



09/28/2015 09:09 AM
City & County of Denver
Electronically Recorded

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D \$0.00

When recorded, return to:
Mr. Eric Kubly
Richmond American Homes of Colorado, Inc.
4350 South Monaco Street
Denver, Colorado 80237

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DRAINAGE EASEMENT AGREEMENT

THIS DRAINAGE EASEMENT AGREEMENT (this "Agreement") is made as of the 18th day of September, 2015, by and between RICHMOND AMERICAN HOMES OF COLORADO, INC., a Delaware corporation ("Grantor"), and CEDAR LANE AT CHERRY CREEK HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation ("Grantee"). Grantor and Grantee may each be individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS:

A. Grantor is the owner of that certain real property situated in the City and County of Denver (the "County"), Colorado, as described on **Exhibit A** attached hereto and incorporated herein by this reference (the "Grantor Property"). Grantee is the homeowners association which has jurisdiction over that certain real property situated in the County, legally described as Riva Cherry Creek Filing No.1 – Amended, City and County of Denver, Colorado (the "Project"), as depicted on the final plat thereof recorded in the County real property records at Reception Number 2011045058 (the "Final Plat").

B. Grantor has agreed, subject to the terms and conditions of this Agreement, to grant, sell, bargain and convey to Grantee and its agents, employees, contractors, representatives, service providers, successors and assigns (collectively, the "Permittees"), a perpetual non-exclusive easement in, to, on, over, upon, across, through and under the Grantor Property for the purposes of: (i) designing, constructing, installing, operating, inspecting, maintaining, repairing, removing and replacing permanent stormwater sewer lines, surface inlet improvements and other drainage improvements and facilities, storm and other surface water and underground water detention and drainage lines and facilities, and all facilities, fixtures, devices, similar facilities and structures related to the foregoing necessary or useful for the design, construction, installation, operation, inspection, maintenance, removal and/or replacement of the foregoing (collectively, the "Improvements"); and (ii) vehicular, motorized and non-motorized equipment, and pedestrian ingress and egress and the passage, temporary parking and temporary storage of construction and other vehicles and equipment, to the extent the foregoing are related to the design, construction, installation, operation, inspection, maintenance, repair, removal and/or replacement of the Improvements (collectively, the "Easement").

AGREEMENT:

NOW THEREFORE, in consideration of the foregoing, the mutual covenants and promises set forth herein, and the receipt of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of Recitals. The above recitals are true and correct and incorporated herein as if set forth herein in full.
2. Grant of Easement. Grantor hereby grants, sells, bargains and conveys to Grantee, its Permittees, and the successors and assigns of each, the Easement. Grantor hereby expressly reserves unto itself and its Permittees the right to use the Grantor Property for all purposes and uses not inconsistent with the Easement.

01330-61289-235



3. Scope and Duration of Easement. The Easement shall be perpetual in nature and shall burden the Grantor Property and the successors and assigns thereof, and shall benefit the Grantee, its Permittees and the successors and assigns of each, and shall run with the Grantor Property and be appurtenant thereto, with the effect that any person or entity that acquires an interest therein shall be bound thereby.
4. Maintenance of Improvements. During the term of this Agreement, Grantee shall inspect, maintain, repair and replace the Improvements as necessary to keep the same in good condition and repair.
5. Non-Interference. Neither Grantor, nor any person claiming by, through, or under Grantor, shall interfere with or obstruct the use or enjoyment of the Grantor Property by Grantee, its Permittees, or the successors or assigns of each, for the purposes indicated in this Agreement.
6. Restoration of Grantor Property. Upon completion of any work performed by, through or under Grantee, its Permittees, or the successors or assigns of each under this Agreement, except as the same may relate to the Improvements, Grantee shall restore the Grantor Property, and any property adjacent thereto affected by such entry, to the condition in which it existed prior to Grantee's entry thereon.
7. Notices. All notices provided for herein shall be in writing and personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, or delivered via confirmed facsimile, to the Parties at the address or facsimile number given below, or at such address or facsimile number as may be specified by written notice:

Grantee:

Cedar Lane at Cherry Creek Homeowners Association, Inc.
c/o Richmond American Homes of Colorado, Inc.
4350 South Monaco Street
Denver, Colorado 80237
Attn: Linda Purdy
Facsimile Number: 720-977-4707

With a copy to:

M.D.C. Holdings, Inc.
4350 South Monaco Street
Denver, CO 80237
Attn: John Mosesso, Esq.
Facsimile Number: 303-488-4813

Grantor:

Richmond American Homes of Colorado, Inc.
4350 South Monaco Street
Denver, Colorado 80237
Attn: Linda Purdy
Facsimile Number: 720-977-4707

All notices so sent via confirmed facsimile shall be deemed delivered upon receipt, and all notices so mailed shall be deemed delivered three (3) business days after mailing by certified mail, return receipt requested.

