

WHEN RECORDED, MAIL TO:

Central Iron County Water Conservancy District  
88 East Fiddlers Canyon Road, Ste A  
Cedar City, Utah 84721

## **GRANT OF EASEMENT AGREEMENT**

### **(Access and Utility Easement)**

This Grant of Easement Agreement (“Easement Grant”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2022 (the “Effective Date”) by and between Cedar Highlands Homeowners Association, a domestic nonprofit Utah corporation, (“Grantor”), having a mailing address of 285 West Tabernacle Street, Suite 301, St. George, UT 84770-5406, and the Central Iron County Water Conservancy District (“Grantee”), having a mailing address 88 East Fiddlers Canyon Road, Ste A, Cedar City, Utah 84721.

WHEREAS, Grantor governs certain real property which is part of the common area owned by Cedar Highlands Homeowners Association, (“Association”), acting on behalf of its members, which includes springs and water infrastructure necessary to service all lots within the Cedar Highlands Subdivision, as depicted in Exhibit “A”;

WHEREAS Grantor has a desire to preserve the real property in its pristine condition, including retaining trees, vegetation, springs and the natural beauty of the surrounding area;

WHEREAS, Grantee desires to obtain the legally described Easement, (See Exhibit “B”), for purposes of installing, maintaining and repairing an underground water transmission line, pipeline, springs and attendant utilities related and necessary therewith over common property, for the purpose and collecting and transporting water under and through Grantor’s property to service the Cedar Highland Subdivision and the general public within District boundaries;

WHEREAS Grantor is authorized pursuant to its Declaration of Covenants and Restrictions to own, maintain and otherwise manage all of the common properties acquired by the Association for the benefit of the Association and the lot owners within Cedar Highlands Subdivision;

WHEREAS Grantor is authorized pursuant to its Declaration of Covenants and Restrictions to grant easements where necessary over common properties for utilities, and Grantor desires to grant to Grantee a perpetual easement under and through a portion of the Association’s Grantor’s property, as more particularly legally described in attached Exhibit “C” (the “Easement Property”) for purposes of installing and maintaining all springs, transmission pipeline(s) and any utilities associated therewith, within the described Easement, including but not limited to underground fiber optics, cable or other communication and/or electrical transmission line to service the needs of the Grantee in collecting, storing, and transporting the water, (the “Work” or the Improvements”), subject to the terms and conditions of this Grant; and

WHEREAS Grantee and Grantor stipulate that Grantee is obtaining the Easement for the purposes of better serving the Cedar Highland Subdivision with water services and fire protection and that such increased services shall constituted good and adequate compensation for the Easement.

NOW, THEREFORE, to these ends and in consideration of the terms and conditions of this Easement Grant, together with the mutual benefits to be derived herefrom, Grantor and Grantee agree as follows:

1. Grant of Easement. Subject to the terms and conditions of this Easement Grant, Grantor hereby grants and conveys to Grantee a perpetual easement over and through the Grantor’s property for purposes of installing, inspecting, accessing, repairing, and maintaining the Improvements within

the Easement, together with a right of access upon, and ingress and egress over and across, the Easement Property as and to the extent reasonably necessary or appropriate therefor; provided that Grantee shall use its best reasonable efforts to not damage, misuse or otherwise cause any annoyance or concern to Grantor and Grantor's guests; and provided further that any installation or repairs of underground utilities shall be fully replanted and reseeded to its pre-disturbance condition, and provided further that nothing contained in this Easement Grant shall be deemed or considered to be a dedication of all or any part of the Easement Property for the general public whatsoever except for Grantee's use and access to Grantor's property for service of a public water system. Grantee shall have the limited right and exclusive use and the right to reasonably restrict access to the springs and protection zones surrounding said springs, (exclusive easement), which provide water service to the Cedar Highlands Subdivision, and to protect the general public from contamination of the springs and damage to the pipeline, by fencing out all public and members of Grantor;

