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Gary W. Ott  
Recorder, Salt Lake County, UT  
STRONG & HANNI  
BY: eCASH, DEPUTY - EF 17 P.

When Recorded Return to:  
Castlewood-Kimballs Lane, LLC  
6470 S. 1300 E., Suite 200  
Salt Lake City, Utah 84121

(Parcel Nos. 28-19-476-009, 28-19-476-004, 28-19-476-003, 28-19-476-037,  
28-19-476-010, 28-17-476-035)

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS &  
RESTRICTIONS FOR THE COVE AT KIMBALLS LANE**

This *First Amendment to Declaration of Covenants, Conditions & Restrictions for the Cove at Kimballs Lane* (“**Amendment**”) is made this as of the date set forth below by Castlewood-Kimballs Lane, LLC, a Utah limited liability company (“**Declarant**”), The Cove at Kimballs Lane Homeowners Association, a Utah nonprofit corporation (“**Association**”), and Kimballs Lane Holdings, LLC (“**Landowner**”).

**RECITALS**

- A. Declarant owns, or has the contractual right to purchase, certain real property located at approximately 621 East 18000 South in in the City of Draper, Salt Lake County, State of Utah, as more particularly described on Exhibit A hereto (“**Property**”). To the extent Declarant does not already own the Property, the Property is owned by Landowner.
- B. Declarant has previously executed a *Declaration of Covenants, Conditions & Restrictions of The Cove at Kimballs Lane Homeowner’s Association, Inc.* (“**Declaration**”). The Declaration was recorded in the real property records of Salt Lake County, Utah, on February 22, 2016, as Entry No. 12225964.
- C. The Declaration was executed in connection with the development of a residential subdivision on the Property to be known as The Cove at Kimballs Lane PUD (“**Project**”). The Declaration encumbers the Property and gives Declarant certain rights, privileges, duties, and obligations with respect to the Project and the Property.
- D. The Declaration sets forth the covenants, conditions, restrictions, easements, servitudes and other limitations (collectively, the “**Covenants**”) which encumber the Property and the Project and are binding the current and any future Owners of the Property or any portion thereof.
- E. Capitalized terms not otherwise defined shall have the meaning identified in the Declaration, if a meaning is provided.

F. The Association has been delegated has certain rights and duties under the Declaration. Among other things, although Declarant has the right to amend the Declaration pursuant to Section 20 of the Declaration, the Association's Management Committee must execute any amendment to the Declaration. Declarant wishes to modify certain provisions of the Declaration as set forth herein.

#### AMENDMENT TO DECLARATION

1. Association' Lien. For purposes of enforcing the lien to secure the assessments identified in Section 17 of the Declaration, and for purposes of complying with Utah Code Ann. § 57-8a-212, Declarant appoints Landmark Title Insurance Company as trustee and incorporates the following statement into the Declaration:

Declarant hereby conveys and warrants pursuant to Utah Code Ann. § 57-1-20 and § 57-8a-30 to Landmark Title Insurance Company, with power of sale, the Property and all improvements to the Property for the purpose of securing payment of the assessments under the terms of the Declaration.

This conveyance shall be binding on the purchaser of any Lot or Unit within the Project and by accepting a deed to such Lot or Unit the purchaser is deemed to both have knowledge of and consented to the foregoing conveyance.

2. Declarant's Rights. In order to promote the orderly and timely development of the Project, Declarant adopts the following provisions governing Declarant's development, construction, and sales activities. The following terms and conditions will control over any inconsistent provision of the Declaration.

a. Construction Activities. Until all the Lots or Units in the Project have been conveyed to third-party residential purchasers, Declarant shall have the right to conduct construction activities on or related to such Lot or Unit and shall not be bound by any limitations related to construction activities or use of the Lots or Units set forth in the Declaration. During such period, Declarant shall have a non-exclusive easement and right-of-way in, through, under, over and across the Common Areas and Limited Common Areas for the purpose of construction, grading, the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the installation or provision of utility services and other services or facilities to the Project. Notwithstanding any other provision of the Declaration to the contrary, Declarant, in its absolute discretion, shall have the right to construct and install any structure, feature or improvement of any kind placed or constructed in the Project, including but not limited to any residence, building, garage, lighting, deck, porch, patio, sidewalk, foundation, awning, fence, retaining wall, driveway, irrigation or drainage feature, storage structure or other product of construction

or landscaping (any of the foregoing being an “**Improvement**”) within the Project which Declarant desires, so long as the Improvement or Improvements comply with applicable zoning and building ordinances. However, this provision shall not be construed to impose any obligations on Declarant to construct any such Improvements.

