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THIS INSTRUMENT WAS PREPARED BY
AND UPON RECORDATION RETURN TO:

Steven H. Goodman
Roger T. Stelle
Meltzer, Purtil & Stelle LLC
1515 East Woodfield Road
Second Floor
Schaumburg, IL 60173-5431

2020-083243

2020 Nov 17 10:59 AM

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
MICHAEL B BROWN
RECORDER

CTNW8003715B

(Space Above For Recorder's Use)

MORTGAGE AND SECURITY AGREEMENT
(Earnest Money Mortgage—The Gates of St. John)

Document is NOT OFFICIAL!

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is made as of November 10, 2020, by ~~FOR STAR (USA) REAL ESTATE GROUP INC.~~, a Delaware corporation, of 3330 Cumberland Boulevard, Suite 275, Atlanta, Georgia 30339 ("Borrower"), to **D.R. HORTON, INC. - MIDWEST**, a California corporation, of 750 E. Bunker Court, Suite 500, Vernon Hills, IL 60061 ("Lender").

CHICAGO TITLE INSURANCE COMPANY

WITNESSETH:

WHEREAS, Borrower is justly indebted to Lender in the principal amount of FIVE HUNDRED TWENTY TWO THOUSAND AND NO/100 DOLLARS (\$522,000.00) (the "Loan") as evidenced by that Promissory Note of even date herewith made by Borrower and payable to the order of and delivered to Lender in and by which said Note, Borrower promises to pay the said principal sum and interest in the manner and at the rates as provided therein (the "Note");

WHEREAS, so long as no default exists, the unpaid principal balance of the Note, if not sooner declared to be due in accordance with the terms hereof, together with all accrued and unpaid interest, shall be due and payable in full on September 30, 2021 ("Maturity Date") and

WHEREAS, Borrower desires to secure the payment of the Debt (as hereinafter defined) and the performance of all of the Obligations (as hereinafter defined).

NOW THEREFORE, in consideration of the making of the Loan and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Borrower hereby agrees, covenants, represents and warrants with and to Lender as follows:

J03

\$55100

A 1820801931

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Article 1 - GRANTS OF SECURITY

Section 1.1 PROPERTY MORTGAGED. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender, all of Borrower's estate, right, title and interest in and to the following property, rights, interests and estates now owned or hereafter acquired by Borrower, whether now existing or hereafter created and described in Exhibit A attached hereto and made a part hereof (collectively, the "Real Property") together with the tangible and intangible persona property hereinafter described, is collectively referred to herein as "Property".

Together with all improvements thereon and all and singular the rights and appurtenances pertaining thereto, including, but not limited to, all right, title, and interest of Grantor in and to adjacent streets, alleys, easements, and rights-of-way, any strips or gores of real property between such real property and abutting or adjacent properties, all water and water rights, timber and crops pertaining to such real estate, and all reversions and remainders in or to such real property; together with all of the following personal property: (i) all fixtures, supplies, building materials, and other goods of every nature now or hereafter located, used, or intended to be located or used on the Real Property; (ii) all of the Development Rights (as defined below); (iii) all contracts and subcontracts relating to the construction of improvements on the Real Property; (iv) all accounts, contract rights, instruments, documents, general intangibles, and chattel paper arising from or by virtue of any transactions relating to the Real Property; (v) all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Real Property; (vi) all proceeds payable or to be payable under each policy of insurance relating to the Real Property; and (vii) all products and proceeds of the foregoing. Notwithstanding any other provision in this Mortgage, the term "Property" and the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned, except for personal effects used primarily for personal, family, or household purposes.