2. **Nonexclusive and Limited Use; Exercise of Rights.** Exclusive use of the permanent Easement Property is hereby granted to Grantee, except to the extent that use of the Easement Property surface is reserved by Grantor and Grantee. Further, except to the extent the same will interfere with Grantee's rights hereunder and the placement of markers to demark Grantee's utilities for protection and non-disturbance, Grantor reserves the right, in its sole discretion, (i) to make use of the Easement Property for agricultural and other similar purposes, including, without limitation, the right to graze, plant, fence or otherwise improve any part or all of the Easement Property, (ii) for the general enjoyment by the Grantor's members, and (iii) to use and/or to grant permits, licenses and easements over, across, through and under the Easement Property to any other governmental or quasi-governmental authority, to any other public or private utility company or to any other person or entity, for the purpose of installing, maintaining or providing utilities and related facilities or for any other lawful purpose, provided it does not interfere with Grantee's exclusive use of the springs and protection zones surrounding said spring or which would limit Grantee's ability to deliver water and protect its Improvements.
  - a. It is the intention of Grantor that this Easement Grant be limited to the purposes expressed herein, subject to the limitation that Grantee's rights hereunder shall not be exercised in any manner which substantially and unreasonably interferes (i) with the purposes for which the Easement and Easement Property is to be used as provided herein, (ii) with the rights and easements of any other grantee except to the extent to preserve the water quality and integrity of the springs, storage facility and pipeline, or (iii) the right of any other governmental or quasi-governmental body having jurisdiction over the Easement Property or the Grantor's Property at any time and from time to time, and any other private or public utility company serving the Easement Property or the Grantor's Property, of access to, and rights of ingress and egress over and across, any of the Easement Property for purposes of providing any governmental, municipal or utilities services.
  - b. The use by the holders of the dominant tenements of the Easement granted hereunder shall be limited to such uses as are described herein, which uses shall be made in such a manner as will least interfere with the use of the servient tenements by the owners and lessees thereof.
3. **Relocation of Improvements.** Grantee, reserves the right, upon prior written notice to Grantor, to relocate the Improvements within the Easement Property in the event of a problem is discovered underground which prevents installation of the pipeline an attendant facilities, provided however that any such relocation does not unreasonably interfere with Grantor's use of Grantor's property. In connection with any such relocation, the parties shall execute and acknowledge an instrument,

in a form suitable for recording, to evidence any such relocation, and shall provide prior notice in the event relocation is required.

4. Grantee's Covenants. In consideration of the terms and conditions hereof and for the granting of the Easement, Grantee acknowledges, covenants and agrees that:
- a. Grantee shall not exceed the easement during construction, and shall pursue to diligence installation of the pipeline, wiring, valves, etc. once construction is commenced on Grantor's property;
  - b. Grantee shall, at Grantee's sole expense replant, reseed and restore the property to its precondition status, and shall return and repair all fencing previously installed by Grantor. Grantee shall use all reasonable efforts to avoid removal of any mature trees and shall work with Grantor prior to cutting down any mature wooded foliage;
  - c. Grantee shall pay the cost of installation of any gates and fencing over and above said pipeline and around the springs protection zones, if it so desires or requires the same, and shall provide all posting necessary or required by any state regulation or law.
  - d. Unless otherwise agreed to in writing by the parties and except for any damage caused by or under Grantor, Grantee shall be solely responsible for maintaining, in good and condition and repair, any Improvements associated therewith so as not to disturb Grantor's use of the Property. If, in connection with the use of the Easement, any landscape, fence repairs, or other improvements or property of Grantor is damaged or destroyed by Grantee, then, within thirty (30) days thereafter (or such other longer period as may be reasonably necessary therefor, so long as any such repair shall be commenced within such thirty (30) day period and prosecuted with reasonable due diligence thereafter to completion), exigent circumstances (to the extent necessary and reasonably practicable) excepted, Grantee shall repair or replace any and all such damaged or destroyed property or improvements in a good and workmanlike manner to a condition substantially identical to that existing before any such damage or destruction or, alternatively, pay Grantor for the costs and expenses reasonably necessary or appropriate therefor.
  - e. Grantee shall not permit any lien or claim of mechanics, laborers or materialmen to be filed against the Easement Property or Grantor's property, or any part or parts thereof, for any work, labor or materials furnished, alleged to have been furnished or to be furnished pursuant to any agreement by Grantee. Within thirty (30) days after the date of the filing or recording of any such lien, Grantee shall cause the same to be paid and discharged of record, or, if Grantee contests the amount allegedly due or the right of the lien or to make its lien claim, Grantee shall cause a bond for at least 125% of the amount of the disputed lien claim to be issued in favor of Grantor to protect Grantor from any damage resulting from the lien during the entire time of any proceeding in which Grantee contests the lien.
  - f. Notwithstanding any other term and condition of this Easement Grant or the termination or expiration hereof, Grantee acknowledges and agrees that, as and to the extent arising by reason of Grantee's use of the Easement, Grantee shall indemnify, defend and hold harmless Grantor from and against any and all losses, claims, costs, expenses or damages arising or caused, in whole or in part, by (i) any breach by Grantee, inclusive of its agents, representatives and/or employees, of the terms and conditions of this Easement Grant, or (ii) any actions or omissions of Grantee, inclusive of its agents, representatives and/or employees.