b. Sales Activities. Notwithstanding any other provision of the Declaration, until all the Lots or Units in the Project have been conveyed to third-party residential purchasers, Declarant shall have the right to conduct reasonable sales activities including, but not limited to maintaining one or more sales office or model home on Lots owned by the Declarant and using the same for appropriate business purposes and maintaining a reasonable number of “for sale” signs or other similar marketing materials within in the Project, including on Common Areas or Limited Common Areas.

c. Declarant’s Rights Assignable. Declarant may assign the rights of Declarant set forth under the Declaration, or those rights of Declarant in any way relating to the Property. Upon such assignment, such assignee shall be deemed the Declarant for all purposes under the Declaration.

3. Dispute Resolution. To the fullest extent permitted by law, all claims and disputes of any kind that any Owner or the Association may have involving the Declarant, or any agent, employee, executing officer, manager, affiliate or owner of the Declarant, or any engineer or contractor involved in the design or construction of the Project, which arise from or are in any way related to the design or construction of residence or other Improvement on a Lot, Common Area, Limited Common Area or any portion of Project or which are otherwise related to the development of the Project (each a “**Dispute**”), shall be submitted to final and binding arbitration as provided in this section.

a. Statement of Intent. Prior to purchasing a Lot or Unit, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, an inspection of any Lot or Unit that Owner is purchasing or any other aspect of the Project, including, without limitation, the Common Areas and Limited Common Areas. Moreover, if any written warranty has been provided, it identifies the only items that are warranted by the Declarant. Having had the ability to inspect prior to purchasing a Lot, having received a written warranty if any warranty is provided, and having paid market price for a Lot in the condition it and the Lots and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Lot or Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it

can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lots for years, unfairly prejudicing those Owners who must or want to sell their Lot during any period when litigation is pending. For this reason, the Owners, by purchasing a Lot, and the Declarant covenant and agree that claims and disputes shall not be pursued through court action, but shall be asserted and resolved only through the specific alternative dispute resolution mechanisms described below and only after full disclosure, satisfaction of the right to cure periods, and knowing approval of the Owners, as set forth in the provisions of this section. In addition, the Owners, for themselves and on behalf of the Association, agree that they take ownership and possession of the Lots, Units, Common Areas and Limited Common Areas AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims any and all warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

b. Binding Arbitration for All Disputes. Binding arbitration shall be the sole remedy for resolving claims and disputes between or involving the Declarant and any Owner or between or involving the Declarant and the Association. Arbitration proceedings, however, shall not be commenced unless the Pre-Arbitration Requirements set forth below have been satisfied in full. Without in any way limiting the foregoing, Disputes subject to binding arbitration shall include the following:

- i. Any allegation that a condition in any of the residences on the Lots, the Common Areas, the Limited Common Areas, or in any other Improvements in the Project is or involves a construction defect;
- ii. Any disagreement as to whether an alleged construction defect has been corrected;
- iii. Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;
- iv. Any disagreement as to the enforceability of any warranties alleged to be applicable to the subject matter of any Dispute;
- v. Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;
- vi. Any alleged violations of consumer protection, unfair trade practice, or other statutes or laws;

vii. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;

viii. Any allegation that any condition existing in the Project or created by the Declarant (or any of its contractors), including construction-related noise, dust, and traffic, is a nuisance, a defect, or a breach of any implied warranties of habitability or other implied warranties;

ix. Any disagreement concerning the scope of issues or claims that should be submitted to binding arbitration;

x. Any disagreement concerning the timeliness of performance of any act to be performed by Declarant or any of its contractors;

xi. Any disagreement as to the payment or reimbursement of any fees associated with binding arbitration;

xii. Any disagreement or dispute regarding management of the Association, or regarding reserve studies or funding of Association expenses; and

xiii. Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of Improvement on the Lots, Common Areas, Limited Common Areas, off-site improvements, any other claim regarding the management of the Association, or any other claims regarding the Project.

