

13839649  
12/3/2021 4:53:00 PM \$40.00  
Book - 11278 Pg - 4-32  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 29 P.

**WHEN RECORDED, RETURN TO:**

Holladay Hills, LLC  
c/o Woodbury Corporation  
Attn: Legal Department  
2733 East Parleys Way, Suite 300  
Salt Lake City, Utah 84109

*Space above for County Recorder's Use*

---

---

**DECLARATION OF EASEMENTS, COVENANTS,  
AND RESTRICTIONS REGARDING COMMON AREAS FOR  
ROYAL HOLLADAY HILLS SUBDIVISION**

---

---

THIS DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS REGARDING COMMON AREAS FOR ROYAL HOLLADAY HILLS SUBDIVISION (this "**Declaration**") is made as of this 3 day of Dec, 2021 ("**Effective Date**"), by and between the Declarants (as defined herein).

A. KMW Development L.L.C., a Utah limited liability company ("**KMW**"), is the owner of certain real property located in Salt Lake County, Utah, as more particularly described on Exhibit A attached hereto and made a part hereof (the "**KMW Property**").

B. Holladay Hills Block D L.L.C., a Utah limited liability company ("**Block D**"), is the owner of certain real property located in Salt Lake County, Utah, as more particularly described on Exhibit B attached hereto and made a part hereof (the "**Block D Property**").

C. Peterbuilt HH, L.L.C., a Utah limited liability company ("**Peterbuilt**"), is the owner of certain real property located in Salt Lake County, Utah, as more particularly described on Exhibit C attached hereto and made a part hereof (the "**Peterbuilt Property**").

D. JM Cheney Holladay Holdings, LLC, a Utah limited liability company, and RL Cheney Holladay Holdings, LLC, a Utah limited liability company (collectively, "**Cheney**"), are owners as tenants-in-common of certain real property located in Salt Lake County, Utah, as more particularly described on Exhibit D attached hereto and made a part hereof (the "**Cheney Property**").

E. The Declarants desire to enhance and protect the value, desirability, and attractiveness of the Property (as defined herein) by, among other things, forming and organizing the Association (as defined herein) in connection with the designation, installation, improvement, operation, maintenance, repair, and replacement (as and when needed) of the Common Areas (as defined herein).

F. The primary purpose of this Declaration is to provide for a fundamental scheme for the initial designation, installation, and construction of the Common Areas, for the efficient and ongoing operation, improvement, maintenance, repair, and replacement (as and when needed) of the Common

Areas, and for the establishment and protection of the Declarants and the Association's rights, benefits, easements, and privileges as contemplated in this Declaration.

G. The Declarants hereby declare that the Property shall be held, transferred, sold, conveyed, encumbered, leased, rented, used, occupied, and improved subject to the easements, covenants, conditions, limitations, restrictions, reservations, rights, and obligations hereinafter set forth, all of which are declared and agreed to be in furtherance of an overall plan and fundamental scheme for the installation, improvement, protection, maintenance, repair, and replacement (as and when needed) of the Common Areas and the applicable portions of the Property, which easements, covenants, conditions, limitations, restrictions, reservations, rights, and obligations shall run with and burden the Property and with the title to the Property and shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof, subject to the limitations herein provided, and shall inure to the benefit of each Owner (as defined herein), its heirs, grantees, distributees, personal representatives, successors, and assigns, the Declarants, their respective successors and assigns, and the Association.

#### ARTICLE I. DEFINITIONS

The following terms, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

**"Association"** means the Holladay Hills Owner's Association, Inc., a Utah non-profit corporation, its successors and assigns.

**"Association Board"** means the Board of Directors of the Association.

**"Association By-Laws"** means the document governing the operation of the Association pursuant to which the Association Board is elected and governs.

**"Block"** or **"Blocks"** means each legally subdivided development lots within and part of the Property in accordance with the Plat, or any development lot to be legally subdivided or replatted or that can be legally subdivided or replatted in the future pursuant to an amendment to the Plat. Each Block is designated by a letter or a number (or a combination of both) on the Plat, as the same may be amended.

**"Common Areas"** mean all of those areas and improvements located within and throughout the Property that are installed, improved, and constructed for the common or joint use and benefit of the Owners and their respective tenants, occupants, employees, agents, contractors, guests, customers, and other invitees, which areas and improvements shall include, but are not limited to, private roadways, streets, access roads, driveways, medians, and entrances and exits, sidewalks, walkways, trails, stairs, ramps, parking spaces and other parking areas (if applicable), curbs, gutters, retaining walls, common facilities and structures, fences, outdoor courtyard and patio areas, parks, and open spaces, landscaped areas (including trees and irrigation systems), planters, light poles and fixtures, bike racks, signs and signage improvements, utilities lines, facilities, systems, and improvements (including, but not limited to, sewer, water, and storm drainage facilities), and other exterior common areas and amenities located within such areas and improvements that have been designated for common or joint use and which serve and benefit more than one Block. As of the Effective Date, those areas and improvements that consist of Common Areas that are being and have been established, identified, and designated by the Declarants are shown and further identified on Exhibit E attached hereto and made a part hereof ("**Common Area Site Plan**"). The Declarants expressly reserve for themselves and the Association, the right to identify and designate additional and future Common Areas (or modify or withdraw a previous designation of Common Areas) and to amend the Plat and/or the Common Area Site Plan, as necessary, and each of the Owners (by acceptance of a deed or other instrument of conveyance (whether or not it shall be so expressed in any such

deed or instrument)) and the Members shall cooperate in good faith with the Declarants and the Association, as the case may be, in the execution and recording in the official records of Salt Lake County Recorder's Office any amendment or supplement to the Plat or this Declaration to update and accurately reflect and identify the Common Areas. Certain future Common Areas (like outdoor parks and open spaces may be designated on the Common Area Site Plan. For clarification, Common Areas shall not include any Improvements (as defined herein) or areas or improvements that are intended and/or have been designated and reserved for the exclusive use and benefit of an individual Owner and its tenants, occupants, employees, and other invitees.

**"Declarants"** mean, collectively, KMW, Block D, Peterbuilt, and Cheney.

**"Improvements"** mean any and all buildings located upon or within the Property and any particular Block at any time that are intended for permanent use or occupancy, including, the area directly below such buildings, and all projections and extensions of, and additions to, such buildings, including, without limitation, platforms, ramps, docks, and signage affixed to the outside of such buildings.

**"Member"** or **"Members"** means every Owner who holds membership in the Association.

**"Owner"** or **"Owners"** means the record owner or owners in fee title of a particular Block situated upon or within the Property. Except as otherwise provided in this Declaration, if any particular Block has more than one Owner, the liabilities and obligations of each such Owner under this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a mortgage or deed of trust, the term "Owner" shall not mean a mortgagee or beneficiary unless and until such mortgagee or beneficiary has acquired title to the realty concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

**"Person"** means any natural person, partnership, firm, association, corporation, limited liability company, trust, estate, fiduciary, unincorporated association, syndicate, joint venture, organization, or any other business or legal entity.

**"Plat"** means that certain Royal Holladay Hills Subdivision #2, recorded on June 25, 2021, in the official records of Salt Lake County Recorder's Office, as Entry No. 13700581, in Book 2021P, beginning at Page 171, amending the previously recorded Royal Holladay Hills Subdivision #1.

**"Property"** means, collectively, the KMW Property, Block D Property, Peterbuilt Property, and Cheney Property.

**"Residential Improvements"** mean Improvements designed and intended for use as residences, including, without limitation, Residential Units, single family homes, condominiums and condominium units, duplexes, multifamily buildings, flats, apartments, senior residential living facilities, senior care facilities, and the like.

**"Residential Unit"** or **"Residential Units"** means all homes, apartments, residential condominium units, or other similar dwellings used as a place of residence, and any other type of residence regardless of whether the unit is used as a principal residence, secondary residence, vacation residence, or residence of some other denomination.

**"Square Feet"** or **"Square Footage"** means the gross floor area of each of the Improvements within the Property, defined further as the total area of all floors of a primary building and all associated accessory buildings, measured from the external surface of the outside walls, but excluding covered walkways, open roofed areas, porches and other similar spaces, exterior terraces or steps and similar features, basements or attic spaces of less than seven feet in height, and vehicular parking and maneuvering

areas. The Square Footage shall be determined in the reasonable discretion of the Association Board and, absent manifest error, shall be conclusive and binding upon the Owners and the Members for all purposes associated with this Declaration and the Association.

