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Book - 11278 Pg - 33-37
RASHELLE HOBBS
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 5 P.

WHEN RECORDED, RETURN TO:
Snell & Wilmer L.L.P.
Attn: Wade R. Budge
15 West South Temple, Suite 1200
Salt Lake City, UT 84101

Affects Parcel Nos. 22-10-151-029; 22-10-151-026

**DECLARATION OF COVENANTS
REGARDING DEVELOPMENT**

[Block L]

THIS DECLARATION OF COVENANTS REGARDING DEVELOPMENT
("Declaration") is made as of Dec 2, 2021 by **KMW DEVELOPMENT L.L.C.**, a Utah
limited liability company ("Declarant") and **PETERBUILT HH, L.L.C.**, a Utah limited liability
company, as a consenting property owner ("Owner").

RECITALS

A. Declarant is the master developer of a planned and under development retail, office, and residential project (the "Project") on the former "Cottonwood Mall Site" situated in the city of Holladay ("City"), Salt Lake County, Utah (the "Property"), constituting the real property described in, and covered by, that certain Cottonwood Site Development Master Plan—Regional Mixed-Use Development ("SDMP") approved by the City in 2007.

B. Declarant and Owner are the owners of that certain real property that constitutes a portion of the Property, more particularly described on Exhibit A, attached hereto and made a part hereof ("Block L").

D. The Property must be developed in accordance with the SDMP, as may be revised, modified, or amended, and in accordance with the plan described by the Second Amended and Restated Agreement for Development of Land dated August 22, 2019, as amended by the Third Amendment to the Agreement for Development of Land, dated December 16, 2020 (collectively, the "ADL").

E. Under the ADL, Declarant must develop the Project consistent with the SDMP, and may sell various portions of the Project to builders or developers of residential lots provided that said portions of the Project are developed consistent with the SDMP and ADL. This Declaration sets forth the covenants and restrictions with respect to Block L that will ensure future owners develop Block L consistent with the SDMP and ADL. Purchasers or other end users of housing lots and housing units shall have no obligations under the ADL, other than the legal obligation to pay ad valorem taxes and assessments attributable to such end user's property.

AGREEMENT

NOW, THEREFORE, Declarant and Owner hereby submit the Property to the provisions of this Declaration and declares; that Block L and each part thereof shall be held, encumbered, occupied, built on and otherwise used, improved, maintained, leased, sold, occupied and otherwise transferred subject to the following:



1. **Development Covenants.**

(a) Declarant is the master developer of the Property, including Block L, and no development, construction, exterior modifications, expansion, grading, improvement, landscaping, or other work or alteration of any land, including the installation of Improvements (defined below), shall be commenced on Block L unless and until Declarant has given its prior written approval of same, which approval may be granted or denied in the reasonable discretion of Declarant. As used herein, "Improvements" means all horizontal and vertical development improvements located from time to time on Block L, including, without limitation, underground utilities, private streets, curbs, gutters, sidewalks, driveways, walkways, and buildings. Declarant hereby approves the Improvements that Holladay Hills 38, LLC, a Utah limited liability company, proposes to construct pursuant to those certain permit-issued plans approved by the City and dated August 3, 2021. If there are material changes to such plans that require the approval of the City, then such changes shall also require the prior written approval of Declarant, which approval may be granted or denied in the reasonable discretion of Declarant.

(b) All development and construction activities on Block L shall fully comply, and be in accordance, with the SDMP and ADL, as the same may be amended from time to time.

(c) Declarant and the City may agree to amend the SDMP and ADL and record agreements acknowledging the same without the written consent of the fee owner of Block L or any portion thereof, provided that said amendment preserves each fee owner's right to develop Block L for residential use. All increment and benefits described in the ADL have been, and hereby are, solely reserved unto Declarant. Each fee owner of Block L shall cooperate and take such actions as necessary to ensure Declarant's entitlement to those funds and benefits.

(d) The SDMP and ADL permit owners of the Property, including those adjacent to Block L to develop a mixed-use development with a broad range of uses including, without limitation, high-density multifamily residential buildings, retail, office, and other commercial uses. Moreover, the SDMP permits building heights up to ninety (90) feet to be built on the Property. By taking fee title to Block L or any portion thereof, each fee title owner hereby waives any right to object to proposed development plans for the Property and shall perform no action which may diminish or may have any detrimental effect on the rights of Declarant or Owner of the Project under the SDMP or ADL.