As used herein, the term "Development Rights" shall mean and include any and all rights, powers, privileges, options, or other benefits associated with, that pertain to, are attributable to, are appurtenant to, apply to, or which otherwise benefit the Real Property including, without limitation, any and all development rights, applications, permits, approvals, and licenses; deposits, and other fiscal security; utility service commitments, rights, capacity, allocations, taps, and connections (and the right to acquire any of same under any contract or agreement with any utility provider); all plans and specifications for development of or construction of improvements on the Real Property; agreements with municipal or other public utilities; detention rights; rights to credits, refunds, and reimbursements (including without limitation any credits against, or right to pay reduced, impact fees, application fees, permit fees, or inspection fees) from any municipality, municipal utility district or other governmental (or quasi-governmental) district, entity, political subdivision or authority, or any utility company or provider; rights under any plats, plat applications and other development applications and approvals; rights under any development agreements, reimbursement agreements or similar agreements or contracts with any municipality, municipal utility district or other governmental (or quasi-governmental) district, entity, political subdivision or authority; rights to receive or install water, wastewater, electricity, gas, telephone, telecommunications, drainage, or other utilities or services; rights to build, construct, or install streets, driveways, or other access to the land; rights under any declaration of covenants, conditions, and restrictions, including rights as declarant.

As to any of the property aforesaid which does not so form a part and parcel of the Real Estate or does not constitute a “fixture” (within the meaning of Section 9-102(41) of the Uniform Commercial Code of Indiana (“Code”), as amended and in effect from time to time), this Mortgage is hereby deemed to also be a Security Agreement under the Code for purposes of granting a security interest in such property, which Lender hereby grants to Lender, as Secured Party (as defined in the Code), as more particularly provided hereinafter.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note and this Mortgage, shall well and truly perform the other Obligations as set forth in this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Note and in the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void.

Article 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1 DEBT. This Mortgage and the grants, assignments and transfers made herein are given for the purpose of securing the following, in such order of priority as Lender may determine in its sole discretion (the “Debt”):

- (a) the payment of the indebtedness evidenced by the Note;
- (b) the payment of interest, default interest, late charges, if any, and all other moneys agreed or provided to be paid by Borrower in any of the “Related Documents” (as defined in the Note); and
- (c) the payment of all sums advanced to protect and preserve the Property and the lien and security interests created hereby.

Section 2.2 OBLIGATIONS. This Mortgage and the grants, assignments and transfers made herein are also given for the purpose of securing the performance of all other obligations of Borrower contained herein and in the Note and the Related Documents (all of such obligations, together with Borrower's obligations for the payment of the Debt, collectively, the “Obligations”).

Article 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 PAYMENT OF DEBT. Borrower will pay the Debt at the time and in the manner provided in the Note.

Section 3.2 Insurance.

(a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

(1) Insurance as required pursuant to the Purchase and Sale Agreement (hereafter defined);

(2) Such other insurance as may be reasonably required by Lender, which may include, among other coverages:

(i) Insurance against loss or damage by fire, casualty and other hazards as now are or subsequently may be covered by an "all risk" policy or a policy covering "special" causes of loss, with such endorsements as Lender may from time to time reasonably require including, without limitation, building ordinance and law, lightning, windstorm, civil commotion, hail, riot, strike, water damage, sprinkler leakage, collapse, malicious mischief, explosion, smoke, aircraft, vehicles, vandalism, falling objects and weight of snow, ice or sleet, covering the improvements made to the land in an amount equal to one hundred percent (100%) of the full insurable replacement value of the improvements (exclusive of footings and foundations below the lowest basement floor) without deduction for depreciation; and

(ii) Additional commercial general liability insurance under a policy containing "Comprehensive General Liability Form" of coverage (or a comparably worded form of coverage) and the "Broad Form CGL" endorsement (or a policy which otherwise incorporates the language of such endorsement.

(b) All insurance policies required hereunder (each, a "Policy" and collectively, the "Policies") shall have a term of not less than six months be in the form and amount and with deductibles as, from time to time, shall be reasonably acceptable to Lender.

(c) All Policies shall name Lender as an insured or additional insured, shall provide for loss payable to Lender and Borrower as their interests may.

