

**RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:**

D.R. Horton, Inc.
Attn: Robert B. Hartshorn
12351 Gateway Park Place, Suite D-100
Draper, Utah 84020

Parcel No.: 02-123-0-0043

DRAINAGE EASEMENT AGREEMENT

THIS DRAINAGE EASEMENT AGREEMENT (this "*Agreement*") is entered into this 8 day of March, 2023 (the "*Effective Date*"), by and between GRNOBL WESTERN ACRES, LLC, a Utah limited liability company ("*Grantor*"), and WESTERN ACRES OWNERS ASSOCIATION, a Utah nonprofit corporation, whose address is 12351 S. Gateway Park Place, Suite D-100, Draper, Utah 84020 ("*Grantee*"). Grantor and Grantee shall also be referred to hereinafter individually as a "*Party*," and collectively as the "*Parties*."

RECITALS

A. Grantor is the owner of that certain real property located in Tooele County, Utah, being more particularly described in the attached Exhibit A (the "*Grantor Property*"). Grantor is participating in the development of the Grantor Property as a portion of the "**Western Acres**" residential master-planned development located in Tooele City, Tooele County, Utah. The Grantor Property shall be subdivided and shall be subject to a subdivision plat for a portion of Western Acres known as Western Acres Townhomes Phase 2B.

B. Grantee is a Utah nonprofit corporation that has been formed to serve as the owners association for Western Acres, including without limitation the Western Acres Townhomes Phase 2B that shall be created upon the Grantor Property.

C. To facilitate the development of the Grantor Property as the Western Acres Townhomes Phase 2B and to remove the Grantor Property from the flood plain to which the Grantor Property is subject as of the Effective Date, Grantee desires, and Grantor has agreed to grant, a perpetual, non-exclusive easement across the portion of the Grantor Property more particularly described in the attached Exhibit B (the "*Easement Area*") to provide for the relocation of a portion of the Middle Canyon Creek onto the Easement Area and the construction of certain improvements thereon, subject to the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms, conditions, covenants, agreements and restrictions in this Agreement, the Parties hereby agree as follows:

1. Drainage Easement. Grantor hereby grants to Grantee, for the benefit of Western Acres, a perpetual, non-exclusive easement over, across, under and through the Easement Area for (i) community drainage within Western Acres (including, without limitation, the drainage of storm water flows, diffused surface water, and directed storm water), including without limitation drainage from the Western Acres Townhomes Phase 2B, in both its natural state and as now or hereafter developed in accordance with applicable law and all development entitlements and approvals issued by applicable governmental authorities; (ii) within the Easement Area, the construction, installation, use and enjoyment, repair, replacement, and maintenance of flood control channels, storm drainage improvements, drainage channels, drainage facilities, slopes, basins, retention/detention improvements, and all other facilities or improvements related to any of the foregoing, and roadway improvements as may be necessary to provide access to such improvements and facilities (collectively, the *"Improvements"*); and (iii) such access, ingress and egress rights as may be necessary to enjoy the foregoing rights.

2. Construction; Maintenance. Grantee shall be solely responsible for all costs and expenses associated with the construction, installation and maintenance of the Improvements, including, without limitation, the cost for any and all permits, approvals, or consents, necessary or appropriate for the Improvements. Grantee shall maintain the Improvements and the Easement Area in good condition and repair. Grantee's construction, installation, maintenance and/or repair of the Improvements shall not unreasonably interfere with the operation of Grantor's business on the Grantor Property or unreasonably disturb the peaceful and quiet enjoyment of the tenants and occupants of the Grantor Property. Grantee shall comply with any and all applicable laws, rules, regulations, ordinances and orders of governmental entities in exercising its rights and performing its obligations under this Agreement.

3. Flood Plain. Upon the completion of the Improvements, Grantee shall use commercially reasonable efforts to obtain a Letter of Map Revision (*"LOMR"*) from the United States Army Corps of Engineers that removes the Grantor Property from the flood plain to which the Grantor Property is subject as of the Effective Date due to the existing location of Middle Canyon Creek. Grantor shall reasonably cooperate with Grantee in obtaining the LOMR.