c. Pre-Arbitration Requirements. An Owner or the Association may only pursue a claim against the Declarant after all of the following steps have been completed (the parties intending that strict compliance with these Pre-Arbitration Requirements be observed): (1) *Right to Cure*, the claimant (e.g. the Owner or the Association) shall provide to the Declarant a written Notice of Claim (defined below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get the builder or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any formal arbitration proceedings; (2) *Mediation*, if the Dispute is not resolved within the 180-day Right to Cure period, the parties shall participate in formal mediation with a mutually-acceptable third-party mediator in an effort to resolve the Dispute prior to taking further action or commencing arbitration. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this

Section shall immediately apply again and any pending action or proceedings, including any mediation or arbitration, shall be stayed during the 180-day period.

d. Notice of Claim. "Notice of Claim" means a written statement including the following information about the claim giving rise to the Dispute: (1) an explanation of the nature of the claim, (2) a specific breakdown and calculation of any alleged damages, (3) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (4) photographs of any alleged defective condition, if applicable, (5) samples of any alleged defective conditions or materials, if reasonably available, (6) an explanation of the efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (7) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

e. Procedure. If a Dispute has not been resolved after satisfying and complying with the above-described Pre-Arbitration Requirements, then the claimant (Owner or Association) shall have the right to proceed with binding arbitration; however, the Association shall not pursue or commence binding arbitration unless such action is first approved by a majority of the total votes of the Association after the Association has obtained a written opinion from legal counsel advising the Association of the likelihood of success on the merits of the claims, the anticipated costs and legal fees, the anticipated expert witness fees, and the likelihood of recovery if the Association prevails. The written opinion from legal counsel, addressing these topics, must be provided to all Owners before the formal vote on whether to proceed with binding arbitration. The binding arbitration shall be conducted by a mutually-acceptable arbitrator (preferably a former judge), or, if an arbitrator cannot be mutually selected, then by Construction Dispute Resolutions Services LLC or DeMars & Associates. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.

f. No Fee Awards. Regardless of the outcome of the binding arbitration, and notwithstanding any other provision of the Declaration to the contrary, each party shall bear its own attorney fees and costs (including expert witness costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties. However, arbitrator shall not award attorney fees, expert witness fees, or arbitration costs, to the prevailing party.

g. No Waiver of Arbitration Right. If any Owner, the Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party, or a bar to the right of any other party, to seek arbitration or to insist on compliance with the requirements set forth in this section.

If any such court action is filed, then the court in such action shall, upon motion of any party to the proceeding, stay the proceeding before it and direct that such Dispute be arbitrated in accordance with the terms set forth herein, including, without limitation, compliance with the Pre-Arbitration Requirements set forth above.

h. Waiver of Subrogation. The Association and each Owner waives any and all rights to subrogation against the Declarant and any builder, contractor, and engineer in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, the Project engineer, and builder, contractors of the Declarant and the builder, and their officers, employees, owners, and representatives. To the full extent permitted by law, the Association and Owners hereby release Declarant, the Project engineer, and builder, and their respective officers, employees, owners, contractors, insurers, and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or builder, their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the builder, and any of their officers, employees, owners, contractors, or representatives from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

4. Landowner's Consent and Ratification. Landowner hereby consents to the Amendment, and the terms set forth herein, as an encumbrance on the Property. Landowner further consents to, and hereby ratifies, the Declaration, as modified by this Amendment, as an encumbrance on the Property. Landowner consents to Declarant assuming all rights, privileges, duties, and obligations of Declarant under the Declaration and this Addendum.

5. Approval by the Management Committee. This Amendment, and the terms and conditions set forth herein, are approved and agreed to by the Association's Management Committee and the Management Committee has executed this Amendment as required by Section 20 of the Declaration.

6. Scope of Amendment. Except as explicitly modified by this Amendment, the Declaration remains in full force and effect and is a valid encumbrance on the Property. This

Amendment will likewise be an encumbrance on the Property and the Project, will run with the land, and will be binding upon the Owners of the Property or any portion thereof.


*[End of Document. Signature Pages Follow.]*



The Declarant, the Management Committee, and the Landowner have executed this Amendment effective this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by signing this and the following pages.

