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BRENDA NELSON, Recorder  
MORGAN COUNTY  
For: COTTONWOOD TITLE INSURANCE AGENCY  
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WHEN RECORDED MAIL TO:

NeilMark Properties, LLC  
P.O. Box 2000  
Layton, UT 84041

## **Amended and Restated Declaration of Covenants, Conditions and Restrictions of Morgan Mahogany Ridge Homeowners Association**

In Reference to Tax ID Number(s):

Phase One Common Area: 00-0064-4591,  
Phase One Lots: 00-0064-4753, 00-0064-4915, 00-0064-5177, 00-0064-5339, 00-0064-5881,  
00-0064-5743, 00-0064-5905, 00-  
0064-6167, 00-0064-6329, 00-0064-6571, 00-0064-6733, 00-0064-6995, 00-0064-7157,  
00-0064-4420.  
Phase Two Common Area: 00-0064-4420,  
Phase Two Lots: 00-0064-4672, 00-0064-4834, 00-0064-5096, 00-0064-5258, 00-0064-5410,  
00-0064-5662, 00-0064-5824, 00-  
0064-6086, 00-0064-6248, 00-0064-6400, 00-0064-6652  
Phase Three Common Area: 00-0073-7666,  
Irrigation and Access Easement/Open Space between lots 36-R and  
37, 00-0073-7667 Phase Three Lots: 00-0073-7652 through  
00-0073-7665.  
Phase 4 Common Area: 00-0087-5691, 00-0087-5692  
Phase 4 Lots: 00-0087-5672 through 00-0087-5690  
Phase 5 Common Area: 00-0087-5792  
Phase 5 Lots: 00-0087-5775 through 00-0087-5791

**ACCOMMODATION RECORDING ONLY.  
COTTONWOOD TITLE INSURANCE AGENCY,  
INC. MAKES NO REPRESENTATION AS TO  
CONDITION OF TITLE, NOR DOES IT ASSUME  
ANY RESPONSIBILITY FOR VALIDITY,  
SUFFICIENCY OR EFFECTS OF DOCUMENT.**

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF MORGAN MAHOGANY RIDGE HOMEOWNERS ASSOCIATION

THIS DECLARATION is made and executed this 10th day of Dec, 2020, by NeilMark Properties, LLC, a successor and assign of Mt. Joy, L.L.C. ("Declarant").

RECITALS:

A. Declarant desires to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas. To this end and for the benefit of the Property and the Owners thereof, Declarant hereby subjects the Property to the covenants, restrictions, easements, charges and liens set forth in this Declaration, which shall be recorded in the official records of Morgan County, State of Utah.

B. Declarant has deemed it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the powers to maintain and administer the Common Areas, collect and disburse the assessments and charges provided for in the Declaration and otherwise administer and enforce the provisions of the Declaration. For such purposes, Declarant has caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, the Morgan Mahogany Ridge Homeowners Association (the "Association").

C. This Declaration amends and replaces in its entirety the Declaration of Covenants, Conditions and Restrictions of Mahogany Ridge Subdivision recorded on July 9, 2003 as Entry No. 092835 Book 195 Page 1073

NOW, THEREFORE, for the foregoing purposes, the Declarant declares that the Property shall be subject to this Declaration and that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I

DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated:

1.01 Association shall mean the MORGAN MAHOGANY RIDGE HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation.

1.02 Board shall mean the Board of Trustees of the Association.

1.03 Common Areas shall mean real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, if any, which the Association now or hereafter owns, maintains, repairs, administers, or otherwise holds for the common use and enjoyment of all Owners and related improvements, including all property owned or designated on the recorded Plat as being intended ultimately to be owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto.

1.04 Declaration shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions of MORGAN MAHOGANY RIDGE HOMEOWNERS ASSOCIATION.

1.05 Architectural Committee shall mean the Architectural Committee established by and referred to in Article VIII of this Declaration.

1.06 Living Unit shall mean a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the same Residential Lot and used in conjunction with such residence.

1.07 Managing Agent shall mean any person or entity appointed or employed as Managing Agent pursuant to Section 4.02(c) of Article IV of this Declaration.

1.08 Mortgage shall mean any mortgage, deed of trust, or trust deed or the act of encumbering any property by a mortgage, deed of trust or trust deed; and mortgage shall mean any mortgagee of a mortgage and any trustee or beneficiary of a deed of trust or trust deed.

1.09 Owner shall mean any person who is the owner of record (as reflected by the records in the office of the County Recorder of Morgan County, Utah) of a fee or undivided fee interest in any Residential Lot, including contract sellers, but not including purchasers under contract until such contract is fully performed and legal title is conveyed of record. Notwithstanding any applicable theory relating to mortgages, no mortgagee shall be an Owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Residential Lot owned by it.

1.10 Property shall mean all land covered by this Declaration, including Common Areas and Residential Lots and other land annexed to the Property. Lots one (1) through thirteen (13) are Phase I and lots fourteen (14) through twenty-four (24) are Phase II. Also Phase 3 consisting of Lots 25 through 38, Phase 4 consisting of Lots 401 through 419, and Phase 5 consisting of Lots 501 through 517. The Property is more fully described in Exhibit "A" attached hereto and made a part hereof.

1.11 Residential Lot shall mean and refer to any one of the lots of land within the boundary of the Property as such is shown and designated on the Plat for private ownership and individually numbered and are intended to be used and occupied by a single family. The Residential Lots are shown on the Plat.

1.12 Plat shall mean and refer to all of the subdivision plats covering the Property, the first being entitled "MAHOGANY RIDGE PLANNED RESIDENTIAL UNIT DEVELOPMENT" ("Phase I Plat") filed for record in the office of the County Recorder of Morgan County, Utah, on the 30<sup>th</sup> day of April, 2002 as Entry No. 88109, in Book 179 of Plats, at Page 1148; and the others, entitled "MAHOGANY RIDGE PHASE II Three, Four, and Five PLANNED RESIDENTIAL UNIT DEVELOPMENT" ("Phase II Plat"). "Plat" shall also refer to any amendments of the foregoing as shall be prepared and certified by a registered Utah professional engineer and land surveyor and recorded in the office of the County Recorder of Morgan County, Utah. The Phase II Plat, as it may be amended, shall be executed, acknowledged and recorded in the office of the County Recorder of Morgan County, Utah, at such time as Declarant shall determine following receipt of final approval thereof.

