

**Andrea Allen**

**Utah County Recorder**

2021 Jul 30 04:51 PM FEE 144.00 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 #D-100  
Draper, UT 84020

File No.: 145529-DMP

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**DEED OF TRUST,  
SECURITY AGREEMENT AND FIXTURE FILING**

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

## Deposit Deed of trust

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

Instructions to County Recorder:  
Index this Instrument as a Deed of Trust  
And Fixture Filing

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### DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

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**THIS DOCUMENT IS A SECURITY AGREEMENT WITHIN THE MEANING OF SECTION 70A-9a-102(74) OF THE UTAH UNIFORM COMMERCIAL CODE, AS WELL AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITHIN THE MEANING OF SECTION 70A-9a-502 OF THE UTAH UNIFORM COMMERCIAL CODE.**

THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (this "**Deed of Trust**") made this 17<sup>th</sup> day of June, 2021, between Edgewater TH – American Fork, L.P. herein called "**Trustor**," whose address is 23975 Park Sorrento, Suite 220, Calabasas, CA 91302; First American Title Company, herein called "**Trustee**," and D.R. Horton, Inc., a Delaware corporation, herein called "**Beneficiary**," whose address is 12351 So. Gateway Park Place, Ste. D-100, Draper, Utah 84020.

This Deed of Trust is being entered into in connection with that certain Option and Development Agreement dated for reference July 20, 2021 between Trustor and Beneficiary (as the same may be amended from time to time, "**Option Agreement**" or "**ODA**").

WITNESSETH: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, that real property in American Fork, Utah, described on Exhibit "A" attached to this Deed of Trust, herein called the "**Property**."

TOGETHER WITH AND INCLUDED WITH THE PROPERTY Trustor's assignable or transferable rights, title and interest in and to (if any) all buildings, structures, fixtures and improvements now located or later to be constructed on the Property, all right, title and interest in

and to all assets, rights, materials and/or claims but only to the extent used, owned or held in connection with the ownership, development and enjoyment of the Property, including but not limited to (a) all entitlements, development rights, tenements, easements, easement rights, rights to half-widths of all adjacent public streets and public rights of way, mineral rights, oil and gas rights, water, water rights (except as expressly excepted in a prior conveyance), air rights, development rights and privileges appurtenant thereto and all improvements located thereon to the extent benefitting the Property; (b) all engineering plans, specifications, studies, drawings, renderings and surveys, soils, environmental, and biological reports, and all other documents concerning the physical condition or development of the Property, if any, in possession of Trustor, (c) all intangible rights, goodwill and similar rights benefitting the Property, (d) all rights, claims, or awards benefitting the Property and (e) all rights to receive a reimbursement, credit, or refund from the applicable agency or entity of any deposits or fees paid in connection with the development of the Property. This Deed of Trust shall constitute a security agreement as that term is used in the Utah Uniform Commercial Code and Trustor hereby grants to Beneficiary a continuing security interest in Trustor's assignable or transferable rights, title and interest in and to (if any) existing and future personal property, including, without limitation, all future tangible property, inventory, equipment, fixtures, fittings, goods, and other decorations, supplies and materials now or hereafter owned by Trustor and located at or on or used in connection with the Property (whether or not such items are stored on the premises or elsewhere), and all present and future accounts, general intangibles, chattel paper, documents, instruments (whether negotiable or nonnegotiable), including all of Trustor's right, title and interest in and to all deposit accounts, money, contract rights, insurance policies, and all rights to payment of any kind related to or arising from the Property, all warranties in which Trustor may now or hereafter have an interest relating to work, labor, skill or materials furnished in connection with the construction of any improvements on the Real Property, all plans and specifications which have been or will be prepared by or for Trustor related to improvements on the Real Property or to the adjacent lands of Beneficiary, whether constructed or not and all proceeds, products, substitutions and accessions therefor and thereto and any other portion of the Property which, under applicable law, may be subject to a security interest pursuant to the Utah Uniform Commercial Code (collectively, "**Personal Property**"). At Beneficiary's expense and upon written request from Beneficiary as to exactly what is requested, Trustor will give any reasonable notices and take any other reasonable actions that are necessary to perfect or to continue the perfection the security interest created hereunder or to protect the Personal Property or fixtures against the rights, claims, or interests of third persons. At Beneficiary's election, in addition to or instead of any other description of the Personal Property, any financing statement description may use the terms "all assets," "all personal property" or words to similar effect. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor and Beneficiary agree that Beneficiary is, and shall be deemed to be, the "secured party" as that term is defined in the Utah Uniform Commercial Code and elsewhere with respect to the Personal Property. In the event of a default under this Deed of Trust, Beneficiary may, at its option, exercise any or all of the remedies available to a secured party under the Utah Uniform Commercial Code in such order and in such manner as Beneficiary, in its sole discretion, may determine. The proceeds of any sale of any portion of the Personal Property shall be applied first to the expenses of Beneficiary in retaking, holding, preparing for sale, selling or similar matters, including reasonable attorney's fees. Notwithstanding the foregoing or anything herein to the contrary, in no event shall the Property include any amounts paid or payable from Beneficiary to Trustor under the Option Agreement.