2. **Covenant Running with Land.** The provisions of this Declaration shall be deemed to be covenants running with title to the Property, or equitable servitudes, as the case may be, and, accordingly, shall bind each and every portion of Block L and shall not constitute merely personal covenants.

3. **Severability.** If any term or provision of this Declaration or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Declaration, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Declaration shall be valid and shall be enforced to the fullest extent permitted by law.

4. **Amendment.** No modification, waiver, or amendment of this Agreement shall be made except by written agreement (a) signed and acknowledged by each fee owner of Block L, (b) consented to by Declarant, so long as Declarant retains rights or obligations under this Agreement, and (c) recorded in the office of the Recorder of Salt Lake County, Utah.

5. **Applicable Law: Construction.** This Declaration shall be construed and interpreted under, and governed and enforced according to, the laws of the State of Utah. This Declaration shall be given a reasonable construction so that the Declarant's stated intentions are implemented. The captions and headings used herein are for convenience of reference only and shall not affect the interpretation of this Agreement.

6. **Assignment.** Declarant may, at any time, by recording a written notice, assign or transfer all or some of its control, power, authority, or decision-making ability to any person or entity without the consent of any or all fee owner(s) of Block L.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of the Effective Date.

DECLARANT:

KMW DEVELOPMENT L.L.C.,
a Utah limited liability company

By: **WOODBURY CORPORATION,**
a Utah corporation, Its Manager

By: *[Signature]*
Guy R. Woodbury, SVP

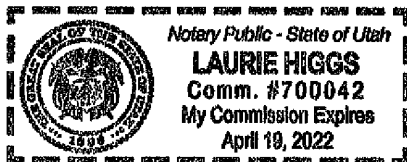
By: *[Signature]*
W. Richards Woodbury, Chairman

By: **MILLROCK CAPITAL II, LLC,**
a Utah limited liability company, Its Manager

By: *[Signature]*
Steven Peterson, Manager

STATE OF Utah)
County of Salt Lake) ss.

The foregoing instrument was acknowledged before me this 3rd day of December, 2021, by Guy R. Woodbury, the Senior Vice President of Woodbury Corporation, the Manager of KMW Development L.L.C., a Utah limited liability company, on behalf of said company.



[Signature]
Notary Public

STATE OF Utah)
County of Salt Lake) ss.

The foregoing instrument was acknowledged before me this 3rd day of December, 2021, by W. Richards Woodbury, the Chairman of Woodbury Corporation, the Manager of KMW Development L.L.C., a Utah limited liability company, on behalf of said company.



Laurie Higgs
Notary Public

STATE OF Utah)
County of Salt Lake) ss.

The foregoing instrument was acknowledged before me this 2nd day of December, 2021, by Steven Peterson, the Manager of Millrock Capital II, LLC, the Manager of KMW Development L.L.C., a Utah limited liability company, on behalf of said company.



Laurie Higgs
Notary Public

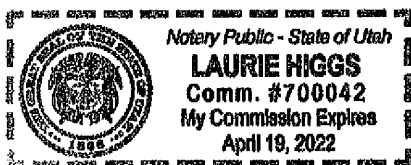
OWNER:

PETERBUILT HH, L.L.C.,
a Utah limited liability company

By: _____
Name: Steven Peterson
Title: Manager

STATE OF Utah)
County of Salt Lake) ss.

The foregoing instrument was acknowledged before me this 2nd day of December, 2021, by Steven Peterson, the Manager of Peterbuilt HH, L.L.C., a Utah limited liability company, on behalf of said company.



Laurie Higgs
Notary Public

Handwritten initials

EXHIBIT A

Legal Description

All that real property situated in the County of Salt Lake, State of Utah, bounded and described as follows:

PARCEL 1:

All of the Lots contained within the Royal Holladay Hills Block L Phase 1 subdivision, according to the official plat thereof recorded November 2, 2021, as Entry No. 13814082, in Book 2021P, at Page 279, in the official records of the Salt Lake County Recorder's Office.

PARCEL 2:

All of the Lots and Common Area contained within the Royal Holladay Hills Block L Phase 2 subdivision, according to the official plat thereof recorded November 29, 2021, as Entry No. 13834024, in Book 2021P, at Page 317, in the official records of the Salt Lake County Recorder's Office.