

1-8-3

WHEN RECORDED, MAIL TO:  
Hurricane Garden Homes Owners Association  
P.O. Box 826  
Hurricane, Utah 84737

DOC # 20160017511

Agreement Page 1 of 8  
Russell Shirts Washington County Recorder  
05/18/2016 02:15:59 PM Fee \$ 27.00  
By HURRICANE GARDEN HOA



## REAL ESTATE PURCHASE AGREEMENT

Tax ID: H-3-1-33-1444

This Real Estate Purchase Agreement ("Agreement") is made effective on the 5<sup>th</sup> day of May, 2016, by and between **Hurricane Garden Homes Owners Association**, (hereafter "HGHOA"), and **MB - Painted Sands, LLC. A Utah Limited Liability Company**, (hereafter "Developer").

### Recitals

WHEREAS, HGHOA owns property which bisects property owned by Developer; and

WHEREAS, HGHOA is willing to facilitate 169 unit residential development of Developer's property in exchange for concessions described below; and

WHEREAS, Developer own portions of the land bisected by HGHOA property; and

WHEREAS, Developer wishes to purchase land from HGHOA to facilitate their development plan; and

WHEREAS, HGHOA and Developer have reached an agreement for the purchase of property, which bisects Developer property and the parties desire to enter into a written agreement;

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

### Agreement

1. HGHOA shall convey by sufficient deed, to the Developer, the roadway property currently owned by HGHOA as shown on page 1 of the Hurricane Garden Homes Phase 1 Amended plat also including approximately 193 feet of said road shown on page 2 of said plat, which is more particularly described in Exhibit A.

2. Developer agrees to pay a sum of \$35,000.00 (Thirty-Five Thousand Dollars) to HGHOA prior to beginning construction on Developer's property.

3. Developer agrees to resurface 1580 West in its entirety from the Northern boundary of Hurricane Garden Homes Subdivision Phase 2 to the Southern boundary of Hurricane Garden Homes Phase 1 Amended as shown on the official plats for said subdivisions (not to exceed 1350 linear feet), prior to occupancy of any dwelling contained on Developer's property, at no cost to HGHOA. Said resurface shall include a screed leveling course of asphalt to be initially placed upon the existing surface to fill existing imperfections as well as an additional 2" (two inch) overlay preceded by a tack coat on the previously leveled roadway surface. Said overlay will not exceed current width of road (approximately 28'). All work will be in accordance with industry standards for asphalt placement with a one-year warranty on work. All utility covers will be raised and re-collared to the new road level. If any traffic mediation is needed with HGHOA residents, HGHOA will be responsible to organize and facilitate. HGHOA will work

with Developer to keep all vehicles off of the asphalt for 24 hours during and after the installation.

4. Developer agrees that in addition to the resurfacing of 1580 West, they will also resurface the short section of 1450 West, which will be remaining in HGHOA ownership (approximately 175') not to exceed 28' in width in the same fashion previously described at no cost to HGHOA. All work will be done in accordance with industry standards for asphalt placement with a one-year warranty on work.

5. Developer and HGHOA understand that an irrigation line exists in Developer's property; said line services the homes and common space within HGHOA. Said irrigation line is acknowledged to exist within a prescriptive easement and needs to be relocated. Developer agrees to relocate said irrigation line with like size and material and in compliance with industry standards at no cost to HGHOA. Relocation will happen with a one week notice from Developer for any outage and not last any longer than 72 hours. HGHOA agrees to work in good faith with Developer to be accommodating to Developer's schedule for outages.

6. Developer agrees to grant an easement, with the necessary exceptions for roadways and driveways, to HGHOA for the relocated irrigation line, at no cost to HGHOA, said easement shall be a minimum width of 10' (ten feet).

7. Developer agrees to increase buffer zone between Hurricane Garden Homes Phases 1 and 2 and the proposed development on Developer's property by approximately 20' (twenty feet). This is in addition to the 30' (thirty feet) required by Hurricane City. The buffer zone shall be no less than 49' (forty nine feet) on all boundaries common to both properties. Said 49' area shall remain open and shall be completed in such a way as to discourage pedestrian use and prevent drainage from entering HGHOA property but must allow for drainage to exit from HGHOA property as it has historically done.

8. Developer agrees that all drainage originating from any Developer's property and proposed roadways will be contained, or properly discharged away from HGHOA property. This provision specifically includes waters collected on 1580 West within Developer's property and 1450 West which will become Developer's property upon execution of this Agreement.

9. Developer agrees that a 6' (six foot) high masonry wall will be built along all common boundaries. Said fence will be elevated if needed in an effort to prevent obstruction of views and enhance privacy by blocking views of structure from within HGHOA.