## ARTICLE II. ASSOCIATION

Section 1. *Formation of the Association.* KMW shall form and organize the Association, including the adoption of the Association By-Laws. The purpose of the Association is to provide certain services to the Owners concerning the Common Areas. The Association will be required to provide only those services and perform only those obligations expressly provided for and described in this Declaration. Each Owner is obligated to provide all services and be responsible for the installation, construction, operation, improvement, maintenance, repair, and replacement (as and when needed) to their respective Block, Improvements, and portion of the Property (which, may include, certain of the Common Areas), unless such services or obligations are otherwise specified in this Declaration as an express obligation of the Association.

Section 2. *Membership.* Each Owner, upon and by virtue of becoming an Owner, automatically shall become a Member of the Association and shall remain a Member of the Association until its ownership of fee title of its respective Block and any portion of the Property ceases for any reason, at which time it shall automatically cease to be a Member of the Association. For purposes of this Declaration specific to voting and who is entitled to vote relative to a particular Block situated upon or within the Property, the term "Owner" shall mean any residential owners' association that may be formed in connection with the development of a particular Block and any vote cast by such residential owners' association (which shall have a single vote) shall at all times under this Declaration be for and on behalf of any and all owners of Residential Improvements and/or Residential Units constructed and located on a particular Block. Each Member of the Association shall be entitled to a certain voting percentage for all matters for which the Members are entitled to vote pursuant to this Declaration or the Association By-Laws. Except as otherwise modified in the future pursuant to the Association By-Laws, each Owner's voting percentage shall be calculated based upon each Owner's share of the annual assessment over the total annual assessment for the entire Property for a given year. For example, if the total annual assessment for the entire Property for the year is \$100,000 and an Owner's individual share of that annual assessment is \$10,000, then such Owner's voting percentage is 10%. The Association By-Laws, once adopted, shall establish and govern matters addressing and dealing with, among other things, (i) when Members holding a majority of the voting percentage shall constitute a quorum at a meeting of the Members, and (ii) what actions will require or be permitted to be taken at a meeting of the Members or what action may be taken without a meeting of the Members (for example, by way of one or more written consents signed by the Members holding a majority of the voting percentage). Only Members that own a Block upon which Improvements have been constructed and are completed shall be entitled to voting rights under this Declaration. The Association may suspend the voting rights of a Member who (a) has allowed any annual or special assessment levied by the Association pursuant to this Declaration to become delinquent for the period of such delinquency and as otherwise may be provided in the Association By-Laws, (b) fails to perform any other duties, responsibilities, or obligations under this Declaration (other than the payment of annual or special assessment under subpart (a) above) and such failure has continued for a period of thirty (30) days after written notice of such failure has been given to such Member by the Association, or (c) has failed to perform any other duty, responsibility, or obligation established by the Association in the Association By-Laws.

Section 3. *Association Board.* By way of notice only, the Association anticipates establishing an Association Board comprised of three (3) members and the Association Board shall manage the affairs of the Association in accordance with the Association By-Laws. The initial members of the Association Board shall be appointed by KMW and the Association By-Laws shall provide and set forth in greater detail that so long as KMW is an Owner of any Block or other portions of the Property, KMW shall be entitled to elect

two (2) of the three (3) members of the Association Board. In the event of any conflict between the terms, conditions, and provisions of this Declaration and the terms, conditions, and provisions of the Association By-Laws regarding the establishment of the Association Board, the number of members on the Association Board, and the management of the affairs of the Association, the terms, conditions, and provisions of the Association By-Laws shall prevail and govern.

Section 4. *Limitation of Liability.* No Member of the Association or officer, director, member, manager, employee, agent, or representative of the Association (including, no members of the Association Board) or the Declarants, shall be personally liable to any Owner, Member, or any of their respective tenants, occupants, employees, agents, contractors, guests, customers, invitees, or to any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, default, breach, or negligence of such Member or officer, director, member, manager, employee, agent, or representative of the Association, provided that such person has, upon the basis of such information as may be possessed by him or her, acted in good faith on behalf of the Association, without willful or intentional misconduct.

### ARTICLE III. COMMON AREAS

Section 1. *Title to Common Areas.* To the extent the Common Areas are not part of a publicly dedicated right-of-way, roadway, street, or other parcel of land, fee simple title to the Common Areas shall remain private property and vested in the respective Owners of those portions of the Property and any particular Block upon which any portion or portions of the Common Areas are situated. Except as provided in Article VII, Section 5 in the event the Association elects to accept ownership of any private utilities and utility lines, facilities, systems, and improvements located within and under the Common Areas, the Association shall not be vested with title to or ownership of any of the Common Areas and the Association will not be responsible for the payment of any taxes, assessments (including any owners association assessments and charges under this Declaration), and the prevention and removal of any assessment, mechanics, or tax liens that may become applicable to the Common Areas.

Section 2. *Creation of Lien and Personal Obligation of Assessments.* The Declarants hereby covenant and agree, and each subsequent Owner of any portion of the Property and any particular Block, by acceptance of a deed or other instrument of conveyance (whether or not it shall be so expressed in any such deed or instrument), is deemed to covenant and agree, to pay to the Association annual and special assessments or charges as shall be fixed, established, levied, and collected by the Association from time-to-time as hereinafter provided. The annual and special assessments and/or charges, together with such interest thereon and costs of collection thereof (including, reasonable attorneys' fees) as hereinafter provided, shall be a charge on the land and shall be secured by a continuing lien upon the Property and the Block(s) against which each such assessment and/or charge is made. Each such assessment and/or charge, together with such interest, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Owner and any owners' associations that may be formed in connection with the development of such Property and any particular Block at the time when the assessment and/or charge is due.

Section 3. *Purpose of Assessments.* The annual and special assessments and/or charges levied by the Association under this Declaration shall be used for the purpose of carrying out, performing, and paying for the fundamental scheme established under this Declaration specific to the Association's obligations for the ongoing operation, improvement, maintenance, repair, and replacement (as and when needed) of those portions of the Common Areas, as provided for in Article III, Section 4 below, and to carry out, perform, and protect the Declarants and the Association's rights, benefits, easements, and privileges as contemplated in this Declaration, including, for the payment for services, materials, and facilities devoted to this purpose. The annual and special assessments and/or charges shall not be used for the initial improvements, construction, and development of the Common Areas, nor shall such assessments and/or charges be used

to repair any damage to any of the improvements and utilities within the Common Areas resulting from construction activities occurring on or within the Property or any particular Block prior to a combined total of 300,000 Square Feet of Improvements and 400 Residential Units being constructed within the Property. Once a combined total of 300,000 Square Feet of Improvements and 400 Residential Units have been built within the Property, then the Association is permitted to use the annual and special assessments and/or charges under this Declaration to repair any damage to improvements and utilities resulting from construction activities occurring on the Property. Nothing in this Article III, Section 3 shall be read to prohibit or limit the Association's rights and remedies to pursue claims and damages against any Owners and their respective tenants, occupants, employees, agents, contractors, guests, customers, and other invitees for any damage to any of the improvements and utilities within the Common Areas. The Association shall be responsible for the improvement (excluding, however, the initial improvements, construction, and development of the Common Areas), maintenance, operation, management, cleaning, repair, replacement, and the insuring of all improvements and utilities located within the Common Areas, including, but not limited to, all improvements and utilities not otherwise provided or serviced by a utility provider.

Section 4. *Responsibilities of the Association.* Except as otherwise provided in this Declaration, including, those obligations and responsibilities of a particular Owner or a combination of Owners, the Association shall be responsible for the improvement (excluding, however, the initial improvements, construction, and development of the Common Areas), maintenance, operation, management, cleaning, repair, replacement (as and when needed), and the insuring of improvements and utilities located within and under the Common Areas, including, but not limited to, certain surface improvements and underground utilities not otherwise provided or serviced by a utility provider. Following the initial improvements, construction, and development of the Common Areas, the Association, using funds received from the annual and special assessments and/or charges levied by the Association under this Declaration, shall maintain and repair those improvements and utilities located within and under the Common Areas that the Association is responsible for in a good and clean condition and repair, with said maintenance and repair to include, without limitation, the following:

- i. Maintaining, repairing, and resurfacing (as and when needed) those paved private roadways, streets, access roads, driveways, entrances and exits, and other surfaces meant for vehicular traffic within and apart of the Common Areas, as such areas have been identified on the Common Area Site Plan, to a level, smooth, and evenly covered condition with the type of surfacing material originally installed or such substitute as shall be equal or reasonably similar in quality, use, and durability; and restriping and repainting(as and when needed), to maintain clearly visible traffic control lines and parking spaces (if applicable);
- ii. Removing papers, debris, filth, and refuse from the Common Areas and causing the Common Areas to be swept, washed, and snow plowed (as and when needed) to the extent reasonably necessary to keep the Common Areas in a clean and orderly condition, unobstructed, and if and when applicable, free from ice and snow;
- iii. Placing, painting, maintaining, repairing, replacing, and repainting (as and when needed) any directional and traffic signs, informational signs, markers and lines, striping, and pedestrian crossings falling within and applicable to those Common Areas meant for vehicular, bicycle, and/or pedestrian traffic;
- iv. Operating, maintaining, repairing, and replacing (as and when needed) all street lights, street lighting fixtures, street lighting electrical systems, street trees, and the street trees irrigation system and facilities falling within and applicable to those Common Areas that have been identified on the Common Area Site Plan;

v. Maintaining, repairing, and replacing (as and when needed) those utilities and utilities lines, facilities, systems, and improvements located within and under the Common Areas which service all or portions of the Property, including, those sewer, water, and storm drainage utilities that are anticipated to be placed under the private roadways, streets, access roads, driveways, and entrances and exits referenced in subpart (i) above, *excluding, however*, any utilities, improvements, and facilities that are or will otherwise be serviced and maintained by any utility provider; and

vi. Maintaining commercial general liability insurance for the applicable portions of the Common Areas that the Association is responsible for under this Declaration, in commercially reasonable amounts as the Association may reasonably determine.

