

**Recorded at the request of:**

CEDAR HIGHLANDS HOMEOWNERS  
ASSOCIATION, INC.

**After recording mail to:**

CEDAR HIGHLANDS HOMEOWNERS  
ASSOCIATION, INC.  
1702 N. BULLDOG RD., UNIT 113  
CEDAR CITY UT 84721

Record against the property described in Exhibit "A"

**AMENDED AND RESTATED DECLARATION OF COVENANTS AND  
RESTRICTIONS OF THE CEDAR HIGHLANDS SUBDIVISION**

LOCATED IN  
IRON COUNTY, UTAH

# **AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF THE CEDAR HIGHLANDS SUBDIVISION**

## **PREAMBLE**

To the greatest extent permitted under Utah law, this Amended and Restated Declaration of Covenants and Restrictions of the Cedar Highlands Subdivision (herein “Amended and Restated Declaration” or “Amended Declaration” or “Declaration”)<sup>1</sup> restates, amends, wholly replaces and substitutes the following:

1. DECLARATION OF COVENANTS AND RESTRICTIONS OF THE CEDAR HIGHLANDS SUBDIVISION, recorded as Entry No. 232966, Bk 286 Pg 636-666, on January 25, 1982, in the Official records of the Iron County Recorder, State of Utah (“1982 Declaration”);

2. DECLARATION OF COVENANTS AND RESTRICTIONS OF THE CEDAR HIGHLANDS SUBDIVISION, recorded as Entry No. 0309437, Bk 0437 Pg 0005-0038, on September 9, 1991, in the Official records of the Iron County Recorder, State of Utah, including any amendments thereto (herein the “Original Declaration”);

3. AMENDMENT TO THE DECLARATION OF COVENANTS AND RESTRICTIONS OF THE CEDAR HIGHLANDS SUBDIVISION, recorded as Entry No. 0316525, Bk 0451 Pg 0924, on May 27, 1992, in the Official records of the Iron County Recorder, State of Utah (“1992 Amendment”); and

4. Any and all supplements or amendments to the 1982 Declaration, Original Declaration, 1992 Amendment, or any of the foregoing prior to the date of this Amended and Restated Declaration, whether or not such were recorded in the records of the Iron County Recorder, State of Utah.

## **RECITALS**

WHEREAS this Amended and Restated Declaration shall be recorded against all of the real property identified in Exhibit “A” hereto (hereinafter “Cedar Highlands Subdivision” or “Project”).

WHEREAS as identified in the Original Declaration, at relevant times, the Developer acted as the owner/developer and Declarant for the Cedar Highlands Subdivision and conveyed the Lots within the Cedar Highlands Subdivision subject to certain protective covenants, conditions, restrictions, reservations, assessments, charges, and liens. The Developer also conveyed or dedicated the Common Area to the Cedar Highlands Homeowners Association, Inc., which is a Utah nonprofit corporation (“Association”) organized and governed by the Utah Revised Nonprofit Corporation Act to administer the affairs of the Cedar Highlands Subdivision. Each Owner of a Lot within the Cedar Highlands Subdivision is a Member of the Association.

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<sup>1</sup> Capitalized terms in the PREAMBLE or RECITALS portions of this Amended and Restated Declaration shall have the same meaning as defined in the PREAMBLE or RECITALS, or as defined in Article I of this Amended and Restated Declaration.

WHEREAS all of the real property defined as part of the Cedar Highlands Subdivision was subjected to the terms of the Original Declaration with the intent and desire to create thereon a recreational, residential community with common areas, open spaces, and other common facilities for the benefit of the said community; and to provide for the preservation of the values and amenities in said community and for the maintenance of said common areas, roads, open spaces, and other common facilities, each and all of which is and are for the benefit of said property and each owner thereof; and, the Developer deemed it advisable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated the powers of maintaining and administering the community properties and facilities, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges created pursuant to the Original Declaration, as amended from time to time.

WHEREAS to provide further clarity of the rights and obligations of the Association and the Owners, the Association desires to amend and update the Original Declaration, to reflect the evolving needs of the Owners and the community, to ensure compliance with applicable state and local laws, and to clarify that governance of the affairs of the Association and the Cedar Highlands Subdivision is subject to all applicable ordinances, code, rules, and regulations of Iron County and the State of Utah, including but not limited to: (a) the Community Association Act, Utah Code §57-8a-101, et seq. (the “Community Association Act”); (b) the Utah Revised Nonprofit Corporation Act, Utah Code §16-6a-101, et seq. (the “Nonprofit Act”) (the Community Association Act and Nonprofit Act are collectively referred to as the “Acts”), including any amendments thereto; and subject to (c) Titles 15 and 17 of the Iron County Ordinances, including any other applicable ordinances of Iron County, as amended from time to time (collectively referred to herein as the “Ordinances”). The Acts and Ordinances shall supplement this Declaration. If this Declaration adopts a specific section of the Acts or Ordinances, such amendment shall grant a right, power, and privilege permitted by such section, together with all correlative obligations, liabilities, and restrictions of that section. In the event of a conflict between this Amended and Restated Declaration, the Articles of Incorporation, Bylaws, the Rules and Regulations for the Association, or the Ordinances, this Amended and Restated Declaration shall control.

WHEREAS the Association hereby reaffirms the above dedications and the following covenants as amended and restated in this Amended and Restated Declaration of Covenants and Restrictions of the Cedar Highlands Subdivision.

WHEREAS all of the real property described in Exhibit “A” hereto and defined herein as the Cedar Highlands Subdivision shall be held, sold, conveyed, and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges, liens, and to the official plat maps recorded in the official records of Iron County, Utah, including any amendments thereto. This is for the purpose of protecting the value and desirability of The Properties, including without limitation, the privately owned property and Lots, within the Cedar Highlands Subdivision. This Declaration and the Plats shall be construed as covenants of equitable servitude; shall run with The Properties and be binding on all parties having any right, title, or interest in The Properties or any part thereof, their heirs, successors, and assigns; and shall inure to the benefit of each Owner thereof.

WHEREAS this Amended and Restated Declaration shall take effect upon the date it is recorded in the records of the Iron County Recorder, Utah (the "Amendment Date"). All of the real property identified as the Cedar Highlands Subdivision shall be held, sold, and conveyed subject to this Amended and Restated Declaration.