1.13 Member shall mean and refer to every person who holds membership in the Association.

1.14 Declarant shall mean NeilMark Properties, LLC, a successor and assign of Mt. Joy, L.L.C., and its successors and assigns.

1.15 Culinary Water shall mean water delivered to a lot through the Morgan City culinary meters and paid for through a direct billing from Morgan City.

## ARTICLE II

### SUBMISSION AND DIVISION OF PROJECT

2.01 Submission. The Property is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration and the Utah Community Association Act found at Utah Code § 57-8a-101 *et. seq.*

2.02 Annexation by Declarant. Declarant may from time to time and in its sole discretion expand the Property subject to this Declaration by the annexation of all or part of the lands initially constituting the Undeveloped Land. The annexation of any such land shall become effective upon the recordation in the office of the County Recorder of Morgan County, Utah, of (a) a subdivision plat or map covering the land to be annexed and (b) a supplemental declaration which (i) describes the land to be annexed or incorporated by reference to the description contained in the subdivision plat, (ii) declares that the annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to this Declaration, (iii) sets forth such additional limitations, restrictions, covenants and conditions as are applicable to the annexed land, (iv) states which portions of the annexed land are Common Areas and which portions are Residential Lots and which portions are within any new land classification, provided that the nature and incidents of any such new land classification shall be fully set forth in such supplemental declaration or in another supplemental declaration previously filed with respect to some portion of the Property, and (v) describes generally any improvements situated on the annexed land. When any such annexation becomes effective, the annexed land shall become part of the Property.

2.03 Limitation on Annexation. Declarant's right to annex land to the Property shall be subject to the following limitations:

(a) The annexed land must be part of the land which is Undeveloped Land as of the date of this Declaration.

(b) Declarant's right to annex land to the Property shall expire twenty (20) years after the original declaration for the Association was first filed for record in the office of the county recorder of Morgan County, Utah.

2.04 Annexation by the Association. Notwithstanding the limitations on annexation set forth in Section 2.03 of this Article, the Association may annex land to the Property by satisfying the requirements set forth in Section 2.02 of this Article and by obtaining approval of such annexation from (a) the owner or owners of the land to be annexed and (b) 2/3 of the Members of each class of the Association's voting membership.

Nothing in this paragraph shall be construed to require any prior approval for, or to limit or present, any annexation performed by Declarant pursuant to Section 2.02 of this Article so long as such annexation satisfies the limitations set forth in Section 2.03 of this Article.

2.05 Division into Lots and Common Areas. The Property is hereby currently divided into 38 lots in phases 1-3, with an additional 36 lots in phases Four and Five, each consisting of a fee simple interest in a portion of the Property as set forth in the Plat. All portions of the Property not designated as Lots shall constitute the Common Area which shall be owned by the Association for the benefit of all Owners in accordance with the provisions of this Declaration.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.01 Membership. Every Owner upon acquiring title to a Residential Lot shall automatically become a member of the Association and shall remain a member thereof until such time as his/her ownership of such Residential Lot ceases for any reason, at which time his/her membership in the Association with respect to such Residential Lot shall automatically cease and the successor Owner shall become a Member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Residential Lot.

3.02 Voting Rights. The Association shall have the following described two classes of Voting membership:

Class A. Class A members shall be all Owners but excluding the Declarant until the Class B membership ceases. Class A members shall be entitled to one vote for each Residential Lot in which the interest required for membership in the Association is held.

Class B. Declarant shall be the sole Class B Member. The Class B Member shall be entitled to the following votes: (i) four (4) votes for each Residential Lot which it owns; and (ii) four (4) votes for each acre of Undeveloped Land in which it holds an equitable or legal ownership interest. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

(a) When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member, provided, however, that the Class B membership shall be restored upon the annexation of additional Residential Lots to the Property pursuant to Article II above if and so long as the number of Class B votes after such annexation exceeds the number of Class A votes.

(b) Twenty (20) years after the date on which this Declaration was first filed for record in the office of the County Recorder of Morgan County, Utah.

3.03 Multiple Ownership Interests. In the event there is more than one Owner of a particular Residential Lot, the vote relating to such Residential Lot shall be exercised as such Owners may determine among themselves, but in no event shall more than one Class A vote be cast with respect to any Residential Lot. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Residential Lot concerned unless an objection is made at the meeting by another Owner of the same Residential Lot, in which event a majority in interest of the co-owners as shown on the record of ownership maintained by the Association shall be entitled to cast the vote.

3.04 Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document to him/her of his/her Residential Lot and shall file a copy of such conveyance document with the secretary of the Association, who shall maintain a record of ownership of the Residential Lots. Any Owner who mortgages his Residential lot or any interest therein by a Mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the record of ownership.

### ARTICLE IV

#### DUTIES AND POWERS OF THE ASSOCIATION

4.01 Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration, the Association shall have the obligations and duties to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- (a) The Association shall accept all owners as Members of the Association.
- (b) The Association shall accept title to all Common Areas conveyed to it by the Declarant.
- (c) The Association shall maintain and repair the Common Areas (including easement areas appurtenant thereto but excluding any portions of the Common Areas left in their natural state by Declarant or designated by Declarant as Natural Open Space on any recorded subdivision plat or map) and, at the discretion of the Board, any property dedicated to any governmental authority and situated immediately adjacent to the Property if the Board determines that such dedicated property is not being maintained or landscaped in a condition comparable to the Common Areas.
- (d) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments, levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
- (e) The Association shall obtain and maintain in force the policies of insurance required by Article IX of this Declaration.

4.02 Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Residential Lot for the purpose of maintaining and repairing such Residential Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Residential Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Residential Lot in violation of Article VIII of this Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas and Residential Lots (to the extent necessitated by the failure of the Owners of such Residential Lots) or in exercising any of its rights to construct improvements or other work upon any of the Common Areas, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon not less than ninety (90) days' written notice, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or otherwise provide for:

- (1) Construction, maintenance, repair and landscaping of the Common Areas on such terms and conditions as the Board shall deem appropriate;
  - (2) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Board, the members of the Architectural Committee and the Owners;
  - (3) Such utility services, including (without limitation), secondary water, sewer, telephone and other communication services, as the Board may from time to time deem desirable;
  - (4) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;
  - (5) Such protection services as the Board may deem desirable for the benefit of the Owners or any of the Property;
- and
- (6) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

(c) The Board may delegate to a Managing Agent any of its powers under this Declaration; provided, however, that the

Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of \$5,000 nor the power to sell, convey, mortgage or encumber any Common Areas.