The Common Areas that the Association is responsible for will be improved, maintained, operated, cleaned, repaired, and replaced (as and when needed), at all times, in a lien-free manner, *provided, however*, the Owners will be responsible for the timely payment of all taxes, assessments (including any owners association assessments and charges under this Declaration), insurance, and prevention and removal of any assessment, mechanics, or tax liens applicable to their respective Block and other portion of the Property.

Section 5. *Responsibilities of the Owners.* Notwithstanding anything in Article III, Section 4 above to the contrary, the Association shall not be responsible for any improvements, maintenance, repair, cleaning, replacement, or any other obligations, whether within or outside of the Common Areas, for each of the following:

i. Any improvements, maintenance, repairs, cleaning, replacement, restoration, or other obligations to be performed by any utility provider;

ii. Any improvements, maintenance, repairs, cleaning, replacement, damage, claims, or other harm or liabilities of any kind or nature to the extent caused by or arising out of or resulting from the Owners' and their respective tenants, occupants, employees, agents, contractors, guests, customers, and other invitees use of the Common Areas; and

iii. Any areas of the Property that fall outside of the designated Common Areas and any areas identified on the Common Area Site Plan that are within the Common Areas, but have been designated as expressly being the responsibility and obligation of the Owners. In such cases, the Owners, not the Association, shall be responsible for the improvement, maintenance, operation, management, cleaning, repair, replacement (as and when needed), and the insuring of any applicable improvements and utilities. As stated further on the Common Area Site Plan and, by way of example, areas within the Common Areas that shall be the responsibility of the Owners include, but are not limited to, (1) all sidewalks and surface areas identified on the Common Area Site Plan as being "Owner Responsibility", (2) all utility lateral lines, systems, and improvements that are not part of a "main" utility system or facility that only service a particular Block or certain Improvements on a Block.

#### ARTICLE IV. ASSESSMENTS

Section 1. *Annual Assessments.* The Association Board shall fix, establish, and levy the annual assessment to be paid to the Association by each Owner that owns any Property upon which Improvements are located. The annual assessment shall be a fixed rate as set forth in Section 3 below and the Association Board may increase such rate annually by the "CPI Escalation". Every five (5) years after the first full calendar year after the Effective Date, the Association Board may reevaluate the then current operation, improvement, maintenance, repair, and replacement costs for the Common Areas and other duties, rights, and obligations of the Association under this Declaration and the future needs of the Association in order

to perform the Association's duties, rights, and obligations under this Declaration and to ensure the annual assessments being collected are not insufficient to cover the operations, improvements, maintenance, repair, and replacement costs for the Common Areas and future needs of the Association, including, but not limited to, the funding of one or more prudent reserve accounts. If the Association Board determines the annual assessment being collected is insufficient to cover the operations, improvements, maintenance, repair, and replacement costs for the Common Areas and the future needs of the Association in order to perform the Associations duties and rights under this Declaration, then the Association Board shall have the right to adjust and establish a new fixed rate for the annual assessment, and the Association Board shall prepare a budget upon which the annual assessments for the ensuing years will be based and a copy of such budget shall be sent to each Owner at least ten (10) days prior to the commencement of the effective date of such budget. "CPI Escalation" as used herein means the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (All Items, All Urban Consumers, 1982-1984=100), as amended or replaced by the agency ("CPI"), which occurred during the immediately preceding twelve-month period that has been reported at the time the CPI Escalation is to go into effect. For example, if CPI for March 2021 is 264.877 and for March 2020 is 258.115, then the percentage change is the difference (264.877-258.115) divided by 258.115 which equals a 2.62% escalation. In no event, however, shall any decrease in the CPI result in a decrease below the initial fixed rate or subsequently adjusted, then applicable annual assessment.

Section 2. *Special Assessments.* In addition to the annual assessments authorized and provided for in Article IV, Section 2 above, the Association Board may fix, establish, and levy in any assessment year, a special assessment applicable to that year only, to be paid to the Association by each Owner that owns any Property upon which Improvements are located, for the purpose of defraying (in whole or in part), the cost of reconstruction, unexpected maintenance or repair, or replacement of those areas, improvements, and utilities making up and falling within the Common Areas, including, but not limited to, the necessary fixtures and personal property related thereto, provided that any such special assessment shall have the assent of the Members holding a majority of the votes present in person or represented by proxy at a meeting of the Members entitled to vote pursuant to this Declaration or the Association By-Laws duly called for this purpose at which a quorum is present or in writing by written consent signed by the Members in accordance with Article II, Section 2 above. Written notice of any such meeting regarding a special assessment shall be sent to all Members not less than ten (10) days in advance of the meeting and shall set forth the purpose of the meeting. Notwithstanding the foregoing to the contrary, the Association Board may fix, establish, and levy in any assessment year, a special assessment without the assent of the Members in the event of reconstruction, maintenance or repairs, or replacement to any areas, improvements, and/or utilities within the Common Areas necessitated by an emergency or to prevent, mitigate, or respond to any damage to areas, improvements, and utilities resulting from damage or destruction of the Common Areas as a result of a fire or other casualty event, such as, without limitation, a water or sewer line break. In addition, the Association Board may fix, establish, levy, and charge a special assessment without the assent of the Members to any particular Member who has failed to pay for or reimburse the costs and expenses expended by the Association in order to takeover and perform certain duties, obligations, and liabilities of such Member, as provided (by way of example) in Article VI, Section 2 below. With respect to any written notice to be provided under this Section 2 regarding a meeting concerning a special assessment, the Association may, in its reasonable judgment, provide written notice to any owners' association(s) that may have been formed in connection with the development of a particular Block or to the applicable, then Owner of said Block, either of which shall be deemed compliant notice of said meeting under this Declaration.

Section 3. *Rate of Assessments.* The initial annual assessment under Article IV, Section 2 above shall be equal to (i) One Dollar (\$1.00) for every three and one-quarter (3.25) Square Feet of Improvements that are commercial and retail in nature, (ii) One Dollar (\$1.00) for every four (4.00) Square Feet of Improvements that are office in nature, (iii) Fifty-Five Dollars and No/100 (\$55.00) for each Residential Unit containing less than one thousand five hundred (1,500) Square Feet, plus an additional Twenty-Five



Dollars and No/100 (\$25.00) for each and every bedroom beyond the first (1<sup>st</sup>) bedroom in such Residential Unit (for illustration purposes only, if a Residential Unit contains less than 1,500 Square Feet and has two (2) total bedrooms, the initial annual assessment for such Residential Unit will be a total of \$80.00); and (iv) One Hundred Dollars and No/100 (\$100.00) for each Residential Unit containing more than one thousand five hundred (1,500) Square Feet. Notwithstanding the foregoing, however, with respect to Residential Improvements only, the initial annual assessment shall not exceed One Hundred Dollars (\$100.00) per Residential Unit, but such Residential Unit(s) remain subject to annual and other adjustments provided in Article IV, Section 2 above. In addition, the Association may charge the Owners as part of any given annual and special assessment a fee for managerial, clerical, and overhead costs, expenses, fees, and other related amounts, which fee will be equal to fifteen percent (15%) of the total amount of the then applicable annual and special assessment. Each Owner's share of any particular special assessment as contemplated in Article IV, Section 2 above shall be equal to the percentage of such Owner's share of the annual assessment in that given year, which will be calculated by the Association Board based upon such Owner's share of the annual assessment over the total annual assessment for a given year. For example, if the total annual assessment for a given year is \$100,000 and a particular Owner's share of that annual assessment is \$10,000, then such Owner's share of the special assessment will be established by the Association Board to be 10%. Annual and special assessments levied by the Association under this Declaration shall be due and payable in advance on an annual or monthly basis as determined by the Association Board. Notwithstanding the foregoing to the contrary, in no event shall the overall obligation for any annual and special assessments levied by the Association for Block D within the Property be calculated at more than twenty-five (25%) of the total amount of any given annual or special assessment. To the extent there is any shortfall for any given annual or special assessment under this Article IV because Block D is the only Property upon which Improvements are located, then KMW will be responsible for the payment of such shortfall.

