

Andrea Allen

Utah County Recorder

2021 Jul 30 04:51 PM FEE 40.00 BY JG

RECORDED FOR Cottonwood Title Insurance Agency, Inc.

ELECTRONICALLY RECORDED

WHEN RECORDED MAIL TO:

D.R. Horton, Inc,
Attn: Boyd Martin
12351 S. Gateway Park Place #D100
Draper, UT 84020

File No.: 145529-DMP

CONSTRUCTION LICENSE AND INDEMNITY AGREEMENT

In Reference to Tax ID Number(s):

38-655-0037, 38-655-0038, 38-655-0039, 38-655-0040, 38-655-0041, 38-655-0042, 38-655-0043,
38-655-0044, 38-655-0045, 38-655-0046, 38-655-0047, 38-655-0048, 38-655-0049, 38-655-0050,
38-655-0051, 38-655-0052, 38-656-0057, 38-656-0058, 38-656-0059, 38-656-0060, 38-656-0061,
38-656-0062, 38-656-0063, 38-656-0064, 38-656-0065, 38-656-0066, 38-656-0067, 38-656-0068,
38-656-0069, 38-656-0070, 38-656-0071, 38-656-0072, 38-656-0073, 38-656-0074, 38-656-0075,
38-656-0076, 38-656-0077, 38-656-0078, 38-656-0079, 38-656-0080, 38-656-0081, 38-656-0082,
38-656-0083, 38-656-0084, 38-656-0085, 38-656-0086, 38-656-0087, 38-656-0088, 38-656-0089,
38-656-0090, 38-656-0091, 38-656-0092, 38-656-0093, 38-656-0094, 38-656-0095, 38-656-0096,
38-656-0097, 38-656-0098, 38-656-0099, 38-656-0100, 38-656-0101 and 38-656-0102

CONSTRUCTION LICENSE AND INDEMNITY AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

D.R. Horton, Inc.
Attn: Boyd Martin
12351 So. Gateway Park Place, Ste. D-100
Draper, Utah 84020

(Space Above For Recorder's Use)

CONSTRUCTION LICENSE AND INDEMNITY AGREEMENT

THIS CONSTRUCTION LICENSE AND INDEMNITY AGREEMENT (the "**Agreement**") is made and entered into as of July 28, 2021, by and among Edgewater TH – American Fork, L.P., a Delaware limited partnership ("**Owner**"), and D.R. HORTON, INC., a Delaware corporation ("**Builder**").

Recitals

A. Owner holds title to certain real property (the "**Property**") located in the County of Utah ("**County**"), State of Utah ("**State**") as more particularly described in Exhibit A attached hereto.

B. The Property is or will be comprised of sixty-two (62) single family lots (the "**Lots**").

C. Owner and Builder have entered into that certain Option and Development Agreement of even date herewith (the "**Option Agreement**") pursuant to which Owner has granted to Builder an option to purchase the Lots, and Builder agreed to construct certain improvements on the Property, on certain terms and conditions. Capitalized terms used, but not otherwise defined, herein shall have the meanings given to them in the Option Agreement.

D. During the term of this Agreement, Builder desires the right to enter upon the Property for the purpose of constructing the Improvements and homes on the Lots.

E. Owner desires to grant a license to Builder for such purpose, subject to and in accordance with the terms and conditions set forth below.

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

AGREEMENT

1. Grant of License. Builder (and Builder's agents, employees, contractors and subcontractors) shall have the non-exclusive right and license to enter upon the Property for the limited purposes of constructing Model Homes and dwelling units thereon and related subdivision improvements appurtenant thereto (including without limitation, the Improvements), for locating sales and construction trailers for use in connection therewith and work related thereto, and for the storage of non-hazardous construction materials. All costs of such work and activity shall be borne solely by Builder and, except as expressly set forth in the Option Agreement, and Section 3 of this Agreement, Builder shall have no right to recover such costs from Owner. This license shall expire, except to the extent that the license is still required for Builder to satisfy its obligation to complete any of the Improvements pursuant to the Option Agreement, upon the earlier of (i) termination or expiration of the Option Agreement, or (ii) the purchase of all of the Lots by Builder pursuant to the Option Agreement (and the license shall expire with respect to a particular Lot upon the purchase of such Lot by Builder pursuant to the Option Agreement). After expiration of this license and upon request from Owner, Builder shall execute, acknowledge and deliver to Owner an instrument in sufficient form for recording which shall give notice that the license created hereunder has been terminated and no longer is effect.