8. Enforcement; Attorney's Fees; Waiver. In the event either Party is required to commence any action or proceeding against the other to enforce the provisions hereof, the prevailing Party in such action shall be entitled to recover, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in

connection therewith, including attorney's fees; provided, however, that in no event shall any party be entitled to receive or be awarded any damages other than actual damages, and the Parties hereby waive all other damages, including without limitation any consequential, punitive, special, incidental or similar losses or damages. No waiver by any Party of any default under this Agreement shall be effective or binding upon such Party unless made in writing. No waiver of any default shall be deemed a waiver of any other or subsequent default hereunder.

9. No Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

10. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, then the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby; and in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or enforceable provision as may be possible which shall be legal, valid and enforceable.

11. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which shall constitute one and the same instrument.

12. Governing Law. The terms and conditions of this Agreement shall be governed and construed under the laws of the State of Colorado, without giving effect to any principles of conflicts of laws.

13. Entire Agreement. This Agreement and the exhibits hereto contain all of the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements between the parties or any of them with respect to the subject matter hereof are merged herein and replaced by this Agreement.

14. No Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of any property to or for the general public or for any public purposes whatsoever, it being the intention of the Parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

15. Encumbrances. Grantee shall at no time have the right to mortgage or otherwise pledge any of its right, title or interest hereunder or otherwise encumber the Grantor Property, and shall promptly remove all liens placed against the Grantor Property by, through or under Grantee.

16. Captions. The section and subsection captions used in this Agreement are included for convenience only, and shall be irrelevant to the construction of any provision of this Agreement.

17. Amendment. The provisions of this Agreement may be abrogated, modified, rescinded, terminated or amended in whole or in part only by all of the then current Parties, by a written instrument duly executed and recorded in the real property records of the County.

18. Authority. Each Party represents and warrants to the other Party that it has the power and authority to execute this Agreement and to perform the covenants contained herein, and that there are no third party approvals required to execute this Agreement or to comply with the terms and provisions contained herein.

19. Construction. Each of the Parties acknowledges that they, and their respective counsel, all substantially participated in the negotiation, drafting and editing of this Agreement. Accordingly, the Parties

hereby agree that the provisions of this Agreement shall not be construed or interpreted for or against any Party based on authorship.

20. Estoppel Statement. Each of the Parties hereunder shall within ten (10) days after written request from a requesting Party, deliver a written statement which may be relied upon by the requesting Party or any successor, assignee, transferee or mortgagee of the requesting Party, setting forth whether or not the requesting Party has fully complied with the provisions of this Agreement, and if not, setting forth in reasonable detail the nature of any violations. Failure to deliver such statement within the said ten (10) day period shall be conclusive evidence against the Party failing to deliver such notice (the "Second Party") that the requesting Party has fully complied with its obligations under this Agreement, insofar as such obligations affect the Second Party, as of the date the request was made.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

GRANTEE:
CEDAR LANE AT CHERRY CREEK HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation

By: [Signature]
Jason Pock

GRANTOR:
RICHMOND AMERICAN HOMES OF COLORADO, INC., a Delaware corporation

By: [Signature]
Linda M. Purdy, Vice President

STATE OF COLORADO)
) ss
City and County of Denver)

The foregoing instrument was acknowledged before me this 18th day of September, 2015, by: (A) Jason Pock, as President of Cedar Lane at Cherry Creek Homeowners Association, Inc., a Colorado nonprofit corporation; and (B) Land M. Purdy, as vice president of Richmond American Homes of Colorado, Inc., a Delaware corporation.

Witness my hand and official seal. My commission expires 6/16/16.

