

When Recorded Return to:

Heritage 76, LLC
14034 S. 145 E. #204
Draper, UT 84020

13324193
7/9/2020 3:23:00 PM \$148.00
Book - 10976 Pg - 4352-4363
RASHELLE HOBBS
Recorder, Salt Lake County, UT
MILLER HARRISON LLC
BY: eCASH, DEPUTY - EF 12 P.

NOTICE OF INTERNET SERVICES CONTRACT

This NOTICE OF INTERNET SERVICES CONTRACT ("**Notice**") is executed and adopted by Heritage 76, LLC, a Utah limited liability company ("**Declarant**") on behalf of the Heritage 76 Owners Association, a Utah nonprofit corporation ("**Association**").

RECITALS

- A. This Notice, and all information provided herein, is subject to the Declaration of Covenants, Conditions, Restrictions for Heritage 76 recorded with the Salt Lake County Recorder's Office on June 16, 2020 as Entry No. 13300060 (the "**Declaration**").
- B. The real property subject to this Notice is identified on Exhibit A attached hereto.
- C. Under the terms of the Declaration, the Association has the right to enter into bulk service agreements for the benefit of the community and its members.
- D. Section 17.11 of the Declaration authorizes the Association enter into a contract with Fiber Direct, LLC and to pay all monies owed under such contract with the Association's funds.
- E. The Association and Declarant desire to disclose the contract with Fiber Direct, LLC to its members attached hereto as Exhibit B.
- F. Pursuant to Utah Code Section 57-8a-104, contracts for utilities, cable, and other similar services that require an investment of infrastructure that are entered into during the Period of Declarant Control may not be terminated by the Board after the Period of Declarant Control.
- G. The Fiber Direct, LLC contract is for a utility service that requires an investment of infrastructure and may not be cancelled or terminated by the Association.
- H. Unless otherwise defined herein, all capitalized terms shall have the meanings defined in the Declaration.

IN WITNESS WHEREOF, the Declarant has executed this Notice on the date set forth below.

DATED this 9th day of July, 20²⁰19.

DECLARANT
HERITAGE 76, LLC
a Utah limited liability company

By: _____

Name: Nathan Shipp

Title: Manager

STATE OF UTAH)
) ss.
COUNTY OF Salt Lake)

On the 9th day of July, 20²⁰19, personally appeared before me Nathan Shipp who by me being duly sworn, did say that she/he is an authorized representative of Heritage 76, LLC, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public: [Signature]

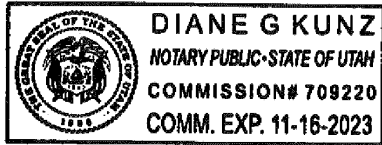


EXHIBIT A
LEGAL DESCRIPTION

All of **Heritage 76, Plat "A"**, according to the official plat on file in the office of the Salt Lake County Recorder.

Including Units 101 through 117 and Units 155 through 164

More particularly described as:

A portion of the Southwest Quarter of Section 14, Township 4 South, Range 1 West, Salt Lake Base and Meridian, located in Salt Lake County, Utah, more particularly described as follows:

Beginning at a point located S89°32'53"W along the section line 669.93 feet and South 3402.85 feet from the North Quarter Corner of Section 14, Township 4 South, Range 1 West, Salt Lake Base and Meridian (Basis of Bearing: S89°46'54"W between the Northeast Corner and the North Quarter Corner of Section 14, T4S, R1W, SLB&M); thence along the arc of a 260.00 foot radius non-tangent curve to the right (radius bears: S13°50'15"W) 233.55 feet through a central angle of 51°28'00" (chord: S50°25'45"E 225.77 feet); thence S24°39'18"E 70.27 feet; thence along the arc of a 30.00 foot radius curve to the right 47.18 feet through a central angle of 90°06'33" (chord: S20°23'58"W 42.47 feet); thence S65°27'14"W 388.80 feet; thence N24°32'46"W 95.00 feet; thence S65°27'14"W 18.70 feet; thence N24°32'46"W 163.00 feet; thence N65°27'14"E 238.69 feet; thence along the arc of a 141.00 foot radius curve to the left 95.20 feet through a central angle of 38°41'13" (chord: N46°06'38"E 93.41 feet); thence along the arc of a 15.00 foot radius curve to the left 3.38 feet through a central angle of 12°55'47" (chord: N20°18'08"E 3.38 feet); thence N13°50'15"E 15.46 feet to the point of beginning.