10. 1450 will be part of Phase 1 and will be paved to 600 North.

11. Developer agrees to direct all construction traffic to 600 North and block access to HGHOA roads until such time as all paving is completed on Developer's Phase 1 property and all paving described previously within HGHOA has been completed.

12. HGHOA agrees to allow developer to connect to the sewer system which serves HGHOA at the North end of 1580 West as requested by Developer.

13. HGHOA acknowledges and agrees that recording of this document will not occur until such time as the current request for zoning to PDO/R-1-8 with a maximum density of 169 units has been approved by Hurricane City. Furthermore, HGHOA agrees to be in support of Developer's future plat proposals to Hurricane City if said proposals are in full compliance with the terms of this agreement and do not exceed said 169 units.

Miscellaneous Provisions.

- a. Assignment. Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of the HGHOA, which consent shall not be unreasonably withheld.
- b. No Joint Venture, Partnership or Third Party Rights. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Developer and HGHOA. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
- c. Amendments. This Agreement may be amended by from time to time by mutual consent of all parties.
- d. Binding Effect. This Agreement is to be recorded amongst the deeds at the office of the Washington County Recorder and be considered an encumbrance which shall run with the land as described in Exhibit B. The provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.
- e. Integration. This Agreement contains the entire agreement of the undersigned with respect to the subject matter hereof and integrates all prior conversations, discussions or understanding of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto.
- f. Severability. If any part or provision of this Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- g. Previous Agreements. Except as otherwise expressly provided herein, this Agreement is the exclusive agreement of the parties and replaces and supersedes all prior agreements between the parties pertaining to this Project.
- h. Legal Fees. Should any party default in any of the covenants or agreements herein contained, that defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise.

IN WITNESS WHEREOF, the parties have executed this Real Estate Purchase Agreement effective the day, month and year first above written.

(Signature pages to follow)

**Developer:**

MB – Painted Sands, LLC. A Utah Limited Liability Company

By: *Richard H. Miller*  
Richard H. Miller, Manager

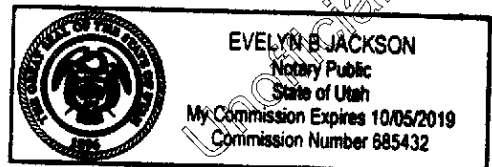
STATE OF UTAH )  
 )ss.  
COUNTY OF WASHINGTON )

On the 27<sup>th</sup> day of April, 2016, personally appeared before me, Richard H. Miller, who, being duly sworn, says that he is the Manager of MB – Painted Sands, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said company by authority of its Articles of Organization, and said Manager acknowledged to me that said company executed the same.

**WITNESS** my hand and official stamp the date in this certificate first above written:

*Evelyn B Jackson*  
NOTARY PUBLIC

Address: 1305 S Washington Dam Rd  
My Commission Expires: 10/05/2019



**HGHOA:**

Hurricane Garden Homes Owners Association

By: *Elena Hall*  
Elena Hall, President

STATE OF UTAH )  
 )ss.  
COUNTY OF WASHINGTON )

On the date first written above written personally appeared before me, Elena Hall, who, being duly sworn, says that she is the President of Hurricane Garden Homes Owners Association, and that the within and foregoing instrument was signed in behalf of said Hurricane Garden Homes Owners Association by authority of, and in compliance with all provisions of, its Declaration of Covenants Conditions and Restrictions.

**WITNESS** my hand and official stamp the date in this certificate first above written:

*Brannen Trost*  
NOTARY PUBLIC

Address: 301 S. Pleasant Grove Blvd. Pleasant Grove, UT. 84062  
My Commission Expires: 12-21-2016



## Exhibit A

### ROADWAY PARCEL:

That portion of 1450 West Street, a 58 foot wide private street, lying between a line from the northwest corner of Lot A-12 to the northeast corner of Lot A-13, both being lots within Hurricane Garden Homes "Subdivision" (Amended) Phase No. 1, and the south line of 600 North Street, a varying width public street.

Contains 1.207 acres.

