

When recorded, mail to:

Wade R. Budge  
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13141451  
12/6/2019 3:06:00 PM \$40.00  
Book - 10869 Pg - 4403-4408  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 6 P.

Affects Tax Parcel Nos.: 26-26-401-~~007~~<sup>008</sup>;  
26-26-200-034;  
~~26-26-200-035~~

119883-DMF

**DESIGNATION OF DEVELOPER AND  
PARTIAL ASSIGNMENT OF DECLARANT’S RIGHTS**  
(Anthem II, Herriman, Utah)

This DESIGNATION OF DEVELOPER AND PARTIAL ASSIGNMENT OF DECLARANT’S RIGHTS (this “*Agreement*”), dated as of December 6, 2019 (“*Effective Date*”), is made by and between **ANTHEM II, LLC**, a Utah limited liability company (“*Declarant*”), and **TOLL SOUTHWEST LLC**, a Delaware limited liability company (“*Toll*”).

RECITALS

A. Fort Herriman Crossing, LLC, a Utah limited liability company (“*Seller*”), and Toll have entered into that certain Agreement of Sale dated August 8, 2019 (as amended, the “*Purchase Agreement*”). Pursuant to the Purchase Agreement, Seller will convey the property described on **Exhibit A** (the “*Property*”) to Toll.

B. The Property either is or will be subject to that certain Declaration of Covenants, Conditions, and Restrictions for Anthem II (a Planned Unit Development) recorded on December 15, 2017 as Entry No. 12680306, in Book 10630, at Pages 870-938 in the Salt Lake County Recorder’s Office, State of Utah (the “*Declaration*”). Declarant is the “*Declarant*” under the Declaration. Capitalized terms used but not defined herein shall have the same meaning as set forth for such term in the Declaration.

C. Declarant and Toll are entering into this Agreement to (1) provide for the designation and confirmation that Toll is a “Developer” under the Declaration and is entitled to all of the rights of a “Developer” under the Declaration, (2) assign certain Declarant rights under the Declaration with respect to the Property, and (3) provide for Toll’s acceptance of rights and assumption of duties and liabilities of a Developer and the Declarant, as applicable and only as expressly set forth herein, under the Declaration.

D. Pursuant to Sections 9.5 and 9.8(d) of the Declaration, the ARC approved Toll’s plans (the “*Plans*”) for use within the Property.

E. The execution and delivery of this Agreement is a requirement under the Purchase Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, the parties agree as follows:

1. Designation and Assignment.

(a) Developer. Declarant hereby designates and confirms, effective as of the Effective Date, that Toll is a “Developer” under the Declaration. In addition, also effective as of the Effective Date, to the extent applicable under the Declaration, Declarant assigns and confirms any attendant rights that relate to a “Developer” under the Declaration to Toll, including without limitation the Development Rights, and delegates to Toll all of the duties, obligations, and liabilities of a “Developer” under the Declaration

(b) Declarant. In accordance with Section 8.7.5 of the Declaration, Declarant hereby assigns, transfers, and sets over unto Toll, Toll’s respective successors and assigns, on a non-exclusive basis and solely with respect to the Property, the following rights or exemptions as Declarant under the Declaration, without the obligation to exercise such rights or exemptions:

(i) Declarant’s control, power, rights, and authority pursuant to Sections 8.7.1, 8.7.3(1), and 8.7.3(3) of the Declaration; and

(ii) Declarant’s exemption from obtaining further ARC approval for the construction, alteration, modification, removal, or destruction of any Dwelling Units or other improvements within the Property pursuant to Section 8.7.3(5) of the Declaration. Accordingly, any future modifications or alterations to the Plans will not require any other ARC approval and Toll shall not be subject to any additional design review fees.

Except for the limited and specific rights assigned and obligations delegated under this Agreement, Toll shall have no rights, liabilities, or obligations as Developer or Declarant under the Declaration. Further, the rights, liabilities, and obligations designated or assigned to Toll under this Agreement shall be limited to the Property, and Toll shall have no liabilities or obligations as Developer or Declarant with respect to other real property covered by the Declaration.