2. Covenants of Builder.

(a) Builder shall maintain throughout the term of the license and, upon request by Owner, shall deliver to Owner evidence, reasonably satisfactory to Owner, that Builder has in effect such insurance coverages (including, but not limited to, worker's compensation, employer's liability, automobile liability, commercial general liability and builder's risk coverage) and issued by insurance companies reasonably acceptable to Owner or rated A VIII or better according to the latest edition of the A.M. Best Key Rating Guide and naming Owner, Owner's members (and such other persons and entities as may be reasonably requested by Owner) as additional insureds as applicable. Builder shall provide prompt notice of cancellation of any insurance. Alternatively, Owner agrees that Builder may satisfy the requirements of this Subsection 2(a) by complying with the provisions of Section 17 of the Option Agreement concerning insurance coverage.

(b) Builder shall not permit to attach to any Lot or all or any portion of the Property, and Builder shall keep the Property and the Lots free and clear of, any, liens and encumbrances (including without limitation any mechanic's or materialmen's liens, but excluding any liens placed upon the Property as a result of a default by Owner) incurred by or resulting from acts of Builder or its agents, employees, contractors and representatives. Builder shall indemnify, defend and hold harmless Owner from and against any claims, demands, liabilities, losses, damages, costs and expenses, including but not limited to court costs and reasonable attorneys' fees, relating to or resulting from any such liens or encumbrances.

(c) Builder shall not purport to transfer title to any Lot or all or any portion of the Property that it has not acquired, nor otherwise encumber such Lot or the Property in any way whatsoever; provided, however, that Builder may market such Lots to prospective home buyers and enter into sales contracts provided that such contracts shall be contingent upon completion of construction, exercise of the Option set forth in the Option Agreement with respect to such Lot and the acquisition of any such Lot from Owner.

(d) Prior to commencing any work on the Lots or the Property pursuant to this Agreement, Builder shall obtain, at its sole cost, all governmental permits and authorizations required by any governmental agencies to perform such work. In the exercise of its rights under this Agreement, Builder shall comply with all applicable governmental laws, rules, regulations and requirements, including any and all environmental laws.

(e) If Builder fails to comply with its covenants under this Section 2, and such failure continues for a period of more than thirty (30) days after Builder's receipt of written notice thereof from Owner, then Builder shall be deemed to have breached its obligations under this Agreement. If such breach of this Agreement remains uncured for more than thirty (30) calendar days after Builder's receipt of written notice of such breach from Owner, then Builder shall be deemed materially to have breached this Agreement and, without the necessity of providing any additional notice or opportunity to cure, said breach shall be deemed a Default under the Option Agreement entitling Owner to immediately exercise its remedies under the Option Agreement.

3. Effect of Termination of License or Option Agreement.

(a) Subject to the rights and obligations of the parties under Section 23 of the Option Agreement, upon the termination of the Option Agreement for any reason other than Owner's default under the Option Agreement and if Builder has failed to acquire any Lot upon which it has commenced construction pursuant to this Agreement, then Owner shall become the owner of any improvements located on the Property or the Lot(s) not purchased by Builder, and, if requested by Owner, Builder shall: (i) assign to Owner all of the work Builder has performed on the Lots and the Property; and (ii) execute such reasonable documentation reasonably necessary to convey such work to Owner; and (iii) confirm that it has no right to recover from Owner its costs in performance of such work. Builder acknowledges that this Section 3(a) shall not abridge or otherwise affect in any way Owner's rights under the Option Agreement.

(b) Upon the termination of Builder's obligations under this Agreement or the Option Agreement as a result of Owner's Default hereunder or under the Option Agreement, then: (i) Builder shall have none of the obligations set forth in Subsection 3(a) above (other than to leave the Property, and any sidewalk, street or land adjacent thereto, in a safe condition and to cause the removal of any liens (except any liens placed upon the Property as a result of a Default by Owner) against the Property, and any sidewalk, street or land adjacent thereto, which were recorded against the Property, and any sidewalk, street or land adjacent thereto, as a result of Builder's activities thereon, except as provided in the final paragraph of this Subsection 3(b)); (ii) Builder shall have no obligation to remove any work completed (but Builder may at its option remove any such work other than the Improvements), provided that in all events Builder shall leave the Property, and any sidewalk, street or land adjacent thereto, in a safe condition; and (iii) Owner shall reimburse Builder for all actual, reasonable and customary third party costs and expenses incurred by Builder in making the Property, and any sidewalk, street or land adjacent thereto, safe, with such reimbursement (the "**Reimbursement Payment**") to be made in accordance with the provisions of the Option Agreement.