(d) The Association shall have the power and authority to hire a responsible corporation, partnership, firm, person or other entity, to maintain the grounds of an owner(s) of Lots. The cost to maintain a Lot for an Owner shall be charged to the Owner and may be included in the monthly assessment to the Owner.

4.03 Association Rules. The Board from time to time and subject to the provisions of this Declaration may adopt, amend, repeal and enforce rules and regulations governing, among other things, (a) the use of the Common Areas; (b) the use of any or utility facilities owned by the Association; (c) other matters concerning the use and enjoyment of the Property and the conduct of residents.

4.04 Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, the Architectural Committee or the Managing Agent.

4.05 Reinvestment Fee. The Board may enact a reinvestment fee by resolution and by recording a "notice of reinvestment fee covenant." If a reinvestment fee is enacted, within thirty (30) days after the effective date of any transfer of legal title to a Lot, the new Owner shall pay to the Association, in addition to any other required amounts, the reinvestment fee, in an amount determined by the Board from time to time. However, notwithstanding the foregoing, in no instance shall the following be subject to a reinvestment fee:

- (a) an involuntary transfer;
- (b) a transfer that results from a court order;
- (c) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity, or to a legal entity, such as a trust, in which the owner or the owner's spouse, son, daughter, father or mother hold a beneficial interest of at least fifty percent (50%) for estate planning purposes;
- (d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or
- (e) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of the Association's costs directly related to the transfer of the burdened property, not to exceed \$250.

## ARTICLE V

### ASSESSMENTS

5.01 Personal Obligation and Lien. Each Owner shall by acquiring or in any way becoming vested with his/her interest in a Residential Lot, be deemed to covenant and agree to pay to the Association the monthly and special assessments described in this Article, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Residential Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt himself or his Residential Lot from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Residential Lot. In a voluntary conveyance of a Residential lot, the grantee shall be jointly and severally liable with the grantor for all unpaid monthly and special assessments, late payment fees, interest and costs of collection which shall be a charge on the Residential Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

5.02 Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, and improvements of the Common Areas; management and supervision of the Common Areas; establishment and funding of a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation. The Association shall maintain an adequate reserve fund or funds for maintenance, repairs and replacement of those elements of the Common Areas that must be maintained, repaired or replaced on a periodic basis.

5.03 Monthly Assessments. The Board shall from time to time and in its discretion set the amount of the monthly assessment in an amount reasonably estimated by the Board to be sufficient to meet the obligations imposed by this Declaration and on the basis specified in Section 5.07 below.

5.04 Special Assessments. From and after the date set under Section 5.08 of this Article, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas. Any such special assessment must be assented to by a majority of the votes of a quorum of members, whether present in person or represented by proxy, each of whom are entitled to cast a vote at a meeting duly called for that purpose. Written or email notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

5.05 Quorum Requirements. The quorum at any meeting required for any action authorized by Section 5.04 above shall be as follows: At the first meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all of the votes of each class of membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 5.04) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

5.06 Special Assessment on Specific Residential Lots. In addition to the monthly assessment and any special assessment authorized pursuant to Section 5.04 above, the Board may levy at any time special assessments (a) on every Residential Lot especially benefited by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Residential Lot to be charged, (b) on every Residential Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs, and (c) on every Residential Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to Section 4.02(a) of Article IV or other provisions of this Declaration. The aggregate amount of any such special assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Residential Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a special assessment against the Residential Lots benefited.

5.07 Uniform Rate of Assessment. All monthly and special assessments authorized by Section 5.03 or 5.04 above shall be fixed at a uniform rate for all Residential Lots.

5.08 Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Residential Lots as of the second monthly following conveyance to the Association of the Common Areas shown on the Plat. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in the amount of monthly assessments, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.

5.09 Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Residential Lot and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all assessments respecting such Residential Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

5.10 Application and Effect of Partial Payment. Any payment received for less than the total amount due shall be applied as follows:

- (a) Payment shall be applied first to any past due and current Monthly Assessment;
- (b) Remaining funds shall next be applied to any past due and current Special Assessments;

5.11 Effect of Nonpayment - Remedies. Any assessment not paid when due shall, together with interest and costs of collection, be, constitute, and remain a continuing lien on the affected Residential Lot. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of one and one-half percent (1 1/2%) per month; and the Association may bring an action against the Owner who is personally liable or may foreclose its lien against the Residential Lot, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights. Subject to Utah Code 57-8a-310, the Association may require tenants of a Lot to make future lease payments directly to the Association so long as Assessments remain unpaid for such Lot. The Association shall have all other rights and remedies available by applicable law, including the right to assess fines and suspend voting rights for any period during which any Assessment against an Owner's Lot remains unpaid. All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Association. The Association may elect to bring an action to recover for a delinquent Assessment against

the Owner or other obligee personally. Any attorney fees or costs incurred in these efforts shall also be assessed against the Owner(s), their Lot(s), and/or other obligees jointly and severally

5.12 Subordination of Lien to Mortgages. Only to the extent required by law, the lien of the assessments provided herein shall be subordinate to the lien of any first Mortgage to a bank, savings and loan association, insurance company or other institutional lender if such lien is recorded prior to the date the assessment becomes due; and the holder of any such first Mortgage or purchaser who comes into possession of a Residential Lot by virtue of the foreclosure of such Mortgage or the exercise of a power of sale under such mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment which accrues or becomes due prior to the time such holder or purchaser takes possession of such Residential Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer shall relieve any Resident Lot from the lien of any assessment thereafter becoming due. Nothing in this Section shall be construed to release any Owner from his or her obligation to pay for any Assessment levied pursuant to this Declaration

## ARTICLE VI

### PROPERTY RIGHTS AND CONVEYANCES

6.01 Easement Concerning Common Areas. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Residential Lot and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such owner's Residential Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Areas except for the necessary parking, access, communication, utility, and drainage purposes for which such easements are intended for use in common with others.