Section 4. *Date of Commencement of Annual Assessments: Due Dates.* The annual and special assessments and any other charges levied by the Association under this Declaration shall commence as determined by the Association Board, in its reasonable judgment, or upon the receipt of a certificate of occupancy for a Residential Unit or individual building, but in no event shall they commence prior to the receipt of a certificate of occupancy for such Residential Unit or individual building. The first annual assessment shall be adjusted (as and to the extent needed) according to the number of months remaining in the fiscal year. The Association Board shall fix, establish, and levy the amount of the annual assessment at least ten (10) days in advance of each annual assessment period. The Association shall, upon demand, furnish a certificate in writing signed by an authorized officer or director of the Association setting forth whether the annual assessments and any applicable special assessments and other charges levied against a specified Property have been paid in full or whether any amounts are outstanding. A reasonable charge may be made by the Association for the issuance of the certificate contemplated in this Section 4. Such certificates shall be conclusive evidence of payment of any assessment therein to have been paid in full.

Section 5. *Effect of Nonpayment of Assessments: Remedies of the Association.* Any annual and special assessments and any other charges levied by the Association under this Declaration that are not paid when due shall be delinquent. If such annual and special assessments and any other charges are not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the lesser of (a) fifteen percent (15%) per annum, or (b) the maximum rate of interest allowed under the laws of the State of Utah, and the Association may bring an action at law against the Owner (or in the Association's discretion, any owners' associations that may be formed in connection with the development of a particular Block or portion of the Property) personally obligated to pay the same, or foreclose the lien against the Property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such annual and special assessments and other charges. If any lien created by this Declaration is to be foreclosed, it shall be foreclosed in accordance with Utah Code Annotated 57-1-23 et seq.

Section 6. *Liens.* The lien of the annual and special assessments and any other charges as provided for in this Declaration shall be, subject to the condition that the Association be (i) made a party to any court proceeding to enforce any lien deemed superior, or (ii) notified in writing not less than thirty (30) days prior to any foreclosure pursuant to a power of sale contained in any instrument creating any lien deemed superior, subordinate to (a) all liens for taxes or special assessments levied by the city, county, and state governments, or any political subdivision or special district thereof, and (b) all liens securing amounts due or to become due under any mortgage or deed of trust filed of record prior to the date payment of any such assessment becomes due or payable.

Section 7. *Utility Charges Included in Assessments.* To the extent the Declarants or the Association are billed directly for any utility costs and/or charges or assessments for any utility services provided to or for the benefit of any Block or utility services provided to or used by any of the Owners and/or their respective tenants, occupants, employees, agents, contractors, guests, customers, and other invitees, such utility costs, charges, and/or assessments may be included and allocated (in the Association's reasonable judgment, including, on a pro rata basis) as part of the annual and special assessments and/or other charges (as each may be applicable) levied by the Association against each Block and Owner under this Declaration. Declarants anticipate that certain utility providers (for example, the water provider) may only permit or desire a single meter for certain utility services provided to the entire Property. In such case, Declarants and the Association shall have the right to evaluate, determine, and allocate the utility services used by each Block and by the Owners and/or their respective tenants, occupants, employees, agents, contractors, guests, customers, and other invitees and charge the respective Owners for their share. In doing so, the Declarants and the Association shall have the right to separately meter each Block, at the respective Owners expense, and each Owner will pay the applicable annual and special assessments and/or charges as determined, allocated, and billed by the Declarants or the Association. If the utility services used by each Block are not separately metered, the Declarants and/or the Association shall have the right to reasonably estimate and allocate the utility costs and/or charges or assessments applicable to each Block.

## ARTICLE V. EASEMENTS TO COMMON AREAS

Section 1. *Access Easements to Common Areas.* Subject to the provisions in this Declaration, each Block shall have appurtenant thereto and be benefited by the Common Areas throughout the Property and the Common Areas shall be subject to and be burdened by, a perpetual, non-exclusive right-of-way and easement for vehicular, non-vehicular, and pedestrian ingress and egress upon, over, and across those areas of the Blocks designed for and qualifying as Common Areas. The use of such right-of-way and easement for the Common Areas shall be for the benefit of the Association and each of the Owners and their respective tenants, occupants, employees, agents, contractors, guests, customers, and other invitees. The use of such right-of-way and easement for the Common Areas shall be limited to general business, commercial, residential, and other permitted activities and purposes, which shall include, but not be limited to, reasonable and customary traffic and deliveries. Once constructed, the Common Areas may be modified, changed, or reconfigured from time-to-time in the discretion of the Association and the Owner(s) of the Blocks on which such Common Areas are located, so long as such modification, change, or reconfiguration are performed in accordance with all applicable laws and do not eliminate or substantially impair or adversely impact the right-of-way and easement created pursuant to this Article V, Section 1. The right-of-way and easement provided for in this Article V, Section 1 shall not benefit and, without the written approval of the Association and the Owner(s) of the Blocks on which such Common Areas are located, may not be assigned or granted to or for the benefit of any third-parties or property outside of the Property (*excluding, however, any applicable additional property that may be annexed in accordance with Article VII, Section 1 below*).

Section 2. *Use of Common Areas.* Subject to the provisions in this Declaration, those areas of the Blocks designed for and qualifying as Common Areas shall be used only for the following enumerated purposes and subject to the restriction that any such use shall not be unreasonable, inconsistent with the

uses commonly found in a Class A multi-use, multi-development lot project, shall not violate any applicable laws, nor adversely impact the use, operation, or the business or intended purposes of any other Owners and their respective tenants, occupants, employees, agents, contractors, guests, customers, and other invitees within the Property:

i. Ingress and Egress. Ingress and egress by vehicles, non-vehicles (for example, bicycles and scooters), and pedestrians over all private roadways, streets, access roads, driveways, medians, and entrances and exits and over all private sidewalks, walkways, trails, stairs, and the like designated from time-to-time by Declarants or the Association within the Common Areas.

ii. Parking. Parking of motor vehicles and non-vehicles (for example, bicycles and scooters), but only in those parking spaces and parking areas (if applicable) or bike racks and other similar areas that have been specifically designated from time-to-time by Declarants or the Association within the Common Areas as parking spaces, parking areas, bike racks, and other similar parking areas. Notwithstanding anything in this Declaration to the contrary, no representation or warranty is made by Declarants regarding whether there in fact will be any parking spaces, parking areas, bike racks, and other similar parking areas located on or operating within the Property or on any of the Blocks at any time.

iii. Utilities within Common Areas. Installation, improvement, operation, inspection, maintenance, repair, and replacement (as and when needed) of the utilities lines, facilities, systems, and improvements (including, but not limited to, sewer, water, and storm drainage facilities) located on, over, under, and within the Common Areas, including, without limitation, any applicable vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls, conduits, facilities, and any other related improvements, all of which shall whenever and wherever reasonably feasible be located within those utility corridors within the Common Areas specifically designated and created for the installation of utilities lines, facilities, systems, and improvements.

iv. Encroachments. If (a) any Common Areas (or improvements constructed thereon) encroach upon any particular Block or other areas or improvements that have been designated as Common Areas; or (b) any encroaching Common Areas shall hereafter occur as the result of (i) the installation and construction of any areas or improvements that have been designated as Common Areas, (ii) settling or shifting of any areas or improvements that have been designated as Common Areas, (iii) any alteration, repair, or restoration of areas or improvements that have been designated as Common Areas, or (iv) any alteration, repair, or restoration of areas or improvements that have been designated as Common Areas after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any areas or improvements that have been designated as Common Areas; then, in any such event, a valid easement shall be deemed to have been granted and shall exist under this Declaration for such encroachment(s) and for the maintenance, repair, restoration, and replacement of such encroaching Common Areas.

v. Public Services; Emergency Purposes. Fire, police, health, and sanitation and other public service personnel (and, where appropriate, their vehicles) shall have a perpetual easement for ingress and egress over, through, and across the Common Areas in the performance of their respective duties. Additionally, easements are hereby reserved in favor of all Owners and their respective tenants, occupants, employees, agents, contractors, guests, customers, and other invitees for emergency ingress and egress over, through, and across all Common Areas to the extent necessary to access such Owner's Block or to otherwise comply with and/or enjoy the rights granted to such Owner under this Declaration with respect to such Owner's Block.

vi. Signage. The Association shall have the right to grant an easement in gross to Owners for the construction, operation, maintenance, repair, replacement, and removal of temporary

freestanding signs used (i) during the initial construction of Improvements and/or (ii) in advertising the sale or lease of any Improvements ("Signs"), with such signs to be situated on the Property in the areas (each, a "Signage Area", and collectively, the "Signage Areas") as approved by the Association and in accordance with all applicable laws. Declarant further grants to the Association the right to grant a non-exclusive easement over and across the Blocks on which such Signs are located for access to and from the Signage Area for the installation, maintenance, repair, and replacement of the Signs. The Association shall have the right to approve the design, content, and location of each Sign, with such approval not to be unreasonably withheld, conditioned, or delayed.