(d) If Borrower fails to maintain and deliver to Lender the original Policies required by this Mortgage, Lender may, at its option, procure such insurance and Borrower shall pay or, as the case may be, reimburse Lender for, all premiums thereon promptly, upon demand by Lender, with interest thereon at the Default Rate (as hereinafter defined) from the date paid by Lender to the date of repayment and such sum shall constitute a part of the Obligations secured by this Mortgage.

Section 3.3 REAL ESTATE TAXES. Borrower shall pay in a timely manner all real estate taxes due in connection with the Property prior to the delinquency date thereof.

Section 3.4 MAINTENANCE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair and shall not commit or suffer any waste of the Property or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Mortgage.

Section 3.5 DEMOLITION OF PROPERTY. Borrower shall not cause or permit any building located on the Property to be demolished, without first obtaining the written consent of Lender. Borrower's failure to obtain such consent prior to such demolition shall constitute an Event of Default, as defined in Article 5 below.

Section 3.6 MECHANICS LIEN CLAIMS. Borrower shall at all times keep the Property free from all claims for lien for unpaid materials or services under Indiana mechanic's lien laws. In the event that any such lien claim is filed, Borrower shall have thirty (30) days from the date of such filing to have such lien removed or provide bond or title insurance coverage over such lien claim. Borrower's failure to do so shall be an Event of Default, as defined in Article 5 below.

Article 4 – PARTIAL RELEASE PAYMENT

Pursuant to the Purchase and Sale Agreement by and between the parties dated of even date herewith (the "Purchase and Sale Agreement"), upon the closing of the sale and release of any of any Lots comprising a portion the Property, Lender shall provide a credit to the principal balance of the Note in the amount of the applicable EM Credit. Lender shall issue a partial release of the lien of this Mortgage as to said Lot(s) upon receipt of the amounts required to be paid to Lender pursuant to the Purchase and Sale Agreement. Further, Lender agrees that it will promptly execute and deliver to Borrower, in duly recordable form, a cancellation of the lien of this Mortgage (a) if Borrower pays or causes to be paid to Lender all of the principal balance of the Note when due and in accordance with the terms of the Purchase and Sale Agreement, or (b) if the Purchase and Sale Agreement is duly terminated by Borrower in accordance with its terms as a result of an uncured default thereunder by Lender after the expiration of all applicable cure periods and Borrower is entitled to retain the Earnest Money pursuant to the Purchase and Sale Agreement.

Article 5 - DEFAULT

Section 5.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an "Event of Default":

(a) the failure by Borrower to make payment of any amount due to Lender under this Note, within ten (10) days after the date when any such payment is due in accordance with the terms hereof, or the failure of Borrower to make payment of any amounts due to Lender under the Mortgage or any of the other Related Documents within ten (10) days after written notice from Lender (which notice may be delivered electronically) in accordance with the terms thereof;

(b) the occurrence of any one or more default under the Purchase and Sale Agreement, the Mortgage or any other Related Documents which is not cured within any applicable cure or grace period as therein provided;

(c) if any of real estate tax affecting the Property is not paid prior to the delinquency date thereof;

(d) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender within thirty (30) days of Lender's written request; and

(e) if any federal tax lien is filed against Borrower and same is not discharged of record within thirty (30) days after same is filed.

Section 5.2 LATE PAYMENT CHARGE. If any payment required hereunder is not paid prior to the five (5) days after the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid portion of the outstanding monthly installment of principal and interest then due or the maximum amount permitted by Applicable Law, to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment, and such amount shall be secured by this Mortgage.

Section 5.3 DEFAULT INTEREST. Borrower will pay, from the date of an Event of Default through the earlier of the date upon which the Event of Default is cured or the date upon which the Debt is paid in full, interest on the unpaid principal balance of the Note Default Rate (as defined in the Note).

Section 5.4 WAIVER OF RIGHT OF REDEMPTION AND OTHER RIGHTS. To the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption, or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, or take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights it may have to require that the Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly waives any and all rights of redemption under Indiana law on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons, are and shall be deemed to be waived hereby to the full extent permitted by applicable law. To the full extent permitted by law, Borrower agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will

have been made or enacted. To the full extent permitted by law, Borrower hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note.