6.02 Form of Conveyancing: Leases. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Residential Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_ of the MAHOGANY RIDGE SUBDIVISION, PHASE \_\_\_\_\_ according to the Plat thereof recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, of the Official Records of Morgan County, which Lot is contained within the \_\_\_\_\_ identified in the "Declaration of Covenants, Conditions, and Restrictions of the MAHOGANY RIDGE SUBDIVISION, PHASE \_\_\_\_\_" recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_, TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Covenants, Conditions and Restrictions, and SUBJECT TO the covenants, conditions, restrictions, easements, charges and liens provided for in said Declaration of Covenants, Conditions and Restrictions.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Residential Lot. Any lease of a Residential Lot shall be in writing and shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and By-laws of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the Lease.

6.03 Transfer of Title to Common Areas. Declarant shall convey to the Association title to the various Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any nondelinquent assessments, charges, or taxes, imposed by governmental or quasi-governmental authorities), as each such Common Area is substantially completed. In the absence of any other conveyance of the Common Areas to the Association, the Common Areas shall automatically convey to the Association when the Class B membership ceases pursuant to Section 3.02 herein.

6.04 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

- (a) The right of the Association to govern by rules and regulations the use of the Common Areas for the Owners so as to provide for the enjoyment of the Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Residential Lots by every Owner, including the right of the Association to impose reasonable user charges for the use of facilities (other than open areas) within the Common Areas and reasonable limitations on the number of guests per Owner who at any given time are permitted



to use the Common Areas;

(b) The right of the Association to suspend an Owner's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Owner's Residential Lot remains unpaid and for a period not exceeding ninety (90) days for any other infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Board;

(c) The right of the City of Morgan and any other governmental or quasi-governmental body having jurisdiction over the Property to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association, provided that such dedication or transfer must first be assented to in writing by (1) all holders of first mortgages secured by Residential Lots and (2) the Owners of at least seventy-five percent (75%) of the Residential Lots (not including Residential Lots owned by Declarant).

6.05 Reservation of Access and Utility Easements. Declarant reserves easements for access, electrical, gas, communications, cable television and other utility purposes and for sewer, drainage and water facilities, (whether servicing the Property or other premises or both) over, under, along, across and through the Property, together with the right to grant to the City of Morgan, or any other appropriate governmental agency or to any public utility or other corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof.

6.06 Easements for Encroachments. If any part of the Common Areas as improved by Declarant now or hereafter encroaches upon any Residential Lot or if any structure constructed by Declarant on any Residential Lot now or hereafter encroaches upon any other Residential Lot or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Residential Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Residential Lot or upon any portion of the Common Areas due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

6.07 Easements for Construction and Development Activities. Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Living Units on Residential Lots, (b) improvement of the Common Areas and construction, installation and maintenance thereon or walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, (c) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roads, walkways, and other facilities, planned for dedication to appropriate governmental authorities, and (d) development, improvement, use and occupancy of all or any portion of the Undeveloped Land, whether or not such land is intended to be made part of the Property. The reservations contained in this paragraph shall expire twenty (20) years after the date on which this Declaration was first filed for record in the Office of the County Recorder of Morgan County, Utah.

## ARTICLE VII

### LAND USE RESTRICTIONS AND OBLIGATIONS

#### 7.01 General Restrictions and Requirements.

(a) No improvement, excavation, fill or other work (including the installation of any wall or fence) which in any way alters any Residential Lot from its natural or improved state existing on the date such Residential Lot is first conveyed by Declarant to a purchaser shall be made or done except upon strict compliance with the provisions of this Article VII, the provisions of Article VIII, and the Association Rules.

(b) Residential Lots shall be used only for single-family residential purposes, and no more than one house shall be constructed on any Residential Lot except that an additional guest house or servants quarters meeting the requirements of all applicable laws in effect from time to time may be constructed on a Residential Lot with the approval of the Architectural Committee. The facilities and improvements constituting part of the Common Areas shall be used only for the purposes and uses for which they are designed. Unimproved or landscaped portions of the Common Areas shall be used only for natural recreational uses which do not injure or scar the Common Areas or the vegetation thereof, increase the cost of maintenance thereof or cause unreasonable embarrassment, disturbance or annoyance to

Owners in their enjoyment of their Residential Lots and Living Units or the Common Areas.

(c) No business, profession or trade other than those allowed by the Morgan City Home Occupation Ordinance shall be operated or maintained on any Residential Lot or in any structure thereon without the prior approval of the Board, except that this provision shall in no way limit or restrict Declarant in its activities prior to the sale of all Residential Lots nor prevent Owners from renting their Living Units to tenants.

(d) No noxious or offensive activity shall be carried on upon any Residential Lot, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their Residential Lots and Living Units or the Common Areas. Without limiting the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Residential Lot and Living Unit thereon, shall be placed or used upon any Residential Lot without the prior written approval of the Architectural Committee.

(e) No furniture, fixtures, appliances or other goods and chattels shall be stored in such a manner as to be visible from neighboring Residential Lots, roads or Common Areas.

(f) Each Residential Lot and all improvements located thereon shall be maintained by the Owner thereof in good condition and repair, and in such manner that is clean, safe, attractive, and that does not create a fire hazard, all at the Owner's expense. All walls and fences on common boundary lines or corners separating two or more Residential Lots shall be maintained jointly in equal shares by the owners of the Residential Lots abutting such fence or wall, provided that each Owner shall be responsible for maintaining the side of any party wall or fence facing his Residential Lot. All fences constructed on Residential Lots shall be constructed of materials suitable for the purposes for which the fence is constructed and shall be prior approved by the Architectural Committee pursuant to paragraph 8.02. The Architectural Committee shall have the authority to create architectural standards for the construction of fences including height limitations and construction materials that can be used in the construction of fences.

(g) Vegetation within any Residential Lot shall be planted and maintained in good condition at the Owner's expense in such a manner as to prevent or retard shifting or erosion.

(h) No lots shall be used for or maintained as a dumping ground for rubbish, trash, vegetation clippings, or other waste. Any containers or equipment commonly used for storage and disposal of such shall be kept in a clean and sanitary condition. Each lot and its abutting street shall be kept free of trash, weeds and refuse by the property owner at the owner's expense. Containers or equipment used for storage and disposal of such disposal shall not be left on the curbside or the street for a period of time exceeding twenty-four (24) hours. If in the opinion of the Architectural Committee, the property owner is not maintaining, otherwise allowing the property to become unsightly or is maintaining objects of trash and rubbish or other materials which in the opinion of the Architectural Committee are degrading the value of the surrounding property, then such materials shall be removed and kept out of the view of the general public at lot owner's expense.

