

EXHIBIT D
JOINT USE AND CROSS EASEMENT
AGREEMENT

**RECORDED AS PART OF THE COVENANTS,
CONDITIONS & RESTRICTIONS (CC&Rs)
OTHERWISE KNOWN AS THE DECLARATION OF THE
HORIZON HEIGHTS CONDOMINIUM PROJECT**

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GARY M. OTT

RECORDER, SALT LAKE COUNTY, UTAH

EDGE HOMES

BY: LHA, DEPUTY - MI 82 P.

EXHIBIT D
JOINT USE AND CROSS EASEMENT AGREEMENT

DATED: this 28 day of September, 2016

PARTIES: Horizon Heights Condominiums Owners Association, Inc. ("Horizon COA") and Horizon Heights Homeowners Association, Inc. ("Horizon HOA") (collectively the "Parties" or individually a "Party").

RECITALS

- A. Horizon COA is a Utah nonprofit corporation governing a residential condominium development in Herriman City, Salt Lake County, Utah ("Horizon Condo Project"), as more fully described in the Horizon Condo Project's Declaration of Condominium ("Condo Declaration") and as depicted on the Horizon Condo Project's plat maps ("Condo Plats") recorded with the Salt Lake County Recorder.
- B. Horizon HOA is a Utah nonprofit corporation governing a residential single family home subdivision ("Horizon Subdivision") in Herriman City, Salt Lake County, Utah, as more fully described in the Horizon Subdivision's Declaration of Covenants, Conditions, and Restrictions ("Subdivision Declaration") and as depicted on the Horizon Subdivision's plat maps ("Subdivision Plats") recorded with the Salt Lake County Recorder.
- C. Horizon COA desires to grant the owners and residents at the Horizon Subdivision an easement for the right to use the Horizon COA's private roadways, visitor parking, and recreational amenities, which may include a playground, clubhouse, and swimming pool, as depicted on the Condo Plats recorded with the Salt Lake County Recorder.
- D. Horizon HOA desires to grant the owners and residents at the Horizon Condo Project an easement for the right to use the Horizon HOA's private roadways, visitor parking, and recreational amenities, which may include a playground, clubhouse, and swimming pool, as depicted on the Subdivision Plats recorded with the Salt Lake County Recorder.

AGREEMENT/EASEMENT

In consideration of the foregoing and the mutual covenants of the Parties contained in this Joint Use and Cross Easement Agreement ("Agreement"), the receipt and adequacy of which are hereby acknowledged, the Parties agree follows:

1. **Grant of Easement to Horizon Subdivision.** Subject to the rights and restrictions set forth in this Agreement, Horizon COA hereby grants and conveys to Horizon HOA a permanent and nonexclusive easement over and across the Horizon Condo Project's roadways, visitor parking areas, and common recreational amenities, as

described on the Condo Plats, for purposes of temporary parking, pedestrian and vehicular access to, ingress to and egress from the Horizon Condos' private roadways, visitor parking areas, and common recreational amenities, and for the use and enjoyment of the amenities of Horizon Condo Project by Horizon HOA permitted users, as defined below (the "Horizon HOA Easement"). The Horizon HOA Easement is granted by the Horizon COA as a benefit and right appurtenant to the Horizon Subdivision. The Horizon HOA Easement is granted for the right, benefit, and use of Horizon HOA and Horizon HOAs' successors, heirs, assigns, owners, guests, managers, mortgagees, lessees, and beneficiaries under any deeds of trust (collectively the "Horizon HOA permitted users"), subject to the provisions of this Agreement.

2. **Grant of Easement to Horizon Condos.** Subject to the rights and restrictions set forth in this Agreement, Horizon HOA hereby grants and conveys to Horizon COA a permanent and nonexclusive easement over and across the Horizon Subdivision roadways, visitor parking areas, and common recreational amenities, as described on the Subdivision Plats, for purposes of temporary parking, pedestrian and vehicular access to, ingress to and egress from the Horizon Subdivision private roadways, visitor parking areas, and common recreational amenities, and for the use and enjoyment of the amenities of Horizon Subdivision by Horizon COA permitted users, as defined below (the "Horizon COA Easement"). The Horizon COA Easement is granted by the Horizon HOA as a benefit and right appurtenant to the Horizon Condo Project. The Horizon COA Easement is granted for the right, benefit and use of the Horizon COA and Horizon COA's successors, heirs, assigns, owners, guests, managers, mortgagees, lessees and beneficiaries under any deeds of trust (collectively the "Horizon COA permitted users"), subject to the provisions of this Agreement.
3. **Roadway and Common Area Maintenance, Repair, and Replacement.** Horizon HOA and Horizon COA shall have separate and individual obligations to maintain, repair, and replace the roadways, improvements, visitor parking, and recreational amenities located within and upon their respective community and property in good condition and repair and in accordance with all applicable laws, ordinances, rules, regulations, covenants, conditions and restrictions, and governmental requirements. All maintenance, repair and replacement obligations shall be performed in a prompt, diligent, and regular manner.
4. **Cost Sharing.** Horizon COA and Horizon HOA shall share all maintenance, repair, and replacement costs of any (a) playground (tot lot), (b) clubhouse, (c) swimming pool, and (d) the shared road, which provides access to the six (6) condominium buildings immediately adjoining Horizon Subdivision, on a pro rata basis based on the relative number of residential housing units certified for occupancy within each Project. Each Party shall separately fund the maintenance, repair, and replacement of any visitor parking stalls, and any other roadways and amenities on each respective Project plat. Any invoice for shared costs shall be payable no later than