Section 5.5 SECURITY AGREEMENT AND FINANCING STATEMENT. This Mortgage shall constitute a Security Agreement within the meaning of the Code with respect to any property included in the definition herein of the word “Property” which property may not be deemed to form a part of the Real Property or may not constitute a “fixture” (within the meaning of Section 9-102(41) of the Code), and all replacements of such property, substitutions for such property, additions to such property, books and records relating to the Real Property and operation thereof and the proceeds thereof and the “supporting obligations” (as defined in the Code) (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as “Collateral”); (ii) a security interest in and to the Collateral; and (iii) all of Borrower’s right, title and interest therein are hereby collaterally assigned to Lender; all to secure payment of the indebtedness hereby secured and to secure performance by Borrower of the terms, covenants and provisions hereof. This Mortgage is intended to be a financing statement within the purview of the Code with respect to the Collateral.



Article 6 - RIGHTS AND REMEDIES

Section 6.1 REMEDIES. Upon the occurrence of any Event of Default which is not cured within the cure period specified herein, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) take actual possession of the Property or any part thereof personally, or by its agents or attorney;
- (c) exercise the remedies of a secured party under the Code;
- (d) institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any applicable provision of law in which case the Real Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note; and
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage; or

(g) pursue such other remedies as Lender may have under Applicable Law.

Article 7 - MISCELLANEOUS PROVISIONS

Section 7.1 ATTORNEY'S FEES. Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Related Documents

Section 7.2 Waiver of Right of Redemption.

Borrower hereby releases and waives any and all rights to retain possession of the Property after the occurrence of default hereunder and any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights therein granted, on behalf of Borrower, and each and every person acquiring any interest in, or title to, the Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by Indiana law.

Section 7.3 Indemnity.

Borrower hereby covenants and agrees that no liability shall be asserted or enforced against Lender in the exercise of the rights and powers granted to Lender in this Mortgage, and Borrower hereby expressly waives and releases any such liability. Except as due to the gross negligence or willful misconduct of Lender, Borrower shall indemnify and save Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and court costs) of whatever kind or nature which may be imposed on, incurred by or asserted against Lender at any time by any third party which relate to or arise from: the making of the loan evidenced by the Note and secured by this Mortgage; any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Lender may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; the offer for sale or sale of all or any portion of the Property; and/or the ownership, leasing, use, operation or maintenance of the Property. All costs provided for herein and paid for by Lender shall be so much additional indebtedness secured hereby and shall become immediately due and payable upon written notice thereof to Borrower and with interest at the Default Rate (as defined in the Note).

Section 7.4 TRANSFER OF LOAN. Lender may, at any time, sell, transfer or assign the Loan. Borrower agrees to cooperate with Lender in connection with any transfer made as may be reasonably requested by Lender.

Section 7.5 ENTIRE AGREEMENT. This Mortgage, together with the Note and other Related Documents constitute the entire agreement of the parties thereto with respect to the subject matter thereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter.

Section 7.6 GOVERNING LAW. This Mortgage shall be governed by, and construed in accordance with, the laws of the State of Indiana and ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN the county where the Property is located

Section 7.7 TERMS. Capitalized terms not herein defined shall have the same meaning as defined in the Purchase and Sale Agreement or the Note.

Section 7.8 INDIANA PROVISIONS. Compliance with Indiana Law.

(a) Anything herein to the contrary notwithstanding, upon the occurrence of an Event of Default, Lender shall have the right to foreclose this Mortgage in the manner provided under the laws of Indiana and to exercise all remedies available under Indiana law. In the event a foreclosure action is commenced, as aforesaid, and a receiver is appointed as to the Property, said receiver shall possess all rights and powers granted to Lender to the extent said receiver may possess and exercise said rights and powers under Indiana law.