WHEREAS this Amended and Restated Declaration is adopted and approved to be recorded against the Cedar Highlands Subdivision pursuant to Article VII, Section 2, of the Original Declaration, by: (i) not less than two-thirds (2/3) of all the Members, as evidenced by Exhibit "C" of this instrument, which contains the signatures of not less than two-thirds (2/3) of the Owners approving of this Amended and Restated Declaration; and (ii) approval of not less than two-thirds (2/3) of the institutional lenders, pursuant to Utah Code § 57-8a-104.<sup>2</sup>

NOW, THEREFORE, the Association hereby adopts the following Amended and Restated Declaration of Covenants and Restrictions of the Cedar Highlands Subdivision (hereinafter the "Declaration") containing covenants, conditions, and restrictions relating to the Cedar Highlands Subdivision which, pursuant to the provisions of the Utah Community Association Act of the State of Utah, shall be enforceable equitable servitudes, and shall run with the land:

## ARTICLE I DEFINITIONS

Section 1. The following words when used in this Declaration or any supplemental declaration (unless the context prohibits the same) have the following meanings:

(a) "Articles" mean and refer to the Association's Articles of Incorporation filed in the Division of Corporations and Commercial Code in the Utah Department of Commerce, as may be amended;

(b) "Association" means and refers to THE CEDAR HIGHLANDS HOMEOWNERS ASSOCIATION, INC., a non-profit corporation organized under the laws of the State of Utah, its successors and assigns;

(c) "Board" means and refers to the Association's Board of Directors, the members of which shall be elected pursuant to the Bylaws and other Governing Documents. Director means a member of the Board. Except as may otherwise be provided, all corporate powers of the Association shall be exercised by or under the authority of, and the business and affairs of the Association managed under the direction of, the Board;

(d) "Bylaws" mean and refer to the Bylaws of the Association, as adopted by the Board or Association, including any amendments thereto. A true and correct copy of the Association's Bylaws are attached hereto as Exhibit "B";

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<sup>2</sup> Under Utah Code § 57-8a-104(1)(a), "to amend the governing documents, the governing documents may not require: . . . the vote or approval of lien holders holding more than 67% of the first position security interests secured by a mortgage or trust deed in the association." Additionally, Under Utah Code § 57-8a-210, the security holder's consent is presumed if: (a) written notice of the proposed amendment or action is sent by certified or registered mail to the security holder's address listed for receiving notice in the recorded trust deed or other recorded document evidencing the security interest; (b) 60 days have passed after the day on which notice was mailed; and (c) the person designated for receipt of the response in the notice has not received a written response from the security holder either consenting to or refusing to accept the amendment or action.

(e) “Cedar Highlands Subdivision,” “Subdivision,” “The Properties,” or “Project” mean and refer to the real property described in Exhibit “A” or the “Plats” and such additions thereto as may hereafter be brought within the terms of this Declaration, or supplemental declaration;

(f) “Common Area,” “Common Areas,” or “Common Properties” mean and refer to those areas of land designated as common area or common areas on the Plats or in this Declaration, including any improvements and facilities upon or within said property, including any such other additions of common area that may hereafter be brought within and subject to the terms of the Declaration;

(g) “Developer” means and refers to Cedar Highlands Development Corp. Inc., together with its predecessors, heirs, successors and assigns. The Developer is no longer in control of the Association and Project and references herein to the Developer are for historical purposes and context;

(h) “Governing Documents” means and includes this Declaration, the Articles, the Bylaws, the Plats, the rules and regulations related to the Cedar Highlands Subdivision, and all other documents identified as governing documents in Utah Code § 57-8a-102 (collectively the “Governing Documents”), as any of the foregoing may be amended from time to time;

(i) “Lot” means and refers to each separately numbered and individually described plot of land shown on the Plats and designated as a Lot for private ownership, but specifically excludes the Common Areas. Each Lot is owned in fee simple by the Owner;

(j) “Owner” means and refers to the person, persons, or entity that is the owner of record (according to the records of Iron County Recorder, Utah) of a fee simple or an undivided fee simple interest in a Lot within the Cedar Highlands Subdivision. Notwithstanding any applicable theory relating to a Mortgage, the term Owner shall not mean or include a Mortgagee unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof;

(k) “Member” means and refers to the Members of the Association. Each Owner is a Member of the Association. As used in this Declaration, the terms “Owner” and “Member” are synonymous;

(l) “Mortgage” means and refers to the conveyance of an interest in any Lot or other portion of The Properties to secure the performance of an obligation, which conveyance will be void upon the due performance of said obligation;

(m) “Mortgagee” means and refers to a person or entity to whom a Mortgage is made;

(n) “Institutional Lenders” means and refers to a first position security interest secured by a Mortgage or trust deed on property within the Subdivision;

(o) “Mortgagor” means and refers to a person or entity who mortgages the person’s or its property to another, i.e., the maker of a Mortgage;

(p) “Plat” or “Plats” mean and refer, collectively and individually as required by the context, to the official Plats for the Cedar Highlands Subdivision and include:

The Official Plat for Cedar Highlands Subdivision, recorded as Entry No. 00309436, on September 9, 1991, in the official records of the Iron County Recorder, Utah;

The Official Plat for CEDAR HIGHLANDS SUBDIVISION (AMENDED), recorded as Entry No. 00377989, on April 29, 1997, in the official records of the Iron County

Recorder, Utah; including any amendments, modifications, additions thereto or any replacements thereof; and

Any and all supplements or amendments to any of the foregoing prior to the date of this Declaration, whether or not such were recorded in the records of the Iron County Recorder, State of Utah;

(q) “Rules and Regulations” or “rules and regulations” mean and refer to all rules and regulations as may be adopted and promulgated by the Board pursuant to the Governing Documents, including any amendments thereto; and

(r) “Sale” means and refers to the recordation of a grant, bargain, and/or sale deed to convey title to a new Owner.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is defined as the Cedar Highlands Subdivision, located in Iron County, State of Utah, which is identified by the Plats, and which is more particularly described on Exhibit “A” attached hereto and made a part hereof, all of which real property is referred to herein as the Cedar Highlands Subdivision.

## ARTICLE III

### PROPERTY RIGHTS

Section 1. Owners’ Easements of Enjoyment. Every Owner has a right and easement of enjoyment in and to the Common Area, which is appurtenant to and passes with the title to each Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area, and to reasonably limit the number of guests of Owners upon the Common Area;

(b) The right of the Association, pursuant and subject to the Acts, including Utah Code § 57-8a-309, to terminate a delinquent Owner's rights to receive a utility service for which the Owner pays as a common expense, and/or rights of access to and use of recreational facilities and Common Area. Subject to the Acts, the Association may also suspend the voting rights of a delinquent Owner for any period during which any assessment against the Owner’s Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction, violation, or breach of its published rules and regulations;

(c) The right of the Association to dedicate or transfer ownership, or grant easements, of or over all or any part of the Common Area to any public agency, public authority, or public utility for such purposes and subject to such conditions as may be approved by a majority of all Members. Such dedication or transfer of ownership of the Common Area, or any portion thereof, to any public agency, authority, or utility, will not be effective unless approved by at least a majority of all the Members approving of such dedication or transfer. The Board may grant non-exclusive easements of or over all or any part of the Common Area

to any public agency, public authority, or public utility company for such purposes deemed reasonable and necessary by the Board without the need for approval by the Members;

(d) The right of the Association to enter into agreements or leases, which provide for use of the Common Area by a similar Association in consideration for use of the Common Area of the other Association, and/or for cash consideration;

(e) The right of the Association with the written consent or approval of not less than two-thirds (2/3) of all the Members, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release, or transfer all or part of the Common Area to any private individual or corporate entity; and

(f) The terms and conditions of this Declaration and the Association's Governing Documents, including the covenant and condition that each Lot and all of the property within the Cedar Highlands Subdivision, must be occupied, constructed, improved, maintained, and used in accordance with the Ordinances of Iron County (Titles 15 and 17 of the Iron County Ordinances, including any other applicable ordinances of Iron County, as amended from time to time). Any violation and/or breach of the Ordinances shall constitute a breach and/or violation of this Declaration and/or the Association's Governing Documents. The Association, or any Owner, may enforce by any proceedings at law or in equity, the Ordinances against any other Owner of a Lot within the Cedar Highlands Subdivision, as if the Ordinances, as amended from time to time, are set forth and incorporated herein in their entirety.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, the Owner's right of enjoyment to the Common Area and facilities to the members of the Owner's family, the Owner's guests, the Owner's tenants, and/or contract purchasers who reside on the Owner's Lot.