- g. By reason of Grantee's use and enjoyment of the Easement granted hereunder, Grantee shall not permit any contamination, dumping or other environmental waste to be left, disposed on or contaminate the Easement Property and, further, shall not create, exacerbate or cause any "Environmental Condition" (as defined below) on or about the Grantor Property (inclusive of the Easement Property). For purposes hereof, "Environmental Condition" means (i) contamination or pollution of soil, air, surface or groundwater, (ii) the disposal, placement, existence, presence or release or threat of release of a Hazardous Material and the affects thereof, (iii) noncompliance with or violation of Applicable Law including, without limitation, any lack of required governmental permits or approvals; "Hazardous Material" means (iv) any substance, the presence of which requires investigation, remediation, or other response or corrective action under Applicable Law, or (v) any substance which is defined as a hazardous waste, hazardous substance, extremely hazardous substance, hazardous material, hazardous matter, hazardous chemical, toxic substance, toxic chemical, pollutant or contaminant, or other similar term, in or pursuant to Applicable Law, or (vi) any asbestos or asbestos-containing material, PCBs or equipment or articles containing PCBs, petroleum, diesel fuel, gasoline or other petroleum hydrocarbons; and "Applicable Law" means all existing federal, state or local laws, common law, statutes or regulations, including, without limitation, those relating to the protection of human health and safety, protection of the environment, or prevention of pollution.
- h. The agreements, indemnities, terms and conditions set forth in this Paragraph shall survive the rescission, cancellation or termination of this Easement Grant.
5. Covenant Running with the Land. This Easement Grant (a) shall constitute a covenant running with the land, (b) shall bind every person having a fee, leasehold or other interest in any portion of any affected property, to the extent that such portion is affected or bound by this Easement Grant, and (c) shall be binding upon any owner of any such affected property acquiring title by judicial foreclosure, trustee's sale, deed in lieu of foreclosure, voluntary conveyance, or otherwise.
6. Miscellaneous.
- a. The failure of a person to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein by the same or any other person. The provisions of this Easement Grant are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership or any similar relationship between the parties. Nothing in this Easement Grant is intended to create an enforceable right, claim or cause of action by any third party against any party to this Easement Grant.
- b. This Easement Grant contains the entire agreement between the parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof or any prior easements. Further, the recitals set forth above, together with the exhibits attached hereto, are incorporated in and made an integral part of this Easement Grant by this reference. This Easement Grant may be executed in counterparts, all of which taken together shall constitute one agreement, binding upon and inuring to the benefit of the parties hereof and their successors and assigns, notwithstanding all the parties are not signatories to the original or the same counterpart.

- c. The provisions of this Easement Grant shall be construed as a whole and not strictly for or against any party. This Easement Grant shall be governed by and construed in accordance with the laws of the State of Utah and shall be recorded in the official real estate records of Iron County, Utah. This Easement Grant may not be modified except with the consent of Grantor and Grantee, and then only by written instrument duly executed and acknowledged and recorded in the official real estate records of Iron County, Utah.

IN WITNESS WHEREOF, the parties have caused this Easement Grant to be effective as of the Effective Date.

GRANTOR

CEDAR HIGHLANDS

HOMEOWNERS ASSOCIATION

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

GRANTEE:

CENTRAL IRON COUNTY WATER  
CONSERVANCY DISTRICT

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

(acknowledgment page follows)

STATE OF UTAH )  
 : ss  
COUNTY OF IRON )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2022, this instrument was acknowledged before me by \_\_\_\_\_ who personally appeared before me as the signer of the foregoing instrument, who duly acknowledged to me that he executed the same after a motion was duly made and authorized by the Cedar Highlands Homeowners Association Board of Directors.

\_\_\_\_\_  
Notary Signature and Seal

STATE OF UTAH )  
 : ss  
COUNTY OF IRON )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2022, this instrument was acknowledged before me by \_\_\_\_\_, the \_\_\_\_\_ of the Central Iron County Water Conservancy District, who by duly motion and authorization of its Board of Directors did authorize and appoint the District Director to execute the same.

\_\_\_\_\_  
Notary Signature and Seal

**EXHIBIT “A”**

**(Picture of the Easement Property)**

# **EXHIBIT “B”**

**(Legal Description of Easement)**

# **EXHIBIT “C”**

**(Description of the Easement Property and Depiction  
of the Improvements)**