Contains: ± 2.54 Acres

All of **Heritage 76, Plat "B"**, according to the official plat on file in the office of the Salt Lake County Recorder.

Including Units 118 through 154

More particularly described as:

A portion of the Southwest Quarter of Section 14, Township 4 South, Range 1 West, Salt Lake Base and Meridian, located in Salt Lake County, Utah, more particularly described as follows:

Beginning at a point located S89°32'53"W along the section line 959.24 feet and South 3582.66 feet from the North Quarter Corner of Section 14, Township 4 South, Range 1 West, Salt Lake Base and Meridian (Basis of Bearing: S89°46'54"W between the Northeast Corner and the North Quarter Corner of Section 14, T4S, R1W, SLB&M); thence S24°32'46"E 163.00 feet; thence N65°27'14"E 18.70 feet; thence S24°32'46"E 95.00 feet; thence S65°27'14"W 76.11 feet; thence along the arc of a 1938.50 foot radius curve to the right 324.25 feet through a central angle of 9°35'01" (chord: S70°14'45"W 323.87 feet); thence S82°00'59"W 339.63 feet; thence N7°43'17"W 297.79 feet; thence N82°16'43"E 53.00 feet; thence southeasterly along the arc of a 10.00 foot radius non-tangent curve to the left (radius bears: N82°16'43"E) 15.75 feet through a central angle of 90°15'44" (chord: S52°51'09"E 14.17 feet); thence N82°00'59"E 337.21 feet; thence along the arc of a 650.00 foot radius curve to the left 187.89 feet through a central angle of 16°33'45" (chord: N73°44'07"E 187.24 feet); thence N65°27'14"E 53.53 feet to the point of beginning.

Contains: ± 4.39 Acres

EXHIBIT B

AGREEMENT

THIS AGREEMENT is made and entered into, by and between Fiber Direct, LLC, a Utah limited liability company (“Fiber Direct”) and Heritage 76 Owners Association, a Utah non-profit corporation (the “Association”).

WITNESSETH:

WHEREAS, the Association was formed for the purposes of administering the provisions of that certain Declaration of Covenants, Conditions and Restrictions for Heritage 76 (“Declaration”), recorded June 16, 2020 with the Salt Lake County Recorder’s Office, Entry No. 13300060, Book 10962, Pages 2793-2854, for the development known as “Heritage 76” (the “Development”);

WHEREAS, the Association desires to obtain internet services for the occupants of the Development, (herein, “Services”) and Fiber Direct has made arrangements to have the Services supplied to the Association; and

WHEREAS, Fiber Direct and the Association desire to execute this Agreement for the purposes herein contained.

NOW, THEREFORE, the parties agree, for good and valuable consideration, as follows:

1. Fiber Direct shall arrange to supply the Services to the residents of the Development, subject to the terms contained herein.

2. In consideration of Fiber Direct’s supply of Services, the Association and all “Owners” (as defined in the Declaration) shall be liable for payment of the Services to Fiber Direct. Assessments levied by the Association shall include all amounts required under this Agreement. The Association is obligated to ensure that the budget of the Association each year includes the amounts to be paid under this Agreement. The sums due under this Agreement will be billed by Fiber Direct and the Association is required to pay the amounts due under the bills on a monthly basis, or other periodic installment as determined by Fiber Direct in its sole and absolute discretion from time to time.