The Personal Property in which Beneficiary has a security interest includes goods which are or shall become fixtures on the Property. This Deed of Trust shall constitute a financing statement pursuant to U.C.A. § 70a-9a-502(3), and shall be filed as a fixture filing in the Office of the County Recorder in which the Property is located and covers goods which are or are to become fixtures on the Property. In that regard, the following information is provided:

Name of Debtor: Trustor

Address of Debtor: See Page 1 hereof.

Name of Secured Party: Beneficiary

Address of Secured Party: See Page 1 hereof.

SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary hereunder to collect and apply the rents, issues and profits of the Property.

**For the Purpose of Securing:** (i) the performance of all obligations of Trustor under the ODA with respect to the "**Deposit**" (as defined in the ODA) in the total amount of Eight Hundred Thirty-Seven Thousand and 00/100 (\$837,000.00), (ii) payment of all other sums, with interest as herein provided, expended by Trustee or Beneficiary in protecting the security of this Deed of Trust and (iii) performance and discharge of each obligation of Trustor contained in this Deed of Trust, any document or instrument modifying or amending this Deed of Trust, or any instrument or agreement given to evidence or further secure the payment and performance of any obligation secured hereby. This Deed of Trust does not secure any obligations of Trustor under the ODA other than the obligation to return the Deposit or portion of the Deposit actually paid by Beneficiary in accordance with the ODA. Without limiting the foregoing, this Deed of Trust expressly does not secure Trustor's obligations under the ODA to convey the Property to Beneficiary.

**It is mutually agreed:**

(1) That, except as otherwise expressly provided for in ODA, any award in connection with any condemnation for public use of or injury to said Property or any part thereof is hereby assigned and shall be paid to Beneficiary, who may apply or release such moneys received by Beneficiary in accordance with applicable law.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and any other instruments to the extent legally required for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said Property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That, upon written request of (1) Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the ODA to Trustee for cancellation and retention or other disposition as Trustee in its sole and absolute discretion may choose and upon payment of its fees, or (2) Trustor upon the termination of the ODA and payment of the Deposit to Beneficiary to the extent Beneficiary is entitled to such payment under the Option Agreement, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "The person or persons legally entitled thereto."

(5) That upon a default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may, in addition to all of its other rights and remedies permitted by Utah law, all of which are cumulative, declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said Property, which notice Trustee shall cause to be filed for record, or, at Beneficiary's option, Beneficiary may pursue judicial foreclosure in the manner provided by law for the foreclosures of mortgages on real property. Beneficiary also shall deposit with Trustee this Deed of Trust, and any other instruments to the extent required by law and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustor waives all rights to require the Property to be sold together or separately, to direct the order in which any of the Property will be sold, to have any of the Property marshaled upon any sale, and to direct the application of any proceeds of sale. Trustee may postpone sale of all or any portion of said Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement, as provided by Utah law. Trustee shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby in such order as Beneficiary may direct in its sole and absolute discretion; and the remainder, if any, to the person or persons legally entitled thereto.

