

WATER SERVICE AGREEMENT

This Water Service Agreement, (the "Agreement"), is made and entered into by and between the Central Iron County Water Conservancy District (the "District"), a water conservancy district organized under the laws of the State of Utah, and Cedar Highlands Homeowners Association, and any of its assigns or successors in interest, (hereafter collectively referred to as the "Company").

RECITALS

1. WHEREAS Company currently has a culinary water system servicing the Cedar Highlands Subdivision; and
2. WHEREAS the District is a duly recognized public agency with experience and expertise in the construction and operation of a public water system; and
3. WHEREAS the Company is located within the District's service area
4. WHEREAS the District is willing to supply culinary water to the Cedar Highlands Subdivision in accordance with the terms and conditions of this Agreement; and
5. WHEREAS there are presently 165 lots within the Cedar Highlands subdivision including approximately 71 lots with homes connected with meters to the water system along with several lots without homes that are also connected with meters to the water system.
6. WHEREAS the Subdivision has additional storage requirements for future water needs in addition to required easements and additional property as needed for the ongoing management of the Subdivision's water system.
7. WHEREAS the District is bound to follow and comply with the Utah State Drinking Act, U.C.A. Title 19, Chapter 4, et. seq. including the duty to provide adequate water, water pressure and fire flows.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for good and valuable consideration the sufficiency of which the parties acknowledge, the parties agree as follows:

1. **Transfer of Current System and Water.** The Company currently has a well constructed to municipal public standards, storage tanks, springs and water systems, (including sufficient real property for adequate source protection zones of both the well

and springs, having a minimum 100 feet circumference), and real property upon which the well and storage tank and springs are located of not less than 120 feet in diameter. The current water system has sufficient capacity to service all lots located within the Cedar Highlands Subdivision, and has been constructed and developed in accordance with State Drinking Water standards. The Company shall transfer its water system and water rights to the District, as set forth in section 2 below. The Company shall transfer sufficient additional property, adjacent to the existing upper tank, to place a second water tank, as more fully described in Exhibit A for purposes of providing adequate water storage pursuant to R309-510-8. In addition thereto, the Company shall transfer sufficient water to fully service every lot within the Cedar Highlands Subdivision as more fully set forth in section 2 below. Water usage shall continue to conform to current CC&R's, which restrict outside watering within the subdivision.

2. **Title Transfer.** The Company shall convey, by water deed, to the District (.958) acre-foot of underground water right for each platted and/or developed lot within the Cedar Highlands Subdivision, in the appropriate water hydrological basin, said water to have been beneficially used in the last seven years and deemed acceptable for domestic uses in the amount of (.958) acre-foot per lot served. Except for the existing liens identified on Schedule A, which is integrated by this reference, and as otherwise set forth in paragraph 3 below, the water rights shall be free of liens, judgments or any other legal encumbrances, and shall include the complete and proper transfer of ownership of said rights to the District. The Company presently owns sufficient underground water rights to adequately convey to the District 158 acre feet of water from water right number(s) number(s) 73-1308, 73-1619, 73-1621, 73-1622, 73-2287, 73-2287, 73-2414, 73-2733, 73-995, 73-996, 73-997. Acceptance of the water system, well, springs and property shall be deemed effective upon completion of legal transfer and recording of the water and real property identified herein by appropriate warranty deed, water deed and Bill of Sale.

The parties agree that the existing debt identified on Schedule A will be assumed by the District as part of this transfer, and that the Parties shall execute whatever documents as are necessary to transfer said debt to the District. In addition, the parties agree that cash in the amount of \$23,300.00, and all assets appertaining to the water system, including, but not limited to, well, springs and transfer system will also be transferred to offset the District's costs of meter replacement and fencing improvements identified around the spring areas.