4. Liens. Grantee has no right to cause, and shall not permit, any mechanics' or materialmen's liens to be filed against the Grantor Property as a result of Grantee's activities upon the Easement Area. In the event a lien is filed, then Grantee, within thirty (30) days after it receives notice of the lien, shall provide a bond or other security or otherwise remove such lien from the Grantor Property pursuant to applicable law.

5. Indemnity. Except to the extent due to the negligence or willful misconduct of the other Party (the *"Indemnified Party"*) or its employees, agents, lessees, visitors, invitees, contractors, or licensees, each Party (the *"Indemnifying Party"*) shall defend, indemnify and hold the Indemnified Party harmless from and against any and all claims, actions, proceedings, demands, damages, liabilities, costs, and expenses, including, without limitation, reasonable attorneys' fees, to the extent resulting from the use of the Easement Area by the Indemnifying Party or its employees, agents, lessees, visitors, invitees, contractors, or licensees. The provisions of this Section shall survive the termination of this Agreement.

6. Insurance. Grantee shall maintain commercial general liability insurance as to the Easement Area in an amount of no less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate, naming Grantor as additional insured. Grantee shall provide Grantor with a certificate of insurance evidencing such coverage within five (5) days of request from Grantor.

7. No Interference. Grantor reserves the right to utilize the Easement Area, provided, that Grantor's activities and any grant of rights Grantor makes to any person or entity, whether located on the Grantor Property or elsewhere, shall not, currently or in the future, unreasonably impede or interfere with the exercise of Grantee's rights granted under this Agreement. No other easement or rights shall be granted on, under, or over the Easement Area by Grantor to any person or entity without the prior written consent of Grantee, which consent shall not be unreasonably withheld, conditioned or delayed so long as such other easements do not materially affect Grantee's use of the Easement Area.

8. Court Costs and Attorneys' Fees. In the event of any legal action or proceeding between the Parties, reasonable attorneys' fees and expenses of the substantially prevailing party in any such action or proceeding will be added to the judgment therein.

9. No Third-Party Beneficiaries. There is no intent by either Party to create or establish third party beneficiary status or rights in any third party. This Agreement shall not be deemed to confer any rights upon any individual or entity which is not a party hereto, and Grantee and Grantor expressly disclaim any such third-party benefit.

10. Subordination. Grantor shall take all action that is necessary to cause this Agreement to be and remain at all times superior in priority to (a) the lien of any mortgage or mortgages which may now or hereafter affect the Grantor Property, and to all advances made or hereafter to be made upon the security thereof and to the interest thereon, and to any agreements at any time made modifying, supplementing, extending or replacing any such mortgages; (b) any ground or underlying lease which may now or hereafter affect the Grantor Property; and (c) any easements or other matters of record which may now or hereafter affect the Grantor Property, including all amendments, renewals, modifications, consolidations, replacements and extensions of any of the foregoing documents. The obligations of Grantor under this Section 10 shall include the obligation of Grantor to cause to be executed and recorded a subordination, non-disturbance and attornment agreement, in a form acceptable to Grantee, by the mortgagees under any existing mortgage, the trustees and beneficiaries under any existing deeds of trust, the lessees or tenants under any existing leases, and any other parties to any existing recorded documents that affect the Grantor Property and that may be deemed to be superior in priority to this Agreement without the execution and recording of such subordination, non-disturbance and attornment agreements.

11. Counterparts; Incorporation. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Signatures hereon may be delivered by electronic mail or facsimile, and the delivery of such signatures shall be deemed originals for all purposes. The recitals set forth above and exhibits attached hereto are incorporated herein by this reference.

12. Governing Law; Venue. This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Utah. Venue for any action, suit, or

proceeding relating to this Agreement shall lie in the state and federal courts located in Salt Lake County, Utah.

13. No Waiver; Severability. The failure of any Party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that such Party may have and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein. Invalidation of any one of the covenants or restrictions set forth in this Agreement by judgment or court order shall in no way affect all other provisions, which shall remain in full force and effect.

14. Covenant Running with the Land. This Agreement shall be a covenant running with the land and shall be binding upon the Grantor Property for the benefit of the Grantee Property and each of their respective successors and assigns.