## ARTICLE VI. RESTRICTIONS ON USE OF PROPERTIES

Section 1. *Nuisance and Rubbish.* In an effort to further the Declarants desire to enhance and protect the value, desirability, and attractiveness of the Property by, among other things, forming and organizing the Association and designating and initially installing and constructing the Common Areas, the Declarants hereby declare that nothing shall be done or maintained on any portion of the Property which may be or shall become an unreasonable annoyance or nuisance to the Owners and their respective tenants, occupants, employees, agents, contractors, guests, customers, and other invitees, or to the overall Property as a whole, as determined in the reasonable judgment of the Association Board, and no noxious or offensive activity shall be carried on or maintained upon any Property. No accumulation of any rubbish, garbage, junk, or materials of any kind shall be permitted to remain on any Property (whether such Property is vacant or occupied or improved or unimproved, *provided, however*, construction materials, equipment, and supplies may be stored and kept on the Property during the course of construction of any Improvements, so long as such construction materials, equipment, and supplies are kept and stored in an orderly, safe, and legally compliant manner).

Section 2. *Removal, Excavation, and Landscaping.* The Declarants hereby declare that no sand, dirt, earth, or sod shall be removed from any Property, nor shall an excavation be allowed to remain open thereon, except as may be necessary during the course of construction of any Improvements within the Property or except as may otherwise be approved by the Association Board. After construction, lawn and landscaping shall be installed and maintained thereafter in an attractive manner.

Section 3. *Association's Rights to Maintain Vacant Property and Correct Nuisances.* If any particular Owner fails to perform any duty, responsibility, or obligation established under this Declaration or as may otherwise be required by law concerning the maintenance, repair, and satisfaction and performance of other obligations regarding such Owner's vacant and unimproved Property, and such failure continues for a period of thirty (30) days after written notice of such failure is given to the Owner by the Association, or if the performance of such duty, responsibility, or obligation would reasonably require more than thirty (30) days, if the Owner fails to commence such performance within such thirty (30) day period or thereafter diligently prosecute such performance to completion, the Association after giving such notice may, but is not obligated to, takeover and perform such duty, responsibility, or obligation in the stead of the Owner. Such takeover rights of the Association may include, but is not limited to, mowing, cleaning-up, caring for, maintaining, and removing rubbish, debris, garbage, junk, or materials of any kind from any vacant or unimproved Property or portions thereof (except for any Property upon which construction of Improvements have commenced and is being actively performed). In addition, the Association shall have the right, but not the obligation, to perform and do any other things reasonably necessary or desirable in the reasonable judgment of the Association, to keep any vacant and unimproved Property or portions thereof in a good and clean condition and in an orderly, safe, and sanitary condition. Nothing herein shall exempt the Owner of any vacant and unimproved Property from its duties, obligations, and responsibilities under this Declaration and otherwise required by law to maintain, repair, and satisfy other obligations regarding its vacant and unimproved Property. Any and all costs and expenses necessary and actually expended by the Association in order to takeover and perform such clean-up,

maintenance, and other efforts contemplated under this Section 3 on behalf a particular Owner shall be reimbursed and if not timely paid, shall become a special assessment upon the Property of said Owner, shall be a lien upon the Property of said Owner, and shall be enforceable as all other assessments and charges under this Declaration.

## ARTICLE VII. RESERVED RIGHTS

Section 1. *Annexation of Additional Property.* Declarants hereby reserve the right to annex all or any portions of any additional real property located adjacent and contiguous to or nearby the Property, in the reasonable judgment of the Declarants and the Association, respectively, at any time in the future. Such annexations, if made, will subject the additional real property to the terms and conditions of this Declaration. Annexations will become effective upon the recording of an amendment or supplemental declaration to this Declaration recorded in the official records of the Salt Lake County Recorder's Office, which amendment or supplemental declaration need be executed only by the Declarants, the Association, and, as applicable, the fee title Owner(s) of the additional real property being annexed. Declarants and the Association may, in their reasonable judgment, provide for any such additional real property so annexed to become part of the Common Areas.

Section 2. *Reserved Easements in Common Areas.* Certain perpetual, non-exclusive easements are hereby reserved (and declared and created) by the Declarants, for itself and for the benefit of the Association, over, under, and upon any and all portions of the Property that have been designated as Common Areas pursuant to this Declaration and that may be further designated as Common Areas from time-to-time by the Association in the future concerning, regarding, and covering all of the Common Areas, which reserved easements shall be broadly construed to cover and address all of those areas, improvements, utilities, uses, benefits, and intended purposes for and concerning the Common Areas as set forth in this Declaration, and which reserved easements shall run in favor of the Association and each of the Owners under this Declaration. For clarification, the reserved easements under this Section 2 shall include, but not be limited to, a perpetual, non-exclusive easement for (i) vehicular and non-vehicular traffic over all private roadways, streets, access roads, driveways, medians, and entrances and exits designated from time-to-time by Declarants or the Association within the Common Areas, (ii) pedestrian and non-vehicular traffic over all private sidewalks, walkways, trails, stairs, and the like designated from time-to-time by Declarants or the Association within the Common Areas, and (iii) the rights to install, construct, improve, maintain, inspect, repair, and provide utilities lines, facilities, systems, and improvements (including, but not limited to, sewer, water, and storm drainage facilities) for the benefit of the Common Areas. Without limiting the generality of the foregoing, the reserved easements under this Section 2 are also being reserved and provided to afford access to Declarants and the Association to perform, and/or to enable, any planning, construction, building, installation, placement, continuation, operation, maintenance, servicing, testing, repair, renovation, refurbishment, alteration, improvement, replacement, and/or relocation whatsoever (as the Declarants and/or the Association may deem necessary or desirable in their reasonable judgment), relating to the Common Areas.

Section 3. *Reserved Easements in Vacant and Unimproved Property.* Declarants hereby reserve the right to enter into and access those portions of each Owners' vacant and unimproved Property in order to exercise those rights set forth in Article VI, Section 3 above, in the event any particular Owner fails to perform any duty, responsibility, or obligation established under this Declaration or as may otherwise be required by law.

Section 4. *Replating or Subdivision of Property.* Declarants hereby reserve the right to replat or subdivide any Property or portions thereof, including any individual Block, owned by the Declarants, as the case may be, by recording an amendment or supplement to this Declaration and the Plat recorded in the

official records of the Salt Lake County Recorder's Office, which incorporates and effectuates the replatting or subdivision of Property and/or any individual Block, as applicable.

Section 5. *Ownership of Utility Systems.* Declarants hereby expressly reserve for the Association, the right of the Association to elect to own and accept ownership of any and all private utilities and utility lines, facilities, systems, and improvements located within and under the Common Areas which service all or portions of the Property, in the reasonable judgment of the Association Board, at any time in the future. Such private utilities and utility lines, facilities, systems, and improvements may be transferred from the Declarants to the Association and may include, but may not be limited to, those sewer, water, and storm drainage utilities that are anticipated to be placed under the private roadways, streets, access roads, driveways, and entrances and exits located within and under the Common Areas. Each of the Owners (by acceptance of a deed or other instrument of conveyance (whether or not it shall be so expressed in any such deed or instrument)) and the Members shall cooperate in good faith and exercise commercially reasonable efforts with the Association and any election by the Association to accept ownership of any private utilities and utility lines, facilities, systems, and improvements located within and under the Common Areas, including, the execution and acknowledgement of any transfer documents or other instruments and acknowledgements reasonably requested by the Association to evidence such ownership.

