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BK 7337 PG 863

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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
8/30/2019 10:02:00 AM  
FEE \$40.00 Pgs: 6  
DEP eCASH REC'D FOR MOUNTAIN VIEW TITLE &

When recorded, return to:

Benson Whitney  
Richmond American Homes of Utah, Inc.  
849 W. Levoy Drive, Suite 220  
Salt Lake City, UT 84123

12-046-0113

**CONSTRUCTION EASEMENT AGREEMENT**

(Seasons at Simpson Springs)

This CONSTRUCTION EASEMENT AGREEMENT (this "Easement Agreement") is entered into as of this 28<sup>th</sup> day of August, 2019, by and between WESTWARD DEVELOPMENT, LLC, a Utah limited liability company ("**Grantor**"), and RICHMOND AMERICAN HOMES OF UTAH, INC., a Colorado corporation ("**Grantee**"). Grantor and Grantee may be referred to herein individually as a "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS, Grantor is the owner of that certain real property described on **Exhibit "A"** attached hereto ("**Easement Property**").

WHEREAS, Grantor and Grantee have entered into that certain Settlement Agreement and Release dated July 29, 2019 ("**Settlement Agreement**").

WHEREAS, pursuant to the terms of the Settlement Agreement, Grantee will be constructing a storm drain discharge pipe on the Easement Property.

WHEREAS, for the above reasons, Grantor desires to grant to Grantee a construction easement for the installation and construction of the storm drain discharge pipe on the Easement Property.

**AGREEMENT**

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

1. Grant of Easement. Grantor hereby grants to Grantee and its affiliates, contractors, employees, agents, customers, licensees, invitees, successors and assigns a construction easement upon, over, across and under the Easement Property for the purpose of the installation and construction of the storm drain discharge pipe as follows: (a) access to, upon, over and across the Easement Property as may be reasonably necessary or appropriate in connection with installation and construction of the storm drain discharge pipe; (b) the passage, storage and parking of construction and other vehicles; (c) staging and stockpiling of construction materials and equipment, including dirt stockpiles; and (d) any other construction activities as may be necessary in furtherance of the installation and construction of the a storm drain discharge pipe.

2. Term of Easements. This Easement Agreement and the other rights granted herein shall be effective from and after the date this Easement Agreement is recorded in the Official Records of Davis County, Utah (the "Official Records"). This Easement Agreement and the other rights granted herein shall automatically expire and terminate without any action by the parties hereto being required on the date that is one (1) year after Grantee has completed the installation and construction of the storm drain discharge pipe. Notwithstanding the foregoing or anything else to the contrary contained herein, upon the automatic termination of the Easement Agreement pursuant to the immediately preceding sentence and upon the written request of Grantor, Grantee agrees to execute, acknowledge and deliver to Grantor an instrument evidencing the termination of this Easement Agreement, which Grantor may record in the Official Records or Grantor may elect to record its own Termination of Easement Agreement, provided a copy of such Termination of Easement Agreement is promptly sent to Grantee.

3. Indemnification; Release; Insurance. Grantee hereby agrees that it shall defend, indemnify and hold Grantor, its affiliates, contractors, employees, agents, customers, licensees, invitees, successors and assigns harmless for, from and against any mechanics' and/or materialmen's liens and all other liabilities, claims, demands, losses and expenses (including reasonable attorneys' fees) that may arise out of or in connection with the installation and construction of the a storm drain discharge pipe, except to the extent caused by the negligence or willful misconduct (whether comparative or total) of Grantor, its affiliates, contractors, employees, agents, customers, licensees, invitees, successors and assigns. Grantee shall maintain an insurance policy with a financially responsible insurance company against claims for bodily injury, death or property damage claims by actions occurring upon or in connection with the use of the Easement Property, which policy describes Grantee as named insured and has limits of not less than \$1,000,000. Grantor shall be named as an additional insured on all such policies. Grantee shall provide Grantor such evidence as Grantor may reasonably request from time to time, that the insurance coverage provided by this paragraph is in effect.

