the purpose of ingress/egress. The Parties now desire to enter into this Agreement to, among other things, set forth the specific terms of such public use and the Parties' obligations with respect thereto

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in reliance on the foregoing recitals, the Parties agree as follows:

1. **Incorporations of Recitals**. The Parties hereby incorporate the foregoing recitals into this Agreement.

2. **"Public Use"**. As used herein, the term "public use" shall include pedestrian travel over and across the Site.

3. **Maintenance and Operation Costs**. The Parties agree that maintenance and operation costs for the Site shall be as follows:

- a. **Trail**. City is hereby granted access to the site to maintain only the asphalt portion of the trail at its sole cost and discretion.
- b. **Stormwater Detention Basin**. City agrees to maintain the detention basin at its sole costs and expense. The existing irrigation system will be modified by the City such that the Stormwater Detention Basin will be solely irrigated by a City owned system independent from the HOA owned irrigation system.

- c. Landscaped and Open Space Areas. Owner agrees to maintain the landscaped open space areas, including the irrigation system and related components, and/or other non-trail improvements in the Site.
- d. Utilities. Owner shall pay One Hundred Percent (100%) of the water and power costs for the Site related to landscape irrigation and other non-trail utility costs.

4. **Termination.** This Agreement shall continue for 20-years from the date of execution at which this agreement shall automatically terminate. City and Owner may extend the Agreement for additional terms of 20-years by renewing the agreement.

5. **Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

6. **Notices:** Unless otherwise specifically provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to any Party shall be in writing and shall be deemed duly served, given, delivered and received when personally delivered (including confirmed overnight delivery service to the party to whom it is directed), or in lieu of such personal delivery, when addressed and delivered to:

To City: Herriman City
 Attn: City Manager
 5355 West Main Street
 Herriman, UT 84096

Copy to: John Brems
 5355 West Herriman Main Street
 Herriman, UT 84096

To Owner: D. R. Horton, Inc.
 Attn: Adam Loser
 12351 South Gateway Park Place, Suite D-100
 Draper, UT 84020

Any Party may change its address for the purpose of this section by giving written notice of such change to the other Parties in the manner provided in this section.

7. **Amendments.** This Agreement may be amended only by a writing executed by Owner and an authorized executive official or representative for City.

8. **Other Necessary Acts.** Each Party shall execute and deliver to the other any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement.

9. **Construction/Interpretation.** This Agreement has been reviewed and revised by legal counsel for both City and Owner, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

10. **Waiver.** No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement.

11. **Remedies.** Any Party may, in addition to any other rights or remedies, institute an equitable action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement.

12. **Attorney Fees.** If any Party is required to engage the services of counsel by reason of the default of the other Parties, the non-defaulting Party shall be entitled to receive its costs and actual attorney fees, both before and after judgment and whether or not suit be filed or the provisions of this Agreement be enforced through mediation or arbitration. Said costs and attorney fees shall include, without limitation, costs and attorney fees incurred in any appeal and in any proceedings under any present or future federal bankruptcy act or state receivership act.

13. **Utah Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

14. **No Third-Party Beneficiaries.** This Agreement is among the Parties. No other party shall be deemed a third-party beneficiary or have any rights under this Agreement.

15. **Force Majeure.** No liability or breach of this Agreement shall result from delay in performance or nonperformance caused, directly or indirectly, by circumstances beyond the reasonable control of the Party affected ("**Force Majeure**"), including, but not limited to, fire, extreme weather, terrorism, explosion, flood, war, power interruptions, the act of other governmental bodies, accident, labor trouble or the shortage or inability to obtain material, service, personnel, equipment or transportation, failure of performance by a common carrier, failure of performance by a public utility, or vandalism.

16. **Entire Agreement, Counterparts and Exhibit.** Unless otherwise noted herein, this Agreement is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. Nothing in this integration clause shall affect the validity of other agreements executed among some of the Parties. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the Parties. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A – Legal Description of Parcel 1

Exhibit B – Map of Maintenance Area

17. **Government Records Access and Management Act.** City is subject to the requirements of the Government Records Access and Management Act, Chapter 2, Title 63G, Utah Code Annotated or its successor (“GRAMA”). All materials submitted by Owner pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure pursuant to GRAMA. The burden of claiming an exemption from disclosure shall rest solely with Owner or Agency. Any materials for which Owner claims a privilege from disclosure shall be submitted marked as “**Business Confidential**” and accompanied by a concise statement of reasons supporting claim of business confidentiality. City will make reasonable efforts to notify Owner of any requests made for disclosure of documents submitted under a claim of business confidentiality.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY:

HERRIMAN CITY,
a municipal corporation of the State of Utah

By: Brett geo. Wood
Its: Brett geo. Wood, City Manager

ATTEST:

Jackie Nostrom
Jackie Nostrom, City Recorder

Approved as to form:

C. Cui
City Attorney Office



[Signatures Continue on Following Page]

OWNER:

D. R. Horton, Inc.,
a Delaware corporation

By: 