2. Acceptance and Assumption. Toll hereby accepts the designation, confirmation, and assignments set forth in Section 1 above, and assumes and promises to perform all of the duties, obligations, and liabilities of “Developer” or “Declarant”, as applicable, under the Declaration.

3. Declarant Retention of Rights; Representation and Warranty. Except for such non-exclusive rights and exemptions specifically assigned to Toll herein and the other agreements set forth herein, Declarant shall retain all rights, obligations, and liabilities as Declarant under the Declaration. Declarant represents and warrants to Toll that there have been no prior assignments of the rights assigned hereunder or Declarant’s rights under the Declaration with respect to the Property, except for assignments in favor of Toll.

4. Term. This Agreement shall commence on the Effective Date and shall continue until such time as Toll no longer has any interest in the Property.

5. Protection of Declarant. Toll shall have such rights of Declarant under the Declaration as are necessary to prevent the rights being assigned hereunder from being impaired or diminished.

6. Non-Interference. Each party agrees not to take any action that could reasonably be expected to have a material and adverse impact on the other party's exercise of its Developer's or Declarant's rights.

7. Limited Assignments. Declarant shall have no right to transfer or further assign, for security or other purposes, its rights assigned hereunder without Toll's prior written consent.

8. Choice of Law. This Agreement shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Utah, excluding the principles thereof governing conflicts of law.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of such counterparts shall together constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

EXECUTED as of the Effective Date.

**DECLARANT:**

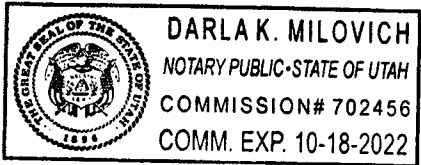
**ANTHEM II, LLC**, a Utah limited liability company

By: [Signature]  
Name: KIRK YOUNG  
Title: MANAGER

STATE OF Utah )  
COUNTY OF Salt Lake : ss.

The foregoing instrument was acknowledged before me this 21 day of November, 2019 by Kirk Young, the Manager of ANTHEM II, LLC, a Utah limited liability company, for and on behalf of said company.

[Signature]  
Notary Public  
Residing at: Salt Lake County, UT





## EXHIBIT A

### PROPERTY DESCRIPTION

That certain real property situated in the County of Salt Lake, State of Utah and described as follows:

#### PARCEL 1:

Beginning at a point being North 89°59'00" West 2,020.84 feet along the section line and South 2,211.87 feet from the Northwest Corner of Section 25, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence South 00°01'53" East 661.17 feet; thence South 89°58'07" West 247.28 feet; thence South 44°53'33" West 46.61 feet; thence North 00°08'37" East 672.43 feet; thence South 89°17'30" East 160.47 feet; thence Northeasterly 63.55 feet along the arc of a 220.00 foot radius curve to the left (center bears North 00°42'30" East and the chord bears North 82°26'00" East 63.33 feet with a central angle of 16°33'00"); thence North 74°09'30" East 52.81 feet; thence Northeasterly 4.24 feet along the arc of a 350.00 foot radius curve to the right (center bears South 15°50'30" East and the chord bears North 74°30'21" East 4.24 feet with a central angle of 00°41'42") to the point of beginning. (aka proposed Big Bend Park Phase 12)

#### PARCEL 2:

Beginning at a point being North 89°59'00" West 2,020.48 feet along the section line and South 2,873.04 feet from the Northwest corner of Section 25, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence South 00°01'53" East 683.03 feet; thence South 89°57'57" West 282.18 feet; thence North 00°08'37" East 650.05 feet; thence North 44°53'33" East 46.61 feet; thence North 89°58'07" East 247.28 feet to the point of beginning. (aka proposed Big Bend Park Phase 13)

Tax Id No.: 26-26-401-008 and 26-26-200-034