30 days following submission. Late payments shall be subject to interest at the rate of 18% per annum.

5. **Damage by Horizon HOA or Horizon COA permitted users.** If damage to the easement area within the Horizon Condo Project, beyond ordinary wear and tear, is directly attributable to Horizon HOA permitted users, then Horizon HOA shall pay for the repairs to the damaged area at its sole expense without any right of partial reimbursement from Horizon COA. Likewise, if damage to the easement area within the Horizon Subdivision, beyond ordinary wear and tear, is directly attributable to Horizon COA permitted users, then Horizon COA shall pay for the repairs to the damaged area at its sole expense without any right of partial reimbursement from Horizon HOA.
6. **Restriction on Use.** Neither Horizon COA nor Horizon HOA, nor any Horizon COA or Horizon HOA permitted users shall place any obstruction to or upon the easement area whatsoever, except as is necessary in connection with the Parties' maintenance, repair, and replacement obligations. Neither Horizon COA nor Horizon HOA shall erect or place any building or other improvement upon or over the easement area, except as authorized under each Parties' governing documents. Each Party and its permitted users shall be bound by any posted or published rules governing the easement areas.
7. **Condemnation.** In the event Horizon COA or Horizon HOA property or any portion thereof is taken by power of eminent domain, or is conveyed under threat of condemnation, the obligations hereunder of the Party owning such property shall be abated to the extent of the taking. Proceeds from any taking of Horizon COA or Horizon HOA property shall belong exclusively to the respective Party over or owning such property.
8. **Non-Use.** No obligation arising from or out of this Agreement or any right granted under this Agreement, shall lapse because of non-use.
9. **Easements Run with the Land.** The Horizon COA Easement and Horizon HOA Easement shall run with the land as to all property benefitted and burdened thereby, including any partition or division of such property. The rights, covenants, and obligations contained in this Agreement shall bind, burden, and benefit Horizon COA and Horizon HOA and their respective successors, assigns, heirs, lessees, mortgagees, and beneficiaries under any deeds of trust.
10. **Conformance with Governmental Requirements.** Both Parties shall cause all their respective uses of the easement area to be in conformance with all applicable federal, state, county, and municipal laws, ordinances, regulations, and requirements.
11. **Recording.** This Agreement shall be recorded in the official records of Salt Lake County, Utah.

12. **Waiver.** Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision, nor shall any waiver of breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or waiver of such provision itself.

13. **Attorneys' Fees.** If a suit, action, or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of this Agreement or to enforce any rights hereunder, the prevailing party shall be entitled to recover its attorneys' fees and expenses and all other fees and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.

14. **Remedies.** In the event that either Party fails to perform any obligation under this Agreement, the other Party shall be entitled to require specific performance of such obligation, to obtain appropriate injunctive relief (without the necessity of showing inadequate remedies at law), to cure the default of such obligation and recover the costs thereof from the Party breaching such obligation, or to pursue any other remedy available at law or equity. The remedies authorized throughout this Agreement are not mutually exclusive and may be maintained independently of each other.

15. **Amendment and Termination.** This Agreement may be amended and/or terminated only by a written agreement signed by representatives of both Parties, their successors, or assigns. Such signers must be authorized in accordance with their respective governing documents, and in no event shall any amendment hereto be accomplished without a two-thirds (2/3) majority vote by the owners of both Horizon COA and Horizon HOA. Said amendment and/or notice of termination shall be recorded in the official records of Salt Lake County, Utah.

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

Horizon Heights Condominium Owners Association, Inc.

By: Stew Mada

Its: Director

Horizon Heights Homeowners Association, Inc.

By: [Signature]

Its: Director