#### ARTICLE VIII. INSURANCE

The Association shall have the rights, power, and duty to obtain and pay the cost of the following insurance and related items in connection with the improvements and utilities located within the Common Areas:

Section 1. *General Liability Insurance.* Commercial General Liability insurance providing coverage against claims brought by third-parties against the Association, its officers, directors, each of the Members, managers, employees, agents, or representatives for (a) death or bodily injury, (b) property damage, (c) personal and advertising injury, (d) contractual liability, and (e) products/completed operations liability, with minimum limits of Two Million Dollars (\$2,000,000) per each occurrence with a general aggregate limit of not less than Four Million Dollars (\$4,000,000).

Section 2. *Business Auto Liability Insurance.* Business Auto Liability policy providing coverage against claims for bodily injury and property damage brought by third-parties against the Association, its officers, directors, each of the Members, managers, employees, agents, or representatives and shall include all owned, non-owned and hired vehicles (if any) for combined single limit of not less than Two One Million Dollars (\$2,000,000) each accident.

Section 3. *Workers' Compensation Insurance.* The Association shall obtain and maintain workers' compensation insurance and Employer's Liability Insurance in amounts not less than Two Million Dollars (\$2,000,000) per accident/disease for employees, if any, of the Association to the extent required by applicable law. The Association shall require independent contractors who performs any labor or service for the Association to carry statutory workers compensation coverage and Employer's Liability Insurance in the same amounts as shown above. Such independent contractors' insurance policy shall provide a waiver of subrogation in favor of the Association and its officers, directors, each of the Members, managers, employees, agents, and/or representatives.

Section 4. *Directors' and Officers' Liability Insurance.* The Association shall obtain and maintain board members', directors' and officers' liability insurance for the Association Board and all officers and directors of the Association containing such terms and conditions as are normally and customarily carried for board members, directors, and officers of a mixed-use development project in Salt Lake County, Utah. The limits of such insurance shall be not less than Two Million Dollars (\$2,000,000).

Section 5. *Other Insurance.* The Association shall obtain and maintain such other insurance, as the Association Board, in its reasonable discretion, considers necessary or advisable, or as is required by applicable laws.

#### ARTICLE IX. TERMINATION

Section 1. *Title and Mortgagee Protection.* The default or breach of this Declaration by any Owner or other party to this Declaration shall not entitle any Person to cancel, rescind, or otherwise terminate its duties, liabilities, and obligations under this Declaration. No default or breach of this Declaration shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust made in good faith and for value, but the easements, covenants, conditions, limitations, restrictions, reservations, rights, and obligations contained in this Declaration shall be binding upon and effective against the Owner of any Property or any portion thereof, whose title thereto is acquired by foreclosure, trustee's sale, or otherwise (like an arrangement or proceeding in lieu of foreclosure).

Section 2. *Termination of Declaration.* This Declaration shall continue and remain in full force and effect until terminated by an instrument recorded in the official records of the Salt Lake County Recorder's Office which has been executed by all of the Members; *provided, however*, that in the event any such termination was approved by the vote of all of the Members, any such termination instrument may be executed by an authorized officer or director of the Association as attorney-in-fact for the Members, which power shall be deemed to be coupled with an interest, and each of the officers and directors of the Association are hereby authorized by the Members to act as their attorney-in-fact for the purpose of executing such termination instrument; provided that such officer or director shall attach thereto a certification of such vote at such meeting, which certification shall set forth all of the Members, the numbers of votes such Member is entitled to vote, and the results of the votes cast by each Member at the meeting.

#### ARTICLE X. AMENDMENT

This Declaration may be amended, modified, added to, or partially deleted, by an instrument recorded in the official records of the Salt Lake County Recorder's Office which has been executed by the Association and those Members holding at least sixty percent (60%) of the votes entitled to vote at a meeting of the Members; *provided, however*, that in the event any such amendment, modification, addition, or partial deletion was approved by the vote of the Members holding at least sixty percent (60%) of the votes entitled to vote at a meeting of the Members, any such amendment, modification, addition, or deletion may be executed by an authorized officer or director of the Association as attorney-in-fact for the Members, which power shall be deemed to be coupled with an interest, and each of the officers and directors of the Association are hereby authorized by the Members to act as their attorney-in-fact for the purpose of executing such amendment, modification, addition, or deletion; provided that such officer shall attach thereto a certification of such vote at such meeting, which certification shall set forth all Members, the numbers of votes such Member is entitled to vote, and the results of the votes cast by each Member at the meeting.

#### ARTICLE XI. GENERAL

Section 1. *Incorporation of Recitals.* The foregoing recitals as contained in this Declaration are true and correct and hereby incorporated by reference as part of this Declaration.

Section 2. *Gender.* A reference in this Declaration to any one gender, masculine or feminine, includes the other one, and the singular includes the plural and vice-versa, unless the context otherwise requires.

Section 3. *Captions.* The captions in this Declaration inserted are included only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of this Declaration or the intent of any provision hereof.

Section 4. *Severability.* Invalidation of any portion of this Declaration, or any of the covenants or restrictions contained herein by a judgment or court order shall in no way affect any other provisions which shall remain in full force and effect. Whenever possible, each term, provision, covenant, or condition of this Declaration shall be interpreted in such a manner as to be valid under applicable law.

Section 5. *Enforcement.* The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration.

Section 6. *Attorneys' Fees.* If any legal action is brought to enforce or interpret this Declaration (or any of the documents contemplated or provided for in this Declaration) or because of a default or breach of this Declaration, in addition to any other relief, remedies, and damages to which the prevailing party is entitled, the party prevailing in such action shall be entitled to recover from the unsuccessful party reasonable attorneys' fees and costs incurred in any such legal action or in any appeal from such legal action, the amount of which shall be fixed by the court and made a part of any judgment rendered.

Section 7. *Waiver.* No provision contained in this Declaration shall be deemed to have been abrogated or waived by reasons of any failure to enforce the same, regardless of the number of violations or breaches that may occur.

Section 8. *Notices.* Any notices or demand to be given or required to be sent to any Owner or Member under the provisions of this Declaration or to the Association or Declarants shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the Person who appears as an Owner or Member on the records of the Association at the time of such mailing. Any Owner, Member, the Declarants, and the Association may change the address at which it desires to receive notice under this Declaration upon written notice of such change to the other Owners, Members, Declarants, and the Association, as applicable. Refusal to accept delivery of a notice or the inability to deliver a notice because of an address change that was not properly communicated shall not defeat or delay the giving of a notice. If any particular Property or Block has more than one Owner, any notices or demand to be given or required to be sent to any Owner or Member under the provisions of this Declaration may be sent by a single written notice to the applicable owners' association(s) that have been formed in connection with the development of such Property and any particular Block and it shall be such owners' association(s) duty, responsibility, and obligation to disseminate such notice or demand to the applicable Owners and their respective tenants, occupants, employees, agents, contractors, guests, customers, and other invitees.

Section 9. *Covenants to Run with the Land.* All provisions of this Declaration and the Association By-Laws shall, to the extent applicable and unless otherwise expressly herein provided to the contrary, be perpetual and be construed to be covenants running with and burdening the land and with every part thereof and interest therein, and all of the provisions hereof shall be binding upon, and shall inure to the benefit of, each of the Owners, and his heirs, executors, administrators, legal representatives, successors and assigns, but the same are not intended to create, nor shall they be construed as creating, any rights in, or for the benefit of, the general public. All present and future Owners, tenants, lessees, occupants, employees, agents, contractors, guests, customers, and other invitees of any portion of the



Properties shall be subject to, and shall comply with, the provisions of this Declaration, as amended from time-to-time. The acceptance of a deed or other instrument of conveyance, the entering into a lease, or the entering into occupancy of any portion of the Property shall constitute an agreement that the provisions of this Declaration, as amended from time-to-time, are accepted and ratified by such owner, tenant, lessee, licensee, or occupant, and all of such provisions shall be deemed and taken to be covenants running with and burdening the land and shall bind any Person having, at any time, any interest or estate in such deed, conveyance, or lease as though such provisions were recited and stipulated at length therein.

Section 10. *Approval of Declarants.* Any decisions or approvals to be made by the Declarants under this Declaration will require or be permitted to be taken at a meeting of the Declarants or may be taken without a meeting of the Declarants by way of one or more written consents signed by a majority of the Declarants.

Section 11. *Assignment of Declarant's Rights.* Declarants may at any time, and shall in the event a Declarant no longer holds fee title to any portion of the Property, assign all of the rights and benefits conferred on or reserved herein to the Declarants in its status as such (as opposed to those rights or benefits conferred on or reserved for all Owners or groups thereof), by an instrument in writing which is recorded in the Salt Lake County Recorder's Office. Alternatively, a Declarant may assign its rights and obligations under this Declaration to the Association, in which the Association Board shall have the rights, privileges, and obligations consistent with this Declaration.