4. Disclaimer. Except to the extent expressly provided otherwise in the Option Agreement, Owner hereby specifically disclaims any warranty, guarantee or representation, oral

or written, past, present or future, of, as to, or concerning the nature and condition of the Lots or the suitability of the Lots for any particular purpose.

5. Indemnity Regarding Builder's Activities. The parties acknowledge and agree that the indemnity provision set forth in Section 18 of the Option Agreement shall apply to Builder's activities under this Agreement. It is the express intent and understanding of the parties hereto that Owner would not have granted the license and rights granted herein to Builder without Builder's agreement to so indemnify, defend and hold Owner harmless. This Section 5 shall survive the termination or expiration of the license.

6. Notices. All notices required hereunder shall be in writing, and shall be delivered in the manner specified in the Option Agreement.

7. Attorneys' Fees. In the event of any action by Owner or Builder under or pursuant to this Agreement, the prevailing party shall be entitled to recover from the nonprevailing party its costs and expenses of enforcing its rights hereunder, including actual attorneys' fees.

8. Assignment; Binding on Successors; Obligations Survive. The terms and conditions herein contained shall be binding upon and inure to the benefit of the successors and assignees of the parties hereto. Notwithstanding the revocation or expiration of the license, for any reason, Builder's obligations under this Agreement shall continue in full force and effect until satisfied.

9. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of where the Property is located.

10. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

11. Entire Agreement. All exhibits referred to herein are attached hereto and incorporated herein by this reference. This instrument contains the entire agreement of the parties with respect to the subject matter hereof and cannot be amended or modified except by a written agreement, executed by each of the parties hereto.

12. Further Assurances. Each of the parties agrees to execute and deliver any and all additional documents and other assurances, and to do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties hereto.

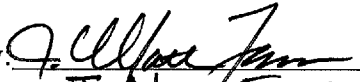
[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF the parties hereto have entered into this Agreement as of the date first set forth above.

Signed and sealed in the presence of:

Builder:

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

By: 
Name: J. Matt FARRIS
Title: VICE PRESIDENT

Owner:

Edgewater TH – American Fork, L.P.,
a Delaware limited partnership

By: NP-HS LOJV GP VII, LLC,
a Delaware limited liability company,
its General Partner

By: NP-HS LOT OPTION JOINT VENTURE VII, LLC,
a Delaware limited liability company,
its Sole Member

By: HEARTHSTONE PROFESSIONALS – PI, L.P.,
a Delaware limited partnership,
its Manager

By: 

Steven C. Porath
Authorized Person

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

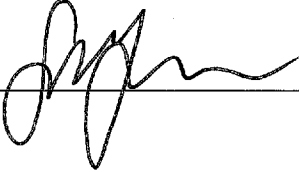
State of Nevada)
County of Clark)

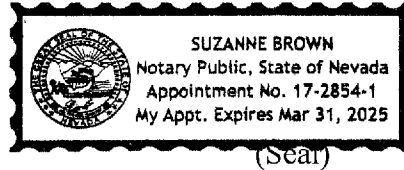
On July 22, 2021, before me, SUZANNE BROWN,
(insert name of notary)

Notary Public, personally appeared J. Matt Farris, as Vice President of D.R. Horton, Inc., a Delaware corporation, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Nevada that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 



(Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On July 27, 2021, before me, Karen S. Hornback,
(insert name of notary)

Notary Public, personally appeared Steven C. Borath,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Karen S. Hornback

(Seal)

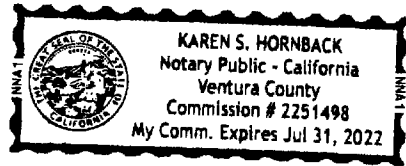


Exhibit A

LEGAL DESCRIPTION OF PROPERTY

All that certain real property situated in the County of Utah, State of Utah, described as follows:

Lots 37-52 of Edgewater Townhomes at American Fork plat 2 recorded as entry number 188977-2020 at the Utah County recorder's office.

And Lots 57-102 of Edgewater Townhomes at American Fork plat 3 recorded as entry number 188978-2020 at the Utah County recorder's office.