**DECLARANT**

Castlewood-Kimballs Lane, LLC

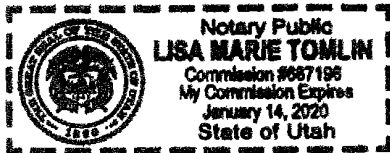
By:   
Name: Jeffrey Duke  
Title: Manager

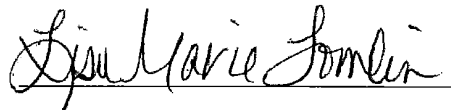
STATE OF UTAH )

ss.

COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of November, 2016 by Jeffrey Duke as the Manager of Castlewood-Kimballs Lane, LLC.





Notary Public

**MANAGEMENT COMMITTEE**

Management Committee of The Cove at  
Kimballs Lane Homeowners Association

By: *Jeffrey Duke*  
Name: *Jeffrey Duke*  
Title: *President*

STATE OF UTAH )

SS.

COUNTY OF *Salt Lake* )

The foregoing instrument was acknowledged before me this *29<sup>th</sup>* day of *November*,  
*2016* by *Jeffrey Duke* as the *President* of the Management Committee  
of The Cove at Kimballs Lane Homeowners Association.



*Lisa Marie Tomlin*  
Notary Public

**LANDOWNER**

Kimballs Lane Holdings, LLC

By: [Signature]

Name: Ryan Peterson

Title: Manager

STATE OF UTAH )

ss.

COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 12 day of December,  
2016 by Ryan Peterson as the Manager of Kimballs Lane Holdings,  
LLC.



[Signature]

Notary Public

**EXHIBIT A**

**(Property Description)**

VTDI 28-19-476-009-0000 DIST 51 TOTAL ACRES 1.31  
KIMBALLS LANE HOLDINGS, LLC TAX CLASS UPDATE  
LEGAL REAL ESTATE  
PRINT BUILDINGS  
TOTAL VALUE

299 S MAIN ST # 2400 NO:  
SALT LAKE CITY UT 84111227899 EDIT 1 FACTOR BYPASS  
LOC: 675 E KIMBALLS LN EDIT 0 BOOK 10330 PAGE 5948 DATE 06/04/2015  
SUB: SEC 19 TOWNSHIP 3S RANG 1E TYPE SECT PLAT

02/22/2016 PROPERTY DESCRIPTION FOR TAXATION PURPOSES ONLY  
BEG S 89-47'37" W 548.875 FT & N 0-12'23" W 33 FT FR SE COR  
SEC 19, T 3S, R 1E, SLM; N 0-12'23" W 408.69 FT M OR L TO  
W'LY R OF W LINE OF UNION PACIFIC RR; S 34-38'23" E 495.5 FT  
M OR L; S 89-47'37" W 280 FT M OR L TO BEG. 1.31 AC M OR L.  
4903-72 5029-46 6193-1233 6436-643 6603-955 6705-1271

PFKEYS: 1=RXPH 4=VTAU 6=NEXT 7=RTRN VTAS 8=RXMU 10=RXBK 11=RXPN 12=PREV

VTDI 28-19-476-004-0000 DIST 51 TOTAL ACRES 1.10  
KIMBALLS LANE HOLDINGS, LLC TAX CLASS UPDATE  
LEGAL BUILDINGS  
PRINT TOTAL VALUE

299 S MAIN ST # 2400 NO:  
SALT LAKE CITY UT 84111227899 EDIT 1 FACTOR BYPASS  
LOC: 633 E KIMBALLS LN EDIT 0 BOOK 10330 PAGE 5947 DATE 06/04/2015  
SUB: SEC 19 TOWNSHIP 3S RANG 1E TYPE SECT PLAT

02/22/2016 PROPERTY DESCRIPTION FOR TAXATION PURPOSES ONLY  
COM S 89-47'37" W 648.875 FT & N 00-12'23" W 33 FT FR SE COR  
SEC 19, T 3S, R 1E, SL MER, N 00-12'23" W 540 FT; S  
89-47'37" E 9.97 FT; S 34-38'23" E 159.22 FT; S 00-12'23" E  
408.68 FT; S 89-47'37" W 100 FT TO BEG. 1.1 AC. 8540-1609