15. Assignment by Grantee. Notwithstanding any other provisions in this Agreement to the contrary, Grantee shall have the right to transfer and assign all of its rights, duties and obligations as the Grantee under this Agreement to any successor-in-interest of Grantee as the property owner's association that is organized and formed pursuant to a declaration of covenants, conditions and restrictions pertaining to and affecting all or a portion of Western Acres for the benefit of the owners and occupants of residential structures developed and constructed upon portions of Western Acres, including without limitation Western Acres Townhomes. Upon such transfer and assignment by Grantee of its rights, duties and obligations as the Grantee under this Agreement and the assumption by such transferee and assignee of the rights, duties and obligations of Grantee as the Grantee under this Agreement, then Grantee shall be fully released and discharged from its obligations as the Grantee under this Agreement.

16. Entire Agreement. This Agreement contains the entire agreement between Grantor and Grantee with respect to the subject matter of this Agreement.

17. Amendment; Termination. This Agreement may not be amended, changed, or modified in any way except in a writing executed by Grantor and Grantee. Grantee may elect to terminate its use of the Easement Area and this Agreement at any time upon providing written notice to Grantor of the same.

[Signature Pages Follow]

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

GRNOBL WESTERN ACRES, LLC,
a Utah limited liability company

By: *AJ Green*
Name: *AJ Green*
Title: *Manager*

STATE OF UTAH)
COUNTY OF *Salt Lake*)^{ss.}

The foregoing instrument was acknowledged before me this *8* day of *March*, 2023 by *AJ Green*, in such person's capacity as the *Manager* of GRNOBL Western Acres, LLC, a Utah limited liability company.



Krisel Travis
NOTARY PUBLIC

**WESTERN ACRES OWNERS
ASSOCIATION,**
a Utah nonprofit corporation

By: [Signature]
Name: Jonathan S. Thornley
Title: Board Member

STATE OF UTAH)
 ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 8 day of March, 2023
by Jonathan S. Thornley in such person's capacity as the Board Member of Western Acres
Owners Association, a Utah nonprofit corporation.