(i) All Plans of homes or accessory buildings must be submitted for review to the Architectural Committee prior to commencement of construction. The Plans submitted must be complete original copies and shall have any changes clearly indicated as well as all exterior materials. The Plans must bear the inscription of the square footage of the proposed home and/or accessory building. The set must include a site plan with the house and/or accessory building accurately located, and the Lot number and address inscribed thereon

(j) No Residential Lot shall be re-subdivided.

(k) All improvements shall be constructed in accordance with applicable building line and setback provisions of zoning ordinances.

(l) All structures constructed on any Residential Lot or the Common Areas shall be constructed with new materials unless otherwise permitted by the Architectural Committee;

(m) No structure or improvement having a height of more than two and one-half (2 1/2) stories shall be constructed on any Residential Lot; provided, however, that the height of a structure or improvement may exceed two and one-half (2 1/2) stories if permitted by law and if the Architectural Committee determines that the proposed height is compatible with the physical site involved and adjoining properties.

(n) All lots shall be used only for single-family dwellings and residential purposes. All dwellings must have private garages for not more than 3 vehicles and not less than 2 vehicles. NO CARPORTS. No temporary structures such as barns, basements, trailers, or other outbuildings shall be permitted. All dwellings and permanent outbuildings shall have hip or gabled roofs. Flat, graveled or

built-up roofs shall not be permitted. Prefabricated homes are not permitted. All construction must be done on site by a duly licensed general contractor, unless otherwise approved by the Architectural Committee.

(o) Unless otherwise approved by the Architectural Committee, all dwellings shall have a minimum of an eighteen foot wide two-car attached garage and must contain not less than the following square footages of living area, exclusive of porches, garages, patios,:

(i)	Main level with an two-car garage with basement.	1,700 sq. ft.
(ii)	Main level with a three-car garage with basement.	1,500 sq. ft.
(iii)	Two-story — main level	Combined
	Two-story — second level	2,100 sq. ft.

(p) Allowable roof materials shall be as follows: Tile, Concrete or Asphalt. Metal roofing can be used as an accent only. NOTE: Asphalt shingles shall be of an ARCHITECTURAL grade and design with a minimum of a 25-YEAR warranty. All roofing materials and color must be approved by the Architectural Committee. ROOF PITCH MUST BE AT LEAST 6/12.

(q) Colors and Finishes: All exterior surfaces shall be finished in colors selected generally from the "earth-tones" or other approved colors as determined by an Owner/Builder and by the Mahogany Ridge Architectural Committee. This shall be done as part of the plan review process. The Mahogany Ridge Architectural Committee shall have the right to consent to all proposed exterior color schemes, which consent shall not be unreasonably withheld. The purpose of this color selection process is to avoid outlandish or non traditional color schemes that may adversely stand out to a passerby and not meant to deter creative, architectural latitude or uniqueness of one home to another on any part of the Property.

(r) All building exteriors must be constructed with a minimum of the following material (excluding windows and doors): FRONT: 100% Brick, Stone, Hardie Board, or Stucco, with at least 50% being Brick or Stone. SIDES: Allowable materials on any side shall be Brick, Stone, Hardie Board or Stucco. Rear exterior materials must be approved by the Architectural Committee. All fascia must be a minimum of 6" inches in height. No aluminum or vinyl siding allowed.

(s) No exterior lighting of any sort shall be installed or maintained on a Residential Lot if the light source shines directly into a neighboring residence.

(t) No Owner of any Residential Lot, except Declarant, shall build or permit the building thereon of any structure that is to be used as a model or exhibit unless a permit to do so is first granted by the Architectural Committee.

(u) No structure shall be occupied until the same is substantially completed in accordance with plans and specifications previously approved by the Architectural Committee and has been issued a certificate of occupancy by Morgan City.

(v) No improvement which suffers partial or total destruction shall be allowed to remain on any Residential Lot in such a state for more than three (3) months after the date of such destruction.

(w) No outside toilet, other than self-contained portable toilet units used during construction, shall be placed or constructed on any Residential Lot or the Common Areas. All plumbing fixtures, dishwashers, garbage disposals, toilets and sewage disposal systems shall be connected to a sewage system.

(x) No exterior antenna or satellite dish of any sort shall be installed or maintained on any Residential Lot except of a height, size and type approved by the Architectural Committee. No activity shall be conducted within the Property which interferes with television or radio reception.

(y) Outside clotheslines and other outside clothes drying or airing facilities shall be maintained in such a manner and in such location as not to be visible from roads.

(z) No drilling, refining, quarrying or mining operations of any kind shall be permitted upon any Residential Lot or the Common Areas.

(aa) There shall be no blasting or discharge of explosives upon any Residential Lot or the Common Areas except as permitted by the Board; provided that this provision shall in no way limit or restrict Declarant in its activities in connection with and during the

development and sale of Residential Lots.

(bb) Except to the extent used by Declarant in connection with and during the development and sale of Residential Lots, no mobile home or similar facility, shall be placed upon any Residential Lot, the Common Areas or adjoining public streets except for temporary storage in strict accordance with the rules and regulations of the Board. No stripped down, wrecked or junk motor vehicles shall be kept, parked, stored or maintained so as to be visible from the street on any Residential Lot, the Common Areas or adjoining public streets. No large commercial vehicle shall be parked on any Residential Lot, public streets or the Common Areas except within an enclosed structure or a screened area which prevents view thereof from adjoining Residential Lots, roads and Common Areas unless such vehicle is temporarily parked for the purpose of serving such Residential Lot or Common Areas.

(cc) No Owner shall cause or permit any condition which creates a fire hazard, creates a nuisance, or is in violation of any fire prevention regulations.

(dd) There shall be no hunting or discharge of firearms on any Residential Lot or the Common Areas.