Section 3. Title To Common Areas. The Developer covenanted to convey title to the Common Area to the Association prior to or concurrently with the conveyance of the first Lot to a purchaser from Developer. The Association has and retains the title to all Common Area within the Cedar Highlands Subdivision.

Section 4. Enforcement of the Governing Documents. The Association, or any Owner, has the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or the Association's Governing Documents, pursuant and subject to requirements set forth in the Acts. Moreover, to the greatest extent permitted by law, the Association, or any Owner, has the right to enforce the Ordinances of Iron County, including all restrictions and ordinances of Iron County applicable to the Cedar Highlands Subdivision, by any proceedings at law or in equity, including filing and maintaining a lawsuit or other legal action in court. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained in this Declaration or the other Governing Documents of the Association, or the Ordinances of Iron County, shall in no event be deemed a waiver of the right to do so thereafter. Except in emergency situations where there is an imminent threat to the life or safety of persons or property, prior to the Association or any Owner seeking to enforce the Ordinances of Iron County, the Association or Owner, must submit a written request to Iron County setting forth the alleged violation(s) and requesting Iron County to enforce the same. In such instance, Iron County shall have thirty (30) days to respond before the Association or Owner may pursue further enforcement of the Ordinances. A denial, interpretation, opinion, written finding, or lack of action by Iron County regarding the Ordinances shall in no way prejudice or have any dispositive impact or waiver on the ability of the Association or Owner to enforce, by any proceedings at law or in equity, the Ordinances as reasonably interpreted by the Association or Owner. Additionally, a breach of the Ordinances shall be considered a breach of this

Declaration or the other Governing Documents and the prevailing party shall be entitled to all remedies and damages, including recovery of attorney fees and costs, as may be provided under the Governing Documents, against the party in violation or breach of the Ordinances.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS THEREOF

Section 1. Membership of the Association. Every Owner of a Lot that is subject to the Declaration is subject to assessments hereunder, and is a Member of the Association. Membership in the Association is appurtenant to and shall not be separated from ownership of any Lot that is subject to the Declaration.

Section 2. Voting and Action by Owners. Each Owner is entitled to one (1) vote for each Lot in which the Owner holds the interest required for membership in the Association. When more than one person holds such interest in any Lot (a "co-owner"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled. A vote cast at any Association meeting by any such co-owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned, unless an objection is immediately made by another co-owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever, other than to determine whether a quorum exists. The same principles apply to any other action or approval by a co-owner and the action or approval by one co-owner constitutes the action or approval attributable to the Lot concerned, unless an objection is immediately made by another co-owner of the same Lot and received by the Association within a reasonable time, not to exceed three (3) business days.

Section 3. Use and Delegation of Rights of Enjoyment of Common Area. Each Member is entitled to the use and enjoyment of the Common Area as provided in the Declaration. Any Member may delegate the Member's rights of enjoyment of the Common Area to members of the Member's family who reside with the Member, to the Member's guests, and/or to the Member's tenants or contract purchasers who reside on the Member's Lot provided that no Member will be reimbursed for any privileges which the Member may delegate or grant to others by virtue of the Member's membership.

Section 4. Suspension of Membership. During any period in which a Member is in default in the payment of any annual assessment, special assessment, or other assessment or charge levied by the Association pursuant to the Governing Documents, the voting rights and right to use of the Common Area of such Member may be suspended, subject to the terms and procedures set forth in the Governing Documents, until such assessment has been paid. Such rights of a Member to use of the Common Area may only be suspended, after notice and an opportunity for a hearing, and for a period not to exceed sixty (60) days, for violation of any rules and regulations established by the Board governing the use of the Common Area or other property within the Cedar Highlands Subdivision.

#### ARTICLE V

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefore, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges;



(ii) special assessments for capital improvements, or costs of maintenance, replacement, or repairs for which the Association is obligated or authorized to undertake, as such assessments may be established and collected as hereinafter provided; (iii) corrective assessments; (iv) emergency assessments; and (v) any other amount, fine or assessment, levied by the Association pursuant to the Governing Documents. All such assessments, together with interest, costs and reasonable attorney fees for the enforcement or collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. All such assessments, together with interest, costs and reasonable attorney fees for the enforcement or collection thereof, shall also be and remain the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. This personal obligation cannot be avoided by abandonment of a Lot or by an offer to waive use of the Common Area. No sale or transfer of a Lot shall relieve an Owner from personal liability for assessments coming due after the Owner/Purchaser takes title or from the lien of such later assessments. In a voluntary conveyance of a Lot, the grantee of the Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for the grantor's share of assessments up to the time of the grant or conveyance being recorded, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Association setting forth the amounts of the unpaid assessments against the grantor, and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth.

Section 2. Purpose of Assessments. The assessments levied by the Association must be used to promote the recreation, health, safety and welfare of the residents and Owners of Lots in the Cedar Highlands Subdivision and for the improvement, insurance, maintenance, repair, and/or replacement of the Common Area and other areas within the Subdivision for which the Association has any responsibility or obligation, and for services including, but not limited to, streets, roads, and/or fire protection.

Section 3. Maximum Annual Assessment.

(a) The Board may increase the annual assessment by up to fifteen percent (15%) above the annual assessment for the previous year without a vote or approval of the Owners;

(b) The annual assessment may be increased above fifteen percent (15%) from the amount for the prior year upon the vote, written consent, assent, or other approval of at least fifty percent (50%) of all the Members; and

(c) The actual annual assessment need not increase annually. The Board shall set the actual annual assessment in an amount at or less than the maximum annual assessment on an annual basis. Notice of the annual assessment amount must be sent to each Owner in any manner provided in the Governing Documents. This notice is not a pre-requisite to the validity of the assessment. In the absence of a determination by the Board as to the amount of said assessment, the annual assessment shall be an amount equal to prior year's annual assessment. The assessment due dates shall be established by the Board. The Board may provide for the payment of annual assessments in equal installments throughout the assessment year.

Section 4. Special Assessments. In addition to the annual assessments authorized above, a special assessment can be assessed to pay the costs of any one or more of the following:

(a) Approved by Board. Special assessments for the following extraordinary expenses can be levied by the Board without Owner approval:

- (i) An extraordinary expense required by an order of a court;
- (ii) An extraordinary expense necessary to repair, replace or maintain the Common Area, or any other area within the Cedar Highlands Subdivision for which the Association is responsible, or any portion thereof, where a threat to personal safety within the Cedar Highlands Subdivision is discovered. Prior to the imposition or collection of a special assessment pursuant to this subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense is necessary and was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Owners with the notice of assessment; and
- (iii) Taxes payable to Iron County, if applicable.