Name: Jonathan S. Thornley

Its: Division CFO

EXHIBIT A

Legal Description of Parcel 1

BOUNDARY DESCRIPTION PARCEL 1

A PARCEL OF LAND LOCATED IN THE SOUTHWEST AND SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 4 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SECTION 8, TOWNSHIP 4 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 0°33'20" WEST, ALONG THE NORTH-SOUTH CENTER QUARTER LINE, A DISTANCE OF 300.11 FEET, TO THE SOUTH SIDELINE OF THE WELBY JACOB CANAL AND POINT OF BEGINNING FOR THIS DESCRIPTION; THENCE RUNNING ALONG SAID SIDELINE FOR THE FOLLOWING SEVEN COURSES:

- (1) THENCE SOUTH 67°20'12" EAST, A DISTANCE OF 14.40 FEET;
- (2) THENCE SOUTH 65°08'49" EAST, A DISTANCE OF 210.38 FEET;
- (3) THENCE SOUTH 59°50'24" EAST, A DISTANCE OF 372.88 FEET;
- (4) THENCE SOUTH 52°56'21" EAST, A DISTANCE OF 105.79 FEET;
- (5) THENCE SOUTH 43°56'22" EAST, A DISTANCE OF 163.88 FEET;
- (6) THENCE SOUTH 42°47'03" EAST, A DISTANCE OF 277.62 FEET;
- (7) THENCE SOUTH 34°16'43" EAST, A DISTANCE OF 29.31 FEET;

THENCE SOUTH 82°04'39" WEST, A DISTANCE OF 346.60 FEET;
THENCE SOUTH 07°55'21" EAST, A DISTANCE OF 88.00 FEET;
THENCE SOUTH 82°04'39" WEST, A DISTANCE OF 68.00 FEET;
THENCE NORTH 07°55'21" WEST, A DISTANCE OF 88.00 FEET;
THENCE SOUTH 82°04'39" WEST, A DISTANCE OF 374.02 FEET;
THENCE SOUTH 24°00'00" WEST, A DISTANCE OF 322.70 FEET;
THENCE SOUTH 33°27'55" WEST, A DISTANCE OF 51.65 FEET;
THENCE NORTH 00°33'20" EAST, A DISTANCE OF 103.40 FEET;
THENCE SOUTH 89°38'37" WEST, A DISTANCE OF 69.56 FEET;
THENCE NORTH 24°00'00" EAST, A DISTANCE OF 517.95 FEET;
THENCE SOUTH 66°00'00" EAST, A DISTANCE OF 28.07 FEET;
THENCE NORTH 24°00'00" EAST, A DISTANCE OF 385.17 FEET;
THENCE NORTH 59°50'24" WEST, A DISTANCE OF 155.71 FEET;
THENCE NORTH 65°08'49" WEST, A DISTANCE OF 206.78 FEET;
THENCE NORTH 67°20'12" WEST, A DISTANCE OF 13.35 FEET;
THENCE NORTH 02°07'24" WEST, A DISTANCE OF 0.24 FEET;
THENCE NORTH 67°22'41" WEST, A DISTANCE OF 400.52 FEET;

THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 548.05 FEET, A DISTANCE OF 131.51 FEET, THROUGH A CENTRAL ANGLE OF 13°44'56";

THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 973.95 FEET, A DISTANCE OF 50.65 FEET, THROUGH A CENTRAL ANGLE OF 2°58'47";

THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 483.45 FEET, A DISTANCE OF 141.30 FEET, THROUGH A CENTRAL ANGLE OF 16°44'44";

THENCE NORTH 53°57'16" EAST, A DISTANCE OF 66.77 FEET TO THE SOUTHWESTERLY SIDELINE OF THE PROVO RESERVOIR CANAL;

THENCE ALONG SAID SOUTHWESTERLY SIDELINE THE FOLLOWING FIVE COURSES:

- (1) ON THE ARC OF A NON TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 83.94 FEET, THE CENTER OF WHICH BEARS NORTH 41°24'25" EAST, THROUGH A CENTRAL ANGLE OF 20°41'03", A DISTANCE OF 30.30 FEET;

- (2) ON THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 428.45 FEET,
THROUGH A CENTRAL ANGLE OF $8^{\circ}52'13''$, A DISTANCE OF 66.33 FEET;
- (3) ON THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 918.95 FEET,
THROUGH A CENTRAL ANGLE OF $2^{\circ}58'47''$, A DISTANCE OF 47.79 FEET;
- (4) ON THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 603.05 FEET,
THROUGH A CENTRAL ANGLE OF $13^{\circ}44'56''$, A DISTANCE OF 144.71 FEET;
- (5) THENCE SOUTH $67^{\circ}22'41''$ EAST, A DISTANCE OF 400.52 FEET;
THENCE SOUTH $10^{\circ}10'47''$ EAST, A DISTANCE OF 0.26 FEET, MORE OR LESS, TO THE
POINT OF BEGINNING.

CONTAINS 9.009 ACRES, MORE OR LESS.

EXHIBIT B

Map of Maintenance Area

SEE ATTACHED

EXHIBIT B
SOUTH HILLS POD 2
OPEN SPACE
MAINTENANCE AGREEMENT