4. No Public Dedication. Nothing contained in this Easement Agreement shall be deemed to be a gift or dedication of any portion of the Easement Property to or for the general public or for any public purpose whatsoever, and this Easement Agreement shall be strictly limited to and for the purposes expressed herein.

5. Run With Land. Until the termination in accordance with Section 2, the grant of easement and other provisions hereof shall run with the Easement Property, shall be a burden upon the Easement Property and shall be binding on Grantor, its successors and assigns, and every person who becomes an owner of all or any portion of the Easement Property; provided however upon the conveyance of the Easement Property, then Grantor's obligations hereunder shall cease, with Grantor being responsible only for obligations incurred prior to the conveyance and with Grantor's transferee being responsible only for obligations incurred after the conveyance.

6. Applicable Law. This Easement Agreement shall be construed and enforced in accordance with the laws of the State of Utah, without giving effect to the principles of the conflicts of law. Any and all actions arising hereunder shall be brought only in the Davis County District Court and the Parties consent to the jurisdiction and venue thereof.

7. Descriptive Headings. The descriptive headings of the paragraphs, subparagraphs and other portions of this Easement Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions herein.

8. Severability. If any terms, provisions or covenants contained in this Easement Agreement shall to any extent be invalid or unenforceable, the remainder of this Easement Agreement shall not be affected thereby, and each term, provision and condition hereof shall be valid and enforceable to the fullest extent permitted by law.

9. Counterparts. This Easement Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement.

*[signatures follow on next page]*

IN WITNESS WHEREOF, this Construction Easement has been made effective as of the date first set forth above.

**GRANTOR:**

WESTWARD DEVELOPMENT, LLC  
a Utah limited liability company

**GRANTEE:**

RICHMOND AMERICAN HOMES OF  
UTAH, INC.,  
a Colorado corporation

By: [Signature]  
Name: JOSHUA E. HUGHES  
Title: MANAGING MEMBER

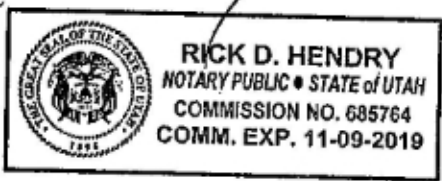
By: [Signature]  
Name: Benson J. Whitney  
Title: V.P. of Land Acquisition

STATE OF Utah )  
  )     ss.  
COUNTY OF Weber     )

The foregoing instrument was acknowledged before me on August 29, 2016, by Joshua E. Hughes as Managing Member Westward Development, LLC, a Utah limited liability company.

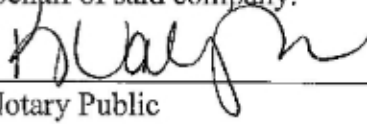
[Signature]  
Notary Public

My Commission Expires:  
11/9/19



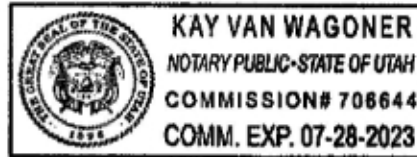
STATE OF UTAH )  
COUNTY OF Salt Lake ) ss.

The foregoing instrument was acknowledged before me on August 28, 2019, by Benson Whitney, as Vice President-Land Acquisition, of RICHMOND AMERICAN HOMES OF UTAH, INC., a Colorado corporation, on behalf of said company.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

7.28-2023



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF EASEMENT PROPERTY**

A STORM DRAIN EASEMENT THAT IS LOCATED IN THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS NORTH 00°14'47" EAST ALONG THE QUARTER SECTION LINE 952.83 FEET AND WEST 1325.31 FEET FROM THE CENTER OF SECTION 7, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE WEST 9.40 FEET; THENCE NORTH 00°09'54" EAST 298.49 FEET; THENCE NORTH 79°27'01" EAST 9.57 FEET; THENCE SOUTH 00°09'54" WEST 300.24 FEET TO THE POINT OF BEGINNING.

CONTAINS 2,814 SQ/FT OR 0.06 ACRES

Part of Tax ID 12-046-0142