3. **Rates.** The District intends to make the water available to customers at the District's regular water rates. The District maintains the right to change the adopted water rate ordinance at any time in accordance with legal requirements and established policies then in effect. Changes, if any, in the adopted rate ordinance shall not take effect until the District has complied with applicable legal and regulatory requirements for a rate increase. As of the date of legal transfer of the water rights and water system, any lot owner currently connected to the system with a set meter shall not be required to pay an impact or hook-up fee to the District. All lot owners not connected to the system with a set meter shall be responsible to pay the District's impact fees and hook-up fees as properly assessed at the time the owner applies for a meter connection. The payment of

any hook-up or impact fees, base fee or usage fee is not the responsibility of the Company but the responsibility of the individual lot owner of the Subdivision of which they have been provided notice. The District will act in good faith in establishing any rate structure. A base fee will be charged each lot regardless of water service delivery. This base fee is identified in the District's established water ordinance.

4. **Service Commitment.** The District hereby agrees and commits, pursuant to its statutory obligations as a local district established pursuant to Utah Code Ann. 17B *et seq.*, to supply culinary water service to the Cedar Highlands Subdivision Property. In so doing, the District shall ensure that water quality continues to comply with State Drinking Water standards. The District shall also make necessary repairs to the water system and keep the system in a state of good repair and maintenance as required of any public entity.


5. **Transfer of Water System Facilities.** Company shall deliver to District its currently existing system and District shall agree to accept the same "As Is", "Where As" and "What for". The Company agrees to provide as built construction drawings for the presently constructed phases of any water system, and cooperate with the District by providing whatever information is requested if available to the Company. Roads shall be maintained for access to water system facilities by the Company as they currently maintain the roads to those facilities. Plowing of snow during winter months shall be provided by the Company so as to maintain access to the water system, and the District shall not be responsible for water shortages during times of breakage when it cannot access the system due to inclement weather, lack of access, or acts of God.

6. **Notices.** Any notice provided for or concerning this Agreement shall be in writing and be deemed sufficiently given when hand delivered or sent by certified or registered United States mail to the respective addresses of the District of the Company as set forth below

If sent to the District: Central Iron County Water Conservancy District
Attn: Scott Wilson
P.O. Box 37
Cedar City, Utah 84721

If sent to the Company: Cedar Highlands Homeowners Association
Attn: John Tully or current President
P.O. Box 1921
Cedar City, Utah 84720

7. **Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Utah.

Initials 

8. **Entire Agreement.** This Agreement shall constitute the entire agreement between the parties and supersedes any prior understanding, representation, or agreement of the parties regarding the subject matter hereof.

9. **Modification of Agreement.** Any modification of the Agreement, or additional obligation assumed by either party in connection with this Agreement, shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

10. **No Waiver.** No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute waiver of that or any other right, unless expressly provided herein. Either party may, by notice delivered in the manner provided in this Agreement, but shall not be under obligation to waive any of its rights or any condition to its obligations hereunder, or any covenant or duty of any other party. No waiver shall affect or alter the remainder of this Agreement, and each and every covenant, duty, and condition hereof shall continue in full force and effect with respect to any other than existing or subsequently occurring breach.

11. **Rights and Remedies.** The parties shall have all rights and remedies, provided under Utah law for breach or threatened breach of this Agreement, these rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies.

12. **Necessary Acts and Cooperation.** The parties hereby agree to do any act or thing and to execute any and all instruments required by this Agreement which are necessary and proper to make effective the provisions of this Agreement.

13. **Authorization.** The Company and District do each hereby represent and warrant that a meeting was duly called and held by each respective Board of Directors, and that during said meeting, each Board did properly approve and direct its respective officer to execute this Agreement, and that said Agreement was signed in behalf of the Company and District, by authority of its bylaws, and by resolution of its Board of Directors.

14. **Execution of Agreement.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

15. **Survival.** All representations and warranties of Seller shall merge into any deed and shall not survive the Closing.

16. **Time of Essence.** Time is of the essence of this Agreement.

17. **Successors and Assigns.** All the terms and conditions of this Agreement are hereby made binding on the successors and permitted assigns of both parties hereto.

18. **Force Majeure.** This Agreement is subject to force majeure, and is contingent on strikes, accidents, acts of God, and weather conditions, inability to secure labor, fire regulations or restrictions imposed by any government or governmental agency, or other delays beyond the control of the parties. If delivery of the water system within the Agreement time is prevented by any cause of force majeure, then this Agreement shall be void.