HOLLY S. HOXENG
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19924007917
My Commission Expires June 16, 2016

[Signature]
Notary Public

EXHIBIT A
GRANTOR PROPERTY

LEGAL DESCRIPTION

A PORTION OF LOTS 5 AND 6, BLOCK 1, RIVA CHERRY CREEK FILING NO.1-AMENDED, PER PLAT RECORDED AT RECEPTION NO. 2011045058, IN THE RECORDS OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, STATE OF COLORADO, SITUATED IN THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, SAID COUNTY AND STATE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 5, WHENCE THE SOUTHERLY BOUNDARY OF SAID LOT 5 BEARS SOUTH 89°56'30" WEST, A DISTANCE OF 119.93 FEET, ALL BEARINGS HEREON ARE REFERENCED TO THIS LINE;

THENCE ALONG SAID SOUTHERLY BOUNDARY, SOUTH 89°56'30" WEST, A DISTANCE OF 119.93 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID LOT 5;

THENCE ALONG SAID WESTERLY BOUNDARY, NORTH 00°03'30" WEST, A DISTANCE OF 5.00 FEET TO A LINE PARALLEL WITH AND 5.00 FEET NORTHERLY, MEASURED AT RIGHT ANGLES TO SAID SOUTHERLY BOUNDARY;

THENCE DEPARTING SAID WESTERLY BOUNDARY, ALONG SAID PARALLEL LINE, NORTH 89°56'30" EAST, A DISTANCE OF 114.90 FEET TO A LINE PARALLEL WITH AND 5.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES TO THE EASTERLY LINE OF SAID LOT 5;

THENCE ALONG SAID PARALLEL LINE, NORTH 00°21'47" WEST, A DISTANCE OF 90.53 FEET TO A LINE PARALLEL WITH AND 2.50 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES TO THE COMMON LOT LINE BETWEEN SAID LOTS 5 AND 6;

THENCE ALONG SAID PARALLEL LINE, SOUTH 89°51'54" WEST, A DISTANCE OF 84.22 FEET TO THE WESTERLY BOUNDARY OF SAID LOT 5;

THENCE DEPARTING SAID PARALLEL LINE, ALONG SAID WESTERLY BOUNDARY, AND CONTINUING ALONG THE WESTERLY BOUNDARY OF SAID LOT 6, NORTH 00°14'45" WEST, A DISTANCE OF 5.00 FEET TO A LINE PARALLEL WITH AND 2.50 FEET NORTHERLY, MEASURED AT RIGHT ANGLES TO THE COMMON LOT LINE BETWEEN SAID LOTS 5 AND 6;

THENCE DEPARTING SAID WESTERLY BOUNDARY ALONG SAID PARALLEL LINE, NORTH 89°51'54" EAST, A DISTANCE OF 84.21 FEET TO A LINE PARALLEL WITH AND 5.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES TO THE EASTERLY BOUNDARY OF SAID LOT 6;

THENCE ALONG SAID PARALLEL LINE, NORTH 00°21'47" WEST, A DISTANCE OF 80.58 FEET TO A LINE PARALLEL WITH AND 6.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES TO THE NORTHEASTERLY BOUNDARY OF SAID LOT 6;

THENCE ALONG SAID PARALLEL LINE, NORTH 60°35'08" WEST, A DISTANCE OF 12.02 FEET;

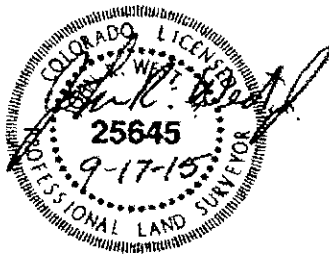
THENCE DEPARTING SAID PARALLEL LINE, NORTH 29°24'52" EAST, A DISTANCE OF 6.00 FEET TO SAID NORTHEASTERLY BOUNDARY OF LOT 6;

THENCE ALONG THE NORTHEASTERLY AND EASTERLY BOUNDARIES OF SAID LOTS 5 AND 6
THE FOLLOWING 2 COURSES:

- 1) SOUTH 60°35'08" EAST, A DISTANCE OF 14.34 FEET;
- 2) SOUTH 00°21'47" EAST, A DISTANCE OF 185.19 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 0.046 ACRE, (1,990 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



JOHN R. WEST, JR.
COLORADO LICENSED PROFESSIONAL LAND SURVEYOR NO. 25645
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 EAST MINERAL AVENUE, SUITE 1, LITTLETON, CO 80122

ILLUSTRATION TO EXHIBIT A

