

WHEN RECORDED, RETURN TO:
Planning Department
60 N. Main Street
P.O. Box 128
Coalville, Utah 84017

ENTRY NO. 01164409

05/24/2021 04:50:16 PM B: 2666 P: 1417

Declaration PAGE 1/7
RHONDA FRANCIS SUMMIT COUNTY RECORDER
FEE 42.00 BY KELVIN JUDD



DECLARATION AND NOTICE OF USE RESTRICTIONS

This **DECLARATION AND NOTICE OF USE RESTRICTIONS** (this "Declaration"), dated as of the 29th day of APRIL, 2021 (the "Effective Date"), is entered into and made by **KELVIN JUDD**, owner of the Cottonwood Canyon Subdivision (Entry # _____), whose address is 622 WILLOW CREEK ROAD, MTN GREEN, UT 84050 (referred to as "Declarant").

RECITALS

WHEREAS, on January 20, 2021, Declarant, as owner of Parcel NS-101-A (25.91 acres), received approval from the Summit County Council for a Master Planned Development (MPD) to subdivide Parcel NS-101-A into ten (10) lots. This "Cottonwood Canyon Subdivision" Master Planned Development" is further described in attached Exhibit "A"; and

WHEREAS, the Eastern Summit County Development Code, Section 11-4-12(E)(6), "MPD Requirements" requires that master planned developments provide for open space of at least ten percent (10%) of the site area; and

WHEREAS, Parcel NS-101-A has now been subdivided by Declarant, creating Lots 1 through 10 as well as Parcel A (a 2.747 acre Open Space parcel) of what is now the Cottonwood Canyon Subdivision, which plat has been recorded in the Office of the Recorder, Summit County, Utah, as entry number 1164166, in Book 2465 beginning at Page 1815. Lots 1 through 10 are referred to in this Declaration as the "Benefited Property." Parcel A (Open Space parcel) (Tax Identification # _____), created to meet the open space requirements of the Eastern Summit County Development Code, Section 11-4-12(E)(6), is referred to in this Declaration as the "Property", as more particularly described in attached Exhibit "A"; and,

WHEREAS, as and to the extent specified herein, Declarant desires that the Property shall be held, conveyed, encumbered, leased, used, occupied, and improved subject to the restrictions, rights, conditions, and covenants set forth in this Declaration, for the benefit of the Benefited Property; and,

WHEREAS, this Declaration is made for and in consideration of, pursuant to, and in furtherance of the terms and conditions of action taken by the Summit County Council, dated January 20, 2021 regarding the Cottonwood Canyon Subdivision Master Planned Development.

TERMS

NOW, THEREFORE, for and in consideration of the covenants and promises set forth in the action taken by the Summit County Council on January 20, 2021 regarding the Cottonwood Canyon Subdivision Master Planned Development and this Declaration, together with the mutual benefits to be derived herefrom and therefrom, Declarant hereby covenants and declares that the Property, and every part or interest therein, is now held and shall hereafter be held, conveyed, encumbered, leased, used, occupied and improved subject to the restrictions, rights, conditions and covenants herein set forth, each and all of which is and are for, and shall inure to the benefit of and pass with, the Property, and every part or interest therein, and shall apply to every owner and occupant thereof, and their successors and assigns, with the effect that all restrictions, rights, conditions and covenants in this Declaration shall run with and burden the Property and shall be binding on the Property and all other persons having or acquiring any interest in the Property, for the benefit of the Benefited Property and other persons having or acquiring any interest in the Benefited Property.

I. Declarant desires to maintain and preserve the Property as open space and to restrict the use of the Property to recreational and other uses that are consistent with its preservation as open space. In that connection, the following uses of the Property and/or activities upon the Property are expressly prohibited in perpetuity (collectively, the "Use Restrictions"):

(a) Division, subdivision or de facto subdivision (through long-term leasing or otherwise) of any parcel of the Property into more than one (1) separately owned parcels of real property;

(b) Construction or location of any structure or other improvement on the Property except for structures or improvements that are reasonably consistent with the use of the Property as open space, trails, cattle guards or other fencing as may reasonably be required to preserve the Property in its present condition;

(c) Exploration and drilling for and extraction of oil and gas from any site on the Property;

(d) Dumping or storing of ashes, trash, garbage or junk on the Property;

(e) Quarrying, mining, excavation, depositing or extraction of sand, gravel, soil and rocks and/or, without limitation, any mineral or similar materials from the Property;

(f) Dumping, depositing, discharging, releasing or abandoning any solid or hazardous wastes, hazardous substance or material, pollutant or debris in, on or under the Property or into the surface or groundwater on or under the Property;

(g) Burning of any materials on the Property;

(h) Hunting or trapping for any purpose other than predatory, scientific research or problem animal control on the Property;

(i) Any agricultural or industrial use of the Property not expressly permitted;

(j) The placement or maintenance of signs, billboards or any other outdoor advertising of any kind or nature on the Property except for signs relating to the use or limitations on use applicable to the Property, directional and regulatory signs relating to the Property and signs of an informational or educational nature relating to the Property and the preservation of the Property as open space;

(k) All other uses and practices inconsistent with and significantly detrimental to the preservation of the Property as open space.