The power of sale under this Deed of Trust shall not be exhausted by any one or more sales (or attempts to sell) as to all or any portion of the Property remaining unsold, but shall continue unimpaired until all of the Property has been sold by exercise of the power of sale herein contained and all obligations secured hereby shall have been paid in full.

(6) Beneficiary may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the date, book and page where this Deed of Trust is recorded, the name and address of the new Trustee and the legal description of the Property. A copy of the substitution shall be sent to any person who requests a copy of any notice of default or notice of sale under U.C.A. §57-1-26(1)(a).

(7) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and permitted assigns. Any assignment hereof shall require the prior written approval of the other party hereto, except that Beneficiary may assign this Deed of Trust to an Internal Transferee (as defined in the Option Agreement) without the consent of Trustor. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(8) That Trustee accepts this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

(9) The ODA restricts Trustor from transferring the Property to any other party. If, notwithstanding such restrictions, Trustor, or any successor in interest, sells, conveys, alienates, assigns, transfers, encumbers or disposes of the Property, or any part thereof or any interest therein, or becomes divested of its title or any interest therein in any manner or way, absolutely or for security, voluntarily or involuntarily, or enters into an agreement to do so, in violation of the ODA without the prior written consent of Beneficiary, which (except as otherwise expressly provided in the ODA) may be withheld by Beneficiary in its sole and absolute discretion, then Beneficiary may, at its election, declare the other obligations secured by this Deed of Trust, irrespective of the provisions of the ODA, immediately due and payable without notice. No waiver of the requirement of consent by Beneficiary as set forth herein shall be effective unless in writing. Consent by Beneficiary to any one or more transactions described above shall not constitute nor be deemed to be a consent, or waiver of the requirement of consent, as to any future or succeeding transactions.

(10) In the event of a legal action between Trustor and Beneficiary with respect to this Deed of Trust or the ODA, the provisions of Section 27(t) of the ODA, as the same may be amended, regarding attorney's fees and costs shall be applicable.

(11) The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at its address set forth on page one of this Deed of Trust.

(12) [intentionally omitted]

(13) If any term or provision of the Deed of Trust or the application thereof to any person, entity or circumstances shall to any extent be invalid or unenforceable, the remainder of the Deed of Trust, or the application of such terms or provision to persons, entities, or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of the Deed of Trust shall be valid and enforceable to the fullest extent permitted by law. This Deed of Trust and the obligations secured hereby shall be governed by and interpreted in accordance with the laws of the State of California.

(14) If Builder does not acquire all of the Lots in accordance with the ODA and Builder has failed to exercise and close upon its Early Acquisition Option, then, subject to all applicable notice and cure periods in the ODA and provided that the Deposit has been paid to Beneficiary to the extent that Beneficiary is entitled to such payment under the Option Agreement, at Owner's reasonable request, Beneficiary shall also execute and record any documents reasonably requested to release and remove of the lien of this Deed of Trust of Record.

*(Signature Page Follows.)*

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first set forth above.

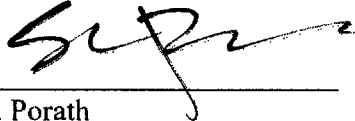
**TRUSTOR:**

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

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

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

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

By:   
\_\_\_\_\_  
Steven C. Porath  
Authorized Person



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

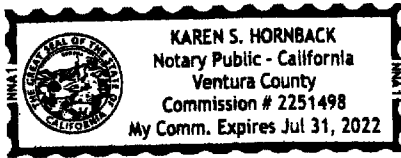
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles }

On July 12, 2021 before me, Karen Hornback Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Steven C. Porath  
Name(s) of Signer(s)

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.



Place Notary Seal and/or Stamp Above

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 Hornback  
Signature of Notary Public

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian of Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian of Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE 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.