7.02 Exemption of Declarant. The provisions of Section 7.01 of this Article shall not apply to any improvement or structure constructed on any Residential Lot or the Common Areas by Declarant prior to the time that such Lot or Common Areas are conveyed by Declarant to a purchaser or the Association, as the case may be; and the Declarant shall have the right to use any Residential Lot or Living Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and sale of all Residential Lots owned by Declarant.

7.03 Enforcement of Land Use Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration:

- (a) Declarant, so long as it has any interest in any of the Property or Residential Lots;
- (b) Any Owner; or
- (c) The Association.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

ARTICLE VIII

ARCHITECTURAL CONTROL

8.01 Organization of the Architectural Committee. There shall be an Architectural Committee consisting of not fewer than three (3) members. The members of the Architectural Committee shall be Owners appointed by the HOA Board. If the Board does not appoint members of the Architectural Committee, the Board shall serve as the Architectural Committee. Whenever the Architectural Committee consists of more than three (3) members, it may designate subcommittees, each consisting of at least three (3) members. Unless authorized by the Board, the members of the Architectural Committee shall not receive any compensation, but all members shall be entitled to reimbursement from the Association for reasonable expenses incurred in the performance of any Architectural Committee function.

8.02 Actions Requiring Approval. No fence, wall, Living Unit, accessory or addition to a Living Unit visible from the Common Areas or public streets within the Property, or landscaping or other improvement of a Residential Lot visible from the Common Areas or public streets within the Property shall be constructed or performed, nor shall any alteration of any structure on any Residential Lot, including a change in exterior color, be made, unless complete plans and specifications showing the nature, color, kind, shape, height, materials and location of the same shall first be submitted to and approved by the Architectural Committee.

8.03 Standard of Design Review. Before granting any approval of plans and specifications, the Architectural Committee shall determine to its reasonable satisfaction that such plans and specifications (a) conform to all architectural standards contained in this Declaration and all further architectural standards promulgated from time to time by the Board and (b) provide for a structure, alteration, landscaping or other improvements in harmony as to external design and location with surrounding structures and topography.

8.04 Architectural Committee Rules and Architectural Standards. The Board may, upon recommendation from the Architectural Committee, adopt and file as a matter of public record reasonable rules related to the efficient review of plans and specifications including requirements as to the number of sets of plans and specifications to be submitted, the fixing of a review or variance request fee not exceeding Fifty Dollars (\$50.00) per review or variance request, the details to be shown on plans and specifications, and design guidelines consistent with this Declaration and covering such matters as setbacks, height limitations, restrictions on minimum or maximum size and quality of structures

8.05 Approval Procedure. The Architectural Committee and any subcommittees thereof shall meet from time to time as necessary to perform the duties of the Architectural Committee. The vote or written consent of a majority of the Architectural Committee or any authorized subcommittee shall constitute the act of the Architectural Committee. Any plans and specifications submitted to the Architectural Committee shall be approved or disapproved within thirty (30) days after receipt by the Architectural Committee. The Committee's review of plans shall in no way be construed as an independent review or opinion of the structural or mechanical adequacy or soundness of the building, and liability thereof. If the Architectural Committee fails to act within such period, the plans and specifications shall be deemed to be approved as submitted.

8.06 Variance Procedure. If plans and specifications submitted to the Architectural Committee are disapproved because such plans and specifications are not in conformity with applicable architectural standards, the party or parties making such submission may submit a request for variance to the Architectural Committee, which shall make a written recommendation of approval or disapproval of the requested variance to the Board. The Board shall approve or disapprove the request for variance in writing. If the Board fails to approve or disapprove a request for variance within sixty (60) days after such request is submitted to the Architectural Committee, such request shall be deemed to be approved.

8.07 Nonwaiver. The approval by the Architectural Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Committee to disapprove any similar plans and specifications.

8.08 Completion of Construction. Once begun, any improvements, construction, landscaping or alterations approved by the Architectural Committee shall be diligently prosecuted to completion in strict accordance with the plans and specifications approved by the Architectural Committee.

8.09 Exemption of Declarant. The provisions of this Article shall not apply to any improvement, construction, landscaping or alteration made or performed by Declarant on any Residential Lot or portions of the Common Areas at any time during the twenty-year period following the date on which this Declaration is filed for record in the office of the County Recorder of Morgan County, Utah.

8.10 Estoppel Certificate. Within thirty (30) days after written demand therefore is delivered to the Architectural Committee by any Owner and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Board, the Architectural Committee shall issue an estoppel certificate in recordable form executed by any two of its members, certifying with respect to any Residential Lot of such Owner that as of the date thereof either (a) all improvements and other work made or done upon or within such Residential Lot by the Owner, or otherwise, comply with this Declaration, or (b) such improvements or work do not so comply, in which event the certificate shall also (i) identify the nonconforming improvements or work, and (ii) set forth the nature of such noncompliance. Any mortgagee or purchaser from the Owner shall be entitled to rely on such certificate with respect to the matters therein set forth.

8.11 Disclaimer of Liability. Neither the Architectural Committee, nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any of the Property, or (d) any engineering or other defect in approved plans and specifications.

## ARTICLE IX

### INSURANCE

9.01 Hazard Insurance. The Board shall procure and maintain from a company or companies holding a rating of "AA" or better from Best's Insurance Reports a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of the land, foundations, excavation and other items normally excluded from coverage) of the common property owned by the Association (including all building service equipment, if any, and the like, with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and, if required by any first mortgagee of any Residential Lot, Demolition and Contingent Liability from Operation of Building Laws Endorsements, an Increased Cost of Construction Endorsement, an Earthquake Damage Endorsement, and such other endorsements as any first mortgagee of any Residential Lot shall reasonably require. Such insurance policy or policies shall name the Association as insured for the benefit of

the Owners and shall afford protection, to the extent applicable, against at least the following:

- (a) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and
- (b) Such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

9.02 Liability Insurance. The Board shall procure and maintain from a company or companies holding a rating of "AA" or better from Best's Insurance Reports a policy or policies (herein called "the Policy") of Public Liability Insurance to insure the Association, the Board and the Managing Agent and employees of the Association against claims for bodily injury and property damage arising out of the conditions of the Common Areas or activities thereon under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried by properties of comparable character and usage in the County of Morgan nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The Policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The Policy shall provide that the Policy may not be cancelled by the insurer unless it gives at least thirty (30) days' prior written notice thereof to the Board and every other person in interest who shall have requested in writing such notice of the insurer. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

9.03 Additional Insurance; Further General Requirements. The Board may also procure insurance which shall insure the Common Areas and the Association, the Board, the Managing Agent or the Owners and others against such additional risks as the Board may deem advisable. Except as provided in Part 4 of the Utah Community Association Act (as amended from time to time), insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide: (a) a waiver of the insurer's rights of subrogation against the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants; (b) that it cannot be cancelled, suspended or invalidated, due to the conduct of any particular Owner or Owners; (c) that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or any directors, officer, agent, or employee of the Association without a prior written demand that the defect can be cured and (d) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

9.04 Review of Insurance. The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Residential Lot and to the holder of any mortgage on any Residential Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner.