3. The Association and each Owner shall indemnify Fiber Direct for any and all claims, losses, damages, legal fees and any other type of costs or expenses arising from or related to contracts Fiber Direct enters into to facilitate the provision of the Services, due to any act or omission by any Owner and/or the Association. The Association and each Owner as well as any

future Owners recognize the rights Fiber Direct has under contracts with other telecommunication and/or network service providers, and shall not take any action or fail to take any action which may impair Fiber Direct's rights under contracts entered into for telecommunication and internet services, or otherwise affect Fiber Direct in connection with such contracts or the services provided thereunder, and in the event the Association and/or any Owner takes any such action or fails to take any action, then the violating party or parties shall be liable to indemnify Fiber Direct for any and all damages, losses, costs, legal fees or other expense Fiber Direct may incur in connection therewith. Further, the Association and each Owner agree and acknowledge that in the event the Association or any Owner fails to comply with any term of a contract entered into by Fiber Direct for the provision of Services, then in no event may Fiber Direct be liable to the Association or any Owner or occupant of the Development for any claim, loss or any other type of expense arising from loss of the Services or otherwise.

4. In addition, the Association and each Owner shall be bound by the restrictions set forth in the Internet Service Agreement, which is appended hereto as **Exhibit A** and incorporated herein by reference.

5. The Association and each Owner will use the Service only for lawful purposes. Any transmission or retransmission of material in violation of any Federal or State laws and/or regulations is expressly prohibited.

6. The Association and each Owner will indemnify and hold harmless Fiber Direct, its officers, members, employees and agents from any and all claims, liabilities and damages arising from or related to use of the Services, including but not limited to those described in paragraphs 5 and 7, which cause, or are alleged to cause, damage to the Association or each Owner or any other party. Fiber Direct will not be liable, either in contract or in tort, for damages arising from unauthorized access to Owner's transmission facilities or to equipment or for unauthorized access to, alteration, theft or destruction of Owner's data files, programs, or information, whether through accident, fraudulent means or devices, or any other method, unless such damage occurs as a result of Fiber Direct's fraud, willful misconduct or gross negligence. Fiber Direct shall not be in any way responsible for claims or damages caused by any other party, any act or omission of any other party furnishing services and/or products in connection with the Services; or for the installation and/or removal of any and all equipment supplied by any service provider, except as provided in this paragraph.

7. Each Lot shall be provided with access to the Internet via fiber optic cable under an agreement with an internet service provider with an Internet connection speed of up to 100 Mbps. Fiber Direct will make every effort to ensure consistently high upload and download speeds, but Fiber Direct makes no warranties of any kind, expressed or implied, in connection with the Service and it disclaims any warranty of merchantability or fitness for a particular purpose. Except as otherwise set forth in paragraph 6 hereof, Fiber Direct is not responsible for any injury or damages which the Association or the Owners may suffer as a result of the use of the Services, including

loss of data resulting from delays, non-deliveries, wrong deliveries, and any and all service interruptions whether caused by Fiber Direct and its employees or by any Owner's own errors or omissions.

8. Any and all information data, programs, media, viruses, spyware, etc. the Association and each Owner obtains or distributes through Fiber Direct's data network services (public and or private) is at their own risk.

9. Fiber Direct may, when necessary to control network congestion, impose reasonable bandwidth limits on an Owner's use of the Services in order to ensure equitable access for other Owners. Fiber Direct will use commercially reasonable efforts to provide the bandwidth speed described in this Agreement, but the Association acknowledges that bandwidth speeds may fluctuate from time to time throughout the day and that Owners may not receive the designated speeds at all times during the day. At Fiber Direct's discretion, Fiber Direct may restrict or limit upload speeds. If a computer causes an internet slowdown as a result of excessive use or use in violation of the Internet Service Agreement, Fiber Direct may, in its discretion disable the port or impose fees as set forth in the Internet Services Agreement.

10. It is the Owner's responsibility to keep independent backup files of important data and software. Fiber Direct, CentraCom, and/or any other internet service provider contracted with to provide Services are not responsible for lost or damaged data or software for any reason and assume Owner's will take all necessary precautions to backup data. To that end, Fiber Direct highly recommends that Owners undertake a proactive approach to computing, which includes: scanning for and preventing malicious software; keeping systems current with the latest operation system patches; protecting data via a scheduled backup solution; and proper insurance for assets.