2. The following uses and practices, though not an exhaustive recital of consistent uses and practices, are consistent with the preservation of the Property as open space and are hereby expressly permitted, provided that each such use or practice is effected in a manner that is not inconsistent with the purpose of the Use Restrictions and that each such use or practice shall neither significantly impair the public's view of and over the Property nor, in general, result in significant injury to or the destruction of the open space conservation value of the Property:

(a) To plant and maintain native trees and bushes and grasses to protect, preserve and enhance the aesthetic and open space values of the Property;

(b) To hunt or trap animals and to control predatory or problem animals by the use of selective control measures and techniques;

(c) To remove such trees and other flora as are reasonably determined to be hazardous to the uses and practices herein reserved;

(d) To build, maintain and repair observation blinds and towers, trails, cattle guards or other fencing reasonably appropriate for wildlife and agricultural protection purposes, for the protection of natural and planted vegetation, observation blinds and towers, trails, cattle guards or other fencing as may reasonably be required to preserve the Property in its present condition;

(e) To engage in grazing and other agricultural activities;

(f) To use the Property for educational and recreational purposes consistent with the preservation of the Property as open space;

(g) To use the Property for commercial or noncommercial photography consistent with the preservation of the Property as open space;

(h) To construct, use and maintain natural and man-made ponds, including ponds used for the storage of treated effluent to the extent authorized or required by applicable governmental entities;

(i) To construct and maintain utility lines running through the Property, and the incidental use of vehicles required to maintain the Property and such utility lines;

(j) To install signs relating to the use or limitations on use applicable to the Property, directional and regulatory signs relating to the Property and signs of an informational or educational nature relating to the Property and the preservation of the Property as open space.

3. With the agreement and understanding that, in the event the Use Restrictions shall, in any respect, as reasonably determined by any of the owners of the Benefited Property, fail to be performed or complied with, the owners of the Benefited Property may not have an adequate remedy at law for the breach or threatened breach thereof, any of the owners of the Benefited Property may (a) take or cause to be taken such actions as may be necessary or appropriate to satisfy any such covenants, agreements, conditions, and/or obligations, and/or (b) file a suit in equity to enjoin the breach or threatened breach of the Use Restrictions, as the case may be, and/or for specific performance thereof.

4. The covenants, terms, conditions, and restrictions of this Declaration shall continue as a servitude running in perpetuity with the Property. All restrictions, rights, conditions and covenants in this Declaration shall run with and bind the Property as covenants running with the land and shall inure with and burden the Property and shall be binding on the Property and any persons having or acquiring any interest in the Property, for the benefit of the Property and other persons having or acquiring any interest in the Property. Further, this Declaration and the restrictions created hereby shall inure to and be binding upon all occupants, tenants, licensees and invitees of the Property, and upon any person acquiring the Property, or any part thereof or any interest therein, whether voluntarily, involuntarily, by operation of law or otherwise. The owner(s) of the Property, including, without limitation, any owner or lien holder, who acquires any interest in the Property, by foreclosure, trustee's sale or otherwise, shall be liable for all obligations arising under this Declaration with respect to the Property after the date of sale and conveyance of title.

5. In the event of any legal action or proceeding in any way connected with this Declaration, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

6. Failure to enforce any provision of this Declaration does not waive the right to enforce that provision, or any other provision of this Declaration.

7. All notices given pursuant to this Declaration shall be in writing and shall be given by personal service (receipted), by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested.

8. The provisions of this Declaration are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Declaration.

9. The Use Restrictions specified herein shall be subject to no prior liens, restrictions or encumbrances, except general real property taxes and assessments not yet due and payable. In the event that any liens or encumbrances shall hereafter accrue against the Property, the lien or indebtedness evidenced by any such liens shall be subordinate to the Use Restrictions specified herein.

IN WITNESS WHEREOF, the undersigned have caused this Declaration and Notice to be executed as of the date first written above.

IN WITNESS WHEREOF, the parties have executed this Notice this 29TH day of APRIL, 2021.

KELVIN JUDD

By: *[Signature]*

Print Name: KELVIN JUDD

Title: OWNER/DECLARANT
COTTONWOOD CANYON SUBDIVISION

STATE OF UTAH)
COUNTY OF Summit) :ss

On this 29 day of April, 2021, personally appeared before me KELVIN STALEY known or satisfactorily proved to me to be the OWNER/DECLARANT of the KELVIN JUDD, who acknowledged to me that he signed the foregoing instrument in that capacity.

[Signature]
Notary Public for Utah

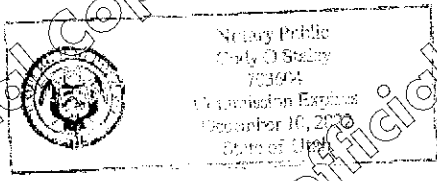


EXHIBIT A

LEGAL DESCRIPTION

All of Parcel A, Cottonwood Canyon Subdivision (Tax Identification # _____), according to the official plat thereof on file with the Office of the Recorder, Summit County, Utah, as entry number 1164165, in Book 265 beginning at Page 1895.