9.05 Residential Lots Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Residential Lot and Acts and events thereon.

#### ARTICLE X CONDEMNATION

10.01 If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Board and shall be used promptly by the Board to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefore, any proceeds of condemnation then or thereafter in the hands of the Board which are proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Board shall reasonably determine; provided, however, that in the event of a taking in which any Residential Lot is eliminated, the Board shall disburse the portion of the proceeds of the condemnation award all proceeds to the interest of the Owner of such Residential Lot in the Association and the Common Areas to such Owner and any first mortgagee of such Residential Lot, as their interests shall appear, after deducting the proportionate share of said Residential Lot in the cost of debris removal.

#### ARTICLE XI RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first mortgagees shall be in effect:

11.01 Preservation of Regulatory Structure and Insurance. Unless the Owners of at least seventy-five percent (75%) of the Residential Lots (not including Residential Lots owned by Declarant) and such Owners' first mortgagees, if any, shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Living Units, the exterior maintenance of Living Units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings on the Property.

(b) to fail to maintain insurance as required by Article This Section 11.01 may be amended as provided in Section 12.02 of Article XII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

11.02 Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) all first mortgagees of Residential Lots and (2) the Owners of at least seventy-five percent (75%) of the Residential Lots (not including Residential Lots owned by Declarant) the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as reserved in Section 6.05 of Article VI hereof; or

(b) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Residential Lot or the Owner thereof.

(c) This Section 11.02 may be amended as provided in Section 12.02 of Article XII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

11.03 Notice of Matters Affecting Security. The Board shall give written notice to any first mortgagee of a Residential Lot requesting such notice whenever:

(a) there is any default by the Owner of the Residential Lot subject to the first mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within sixty (60) days after default occurs; or

(b) damage to the Common Areas from any one occurrence exceeds \$10,000.00; or

(c) there is any condemnation or taking by eminent domain of the Residential Lot subject to the first mortgage or of the Common Areas or

(d) any of the following matters come up for consideration or effectuation by the Association;

(i) abandonment or termination of the Planned Development established by this Declaration;

(ii) material amendment of the Declaration or the Articles or Bylaws of the Association; or

(iii) any decision to terminate professional management of the Common Areas and assume self-management by the Owners.

11.04 Notice of Meetings. The Board shall give to any first mortgagee of a Residential Lot requesting the same, notice of all meetings of the Association; and such first mortgagees shall have the right to designate in writing a representative to attend all such meetings.

11.05 Right to Examine Association Records. Any first mortgagee shall have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Residential Lot securing the mortgage; provided, that the foregoing shall not be deemed to impose upon the Association any obligation to cause its financial statements to be audited.

11.06 Right to Pay Taxes and Charges. First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas; and first mortgagees making such payments shall be owed immediate reimbursement therefrom from the Association. Declarant, for the Association as owner of the Common Area, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to

covenant and agree to make such reimbursement.

11.07 Exemption from Any First Right of Refusal. Any first mortgagee who obtains title to the Residential Lot subject to the first mortgage pursuant to the remedies provided in the first mortgage, or by foreclosure of the first mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant to any power of sale shall be exempt from any "right of first refusal" which would otherwise affect the Residential Lot.

## ARTICLE XII

### MISCELLANEOUS

12.01 Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the managing Agent or the President of the Association. Any notice required or permitted to be given to the Architectural Committee may be given by delivering or mailing the same to the Managing Agent or any member of the Architectural Committee. Notice given to members by email or by text message is sufficient for any notice required under these documents.

12.02 Amendment. Except as provided below in this Section 12.02 or in Section 11.01 and 11.02 of Article XI or in Section 12.08 of Article XII, this Declaration may be amended by:

- (a) the affirmative vote of a majority of the Owners, and
- (b) the written consent of Declarant, if such amendment is adopted by any time when Declarant holds Class B membership in the Association, and
- (c) the filing of an instrument for record in the office of the County recorder of Morgan County, Utah, executed by any two officers of the Association and certifying that such amendment has been duly adopted by the affirmative vote of a majority of the Owners and, if required, has the written consent of Declarant.

Until all portions of the Undeveloped Land are annexed to the Property or until Declarant's right to annex land to the Property otherwise terminates, Declarant reserves the right to amend this Declaration insofar as it applies to any land annexed at or after the date of such amendment, provided that (a) any such amendment shall be set forth in a supplemental declaration annexing land to the Property, (b) no such amendment may affect the voting rights of Owners and (c) no such amendment may decrease the proportionate share of Association assessments which would otherwise be payable by the owners of the annexed lands. Declarant may at any time amend this Declaration so as to limit, diminish or eliminate all or any of the reserved rights or benefits of Declarant herein, provided that any such amendment shall be effective only after being filed of record in the office of the County Recorder of Morgan County, Utah.

12.03 Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the Owners, whether present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 12.03:

- (a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.
- (b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed.
- (c) Except as provided in the following sentence any change in ownership of a Residential Lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would increase the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.
- (d) Unless the consent of all Owners whose memberships are appurtenant to the same Residential Lot are secured, the consent of none of such Owners shall be effective.



12.04 Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

12.05 Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision herein construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

12.06 Covenants to Run With Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and all inure to the benefit of Declarant, the Owners, all parties who hereafter acquire any interest in a Residential Lot, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Residential Lot or Living Unit shall comply with, and all interests in all Residential Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Residential Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

12.07 Declarant's Right to Amend. Until all portions of the Undeveloped Land are included in the Development, or until the right to expand the Development through the annexation of all or part of the lands constituting the Undeveloped Land terminates, whichever event first occurs, Declarant shall have, and is hereby vested with, the right to unilaterally amend this Declaration as may be reasonably necessary or desirable: (a) to more accurately express and intent of any provisions of this Declaration in light of then existing circumstances or information; (b) to better insure, in light of then existing circumstances or information, workability of the arrangement which is contemplated by this Declaration; or (c) to facilitate the practical, technical, administrative, or functional annexation of any Undeveloped Land to the Property.