11. Each Owner is obligated to inform the Association in writing no later than ten (10) business days following the Owner signing any contract of sale of the Lot (as defined in the Declaration) and such notice shall contain the buyer's or buyers' name as well as the date of settlement. Further, each Owner shall include in any contract of sale the acknowledgement and attachments contained in Exhibit "A", attached hereto, executed by all buyers under the contract of sale. The signed notice shall be forwarded to Fiber Direct, LLC at 14034 S. 145 E. Suite 202, Draper, Utah 84020 or such other address as Fiber Direct may provide to the Association from time to time, within the ten (10) days provided herein. The Association shall be responsible for enforcing the Owner's obligations under this Paragraph 11. In the event any Owner fails to comply with this Paragraph 11 and/or the Association fails to enforce the obligations of the Owner described in this Paragraph 11, then the Owner and the Association shall be liable to Fiber Direct for any costs, damages, legal fees and the like which Fiber Direct may incur as a result thereof.

12. In the event the Association and/or any Owner fails to comply with the provisions of this Agreement, then Fiber Direct, in addition to its right to terminate this Agreement upon five (5) day's written notice to the Association, also may take any legal action available under law and

recover all costs incurred in connection therewith, including, without limitation, legal fees and court costs.

13. The Association and Owners shall pay to Fiber Direct Fifty Dollars (\$50.00) per month, per dwelling, as each unit is occupied, subject, however, to increases which Fiber Direct may make upon 30 day's prior written notice to the Association.

Further, in no event may payment by the Association and Owners be subject to any setoff or reduction due to the Association's inability to collect all sums due hereunder or occupancy of the dwellings in the Development. Any costs which are imposed on Fiber Direct under a contract with an internet service provider may be billed by Fiber Direct to the Association.

14. The term of this Agreement shall be five (5) years from the date hereof and shall be automatically renewed for successive five year terms without any further action on the part of any party on the same terms as any agreement Fiber Direct enters into with an internet service provider.

15. Fiber Direct will not be responsible for performance of its obligations hereunder where delayed or hindered by war, riots, fire, earthquakes or other natural disasters, embargoes, strikes, acts of its vendors, or any other cause beyond its control, and will attempt to notify the Association and each Owner in the event of any of the foregoing occurrences.

Should such occurrences continue for more than 60 days, the Association and each Owner or Fiber Direct may cancel the Services if affected with no further liability from the date such event or occurrence first takes place.

16. In the event any part of this Agreement is found to be unlawful or otherwise unenforceable, that part will be severed and the remainder of this Agreement shall remain in effect.

17. The Association's obligations hereunder shall survive any termination of this Agreement.

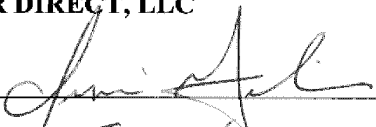
18. This Agreement supersedes all previous representations, understandings or agreements, written or oral, by and between the parties. This Agreement may only be amended upon a written amendment signed by all parties hereto.

19. Fiber Direct may record this Agreement and any amendments to this Agreement in the County Recorder's Office at its expense and in its sole discretion from time to time.

[Signature pages follow]

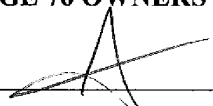
IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the date of the last signature set forth below.

FIBER DIRECT, LLC

By: 
Name: Jim GELS
Title: Manager

Date: June 23, 2020

HERITAGE 76 OWNERS ASSOCIATION

By: 
Name: Nate Shipp
Title: Manager

Date: June 23, 2020

EXHIBIT A

Fiber Direct Agreement

Internet Service Agreement – Heritage 76

ACKNOWLEDGEMENT BY CUSTOMER/BUYER:

1. This Internet Service Agreement (this “Agreement”) provides terms specifically related to Customer’s Internet Service. By signing up for Internet Service, Customer agrees to be bound by the terms of this Agreement, as evidenced by Customer’s signature below. All obligations in this Agreement that refer to “Customer” also jointly and severally apply to Users. Customer shall make all Users at each Service Location reasonably aware of the restrictions and limitations associated with the Internet Services, and Customer shall be responsible for any breach of any portion of this Agreement by any User.