Section 12. *Not A Public Dedication.* Nothing contained in this Declaration shall be deemed a gift or dedication of any portion of the Common Areas or the Property or portion thereof to the general public or for any public use or public purpose whatsoever, it being the intention and understanding that this Declaration shall be strictly limited to and for the purposes expressly stated in this Declaration solely for the benefit of the Owners, Members, and the Association. The Association may take such action as may be necessary or desirable to prevent any such public dedication or appropriation of the Common Areas, including, but not limited to, temporary closure of the Common Areas by barriers at entrance-ways on non-business holidays or other appropriate times not materially disruptive to the operations, businesses, and other uses or occupancy of the Owners. Any such closure of the Common Areas shall not exceed the minimum reasonable time required to prevent such dedication or appropriation and such closures shall be carried out so as to minimize (to the greatest extent possible) any adverse impact or disruption on the operations, businesses, and other uses or occupancy of the Owners.

Section 13. *Release on Transfer.* On and after the date an Owner transfers (other than merely for purposes of security) or is otherwise divested of such Owner's ownership interest in any parcels of land within the Property, such Owner shall be relieved of all duties, liabilities, and obligations under this Declaration related to such Property, except for such duties, liabilities, or obligations as may have accrued as of the date of such transfer or divestiture.

Section 14. *Relationship of Parties and No Third-Party Rights.* Except as expressly set forth in this Declaration, this Declaration does not create any joint venture, partnership, undertaking, or business arrangement between the Declarants, Owners, Members, or the Association, nor, unless otherwise stated, create any rights or benefits in favor of any third-parties.

Section 15. *Force Majeure.* The Declarants, the Association, and any Owners or other Persons obligated under this Declaration shall be excused from performing any liabilities, obligations, or covenants set forth in this Declaration and shall not be liable for any delays or failures in the keeping or performance of its liabilities, obligations, or covenants under this Declaration during the time and to the extent that any such delays or failure is due to causes or events beyond the control and without the fault or negligence of the

Declarants, the Association, Owners, or Persons affected, which shall include, without limitation, causes or events such as any acts of God, acts of civil or military authority, fire, explosion, epidemics, pandemics, contagions, diseases, or viruses (including, by way of example, Covid-19 events), floods, earthquakes, unusually adverse weather conditions, riots, wars, terrorism, sabotage, actions or restrictions of governmental authorities, governmental regulation of the sale, production, or use of materials or supplies or the transportation thereof, government shutdowns or postponements of meetings, or other similar or dissimilar causes or events not within such party's reasonable control (each, considered acceptable "Events of Force Majeure"), but not including generalized economic conditions, recession, or depression. Upon the occurrence of any such Events of Force Majeure, the Declarants, the Association, Owners, or Persons affected shall promptly give written notice to the other party or parties (including, the Association and any other Owners and Persons) to this Declaration and shall promptly resume the keeping and performance of the affected liabilities, obligations, or covenants under this Declaration after any such Events of Force Majeure have come to an end. The notice of any Events of Force Majeure will set forth in reasonable detail the nature and circumstances of the Events of Force Majeure, the expected effect and delays of the Events of Force Majeure on the affected party's performance under this Declaration, and the expected date (based on the best information available) the affected party will be able to resume performance. As of the date of the Events of Force Majeure, the party asserting force majeure is excused from performing any liability, obligation, or covenant that the party is unable to perform under this Declaration due to the Events of Force Majeure for as long as the Events of Force Majeure continue, and such affected party is relieved of liability for its failure to perform the excused liabilities, obligations, or covenants during the force majeure period. The party asserting an inability to perform shall use commercially reasonable efforts to correct such inability and to resume promptly its performance as required under this Declaration.

***[Remainder of Page Intentionally Left Blank]***

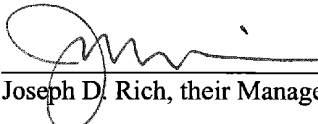


**SIGNATURE PAGE**

IN WITNESS WHEREOF, the Declarants have executed this Declaration as of the Effective Date.

**CHENEY:**

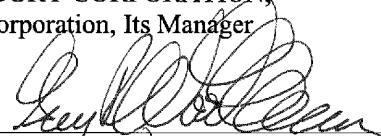
**JM CHENEY HOLLADAY HOLDINGS, LLC**, a Utah limited liability company, and **RL CHENEY HOLLADAY HOLDINGS, LLC**, a Utah limited liability company, as tenants-in-common

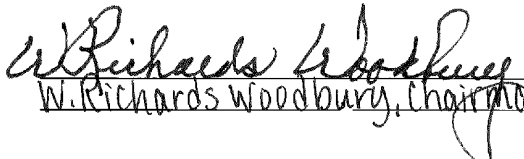
By:   
Joseph D. Rich, their Manager

**KMW:**

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

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

By:   
Guy R. Woodbury, SVP

By:   
W. Richards Woodbury, Chairman

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

By:   
Steven Peterson, Manager

**PETERBUILT:**

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


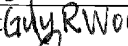
By: 


**BLOCK D:**

**HOLLADAY HILLS BLOCK D L.L.C.**  
a Delaware limited liability company

By: **WCL GP L.L.C.,**  
a Delaware limited liability company,  
Its Manager


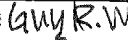
By: **WOODBURY CORPORATION,**  
a Utah corporation, Its Manager

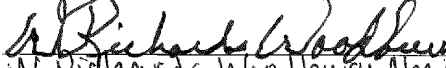
By:   
O. Randall Woodbury, President  O. Randall Woodbury, SVP

By:   
W. Richards Woodbury, Chairman

By: **KMW DEVELOPMENT L.L.C.,**  
a Utah limited liability company, Its Manager

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

By:   
O. Randall Woodbury, President  O. Randall Woodbury, SVP

By:   
W. Richards Woodbury, Chairman

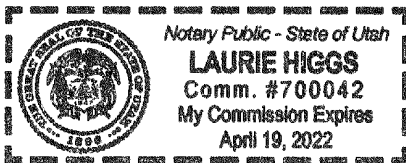
By: **MILLROCK CAPITAL, II, LLC,**  
a Utah limited liability company, Its Manager

By:   
Steve Peterson, Manager

**ACKNOWLEDGMENTS**

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

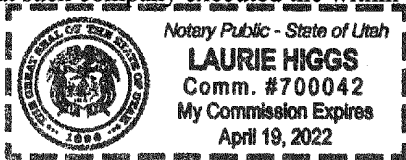
On the 3rd day of December, 2021, before me personally appeared Guy R. Woodbury, to me personally known, who being by me duly sworn did say that he is the Senior Vice President of WOODBURY CORPORATION, a Utah corporation, known to be a Manager of KMW DEVELOPMENT L.L.C., a Utah limited liability company, a company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement.



Laurie Higgs  
Notary Public

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

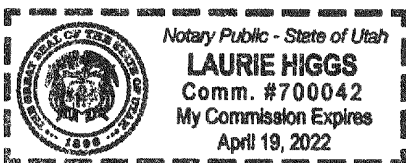
On the 3rd day of December, 2021, before me personally appeared W. Richards Woodbury, to me personally known, who being by me duly sworn did say that he is the Chairman of WOODBURY CORPORATION, a Utah corporation, known to be a Manager of KMW DEVELOPMENT L.L.C., a Utah limited liability company, a company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement.



Laurie Higgs  
Notary Public

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 2nd day of December, 2021, before me personally appeared STEVEN PETERSON, to me personally known, who being by me duly sworn did say that he is the Manager of MILLROCK CAPITAL, II, LLC, a Utah limited liability company, known to be a Manager of KMW DEVELOPMENT L.L.C., a Utah limited liability company, a company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement.

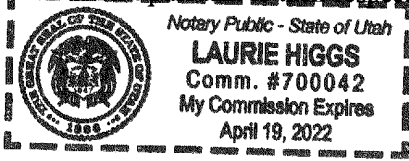


Laurie Higgs  
Notary Public

**ACKNOWLEDGMENTS (CONTINUED)**

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

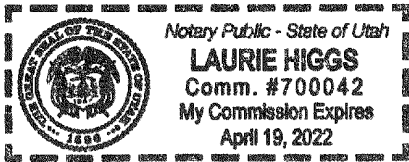
On the 1<sup>st</sup> day of December, 2021, before me personally appeared JOE D. RICH, to me personally known, who being by me duly sworn did say that he is the Manager of JM CHENEY HOLLADAY HOLDINGS, LLC, a Utah limited liability company, and RL CHENEY HOLLADAY HOLDINGS, LLC, a Utah limited liability company, each as tenants-in-common, being companies that executed the within instrument, and acknowledged to me that such companies executed the within instrument pursuant to their respective Operating Agreements.