12.08 Attorneys' Fees. In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner(s) or Lot(s).

12.09 Association Name, Incorporation, and Succession. The Association has been or will be organized as a nonprofit corporation pursuant to the Utah Nonprofit Corporation Act. If, at any time, such nonprofit corporation is dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers, and obligations of the nonprofit corporation existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. To the greatest extent possible, the successor unincorporated association shall be governed by the Articles and Bylaws as if they had been drafted to constitute the governing documents of the unincorporated association. Notwithstanding the foregoing, upon dissolution of the nonprofit corporation, the Board, in its sole discretion, may re-incorporate the Association by renewing the dissolved nonprofit corporation or by incorporating a new nonprofit corporation with a name that is the same as or substantially similar to the previously dissolved nonprofit corporation and with Articles that adopt the Declaration and Bylaws and that are otherwise the same as or substantially similar to the Articles of the previously dissolved nonprofit corporation. In the event that the Board incorporates a new nonprofit corporation as described above, the new nonprofit corporation shall be a successor of the previously dissolved nonprofit corporation and all of the property, powers, and obligations of the nonprofit corporation existing immediately prior to its dissolution shall thereupon automatically vest in the new nonprofit corporation. To the greatest extent possible, the Association shall be deemed a successor of any prior incorporated or unincorporated association established to administer the affairs of the Property pursuant to any prior version of the Association's governing documents which are hereby amended and all property, powers, and obligations of such prior association(s) are vested in the Association.

12.10 Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Morgan County, Utah.

NeilMark Properties, LLC

  
by: Mark Thayne

Its: Manager

STATE OF UTAH

COUNTY OF

DAVIS : ss  
Morgan )

On the 10 day of DECEMBER, 2020, the foregoing did execute this document who by me being duly sworn, did represent that he is the President of NeilMark Properties, LLC, a Utah limited liability company

  
NOTARY PUBLIC

Residing At: DAVIS COUNTY, UT  
My Commission Expires: 03-08-2022



EXHIBIT "A"  
Common Area, Real Property, Undeveloped Land:

**MAHOGANY RIDGE SUBDIVISION**

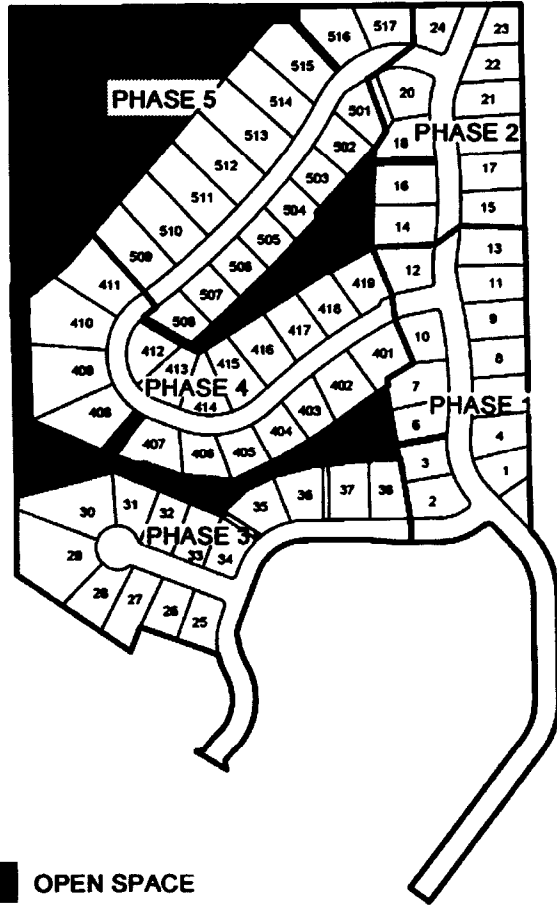


Exhibit "A" Continued (Legal Description)

All of Lots 1 through 13 of Mahogany Ridge Phase One Subdivision, including roads (Mahogany Ridge Road and Grandview Drive) and common Area shown on Plat.

All of Lots 14 through 24 of Mahogany Ridge Phase Two Subdivision, including roads (Mahogany Ridge Road and Eagle View Drive) and common area shown on Plat.

All of Lots 25R through 36R, Lot 37 and Lot 38R of Mahogany Ridge Subdivision phase 3, including roads (Thackery Circle and Great View Drive) and common Areas shown on Plat.

All of Lots 401 through 419 Mahogany Ridge Subdivision Phase 4, including roads (Grandview Drive and Eagle View Drive) and Common Area (CA1 and CA2)

All of Lots 501 through 517 Mahogany Ridge Subdivision Phase 5, including roads (Eagle View Drive) and Common Area (CA1).

Parcel Numbers

Phase One Common Area: 00-0064-4591,

Phase One Lots: 00-0064-4753, 00-0064-4915, 00-0064-5177, 00-0064-5339, 00-0064-5881, 00-0064-5743, 00-0064-5905, 00-0064-6167, 00-0064-6329, 00-0064-6571, 00-0064-6733, 00-0064-6995, 00-0064-7157, 00-0064-4420.

Phase Two Common Area: 00-0064-4420,

Phase Two Lots: 00-0064-4672, 00-0064-4834, 00-0064-5096, 00-0064-5258, 00-0064-5410, 00-0064-5662, 00-0064-5824, 00-0064-6086, 00-0064-6248, 00-0064-6400, 00-0064-6652

Phase Three Common Area: 00-0073-7666,

Irrigation and Access Easement/Open Space between lots 36-R and 37, 00-0073-7667

Phase Three Lots: 00-0073-7652 through 00-0073-7665.

Phase 4 Common Area: 00-0087-5691, 00-0087-5692

Phase 4 Lots: 00-0087-5672 through 00-0087-5690

Phase 5 Common Area: 00-0087-5792

Phase 5 Lots: 00-0087-5775 through 00-0087-5791