(b) Approved by Association. Special projects which must be assented to by more than ~~fifty~~sixty percent (~~50~~60%) of all the Members of the Association, or the written consent of Owners holding more than ~~fifty~~sixty percent (~~50~~60%) of the total votes of the Association, involve:

- (i) replacement, repair, maintenance or improvement of the Common Area or other areas within the Subdivision for which the Association is responsible; and
- (ii) an extraordinary expense necessary to repair, replace or maintain the Common Area or any other portion of the Subdivision for which the Association is responsible.

Special assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the special assessment is approved if the Board so determines.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 6. Date of Commencement of Annual Assessments: Due Dates. The Board must fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessments must be sent or provided to each Owner on an annual basis. The due dates must be determined by the Board. The Association must, upon written demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. All transfers of property after a Sale must be checked by the transferring agent to verify all assessments are paid current, and if not, must be paid to and brought current with the Association at the time of transfer or Sale.

Section 7. Effect of Nonpayment of Assessments: Remedies. Any assessment not paid within thirty (30) days after the due date must bear interest from the due date at the rate of eighteen percent (18%) per annum, or such other amount as may be determined by the Board. Suit to recover a money judgment for unpaid assessments may be maintained against the Owner personally obligated to pay the same without foreclosing or waiving the lien securing said assessment. The Association may, in its discretion, bring a formal legal action against the Owner or seek to foreclose the lien against the Lot through nonjudicial or judicial foreclosure in accordance with Utah Code § 57-the Community Association Act and the Governing Documents. Any judgment obtained by the Association and any foreclosure commenced shall

include reasonable attorney fees, court costs, interest thereon, and each and every other expense incurred by the Association in enforcing its rights.

The Association through duly authorized agents has the power to bid on the Lot at any such Sale and to hold, lease, mortgage, and/or convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of the Owner's Lot. If any suit or legal action is taken to collect any such assessment or other charge, attorney fees, costs, and interest thereon, must be added to the amount, including ongoing and additional attorney fees, costs, and interest in any judgment entered in any such suit or action, as applicable. The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as provided in the Governing Documents.

Section 8. Notice of Lien. Pursuant to, and in accordance with, Utah Code § 57-8a-302 and other provisions of the Acts, and Utah Code Sections 57-1-24, 57-1-25, 57-1-26, and 57-1-27, the Association shall have a lien for assessments against each Lot. An action may be brought by the Association to foreclose said assessment lien or to proceed nonjudicially under the power of sale, which is herein provided, pursuant to the Acts and related provisions of Utah Code regarding the same. The Board may elect to file a claim of lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim or delinquency, (b) the interest and costs of collections which have accrued thereon, (c) the legal description of the Lot against which the lien is claimed, and (d) the name of the reputed Owner thereof. The lien shall continue until all amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. The lien shall be prior to any other lien arising thereafter, except for liens which, by law, are deemed prior to liens of a nature similar to such assessment liens. Unless paid or otherwise satisfied, the lien may be foreclosed in a like manner as a mortgage or deed of trust lien, including judicial or non-judicial foreclosure. For purpose of a foreclosure, the Association is considered to be the beneficiary under a trust deed and the Owner is considered to be the trustor under a trust deed. An Owner's acceptance of an interest in the Lot constitutes simultaneous conveyance of the Lot in trust, with power of sale, to the trustee designated in accordance with the Community Association Act. Upon the timely curing of any default for which a notice of claim or lien was filed by the Association, any two of the officers thereof, or an authorized agent or attorney for the Association, are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a reasonable fee, to be determined by the Association, to cover the costs of preparing and filing or recording of such release.

Section 9. Subordination of the Lien to Mortgage. The lien for assessments provided for herein are subordinate to the lien of any first Mortgage. Sale or transfer of any Lot must not affect the assessment lien. However, the Sale or transfer of any Lot pursuant to Mortgage foreclosures extinguishes the Lot of such assessment as to payments which became due prior to such Sale or transfer. No Sale or transfer will relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Mortgage Protection. No breach of the covenants, conditions or restrictions in this Declaration, nor the enforcement thereof or of any lien provision herein, will defeat or render invalid the lien of any Mortgage or deed of trust made in good faith and for value. However, all of the covenants, conditions and restrictions in this Declaration must be binding upon any Owner whose title is derived through foreclosure or exercise of a power of Sale, or otherwise.

Section 11. Right of Inspection. Any Institutional Lender or first mortgage lien holder has the right, upon written request, to examine and copy the Association's records identified in Utah Code § 57-8a-227(1), subject to the same terms and conditions for an Owner to examine and copy such records. Upon written request, an Institutional Lender or first mortgage lien holder shall also have the right to receive written notice of all meetings of the Association and to designate a representative to attend all such meetings.

Section 12. Reinvestment Fee Covenant and Assessment. In addition to all other assessments, and in accordance with and subject to Utah Code § 57-1-46, as amended, upon the conveyance of a Lot there shall be a reinvestment fee charged to the buyer or seller, as the buyer and seller may determine, comprised of one or more of the following charges:

A reinvestment fee assessment in the sum of **(0.3%)** of the fair market value of the Lot and any improvements thereon, or such other amount as may be determined from time to time pursuant to Utah Code § 57-1-46, as amended, that is dedicated to benefiting the burdened property, including payment for: common planning, facilities, and infrastructure; obligations arising from an environmental covenant; community programming; resort facilities; open space; recreation amenities; charitable purposes; and/or association expenses.

Notwithstanding the foregoing, such reinvestment fee shall not apply to any conveyance made solely for the purpose of transferring title to or from a family trust, provided that the trust is directly associated with the current Owner of the Lot and the beneficial interest in the Lot remains unchanged. This reinvestment fee covenant and the reinvestment fee may not be enforced upon: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) 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 (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution. The Association has the authority to record any notice required by law to effectuate the assessment and collection of the reinvestment fee. The Board has the authority to enact rules and regulations which may include: (i) requirements for Owners to provide sales and transfer documents; (ii) requirements for the timing of the Owner providing responses to the Association's requests; and (iii) other procedural requirements and rules as the Board deems appropriate to effectuate the provisions of this Section in a prompt and reasonable manner.

## ARTICLE VI ARCHITECTURAL CONTROL

Section 1. Approval Required. Any building, excavation, improvement, structure, or fence that requires a permit in accordance with or subject to Titles 15 and/or 17 of the Iron County Ordinances shall not be commenced or erected by an Owner, upon a Lot, or within the Cedar Highlands Subdivision, until (i) first, the required permit is obtained from Iron County and (ii) second, the required permit and the complete plan submission with specifications of the same have been provided in writing to the Architectural Review Committee ("ARC") and approved in writing by the ARC. All architectural control decisions must be in accordance with any policy document approved by the Board to the extent that they are uniformly applied and non-discriminatory. In the event the ARC fails to provide an approval or disapproval within thirty (30) business days after the complete plans with specifications have been received by it, approval will not be required and this Article will be deemed to have been fully complied with, unless the same is expressly prohibited by the term of this Declaration. The ARC shall consist

of three (3) or more persons and if an ARC is not designated and appointed by the Board the Board shall act as the ARC. Unless the Board appoints a committee of persons to act as the ARC all references to the ARC shall mean and refer to the Board. The ARC and Board must comply with the Acts, including without limitation, Utah Code § 57-8a-109, when reviewing, approving, and denying plans submitted for construction or improvement to a Lot.

Section 2. Architectural Review Committee. The ARC is hereby authorized with the rights and powers set forth herein. A majority of the committee may designate a representative to act for it. In the event of the failure or inability to act of any member of said committee, the Board must designate a successor. Neither the members of the ARC, nor its designated representative will be entitled to any compensation for services performed pursuant to this covenant. No member of the ARC will be liable to any person for the member's decisions or failure to act in making decisions as a member of the ARC. Appeals of the ARC decisions may be brought to the Board, and the Board has the express authority to affirm or otherwise overturn such decisions.

Section 3. Construction Activities. The Governing Documents of the Association may require (i) a general new construction impact fee payable to the Association by the Owner prior to the commencement of any new construction or improvement under Section 1 of Article VI herein, and/or (ii) a seasonal construction impact fee payable to the Association by the Owner prior to the commencement of any new construction that occurs between November 1st and April 30<sup>th</sup> of any year. The general new construction impact fee and the seasonal construction impact fee may be non-refundable, refundable, and/or partially refundable, as determined by the Board. The amount of the general new construction impact fee and the seasonal construction impact fee may be determined by the Board and set forth in the Bylaws and/or other Governing Documents of the Association. If any new construction on any Lot is commenced prior to the payment of either of said general new construction impact fee or seasonal construction impact fee, if applicable, then the Governing Documents may require an additional late fee payable to the Association by the Owner. The seasonal construction impact fee may initially be in the amount of up to \$10,000 per Lot per year, for construction of a new building or structure upon a Lot that occurs between November 1st and April 30<sup>th</sup> of any year. The funds from such seasonal construction impact fee shall be an assessment on the Lot, and used for maintenance, repair, and replacement of the roads and/or other Common Area impacted by the construction activities. The seasonal construction impact fee and upper limit thereof may also be increased by the Board from time to time in an amount not to exceed 15% from the prior year.

## ARTICLE VII

### GENERAL PROVISIONS

Section 1. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order in no way affects any other provisions, the other provisions of which will remain in full force.

Section 2. Amendment. This Declaration may be amended by the written approval, written consent, assent, and/or vote of two-thirds (2/3) of all the Members within the Cedar Highlands Subdivision. Any amendment must be recorded with Iron County, Utah.

Section 3. Annexation. Additional residential property and Common Area, other than the property described on Exhibit "A" may be annexed to the Project with the written consent or approval of at least two-thirds (2/3) of all the Members, which consent or approval must be

evidenced in writing and comply with the Acts and Utah Code § 17-27a-601 et seq. In the case of annexing additional real property, an annexation fee of five percent (5%) of the Iron County assessed combined value of the land and any improvements built thereon must be paid, by the owner of the additional real property, to the Association within ten (10) business days of any written consent or approval of two-thirds (2/3) of all Members, the fee of which may be used to help offset the cost of maintenance and/or addition of Common Area, streets, roads, alleys, and/or utilities within the geographic boundaries of the Subdivision, and/or for other needs of the Association as determined by the Board. In the absence of payment of said fee, the proposed and voted-upon annexation shall be null and void.

## ARTICLE VIII USES PERMITTED AND PROHIBITED

In addition to all other covenants contained herein, the use and enjoyment of property within the Cedar Highlands Subdivision, including each Lot therein, is subject to the following:

Section 1. None of the Lots will be used except in accordance with the ordinances, code, rules, regulations, and/or zoning limitations including but not limited to the Ordinances of Iron County, applicable to the Project as set forth by Iron County and/or the State of Utah.

Section 2. ~~No sign or billboard of any kind will~~ At least the following may be displayed ~~to~~ in the public view on any ~~portion of the Project or any Lot except:~~ (a) one sign for advertising the property for sale or rent (b) one sign displaying the Lot address number, and/or (c) one entrance sign and/or arch. Any sign or billboard that is displayed in the public view on any portion of the Project or any Lot must comply with the ordinances, code, rules, and regulations set forth by the Ordinances of Iron County, applicable to the Project as set forth by Iron County, the State of Utah, and/or the policies of the Association.

Section 3. All buildings must be located on corresponding Lots in accordance with setback requirements as may be set forth in the ordinances, code, rules, regulations, and/or zoning limitations including but not limited to the Ordinances of Iron County, applicable to the Project as set forth by Iron County and/or the State of Utah.

Section 4. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plats. Within these easements, no structure, planting or other material will be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it must be maintained continuously by the Owner of the Lot except for those improvements for which a public authority or utility company is responsible.

Section 5. No structure of a temporary character, including a trailer tent, shack, barn, or other temporary building will be used on any Lot at any time as a permanent dwelling. For a period of time not exceeding two years from initial commencement of construction on a Lot, recreational vehicles, including trailers and campers, may be used on the Lot by the Owner while constructing a permanent dwelling. Only self-contained recreational vehicles or recreational vehicles that have portable waste disposal units are permitted to be used. In no event will overnight use be allowed where there is not an existing septic tank installed in conjunction with a permanent dwelling or either a self-contained recreational vehicle or portable waste disposal system utilized. Waste disposal must be deposited in a septic tank or waste disposal station.

Section 6. The keeping and/or breeding of any animals on any Lot must comply with the ordinances, code, rules, regulations, and/or domestic animal limitations including but not limited to the Ordinances of Iron County, applicable to the Project as set forth by Iron County, the State of Utah, and/or the policies of the Association.

Section 7. Each Owner of a Lot must pay any real and personal property taxes or charges assessed against the Owner's respective Lot, and the utility charges for said Lot, and all costs of maintaining said Lot and any structures thereon.

Section 8. The respective Lots are permitted to be rented only in accordance with the ordinances, code, rules, regulations, and/or zoning limitations including but not limited to (a) Title 17 of the Iron County Code, or the Ordinances, and (b) Title 57, Chapter 8a of the Utah Code, applicable to the Project as set forth by Iron County and/or the State of Utah.

- (a) Other than the obligations set forth herein, the Owners of the respective Lots have the absolute right to lease same, provided that said lease is made subject to the covenants, restrictions, conditions, limitations, and uses contained in this Declaration, and further subject to the Association's Governing Documents. The Governing Documents may differentiate their treatment of lease types, i.e., between a Long-Term Rental (i.e., the rental of a residential property or portion thereof for a period of 30 or more consecutive days) or a Short-Term Rental (i.e., the rental of a residential property or portion thereof for a period of less than 30 consecutive days), but neither type of lease is prohibited. Any lease of any Lot is subject to all conditions and limitations set forth in the Governing Documents, regardless of whether or not so indicated in said lease;
- (b) Subject to the Acts, in the case of a Long-Term Rental, no additional fee will be required from the Owner or the tenant for the right of leasing a corresponding Lot or portion thereof. In the case of a Short-Term Rental, the policies of the Association may indicate an additional fair and reasonable application fee and/or an additional fair and reasonable ongoing annual impact fee, which are in addition to the usual annual assessment and any special assessments, payable to the Association in consideration for the right to lease same, the fee(s) of which may be used ~~to help offset the cost of maintenance of the streets, roads, and alleys within the geographic boundaries of the Association, and/or for other needs of the Association~~ as determined by the Board. Neither of the said additional application fee nor the said additional ongoing annual impact fee will exceed, in terms of the amount of each additional fee, the amount of the usual annual assessment. Any lease of any Lot is permitted to include a term of lease that is at least but not less than two (2) days. For Short-Term Rentals, the Owner is required (i) to obtain a Short-Term Rental business license from Iron County prior to submitting an application to the Board to operate a Short-Term Rental, (ii) to renew the license on an annual basis, (iii) to obtain and maintain a general liability insurance policy, (iv) to name the Association as an additional insured, and (v) to defend, indemnify, and hold harmless the Association from losses, damages, or liabilities arising from the Short-Term Rental. For Short-Term Rentals, an Operator must be designated with contact information posted to the Association website for public access. The Operator shall be reasonably available, in person, by telephone, or electronically, for the purpose of responding to complaints regarding the condition, operation, or conduct of occupants of the Short-Term Rental, or their guests. The Governing Documents and the policies of the Association with respect to leases must comply with the Acts and the Ordinances, and be narrowly tailored with the limited purpose of enhancing the safety and enjoyment of the Project by the Owners, their guests, and their tenants;



- (c) The Governing Documents may include a requirement that (i) the Owners of the Lots must inform their guests and tenants that they ~~are required to~~ use 4-wheel drive or all-wheel drive vehicles on the streets and roads within the geographic boundaries of the Association throughout the year, and (ii) that tire chains ~~must~~ be used and/or carried within the vehicles at least during the winter season; and
- (d) The Owners of the Lots must ensure that their guests and tenants are informed of and adhere to all of the Association's Governing Documents. The Owners of the Lots are responsible for the behavior and compliance of their guests and tenants. Failure to maintain a peaceful, safe, and enjoyable environment may result in fines and/or temporary restrictions as determined by the Board and set forth in the Governing Documents. Any failure of the tenants to comply with the Governing Documents constitute a default under the lease. All leases must be in writing, and a copy must be submitted to the Association upon request by the Board.

Section 9. Each Owner of a Lot must maintain, repair, and replace the improvements thereon in good condition and repair at all times, similar to the condition of such improvements at the time the Owner initially occupied the same, reasonable wear and tear excepted.

Section 10. Any Member may delegate in accordance with the Governing Documents, the Member's right of enjoyment of the Common Area to the members of the Member's family, the Member's guests, the Member's tenants, and/or contract purchasers who reside on the property providing that the Member notifies the Association in writing to whom the Member's rights are being relinquished.

Section 11. Liability. The Owners of the Lots, their guests, and their tenants assume and accept all risk and liability for the use of the streets, roads, alleys, and the Common Area within the geographic boundaries of the Association throughout the year. The Association does not own Cedar Highlands Drive, High Cedar Highlands Drive, Greens Lake Drive, or Right Hand Canyon Road, and has no obligation to maintain such streets and roads. For all other streets, roads, and Common Area within the geographic boundaries of the Association, the Association may put forth a best effort to maintain said streets, roads, and Common Area, and to mitigate said streets and roads of snow and ice, but the Association must not be held liable for any kind of accident, use, mis-use, damage, death, injury, or the like, as a result of said use. To the extent that Cedar Highlands Drive, High Cedar Highlands Drive, and/or Greens Lake Drive are not being maintained by their owner, the Association may intervene out of necessity to maintain and/or mitigate said streets and roads of snow and ice in the interest of enabling access to the other streets, roads, and Common Area, but the Association must not be held liable for any kind of accident, use, mis-use, damage, death, injury, or the like, as a result of said use.

Section 12. Damages Caused by the Owners of the Lots. All Owners of the Lots must bear the full financial burden and responsibility for any and all damage caused to the Common Area, streets, and roads that ~~may have been was~~ caused by themselves, their contractors, their vendors, their guests, their tenants, their licensees, and/or any party performing work on their behalf, regardless of whether the Owner had prior knowledge of the damage and regardless of when the damage occurred. Owners must fully remediate any such damage at their sole expense upon notice from the Association, or reimburse the Association of all repair expenses incurred by the Association.

Section 13. Fines. The Association, through its Board, shall have the power to levy fines for violations of the Governing Documents and fines may only be levied for violations of the Governing Documents. In addition to the levy of fines, the Board may also elect to



pursue other enforcement remedies and/or damages permitted under the Governing Documents. Furthermore, pursuant to Utah Code §57-8a-218(2)(b), a tenant shall be jointly and severally liable to the Association with the Owner leasing to such tenant for any violation of the Governing Documents by the tenant. The Board shall adopt a rule for the procedure to enforce the Governing Documents and levy fines, including a schedule of fines.

## ARTICLE IX REGULATION OF WATER SUPPLY AND DISTRIBUTION SYSTEM

Section 1: Water. Regulation and operation of the water supply and water distribution system are by Iron County Water Conservancy District of Iron County, Utah in accordance with the ordinances, code, rules, and regulations of Iron County and the State of Utah.

## ARTICLE X DUTIES AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Duties of the Association. In addition to the powers delegated to it by its Articles, and without limiting the generality thereof, the Association must:

(a) Have the power and authority at any time, without liability to any Owner, to enter upon any Lot and the exterior of any dwelling unit, fence or wall subject to this Declaration in response to a written complaint from another Owner and/or for the purpose of enforcing any and all of the provisions of this Declaration and any other Governing Documents of the Association. Prior to exercising the power to enter upon any Lot and the exterior of any dwelling unit, the Association should seek permission from the Owner and make a good faith effort to communicate which provisions of this Declaration and any other Governing Documents are at issue, and provide the Owner with an opportunity to remedy the issue. If the issue is not remedied within a reasonable time determined by the Board, and permission is not granted by the Owner, the Association nevertheless has the power and authority to enter upon any Lot and the exterior of any dwelling unit to investigate the written complaint and/or to enforce any and all of the provisions of this Declaration and any other Governing Documents of the Association. In the case of an emergency or under exigent circumstances, the Association need not seek prior permission from the Owner to enter upon any Lot and the exterior of any dwelling unit. The Association also has the power and authority in its own name to maintain actions to enjoin any breach of the provisions of this Declaration or the other Governing Documents;

(b) Own, maintain and otherwise manage all of the Common Area, all facilities and improvements thereon, all private streets, all roads, all alleys, and all property acquired by the Association;

(c) Pay any and all real and personal property taxes and other charges assessed against the Common Area;

(d) Have the authority to obtain, for the benefit of any property within the Cedar Highlands Subdivision, including all Common Area, all water, gas, electric power, internet, fiber, fiber optic, refuse collections, and ancillary utilities such as internet and landline phone services; nothing contained in this subparagraph will be construed to impose any obligation on the Association to remove garbage or rubbish from any individual residence or Lot;

(e) Grant easements where necessary for utilities such as water, gas, electric power, refuse collections, internet, fiber, fiber optic, cable television, and/or landline phone services over the Common Area, or easement areas, to service the Common Area or the Lots;

(f) Maintain a policy or policies of liability insurance, insuring the Association and its officers in an amount to be established by the Association, for any personal injury and in an amount to be determined by the Association for property damage. Said limits must be reviewed at intervals of not less than three (3) years and adjusted if necessary to provide such coverage and protection as the Association may deem prudent;

(g) Render an annual accounting, preferably prepared and preferably certified by an independent Certified Public Accountant, to its Members;

(h) Establish and publish such general rules, regulations, and/or policies as the Association may deem reasonable in connection with the use and maintenance of all of the Project, so long that such rules, regulations, and/or policies are in compliance with this Declaration, and in compliance with the ordinances, code, rules, and/or regulations applicable to the Project as set forth by Iron County and/or the State of Utah;

(i) Such rules, regulations, and/or policies may be altered and amended from time to time as the Association may see fit. A copy of such rules, regulations, and/or policies must be:

- (1) Maintained by the Association and must be available for inspection at all reasonable times; and
- (2) Preferably posted in a conspicuous place on the Common Area.

The rules, regulations, and/or policies are binding upon each and every Owner, and will be effective forty-eight (48) hours after the distribution and posting of such changes and amendments;

(j) In its discretion, employ any agent or agents, and enter into contracts for the purpose of performing any and all of the foregoing duties on its part to be performed. The Association should avoid entering into any contracts that bind it for a period in excess of one (1) year, unless reasonable cancellation provisions are included in the contracts; and

(k) The Association, including its authorized agents, do not have the right to enter any structures and improvements built upon the Lots without the consent of the Owner, except in emergency situations that pose an imminent threat to the life or safety of persons or property. In any such emergency situation, the Association shall provide further written notice to the Owner describing the emergency situation and the related details as soon as is practicable.

## ARTICLE XI ADDITIONAL PROVISIONS

Section 1. Financing Improvement of the Common Area. The Association has the right in accordance with the Governing Documents, to borrow money for the purpose of improving the Common Area, including any improvements or incidentals thereto, with the written consent, or other approval of at least ~~a majority~~sixty percent (60%) of all the Members of the Association, and to mortgage said Common Area.

Section 2. Mergers and Consolidations. To the extent permitted by law, the Association may participate in mergers and consolidations with other non-profit organizations on property outside of the property described on Exhibit "A," provided that any merger or consolidation has the written consent or other approval of at least two-thirds (2/3) of all the Members. Any such mergers and consolidations are subject to the annexation fee set forth in Section 3, Article VII herein.

Section 3. Severability of Membership in the Association from Ownership of a Lot.

No Purchasers or Owner of any Lot are permitted to convey the Owner's interest in any such Lot separately from the Owner's membership in the Association, and no Member of the Association is permitted to convey or otherwise dispose of the Owner's membership rights in the Association without at the same time conveying the Owner's interest in the Lot to which the Owner's membership attaches. Membership must be transferred by the Association only to a new Owner of the Lot to which membership attaches. A tenant of an Owner is not a Member of the Association, but the tenant of an Owner has the right to use the Common Area of the Association in the same manner as if the tenant were an Owner.

Section 4. Reciprocal Easements. Reciprocal easements are hereby reserved for the benefit of adjoining Lot Owners for the control maintenance and repair of the utilities of adjoining Lot Owners.

Section 5. Construction. The provisions of this Declaration must be liberally construed to effectuate its purpose of facilitating a residential community, and for the maintenance of community recreational facilities, and of the Common Area. Failure to enforce any provision hereto does not constitute a waiver of the right to enforce said provision or any other provisions hereof.

Section 6. Dispute Resolution and Limitation on Litigation.

6.1 Agreement to Avoid Litigation. The Association, its officers, trustees, and committee members, and all persons subject to the Governing Documents agree to encourage the amicable resolution of disputes involving the Project, without the emotional and financial costs of litigation. Accordingly, each bound party covenants and agrees that those claims, grievances or disputes described in Sections 6.2 ("Claims") shall be resolved using the procedures set forth in Section 6.3 in lieu of filing suit in any court.

6.2 Claims. Unless specifically exempted below, all claims, grievances, or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any member of the Board or Owner of a Lot under the Governing Documents shall be subject to the provisions of Section 6.3. The following claims are exempt from this Section 6:

- (a) Any suit by the Association to collect assessments;
- (b) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of its Governing Documents.
- (c) Any suit between Owners, which does not include the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents.
- (d) Any suit in which any indispensable party is not a bound party to the Governing Documents; and
- (e) Any suit which otherwise would be barred by an applicable statute of limitations.

### 6.3 Mandatory Procedures.

- (a) Notice. Any bound party having a Claim (“Claimant”) against any other bound party (“Respondent”) (collectively, the “Parties”) shall notify each Respondent in writing (the “Notice”), stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (ii) the legal basis of the Claim (i.e., the authority out of which the Claim arises);
- (iii) Claimant's proposed remedy; and
- (iv) that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

- (b) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation;

(ii) If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) (“Termination of Negotiations”), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent agency providing dispute resolution services in Utah;

(iii) IF CLAIMANT DOES NOT SUBMIT THE CLAIM TO MEDIATION WITHIN THIRTY (30) DAYS AFTER TERMINATION OF NEGOTIATIONS, OR DOES NOT APPEAR FOR THE MEDIATION, CLAIMANT SHALL BE DEEMED TO HAVE WAIVED THE CLAIM, AND RESPONDENT SHALL HAVE BEEN RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITY TO CLAIMANT ON ACCOUNT OF SUCH CLAIM; PROVIDED NOTHING HEREIN SHALL RELEASE OR DISCHARGE RESPONDENT FROM ANY LIABILITY TO ANY PERSON OTHER THAN THE CLAIMANT;

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (“Termination of Mediation”). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated; and

(v) Within five (5) days of the Termination of Mediation, the Claimant shall make a final written settlement demand (“Settlement Demand”) to the Respondent and the Respondent shall make a final written settlement offer

(“Settlement Offer”) to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a “zero” or “take nothing” Settlement Offer.

(c) Legal Action.

IF THE PARTIES DO NOT AGREE IN WRITING TO A SETTLEMENT OF THE CLAIM WITHIN FIFTEEN (15) DAYS OF THE TERMINATION OF MEDIATION, THE CLAIMANT SHALL HAVE SIXTY (60) ADDITIONAL DAYS TO FILE A LEGAL ACTION IN COURT. IF THE CLAIMANT FAILS TO TIMELY FILE A LEGAL ACTION IN COURT, THE CLAIM SHALL BE DEEMED ABANDONED, THE RESPONDENT SHALL BE RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITY TO CLAIMANT ARISING OUT OF SUCH CLAIM; PROVIDED, NOTHING HEREIN SHALL RELEASE OR DISCHARGE RESPONDENT FROM ANY LIABILITY TO PERSONS OTHER THAN CLAIMANT.

(d) Allocation of Costs of Mediation. Each party shall bear its own mediation costs, including any attorney’s fees incurred, and each party shall share equally all charges rendered by the mediators.

6.4 Enforcement of Resolution. After resolution of any claim, if any party fails to abide by the terms of any agreement or binding award, then any other party may file suit or initiate administrative proceedings to enforce such agreement or award without the need to again comply with the procedures set forth in Section 6.3. In such event, the party taking action to enforce the agreement or award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such Parties pro rata) all costs incurred in enforcing such agreement or award, including, without limitation, attorney fees and court costs.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 202\_\_

**IN WITNESS WHEREOF**, on the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by the affirmative vote of the Owners holding not less than two-thirds (2/3) of the voting power of the Owners, and approval of not less than two-thirds (2/3) of the institutional lenders, this Amended and Restated Declaration of Covenants and Restrictions of the Cedar Highlands Subdivision was agreed upon and it is directed that the same be recorded in the records of the Iron County Recorder, State of Utah.

**CEDAR HIGHLANDS HOMEOWNERS ASSOCIATION, INC.**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: President

STATE OF UTAH                    )  
  : ss.

County of Iron )

On the \_\_\_\_\_ day of \_\_\_\_\_, 202\_, personally appeared before me \_\_\_\_\_, who being by me duly sworn, did say that he/she is the President of the Association, the authorized individual empowered to sign this Amended and Restated Declaration and that the same was signed on behalf of said Association and said person acknowledged to me that said Association and at least sixty-seven percent of the Owners authorized the execution of the same.

\_\_\_\_\_  
Notary Public

Witnessed:

\_\_\_\_\_,  
Secretary for Cedar Highlands Homeowners Association, Inc.

**Exhibit "A"**  
(Legal Description)

This Amended and Restated Declaration of Covenants and Restrictions of the Cedar Highlands Subdivision affects the following real property, all located in Iron County, State of Utah:

**Block 1 Amended:** All of Lot 1 and Lot 6, together with all Common Area, Cedar Highlands Subdivision Amended, according to the Official Plat thereof, on file in the Office of the Recorder of Iron County, State of Utah.

PARCEL: D-1024-0002-0001

PARCEL: D-1024-0001-0006

**Block 2 Amended:** All of Lots 7 through 9, together with all Common Area, Cedar Highlands Subdivision Amended, according to the Official Plat thereof, on file in the Office of the Recorder of Iron County, State of Utah.

PARCEL: D-1024-0002-0007 through D-1024-0002-0009

**Block 1:** All of Lot 1A and Lots 2 through 5, together with all Common Area, Cedar Highlands Subdivision, according to the Official Plat thereof, on file in the Office of the Recorder of Iron County, State of Utah.

PARCEL: D-1024-0001-001A

PARCEL: D-1024-0001-0002 through D-1024-0001-0005

**Block 2:** All of Lots 2 through 6 and Lots 10 through 34, together with all Common Area, Cedar Highlands Subdivision, according to the Official Plat thereof, on file in the Office of the Recorder of Iron County, State of Utah.

PARCEL: D-1024-0002-0002 through D-1024-0002-0006

PARCEL: D-1024-0002-0010 through D-1024-0002-0034

**Block 3:** All of Lots 1 through 13, together with all Common Area, Cedar Highlands Subdivision, according to the Official Plat thereof, on file in the Office of the Recorder of Iron County, State of Utah.

PARCEL: D-1024-0003-0001 through D-1024-0003-0013

**Block 4:** All of Lots 1 through 19, together with all Common Area, Cedar Highlands Subdivision, according to the Official Plat thereof, on file in the Office of the Recorder of Iron County, State of Utah.

PARCEL: D-1024-0004-001 through D-1024-0004-0019

**Block 5:** All of Lots 1 through 10, together with all Common Area, Cedar Highlands Subdivision, according to the Official Plat thereof, on file in the Office of the Recorder of Iron County, State of Utah.

PARCEL: D-1024-0005-0001 through D-1024-0005-0010

**Block 6:** All of Lots 1 through 12, together with all Common Area, Cedar Highlands Subdivision, according to the Official Plat thereof, on file in the Office of the Recorder of Iron County, State of Utah.

PARCEL: D-1024-0006-0001 through D-1024-0006-0012

**Block 7:** All of Lots 1 through 9, together with all Common Area, Cedar Highlands Subdivision, according to the Official Plat thereof, on file in the Office of the Recorder of Iron County, State of Utah.

PARCEL: D-1024-0007-0001 through D-1024-0007-0009

Amended and Restated Declaration of Covenants and Restrictions of the Cedar Highlands Subdivision

**Block 8:** All of Lots 1 through 20, together with all Common Area, Cedar Highlands Subdivision, according to the Official Plat thereof, on file in the Office of the Recorder of Iron County, State of Utah.

PARCEL: D-1024-0008-0001 through D-1024-0008-0020

**Block 9:** All of Lots 1 through 10, together with all Common Area, Cedar Highlands Subdivision, according to the Official Plat thereof, on file in the Office of the Recorder of Iron County, State of Utah.

PARCEL: D-1024-0009-0001 through D-1024-0009-0010

**Block 10:** All of Lots 1 through 6, together with all Common Area, Cedar Highlands Subdivision, according to the Official Plat thereof, on file in the Office of the Recorder of Iron County, State of Utah.

PARCEL: D-1024-0010-0001 through D-1024-0010-0006

**Block 11:** All of Lots 1 through 11, together with all Common Area, Cedar Highlands Subdivision, according to the Official Plat thereof, on file in the Office of the Recorder of Iron County, State of Utah.

PARCEL: D-1024-0011-0001 through D-1024-0011-0011

**Block 12:** All of Lots 1 through 15, together with all Common Area, Cedar Highlands Subdivision, according to the Official Plat thereof, on file in the Office of the Recorder of Iron County, State of Utah.

PARCEL: D-1024-0012-0001 through D-1024-0012-0015

**Common Area:** All Area Known as Common Area of Cedar Highlands Subdivision, according to the Official Plat thereof, on file in the Office of the Recorder of Iron County, State of Utah.

PARCEL: D-1024-0013-0000

PARCEL: D-1024-0014-0000



Exhibit “B”

## Exhibit "C"

[insert pages with signatures to evidence compliance with the following: this Amended and Restated Declaration is adopted and approved to be recorded against the Cedar Highlands Subdivision pursuant to Article VII, Section 2, of the Original Declaration, by: (i) not less than two-thirds (2/3) of the Lot Owners, as evidenced by Exhibit "C" of this instrument, which contains the signatures of not less than two-thirds (2/3) of the Owners approving of this Amended and Restated Declaration; and (ii) approval of not less than two-thirds (2/3) of the institutional lenders, pursuant to Utah Code § 57-8a-104.3. As to approval of institutional lenders, you can do a sworn statement that notice was sent to the institutional lenders and the time period to respond expired, therefore pursuant to Utah Code § 57-8a-210, the security holder's consent is presumed if: (a) written notice of the proposed amendment or action is sent by certified or registered mail to the security holder's address listed for receiving notice in the recorded trust deed or other recorded document evidencing the security interest; (b) 60 days have passed after the day on which notice was mailed; and (c) the person designated for receipt of the response in the notice has not received a written response from the security holder either consenting to or refusing to accept the amendment or action.]

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<sup>3</sup> Under Utah Code § 57-8a-104(1)(a), "to amend the governing documents, the governing documents may not require: . . . the vote or approval of lien holders holding more than 67% of the first position security interests secured by a mortgage or trust deed in the association." Additionally, Under Utah Code § 57-8a-210, the security holder's consent is presumed if: (a) written notice of the proposed amendment or action is sent by certified or registered mail to the security holder's address listed for receiving notice in the recorded trust deed or other recorded document evidencing the security interest; (b) 60 days have passed after the day on which notice was mailed; and (c) the person designated for receipt of the response in the notice has not received a written response from the security holder either consenting to or refusing to accept the amendment or action.