[Signature]
NOTARY PUBLIC

Exhibit A**Legal Description of the Grantor Property**

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 15 AND THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS SOUTH 00°01'31" EAST ALONG THE SECTION LINE, 664.44 FEET AND WEST 65.74 FEET FROM THE NORTHWEST CORNER OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 43°58'38" EAST 576.59 FEET TO A POINT ON THE BOUNDARY OF WESTERN ACRES TOWNHOMES PHASE 1 ON FILE WITH THE TOOELE COUNTY RECORDER AS ENTRY # 556418; THENCE ALONG SAID BOUNDARY THE FOLLOWING TWENTY-TWO (22) COURSES: 1) SOUTH 39°15'07" EAST 112.95 FEET; 2) NORTHEASTERLY 116.65 FEET ALONG THE ARC OF A 1120.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (CHORD BEARS NORTH 55°00'39" EAST 116.60 FEET); 3) SOUTH 32°00'19" EAST 51.00 FEET; 4) NORTHEASTERLY 239.60 FEET ALONG THE ARC OF A 1069.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (CHORD BEARS NORTH 64°24'57" EAST 239.10 FEET); 5) SOUTHEASTERLY 64.78 FEET ALONG THE ARC OF A 34.00 FOOT RADIUS COMPOUND CURVE TO THE RIGHT (CHORD BEARS SOUTH 54°34'54" EAST 55.42 FEET); 6) SOUTH 00°00'01" EAST 10.00 FEET; 7) SOUTH 89°59'59" WEST 18.00 FEET; 8) SOUTH 00°00'01" EAST 72.00 FEET; 9) NORTH 89°59'59" EAST 18.00 FEET; 10) SOUTH 00°00'01" EAST 431.85 FEET; 11) SOUTHWESTERLY 134.22 FEET ALONG THE ARC OF A 149.50 FOOT RADIUS TANGENT CURVE TO THE RIGHT (CHORD BEARS SOUTH 25°43'13" WEST 129.76 FEET); 12) SOUTH 51°26'26" WEST 164.36 FEET; 13) NORTHWESTERLY 103.11 FEET ALONG THE ARC OF A 225.50 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (CHORD BEARS NORTH 13°05'57" WEST 102.21 FEET); 14) NORTH 00°00'01" WEST 29.78 FEET; 15) 49.61 FEET ALONG THE ARC OF A 34.00 FOOT RADIUS TANGENT CURVE TO THE LEFT (CHORD BEARS NORTH 41°48'05" WEST 45.33 FEET); 16) NORTHWESTERLY 18.69 FEET ALONG THE ARC OF A 225.50 FOOT RADIUS REVERSE CURVE TO THE RIGHT (CHORD BEARS NORTH 81°13'39" WEST 18.69 FEET); 17) SOUTH 37°59'34" WEST 105.30 FEET; 18) SOUTH 52°00'26" EAST 153.67 FEET; 19) SOUTH 50°03'57" EAST 78.46 FEET; 20) SOUTHEASTERLY 4.00 FEET ALONG THE ARC OF A 34.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (CHORD BEARS SOUTH 50°03'57" EAST 4.00 FEET); 21) SOUTHEASTERLY 20.91 FEET ALONG THE ARC OF A 225.50 FOOT RADIUS REVERSE CURVE TO THE LEFT (CHORD BEARS SOUTH 49°21'05" EAST 20.90 FEET); 22) SOUTH 52°00'26" EAST 236.13 FEET; THENCE SOUTHWESTERLY 53.41 FEET ALONG THE ARC OF A 34.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (CHORD BEARS SOUTH 82°59'34" WEST 48.08 FEET); THENCE SOUTH 37°59'34" WEST 102.23 FEET; THENCE NORTH 52°00'35" WEST 125.52 FEET; THENCE NORTH 02°37'24" EAST 62.60 FEET; THENCE NORTH 87°17'11" WEST 79.23 FEET; THENCE SOUTH 02°09'54" WEST 80.91 FEET; THENCE NORTH 87°50'06" WEST 51.00 FEET; THENCE NORTH 02°09'54" EAST 121.33 FEET; THENCE NORTHEASTERLY 107.05 FEET ALONG THE ARC OF A 125.50 FOOT RADIUS TANGENT CURVE TO THE RIGHT (CHORD BEARS NORTH 26°36'09" EAST 103.84 FEET) TO A POINT ON THE SOUTHERLY EASEMENT LINE OF AN EXISTING GASLINE EASEMENT IN FAVOR OF MOUNTAIN FUEL SUPPLY COMPANY, ON FILE WITH THE TOOELE COUNTY RECORDER AS ENTRY 292544 IN BOOK 100, AT PAGE 249; THENCE NORTH 52°00'26" WEST ALONG SAID EASEMENT A DISTANCE OF 220.79 FEET TO A POINT ON THE PROLONGATION OF THE NORTH BOUNDARY OF OVERPASS POINT SUBDIVISION, ON FILE WITH THE TOOELE COUNTY RECORDER AS ENTRY # 112891 IN

BOOK 510 NUMBER 620; THENCE NORTH 65°42'44" WEST ALONG SAID OVERPASS POINT SUBDIVISION AND A PROLONGATION THEREOF A DISTANCE OF 501.59 FEET TO THE POINT OF BEGINNING.

CONTAINING 10.196 ACRES, MORE OR LESS.

TOGETHER WITH:

Western Acres Phase 2B

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS NORTH 00°01'31" WEST ALONG THE SECTION LINE A DISTANCE OF 1416.69 FEET AND EAST 351.38 FEET FROM THE WEST QUARTER OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE & MERIDIAN, SAID POINT ALSO BEING ON THE EASTERLY LINE OF OVERPASS POINT SUBDIVISION, ON FILE WITH THE TOOELE COUNTY RECORDER AS ENTRY # 112891 IN BOOK 510 NUMBER 620; AND RUNNING THENCE ALONG SAID BOUNDARY NORTH 00°00'05" EAST A DISTANCE OF 361.82 FEET; THENCE SOUTH 35°42'44" EAST 43.70 FEET; THENCE SOUTH 52°00'26" EAST 220.79 FEET; THENCE SOUTHWESTERLY 107.05 FEET ALONG THE ARC OF A 125.50 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (CHORD BEARS SOUTH 26°36'09" WEST 103.84 FEET); THENCE SOUTH 02°09'54" WEST 121.33 FEET; THENCE NORTH 87°50'06" WEST 162.88 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.240 ACRES, MORE OR LESS.