2. **Description of Service.** Customer will be provided with access to the Internet via fiber optic cable under that separate contract by and between Heritage 76 Owners Association, (“Association”) and Fiber Direct, LLC (“Service Provider”). The Service Provider will make every effort to ensure consistently high upload and download speeds, but makes no warranty regarding the Internet Service. Each Living Unit will be provided with an Internet connection speed of up to 50 Mbps.

3. **Acceptable Use Policies.**

a. **Lawful Purposes.** CUSTOMER AGREES TO USE THE SERVICE ONLY FOR LAWFUL PURPOSES.

b. **Unacceptable Uses.** Unacceptable uses include, but are not limited to:

i. **Spam.** Customer may not utilize the Internet Service for the purpose of sending direct mailings, solicitations, bulk mail, spam, or any other high volume e-mailing actions. Customer will not send email to persons who are not personally known to Customer, or who did not personally request email from Customer. Customers whose activities result in the Service Provider domain name being banned from an email server due to spamming may be assessed fees associated with the cost of lifting the ban. Any violation of this policy may result in the immediate termination of Customer’s account, at the sole discretion of Service Provider. If Customer violates this spamming policy, it will be assessed the following fines and fees, which Customer hereby agree to pay:

1. First violation: \$100

2. Second violation: \$500

3. Third violation: \$500 and automatic termination of Customer’s account.

ii. **Newsgroup posting.** The posting of any advertisement or other commercial solicitation to any newsgroup is prohibited. Service Provider reserves the right to determine whether a post constitutes an advertisement or commercial solicitation. The posting of a single article or substantially similar articles to an excessive number of news groups or mailing lists, or continued posting of articles that are off-topic is strictly prohibited. A posting will be considered off-topic when it provokes complaints from the regular readers of the news group or is deemed so by Service Provider. A violation of this policy will result in the immediate termination of Customer’s account.

iii. **Obscenity.** Customers may not utilize the Internet Service to send or receive obscene

materials.

- iv. **Impersonation.** Customers may not utilize the Internet Service to impersonate another person.
 - v. **Defamation.** Customers may not utilize the Internet Service to defame, harm, harass, or libel another person.
 - vi. **Trade secrets.** Customers may not utilize the Internet Service to send or receive trade secrets in violation of applicable state or federal law.
 - vii. **Malicious software or code.** Customers may not utilize the Internet Service to send or intentionally receive any viruses, spyware, worms, Trojan horses or any other malicious computer software or code designed to damage or make use of any third party's property.
 - viii. **Intellectual property.** Customers may not utilize the Internet Service infringe on any party's intellectual property rights. Customers may not engage in the illegal or unauthorized transfer of intellectual property, including but not limited to music, written works, movies, software, videogames, instructions, data, and code.
 - ix. **Unauthorized access to computers.** Customers may not utilize the Internet Service for the purpose of hacking or other conduct related to unauthorized access of computers, servers or systems.
- c. **Bandwidth limits and fluctuations.** Service Provider may, when necessary to control network congestion, impose reasonable bandwidth limits on Customer's use of the Service in order to ensure equitable access for other Customers. Service Provider will use commercially reasonable efforts to provide the bandwidth speed described in this Agreement, but Customer acknowledges that bandwidth speeds may fluctuate from time to time throughout the day and that Customer may not receive the designated speeds at all times during the day. At Service Provider's discretion, Service Provider may restrict or limit upload speeds. If a Customer causes an internet slowdown as a result of excessive use or use in violation of this Agreement, Service Provider may, in its discretion, suspend or terminate Customer's Internet Access.
 - d. **Minors.** Customer will be fully responsible for monitoring minors' access to the Service, and will take appropriate steps to ensure that minors do not have access to harmful content. Customer acknowledges that Service Provider does not monitor minors' access to the Service and is not responsible for minors' access to inappropriate or harmful content.
 - e. **Personal Accounts.** Customers that have paid for a personal account (as opposed to a business account) are not permitted to use Service Provider's Internet connection to sell or advertise goods or services. This is only permitted to those who have purchased a business account or a virtual server.
 - f. **Enforcement.** Service Provider reserves the right to take whatever actions it deems appropriate to enforce these policies. Service Provider also reserves the right to change these policies without prior notice at any time. The actions Service Provider takes may include account suspension or termination. Service Provider does not issue any credits for accounts cancelled due to policy violations. Any Internet activity, which references back to Service Provider or its services in a damaging manner, will result in suspension or termination of account(s). Illegal Internet activity using or referencing to Service Provider or an account or services provided by Service Provider will result in immediate termination, possible