PFKEYS: 1=RXPH 4=VTAU 6=NEXT 7=RTRN VTAS 8=RXMU 10=RXBK 11=RXPN 12=PREV

VTDI 28-19-476-003-0000	DIST 51		TOTAL ACRES	1.24
KIMBALLS LANE HOLDINGS, LLC	TAX CLASS	UPDATE	REAL ESTATE	
		LEGAL	BUILDINGS	
% RYAN PETERSON		PRINT	TOTAL VALUE	
299 S MAIN ST # 2400	NO:			
SALT LAKE CITY UT	84111227899	EDIT 1	FACTOR BYPASS	
LOC: 621 E KIMBALLS LN	EDIT 0	BOOK 10330	PAGE 5946	DATE 06/04/2015
SUB: SEC 19 TOWNSHIP 3S RING 1E			TYPE SECT PLAT	
02/22/2016 PROPERTY DESCRIPTION FOR TAXATION PURPOSES ONLY				
COM S 89-47'37" W 648.875 FT & N 00-12'23" W 33 FT FR SE COR				
SEC 19, T 3S R 1E, SL MER, S 89-47'37" W 100 FT; N 00-12'23"				
W 540 FT; N 89-47'37" E 100 FT; S 00-12'23" E 540 FT TO BEG.				
1.24 AC.				

PFKEYS: 1=RXPH 4=VTAU 6=NEXT 7=RTRN VTAS 8=RXMU 10=RXBK 11=RXPN 12=PREV

VTDI 28-19-476-037-0000 DIST 51 TOTAL ACRES 1.69  
KIMBALL'S LANE HOLDINGS, LLC TAX CLASS UPDATE  
LEGAL REAL ESTATE  
PRINT BUILDINGS  
TOTAL VALUE

299 S MAIN ST # 2400 NO:  
SALT LAKE CITY UT 84111227899 EDIT 1 FACTOR BYPASS  
LOC: 561 E KIMBALLS LN EDIT 0 BOOK 10329 PAGE 7075 DATE 06/02/2015  
SUB: SEC 19 TOWNSHIP 3S RANG 1E TYPE SECT PLAT

02/22/2016 PROPERTY DESCRIPTION FOR TAXATION PURPOSES ONLY

BEG S 89-47'37" W 1018.11 FT & N 0-06'23" W 33 FT FR SE COR  
SEC 19, T 3S, R 1E, SLM; N 0-06'23" W 435.6 FT; N 89-47'37"  
E 168.48 FT M OR L; S 0-12'23" E 435.6 FT M OR L; S  
89-47'37" W 169.24 FT TO BEG. 1.69 AC M OR L. 6705-1271  
6920-0010 8253-1004

PFKEYS: 1=RXPH 4=VTAU 6=NEXT 7=RTRN VTAS 8=RXMU 10=RXBK 11=RXPN 12=PREV



VTDI 28-19-476-010-0000 DIST 51 TOTAL ACRES 1.69  
KIMBALLS LANE HOLDINGS, LLC TAX CLASS UPDATE  
LEGAL REAL ESTATE  
PRINT BUILDINGS  
TOTAL VALUE

299 S MAIN ST # 2400 NO:  
SALT LAKE CITY UT 84111227899 EDIT 1 FACTOR BYPASS  
LOC: 561 E KIMBALLS LN EDIT 0 BOOK 10329 PAGE 7075 DATE 06/02/2015  
SUB: SEC 19 TOWNSHIP 3S RANG 1E TYPE SECT PLAT

02/22/2016 PROPERTY DESCRIPTION FOR TAXATION PURPOSES ONLY  
BEG S 89-47'37" W 1018.11 FT & N 0-06'23" W 33 FT FR SE COR  
SEC 19, T 3S, R 1E, SLM; N 0-06'23" W 435.6 FT; N 89-47'37"  
E 168.48 FT M OR L; S 0-12'23" E 435.6 FT M OR L; S  
89-47'37" W 169.24 FT TO BEG. 1.69 AC M OR L. 6705-1271  
6920-0010 8253-1004

PFKEYS: 1=RXPH 4=VTAU 6=NEXT 7=RTRN VTAS 8=RXMU 10=RXBK 11=RXPN 12=PREV