19. **Alternative Dispute Resolution.** The parties agree that any dispute arising prior to or after signing related to this Agreement shall first be submitted to mediation. The dispute shall be submitted to mediation through a mediation provider mutually agreed upon by the parties. Each party agrees to bear its own costs of mediation. If mediation fails, the other procedures and remedies available under this Agreement shall apply. Nothing in this Section shall prohibit any party from seeking emergency equitable relief pending mediation.

20. **Attorney's fees.** In the event of litigation or binding arbitration to enforce this Contract, the prevailing party shall be entitled to costs and reasonable attorney fees.

IN WITNESS THEREOF, each party to this Agreement has caused it to be executed on the date indicated below.

DATED this 29 of Sept, 2011.

DISTRICT CENTRAL IRON COUNTY WATER CONSERVANCY

By: [Signature]
Its: Chairman of the Board of Directors

Cedar Highlands Homeowners Association
By: [Signature]
Its: President - CHHA

Initials [Signature]

Exhibit A

Commencing at a point 133.23' N0°01'33"W and 1847.98' S89°58'41"W of the SE Corner of Section 25, Township 36S, Range 11W of SLB&M and running thence 117.58' S63°41'11"W; thence 39.39' S26°18'49"E; thence 418.99' S25°21'59"E; thence 275.58' S50°01'58"E; thence 404.49' S57°13'11"E; thence 183.63' S19°13'42"W; thence 13.91' West; thence 65.00' S0°02'01"W; thence 50.00' East; thence 65.00' N0°02'01"E; thence 14.91' West; thence 176.03' N19°13'42"E; thence 113.07' S64°15'11"E; thence 136.02' N21°58'01"E; thence 59.93' N89°48'58"E; thence 176.12' S0°51'23"W; thence 61.62' S88°43'11"E; thence 62.29' N1°16'49"E; thence 38.42' N87°56'48"E; thence 100' North; thence 81.20' West; thence 130.86' N0°25'18"E; thence 20.00' S88°18'47"W; thence 54.18' S0°25'18"W; thence 50.03' S86°03'22"W; thence 141.82' North; thence 204.77' West; thence 154.96' S18°06'46"W; thence 44.20' S39°40'10"W; thence 269.54' N57°13'11"W; thence 72.61' N50°01'58"W; thence 30.00' N39°56'01"E; thence 65.00' N50°01'58"W; thence 30.00' S39°58'02"W; thence 132.22' N50°01'58"W; thence 342.14' N25°21'59"W; thence 57.61' N74°14'58"E; thence 129.75' S48°05'24"E; thence 50.00' N41°52'58"E; thence 130.00' N48°05'00"W; thence 104.03' N28°37'36"W returning to point of commencement.

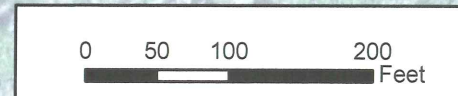
Omitting property at a point commencing at 471.57' S0°19'12"E and 1048.29' S89°40'48"W of the NE Corner of Section 36, Township 36S, Range 11W of SLB&M and running 170.27' West; thence 131.35' S18°06'46"W; thence 79.43' S58°54'55"W; thence 62.24' S32°21'28"W; thence 140.80' S64°18'25"E; thence 106.36' N21°58'15"E; thence 12.50' West; thence 50.00' N0°24'15"W; thence 22.56' East; thence 130.84' North returning to point of commencement.



LEGEND

- Legal Description
- Spring 1
- Spring 1A
- Spring 2
- Spring 7 & 8
- Spring 9
- Well
- Upper Tank
- Lower Tank
- Proposed Tank

TOTAL AREA: ~2.1 Acres



CEDAR HIGHLANDS HOMEOWNERS ASSOCIATION
 EXHIBIT A - PROPERTY TRANSFER
 SUBMITTAL DATE: SEPTEMBER 2011