## Exhibit B

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### EAST PARCEL:

Beginning at the intersection of the southerly right-of-way line of 600 North Street and the east sixteenth line of Section 33, Township 41 South, Range 13 West of the Salt Lake Base and Meridian, said point lies South 88°58'16" East 1319.38 feet along the section line and South 00°52'54" West 40.00 feet along said east sixteenth line from the north quarter corner of said section and running thence, continuing along said east sixteenth line South 00°52'54" West 844.11 feet to a point on the boundary of Hurricane Garden Homes "Subdivision" (Amended) Phase No. 1; thence along said Phase No. 1 boundary in the following six (6) courses: leaving said east sixteenth line North 89°09'14" West 250.12 feet (250.00' record); thence South 81°50'46" West 147.25 feet; thence North 24°35'14" West 280.00 feet to the point of curvature of a 271.00 foot radius curve concave easterly; thence northerly 215.21 feet along the arc of said curve through a central angle of 45°30'00" to the point of tangency; thence North 20°54'46" East 310.84 feet to the point of curvature of a 329.00 foot radius curve concave westerly; thence northerly 96.10 feet along the arc of said curve through a central angle of 16°44'08" to a point on a non-tangent line, said point being a point on said southerly right-of-way line; thence leaving said Phase No. 1 boundary and along said southerly right-of-way line in the following three (3) courses: North 84°23'05" East 110.53 feet to the point of curvature of an 1512.50 foot radius curve concave southerly; thence easterly 88.42 feet along the arc of said curve through a central angle of 3°20'58" to a point on a non-tangent line; thence along said non-tangent line South 88°58'16" East 202.14 feet to a point of said east sixteenth line and the point of beginning. Contains 9.231 acres.

### WEST PARCEL:

Beginning at an angle point on the southerly right-of-way of 600 North Street, said point lies South 88°58'16" East 519.18 feet along the section line and South 01°01'44" West 125.56.00 feet from the north quarter corner of Section 33, Township 41 South, Range 13 West of the Salt Lake Base and Meridian and running thence along said southerly right-of-way line in the following three (3) courses: North 73°56'00" East 101.96 feet to a point on the arc of an 1587.50 foot radius curve concave northerly, the radius point of which lies North 04°51'18" West; thence easterly 21.07 feet along the arc of said curve through a central angle of 0°45'37" to the point of tangency; thence North 84°23'05" East 224.77 feet to a point on the boundary of Hurricane Garden Homes "Subdivision" (Amended) Phase No. 1, said point also being a point on the arc of a 271.00 foot radius curve concave westerly; thence along said Phase No. 1 boundary in the following eight (8) courses: southerly 69.11 feet along the arc of said curve through a central angle of 14°36'43" to the point of tangency; thence South 20°54'46" West 310.84 feet to the point of curvature of a 329.00 foot radius curve concave easterly; thence southerly 261.27 feet along the arc of said curve through a central angle of 45°30'00" to the point of tangency; thence South 24°35'14" East 270.92 feet; thence South 67°58'46" West 233.54 feet; thence South 82°23'46" West 220.00 feet; thence South 66°50'46" West 123.63 feet; thence North 88°45'37" West 360.52 feet to a point on the boundary of Hurricane Garden Homes Subdivision – Phase 2; thence along said Phase 2 boundary in the following eight (8) courses: North 47°36'12" West 16.50 feet;

(continued on next page)

## Exhibit B

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(continued from previous page)

thence North 38°57'14" West 268.00 feet; thence North 57°48'19" West 141.68 feet; thence North 40°15'53" West 81.80 feet; thence North 63°03'14" West 170.09 feet; thence South 05°35'46" West 206.00 feet; thence South 16°39'14" East 279.00 feet; thence South 41°18'04" East 316.24 feet to a point on said Phase No. 1 boundary; thence along said Phase No. 1 boundary South 08°31'59" East 234.56 feet to a point on the northerly boundary of Cottonwood Estates; thence along said northerly boundary in the following two (2) courses: North 39°32'28" West 288.16 feet; thence South 80°40'46" West 10.54 feet; thence leaving said northerly boundary North 42°02'28" West 396.60 feet; thence North 14°51'44" East 254.18 feet; thence North 38°43'04" West 303.83 feet; thence North 14°06'19" West 517.55 feet to a point on said southerly right-of-way line; thence along said southerly right-of-way line in the following four (4) courses: South 88°55'52" East 199.76 feet; thence North 86°17'51" East 117.48 feet; thence South 88°52'28" East 469.22 feet; thence South 88°03'34" East 698.71 feet to said right-of-way angle point and the point of beginning. Contains 33.867 acres.

Combined East and West parcels = 43.098 acres.

Preceding description also known as Parcel: H-3-1-33-1444 as shown in the office of the Washington County Recorder

Also including:

### **ROADWAY PARCEL:**

That portion of 1450 West Street, a 58 foot wide private street, lying between a line from the northwest corner of Lot A-12 to the northeast corner of Lot A-13, both being lots within Hurricane Garden Homes "Subdivision" (Amended) Phase No. 1, and the south line of 600 North Street, a varying width public street.

Contains 1.207 acres.