prosecution, and assessment of legal fees accrued. In addition to any other fees and penalties that may be assessed by the Service Provider, as provided herein, Customer shall be held liable for any and all costs incurred by the Service Provider as a result of Customer's violation of any terms and conditions of this Agreement. This includes, but is not limited to, attorneys' fees and costs resulting from Service Provider responses to complaints from and the cleanup of unsolicited commercial and/or unauthorized bulk mailings and/or news server violations. Service Provider's current hourly rate for responses to complaints and cleanup of unsolicited commercial mailings and/or unauthorized bulk mailings and/or news server violations is listed at are listed at the applicable website. Further, Customer shall indemnify Service Provider for any and all claims, losses, damages, legal fees and any other type of costs or expenses due to any act or omission by the Customer hereunder.

4. Responsibility for Security and Filtering.

- a. **Security and viruses.** Customer acknowledges that by connecting to the Internet, Customer's and its User's computer system and files are vulnerable to access by unauthorized third parties (including hackers). Customer is solely responsible for installing, implementing and using computer security precautions such as closing unnecessary ports, and using firewall technology. **CUSTOMER AND ITS USERS ARE STRONGLY ENCOURAGED TO INSTALL AND ROUTINELY UPDATE FIREWALL AND ANTIVIRUS SOFTWARE.** In the event that Customer is found to be spreading a virus, whether intentionally or unintentionally, Service Provider may suspend Customer's account until such time as Service Provider believes that Customer has effectively remedied the situation.
- b. **Wireless connections.** Customer acknowledges that using wireless networking connectivity may present certain security risks. Customer is solely responsible for implementing and using wireless security measures, including but not limited to enabling encryption technology (e.g., Wired Equivalent Privacy (WEP) or Wi-Fi Protected Access (WPA)) on the relevant equipment, including the access point.
- c. **Disclaimer of liability.** Customer acknowledges and agrees that Service Provider has no liability for any unauthorized access of any Customer computer or system by any third party, and that Customer is solely liable for any damages arising from such unauthorized access. Service Provider is not providing any security advice or consulting services to Customer and is not responsible for installing or maintaining any security systems on behalf of Customer.

5. **IP Addressing.** Service Provider uses static and dynamic IP Addresses for Customers. Assignment of an IP address to Customer creates no ownership rights in Customer of the IP address. Service Provider retains all rights to any IP addresses it assigns to Customer.

6. **Ownership of Content.** Except for content on the Service Provider website, Service Provider does not own, license, or have any rights in content that Customer may upload or download, nor in e-mails that Customer may send or receive, nor in any content that Customer may upload to the server space provided by Service Provider under this Agreement. The content of all uploads, downloads, and emails associated with Customer's use of the Internet Service is solely the property and responsibility of Customer.

The foregoing Internet Service Agreement was agreed to and accepted by the undersigned as of the Date shown below.

Lot#: _____

Customer/Buyer:

Signature: _____

Printed Name: _____

Date: _____

Customer/Buyer:

Signature: _____

Printed Name: _____

Date: _____

UPON COMPLETION RETURN TO:

Fiber Direct, LLC
14034 S. 145 E. Suite 202
Draper, UT 84020