(b) Each of the remedies set forth herein, including without limitation the remedies involving a power of sale on the part of Mortgagor and the right of Lender to exercise self-help in connection with the enforcement of the terms of this Mortgage, shall be exercisable if, and to the extent, permitted by the laws of the State of Indiana in force at the time of the exercise of such remedies without regard to the enforceability of such remedies at the time of the execution and delivery of this Mortgage. Anything contained in this Mortgage to the contrary, Lender shall enforce the terms and provisions of this Mortgage subject to and in accordance with all applicable legal requirements. Any references to "power of sale" in this Mortgage are applicable only to extent permitted by law.

(c) Without limiting the scope of the Assignment of Leases contained in this Mortgage, the Assignment of Leases set forth herein shall constitute an Assignment of Leases as set forth in Indiana Code 32-21-4-2 and hereby creates, and Mortgagor hereby grants to Lender, a security interest in the rents herein described that will be perfected upon the recording of this Mortgage.

(d) Where any provision of this Mortgage is inconsistent with any provision of Indiana law regulating the creation or enforcement of a security interest in real or personal property, including, but not by way of limitation, Indiana Code regarding foreclosure of mortgages, the provisions of Indiana law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provisions of this Mortgage that can be construed in a manner consistent with Indiana law.

(e) Anything contained herein or in Ind. Code 32-29-7-5 to the contrary notwithstanding, no waiver made by Mortgagor in this Mortgage, or in any of the other terms and provisions of the Loan Documents, shall constitute the consideration for or be deemed to be a waiver or release by Lender of the right to seek a deficiency judgment against Mortgagor or any other person or entity who may be personally liable for the indebtedness, which right to seek

a deficiency judgment is hereby reserved, preserved and retained by Lender for its own behalf and its successors and assigns.

(f) Mortgagor represents and warrants that the Property does not, to the actual knowledge of Mortgagor, contain any environmental defect as defined in I.C. 13-11-2-70.

(g) This Mortgage secures all advances made by Lender to Mortgagor and obligations of Mortgagor to Lender pursuant to the Note and this Mortgage that are made or incurred subsequent to the date of this Mortgage; provided, however, that the aggregate amount of all indebtedness secured by this Mortgage shall not exceed Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00), such maximum amount being stated herein pursuant to Ind. Code §32-29-1-10, and not being a commitment by Lender to make future advances.


(h) Interest on any debt secured by this Mortgage shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.

(i) Lender affirms under the penalties of perjury, that it has taken reasonable care to not include any individual's Social Security number in this Mortgage.



IN WITNESS WHEREOF THIS MORTGAGE has been executed by Borrower as of the day and year first above written.

FORESTAR (USA) REAL ESTATE GROUP INC., a Delaware corporation

By: 
Name: Mark S. Walker
Its: SVP; President - East Region

STATE OF GEORGIA)
) SS
COUNTY OF COBB)



I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Mark S. Walker, personally known to me to be SVP; President – East Region of Forestar (USA) Real Estate Group, Inc., a Delaware corporation and personally known to me to be the same person whose name is subscribed on the foregoing instrument, appeared before me this day in person and acknowledged that as such SVP; President – East Region he signed and delivered the said instrument, pursuant to authority given by the Board of Directors of said Corporation, as his free and voluntary act and deed of such Corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 9th day of November 2020.

SHAWNA E. AVILA
NOTARY PUBLIC
Gwinnett County
State of Georgia
My Commission Expires March 16, 2024



Shawna E. Avila
NOTARY PUBLIC
STATE OF GEORGIA
My Commission Expires: 3-16-2024

EXHIBIT A

Legal Description of Land

Lots 2600-2621, 2628-2649, 2314-2318, 2100-2101, 2103-2107, 2110-2117, 2125-2140, inclusive, all as shown on that certain Secondary Plat of The Gates of St. John Units 21, 23 and 26, recorded November 4, 2020, in Document No. 2020-080486 of the Public Records of Lake County, Indiana

Parcel Numbers: Part of 45-15-02-100-015.000-059, 45-15-02-100-014.000-059 and 45-15-02-300-007.000-059