Laurie Higgs  
Notary Public

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 2<sup>nd</sup> day of December, 2021, before me personally appeared Steven Peterson, to me personally known, who being by me duly sworn did say that he is the Manager of PETERBUILT HH, L.L.C., a Utah limited liability company, a company that executed the within instrument, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement.



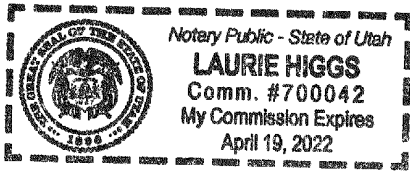
Laurie Higgs  
Notary Public

*[Handwritten signature]*

**ACKNOWLEDGMENTS (CONTINUED)**

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

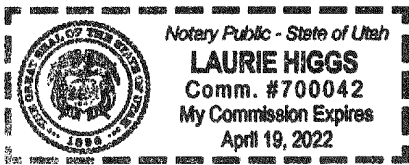
On the 3<sup>rd</sup> day of December 2021, before me personally appeared Guy R. Woodbury, to me personally known, who being by me duly sworn did say that he is the Senior Vice President of WOODBURY CORPORATION, known to be the Manager of WCL GP L.L.C., known to be a Manager of HOLLADAY HILLS BLOCK D L.L.C., the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its operating agreement.



Laurie Higgs  
Notary Public

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

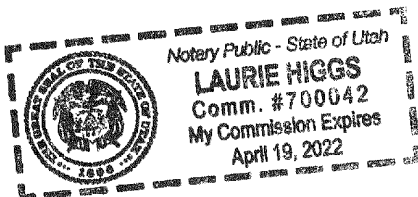
On the 3<sup>rd</sup> day of December 2021, before me personally appeared W. Richards Woodbury, to me personally known, who being by me duly sworn did say that he is the Chairman of WOODBURY CORPORATION, known to be the Manager of WCL GP L.L.C., known to be a Manager of HOLLADAY HILLS BLOCK D L.L.C., the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its operating agreement.



Laurie Higgs  
Notary Public

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 3<sup>rd</sup> day of December, 2021, before me personally appeared Guy R. Woodbury, to me personally known, who being by me duly sworn did say that he is the Senior Vice President of WOODBURY CORPORATION, a Utah corporation, known to be a Manager of KMW DEVELOPMENT L.L.C., a Utah limited liability company, a company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement.



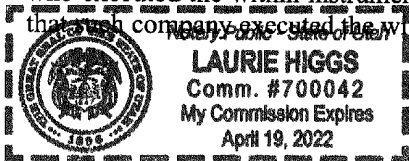
Laurie Higgs  
Notary Public

*[Handwritten initials]*

**ACKNOWLEDGMENTS (CONTINUED)**

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

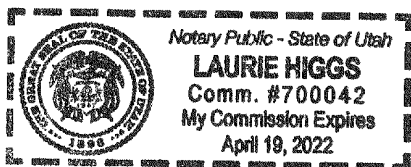
On the 3<sup>rd</sup> day of December, 2021, before me personally appeared W. Richards Woodbury, to me personally known, who being by me duly sworn did say that he is the Chairman of WOODBURY CORPORATION, a Utah corporation, known to be a Manager of KMW DEVELOPMENT L.L.C., a Utah limited liability company, a company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement.



Laurie Higgs  
Notary Public

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 2<sup>nd</sup> day of December, 2021, before me personally appeared STEVEN PETERSON, to me personally known, who being by me duly sworn did say that he is the Manager of MILLROCK CAPITAL, II, LLC, a Utah limited liability company, known to be a Manager of KMW DEVELOPMENT L.L.C., a Utah limited liability company, a company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement.



Laurie Higgs  
Notary Public

*[Handwritten initials]*



**EXHIBIT A  
TO  
DECLARATION OF EASEMENTS, COVENANTS,  
AND RESTRICTIONS REGARDING COMMON AREAS FOR  
ROYAL HOLLADAY HILLS SUBDIVISION**

---

**LEGAL DESCRIPTION OF THE KMW PROPERTY**

The real property referenced in the foregoing Declaration as the "KMW Property" is located in the County of Salt Lake, State of Utah and is more particularly described as follows:

ALL OF BLOCKS B, F, AND L LOT 1 OF THE ROYAL HOLLADAY HILLS SUBDIVISION #2, AS SET FORTH ON THE OFFICIAL PLAT, RECORDED ON JUNE 25, 2021, IN THE OFFICIAL RECORDS OF THE SALT LAKE COUNTY RECORDER, AS ENTRY NO. 13700581, IN BOOK 2021P, BEGINNING AT PAGE 171.

**The following is provided for information purposes only:**

Tax Parcel Identification Numbers: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

22-09-228-039  
22-09-228-043  
22-10-151-031  
" 032  
" 034  
" 036  
" 038  
" 040  
" 042



**EXHIBIT B  
TO  
DECLARATION OF EASEMENTS, COVENANTS,  
AND RESTRICTIONS REGARDING COMMON AREAS FOR  
ROYAL HOLLADAY HILLS SUBDIVISION**

---

**LEGAL DESCRIPTION OF THE BLOCK D PROPERTY**

The real property referenced in the foregoing Declaration as the "Block D Property" is located in the County of Salt Lake, State of Utah and is more particularly described as follows:

ALL OF BLOCK D OF THE ROYAL HOLLADAY HILLS SUBDIVISION #2, AS SET FORTH ON THE OFFICIAL PLAT, RECORDED ON JUNE 25, 2021, IN THE OFFICIAL RECORDS OF THE SALT LAKE COUNTY RECORDER, AS ENTRY NO. 13700581, IN BOOK 2021P, BEGINNING AT PAGE 171.

**The following is provided for information purposes only:**

Tax Parcel Identification Numbers: \_\_\_\_\_.

22-09-228-041



**EXHIBIT C  
TO  
DECLARATION OF EASEMENTS, COVENANTS,  
AND RESTRICTIONS REGARDING COMMON AREAS FOR  
ROYAL HOLLADAY HILLS SUBDIVISION**

---

**LEGAL DESCRIPTION OF THE PETERBUILT PROPERTY**

The real property referenced in the foregoing Declaration as the "Peterbuilt Property" is located in the County of Salt Lake, State of Utah and is more particularly described as follows:

ALL OF BLOCKS A, E, G, H, I, J, L LOT 2, AND K LOT 1 OF THE ROYAL HOLLADAY HILLS SUBDIVISION #2, AS SET FORTH ON THE OFFICIAL PLAT, RECORDED ON JUNE 25, 2021, IN THE OFFICIAL RECORDS OF THE SALT LAKE COUNTY RECORDER, AS ENTRY NO. 13700581, IN BOOK 2021P, BEGINNING AT PAGE 171.

**The following is provided for information purposes only:**

Tax Parcel Identification Numbers: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

22-09-228-038  
22-09-228-042  
22-10-151-029  
" .024  
" .028  
  
22-09-228-045  
22-09-228-044  
22-10-151-026  
22-10-151-023



**EXHIBIT D  
TO  
DECLARATION OF EASEMENTS, COVENANTS,  
AND RESTRICTIONS REGARDING COMMON AREAS FOR  
ROYAL HOLLADAY HILLS SUBDIVISION**

---

**LEGAL DESCRIPTION OF THE CHENEY PROPERTY**

The real property referenced in the foregoing Declaration as the "Cheney Property" is located in the County of Salt Lake, State of Utah and is more particularly described as follows:

ALL OF BLOCK C OF THE ROYAL HOLLADAY HILLS SUBDIVISION #2, AS SET FORTH ON THE OFFICIAL PLAT, RECORDED ON JUNE 25, 2021, IN THE OFFICIAL RECORDS OF THE SALT LAKE COUNTY RECORDER, AS ENTRY NO. 13700581, IN BOOK 2021P, BEGINNING AT PAGE 171.

**The following is provided for information purposes only:**

Tax Parcel Identification Number: \_\_\_\_\_.

22.09.228.046



**EXHIBIT E  
TO  
DECLARATION OF EASEMENTS, COVENANTS,  
AND RESTRICTIONS REGARDING COMMON AREAS FOR  
ROYAL HOLLADAY HILLS SUBDIVISION**

**COMMON AREA SITE PLAN**

The site plan referenced in the foregoing Declaration as the "Common Area Site Plan" is attached below:

