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CEDAR PARK TOWNHOMES PLANNED UNIT DEVELOPMENT

**AMENDED AND RESTATED
DECLARATIONS OF COVENANTS, EASEMENTS, CONDITIONS
AND RESTRICTIONS**

THIS AMENDED AND RESTATED DECLARATION is made, as of the date hereinafter set forth, by DBD Properties, LLC (hereinafter sometimes referred to as the "Declarant"), pursuant to the Cedar City Zoning Ordinance.

This Declaration amends and restates in its entirety, the original declaration recorded on September 01, 2006 in the Office of the Iron County Recorder as Document No.537250 Book No. 1051 Page No. 1431. This Declaration sets forth the covenants, easements, conditions, and restrictions of the Cedar Park Townhomes Planned Unit Development (P.U.D.), to which each Owner who purchases a Unit within said P.U.D. will be subject.

RECITALS

- A. Declarant is the record owner of that certain tract of land more particularly described in Exhibit A hereto (which Exhibit is incorporated herein.)
- B. Declarant is in the process of constructing upon said tract a Planned Unit Development, including certain Units and other Improvements. All of such construction is to be performed in accordance with the Cedar Park Townhomes P.U.D. plans and drawings submitted to Cedar City.
- C. Declarant desires, by filing this Declaration, and the plans and drawings submitted to Cedar City, to submit Phase I and II of Cedar Park Townhomes P.U.D. (and any other Phases constructed at the option of Declarant and made subject, at the option and only upon the express election of Declarant, to this Declaration), and all improvements now or hereafter constructed in the area designated as Phase I and II on the plans and drawings submitted to Cedar City, which are incorporated herein by this reference.
- D. Declarant intends to sell to various purchasers the Fee Title to the individual Units contained in the Project. Purchasers shall have certain rights, herein set forth, to common areas. Said areas shall be owned by Declarant or Cedar Park Townhomes Owners Association. All Units and common areas are subject to the covenants, conditions, restrictions, limitations, and easements herein set forth.
- E. Declarant, or its successors or assigns, reserves the right, as more fully set forth herein, to expand the Project to new Phases which will include certain additional land and improvements, beyond Phase I and II, in the sole discretion of Declarant, as well as to include additional Phases on new tracts of land beyond that designated in Exhibit A, although Declarant also reserves the express right to develop land outside the boundary of Phase I and II, for other purposes, outside the scope and control of this Declaration, also in its sole discretion and retaining the benefit and

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rights regarding hooking up to utility infrastructure for any such various development plans as set forth herein.

NOW THEREFORE, for the foregoing purposes, Declarant hereby declares and certifies as follows:

ARTICLE I

DEFINITIONS

When used in the Declaration the terms shall have the meaning stated as follows:

1. DECLARATION shall mean and refer to this Declaration. This Declaration has been drafted to comply with the requirements of Cedar City Zoning Ordinance. Any ambiguities, omissions, and/or conflicts shall be construed to comply with the provisions of that Ordinance.
2. MAP shall mean and refer to the plans, drawings, and surveys submitted by Declarant to Cedar City in connection with the approval process for "Cedar Park Townhomes Planned Unit Development."
3. PROPERTY shall mean real property as well as the buildings, all improvements and the structures thereon, all easements, rights and appurtenances belonging thereto and all articles of personal property intended for use in connection therewith.
4. BUILDING shall mean and refer to a structure built for Project.
5. COMMON AREAS shall mean and refer to and include:
 - a. The real property and interests in real property including the entirety of the Tract and all landscaping, sidewalks, walkways, patios, parking areas, private streets or roadways located thereon, but excluding all Units.
 - b. That part of the Project not specifically included in the respective Units as hereafter defined.
 - c. All exterior walkways, streets, yards, gardens, fences, open parking spaces, installation of central services such as power, light, gas, all apparatus and installations existing for common use, such as recreational and community facilities as may be provided for, excluding all dedicated public streets, and excluding the Property conveyed in the fee simple to the Unit Owners (*see* definition of "Unit" below).
 - d. All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management.

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- e. All Common Areas and Facilities whether or not expressly listed herein.
6. UNIT shall mean or refer to real property designated for dwellings which are conveyed to, and owned, in fee simple, by the Unit owners, and shall include townhomes and anything located within or without said Unit but designated within lot boundary lines. The enclosed area behind each townhome will be included in the boundary line and thus is part of the UNIT, and is not a common area. Fixtures and the like shall also be considered part of the Unit, as shall all decorated interiors, all structural walls, floors, and ceilings, windows, and window frames, doors and door frames, and trim consisting of, inter alia and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installation constituting part of a particular Unit or serving only that Unit and structural members, including common walls, of any other property of any kind, including fixtures and appliances within any Unit, which are not removable without jeopardizing the soundness, safety, or usefulness of the remainder of the Building within the Unit is situated, shall be considered part of the Unit.
 7. MANAGEMENT COMMITTEE OR COMMITTEE shall mean and refer to the Committee as provided in the Declaration charged with and having the responsibility and authority to make and to enforce all of the reasonable rules and regulations covering the operation and maintenance of the Property.
 8. CEDAR PARK TOWNHOMES HOME OWNERS ASSOCIATION or THE ASSOCIATION shall mean and refer to the Unit Owners acting as a group in accordance with this Declaration, and any Bylaws they may adopt, in accordance with and in compliance with the conditions and rules set forth in this Declaration.
 9. COMMON EXPENSES shall mean all items, things and sums which are lawfully assessed against the Unit Owners in accordance with the provisions of this Declaration, by Bylaws, such rules, regulation and other determinations and agreements pertaining to the Project as the Management Committee, the Unit Owners, or the Association as hereafter mentioned, may from time to time adopt.
 10. MORTGAGE shall mean any mortgage, Deed of Trust, or other security instrument by which a Unit or any part thereof is encumbered.
 11. MORTGAGEE shall mean any person named as a Mortgagee or beneficiary under or holder of a Deed of Trust.
 12. UNIT NUMBER shall mean and refer to the number which designates a Unit on the Map.
 13. UNIT OWNER OR OWNER shall mean and refer to the Owner of a Unit. The Declarant shall be deemed to be the owner of all completed but unsold Units. In the event a Unit is

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the subject of an executory contract of sale, the Buyer shall, unless the Seller and the Buyer have otherwise agreed and have informed the Committee in writing of such an agreement, be considered the Unit Owner for all purposes.

14. MANAGEMENT BODY shall mean and refer to either the Management Committee or the Association, as the context may admit.
15. DECLARANT shall mean and refer to the person(s) who execute the Declaration or on whose behalf the Declaration is executed.
16. TOWNHOME is a term also used to refer to a Unit, and shall thus mean a single family dwelling, owned in fee simple, which is located on a Project Unit, and includes fee title to the real property lying directly beneath the single family dwelling, within lot boundary lines.

ARTICLE II

COVENANTS, EASEMENTS, CONDITIONS, AND RESTRICTIONS

Each purchaser of a Unit is made upon and under the following covenants, conditions, and restrictions.

12. DESCRIPTION OF IMPROVEMENTS. Declarant or his agent will build Phase I and II of Cedar Park Townhomes as described and set forth in the Map. Phase I and II consists of 112 Units. Declarant, or its successors or assigns, also reserves the express right to develop land outside the boundary of Phase I and II, for other purposes, outside the scope and control of this Declaration, also in its sole discretion and retaining the benefit and rights regarding hooking up to utility infrastructure for any such various development plans as set forth herein. All improvements will be compatible with the existing neighborhood.
13. PARKING. Each Unit will have assigned to it one parking space, in which the Owner of the Unit will have the exclusive right to park. Additional parking will be available for common usage. Parking is prohibited on private streets with less asphalt than 35 feet. RV parking will be prohibited within the project.
14. DESCRIPTION AND LEGAL STATUS OF UNITS. The Map shows the Unit Number of each Unit, its location, dimensions from which its areas may be determined, and the Common Areas of the Project.
15. COMMON AREAS. The Common Areas contained in the Project are described and identified in Article I hereof and in the Map. The Declarant will convey fee simple title

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to the common area to the Association, free and clear of all encumbrances and liens, except as set forth herein, no later than the closing on the Unit which represents 75% of the total number of Units planned for the entire Cedar Park Townhomes P.U.D. Said title shall be subject to this Declaration, and easements and rights of way of record. In accepting the deed, the Association will covenant to fulfill all the terms of this Declaration, to maintain the common areas in good repair and condition at all times, and to operate the common areas at its own expenses in accordance with high standards.

16. **HOLDING TITLE.** Title to a Unit may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common.
17. **NO SEPARATION.** No part of a Unit or of the legal rights comprising the ownership of a Unit may be separated from any other part thereof during the period of Unit ownership described herein, so that each Unit shall always be conveyed, devised, encumbered, and otherwise affect only together and may never be separated from one another. Every gift, devise, bequest, transfer, encumbrance, or other disposition of a Unit of any part thereof, shall constitute a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively of the entire Unit, together with all appurtenant rights created by law or by this Declaration.
18. **NO PARTITION.** The Common Areas shall be owned by the Association, and no Unit Owner may bring action for the partition thereof.
19. **USE OF COMMON AREAS.** Subject to the limitations contained in the Declaration, any Unit Owner shall have the non-exclusive right to use and enjoy the Common Areas.
20. **UNIT MAINTENANCE.** Each Owner shall at his own cost and expense maintain, repair, paint, repaint, tile, wax, paper, or otherwise refinish and decorate the interior walls and trim the interior surfaces of the walls, ceiling, floors, gates, fences, ground covering, and windows and doors forming the legal boundaries of his Unit and all walls, ceilings, floors, windows and doors within such boundaries. The Owner shall also keep the interior of his Unit in good repair and in a clean and sanitary condition, and shall be responsible for the maintenance, repair, or replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, refrigerator, dishwasher, disposal equipment, range or other appliances or fixtures that may be in or connect with his Unit.
21. **EASEMENT FOR ENCROACHMENT.** If any part of the Common Area encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance for the same, shall and does exist. If any part of a Unit encroaches or hereafter shall encroach upon the Common Areas or upon an adjoining Unit or Units, an easement for such encroachment shall and does exist. Such encroachment shall not be

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considered to be encumbrances either in the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building(s) on the Tract, by error in the Map, by settling, raising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

22. **ACCESS FOR REPAIR OF COMMON AREAS.** Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable rights, to be exercised by the Committee as their agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or another Unit or Units. Damage to the interior of any part of the Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the instance of the Committee or of Unit Owners, shall be an expense of all the Unit Owners and assessed to the Association; provided, however, that if such damage is the result of negligence of the Owner of the Unit, then such Owner shall be financially responsible for all such damage. Amounts owing by Owners pursuant hereto shall be collected by the Committee by assessment pursuant to the Declaration of Covenants, Conditions, and Restrictions concerning the Project.
23. **RIGHTS OF INGRESS, EGRESS, LATERAL SUPPORT.** Each Owner shall have the right to ingress or egress over, upon and across the Common Areas designated for use in connection with his Unit, and each Owner shall have the right to the horizontal and lateral support of a Unit, and such rights shall be appurtenant to and pass with the title to each Unit.
24. **EASEMENT TO MANAGEMENT COMMITTEE.** The Management Committee shall have non-exclusive easement to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.
25. **EASEMENT FOR UTILITY SERVICES.** There is hereby created a blanket easement upon, across, over and under the tract above described in Article II for ingress, egress, installation, replacement, repair, and maintenance of all utilities, including, but not limited to, water, sewer, gas, telephone, electricity, and other utility services.
26. **LEGAL DESCRIPTION OF A UNIT.** Each conveyance or contract for the sale of a Unit shall incorporate and adopt all the limitations, restrictions, conditions, easements, and covenants as described in this Declaration

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27. STATUS AND GENERAL AUTHORITY OF OWNERS ASSOCIATION. Except as hereinafter provided, the Project shall be managed, operated and maintained by the Management Committee as agent for the Association. The Association shall, in connection with its exercise of any of the powers hereinafter provided, constitute a legal entity capable of dealing in the Association's name. The Management Committee, as an agent for the Association, shall have and is hereby granted, the following authority and powers, but strictly circumscribed and subject to the terms and conditions of the Declaration:
- a. The authority to grant or create in such terms as it deems advisable, utility and similar easements over, under, across, and through the Common Areas.
 - b. The authority to execute and record, on behalf of the Association, amendments to the Declaration, which have been approved by two-thirds of the vote of the Unit owners as set forth below, and except as it may alter or diminish the rights of the Declarant as stated in the Declaration as originally executed herein.
 - c. The power to sue and be sued.
 - d. The authority to enter into contracts relating to the Common Areas and other matters over which it has jurisdiction so long as any vote or consent of the Unit Owners necessitated by the subject matter of the agreement has been obtained.
 - e. The power and authority to convey or transfer an interest in real property, so long as the vote or consent necessary under the circumstances has been obtained.
 - f. The power and authority to purchase, or otherwise acquire and accept title to any interest in real property, so long as such action has been authorized by any vote or consent which is necessary under the circumstances.
 - g. The authority to promulgate such reasonable bylaws, rules, regulations and procedures as may be necessary or desirable to aid the Committee in carrying out its function or to insure that the Project is maintained and used in a manner consistent with the interests of the Association and this Declaration.
 - h. The power and authority to perform any other acts and to enter into any other transactions, subject to the rights of the Association, which may be reasonably necessary for the Management Committee to perform its functions as the agent for the Association. Any instrument executed by the Management Committee relative to the Common Areas of the Project that recites facts which, if true, would establish the Committee's power and authority in favor of any person who in good faith and value relies upon said instrument.

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28. **COMPOSITION OF COMMITTEE, ELECTION, VACANCY.** The Management Committee shall be composed of seven (7) members. However, to ultimately provide a combination of new members and members who have Management Committee experience, the first committee of seven members shall be organized so that three (3) members serve one-year terms, and four (4) members serve two-year terms. Thereafter, all committee members, whether selected by the Declarant or elected by the Association, shall serve two-year terms. Only Unit Owners or spouses of Unit Owners and officers, directors, agents, and employees of Owners shall be eligible for committee membership.

An annual meeting of Unit owners shall be held the second Monday in January of each year. At the annual meeting, each Unit Owner may vote one vote for each Unit that he owns in favor of as many candidates or Committee Memberships as there are seats on the Committee to be filled.

Until title has passed from the Declarant to the purchaser for 75% of all Units planned to be built for the entire Cedar Park Townhomes P.U.D. the Declarant alone shall have the right to select the entire Management Committee or act as the Management Committee itself. However, Declarant may waive this Right at any time by: (1) notifying Unit Owners in writing of such waiver of the Right, and (2) filing for record in the office of the Iron County Recorder a written notice of waiver of the Right, whereupon Unit Owners shall promptly hold a meeting to elect a new Management Committee, it being established hereby that the control of the Unit Owners in the Management Committee shall automatically vest thirty (30) days following the date such waiver is recorded by Declarant. In the event a Committee seat which was filled by a Declarant becomes vacant, Declarant has the right to select a replacement member to sit on the Committee for the balance of the term associated with the vacant seat. In all other cases of vacancy, the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected.

- a. **RIGHTS AND DUTIES.** The Committee, subject to the rights and duties of the Association, this Declaration, and any Bylaws adopted by Committee, regarding Project maintenance as provided herein, shall be responsible for the general management of the Project. It is understood that the Management Committee has the obligation to maintain the Common Areas of the Project.
- b. **RIGHTS OF DELEGATION TO MANAGER.** The Management Committee may carry out any of its functions which are capable of delegation through a Manager. The Manager so engaged shall be responsible for managing the Common Areas and shall, to the extent permitted by law and the terms of the agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself.

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- c. PAYMENT OF SERVICES, ETC. The Management Committee may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel that the Management Committee shall determine to be necessary or desirable for the proper operation of its function in the Project. The Management Committee may obtain and pay for the operation of the Project or the Enforcement of this Declaration. It is recognized that the Committee may arrange with other persons to furnish snow removal, garbage removal, ground maintenance and other common services to the Project, whether such personnel are furnished or employed directly by the Management Committee.
- d. PERSONAL PROPERTY OWNERSHIP AND USE. The Management Committee may acquire and hold for the use and the benefit of all: facilities, maintain Common Areas in the Project, and enforce all covenants and restrictions imposed in this Declaration and to collect and disburse the assessments and charges created herein.
- e. DECISION MADE BY VOTE OF SIMPLE MAJORITY, MINUTES. All decisions made by the Management Committee shall be made by motion and seconding vote of a committee member. Motions shall pass upon the vote of a simple majority of the total members of the committee. Minutes reflecting the decision of the Committee shall be maintained by the Committee.

29. ASSESSMENTS:

- a. AGREEMENT TO PAY ASSESSMENTS. Each Owner of a Unit by the acceptance of a deed or contract therefore, whether or not it be so expressed in the deed or contract, shall be deemed to covenant and agree with each other and with the Management Committee to pay monthly assessments made by them for the purposes provided in this Declaration, and the special assessments for capital improvements and other matters as provided on this Declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided hereunder.
- b. BASIS OF ASSESSMENTS. The total monthly assessments against all Units shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and/or the Common Properties. Said estimates may include, among other things, expenses of management, taxes, special assessments levied by governmental authorities, premiums for all insurance which the Management Committee is required or permitted to maintain pursuant hereto; lighting, water, repair and maintenance of Common Areas, wages for employees of the Committee, legal and accounting

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fees, any deficit remaining from a previous period, creation of a reasonable contingency reserve, surplus and/or sinking fund, and any other expenses and liabilities which may be incurred by the Committee for the benefit of the Owners or by reason of this Declaration.

- c. **APPORTIONMENT OF EXPENSES.** Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among all Units in proportion to the number of lots owned by each respective owner compared to the total number of Units owned by Unit Owners. Declarant shall not be assessed for its ownership in Units that have not yet been sold.
- d. **METHOD, PAYMENT OF ASSESSMENTS, ETC.** Monthly assessments shall be made on the fifth of each month. The Committee shall give written notice to each Owner as to the amount of the assessment with respect to his Unit. Each monthly assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Such monthly assessment becomes payable upon the date the Unit Owner purchases his Unit, whether by conveyance of title or entering into a contract of sale and purchase, and thereafter, each monthly payment shall be due and payable on the first day of each and every month in advance.
- e. **SPECIAL ASSESSMENTS.** In addition to the monthly assessments authorized hereunder, the Management Committee may levy in any assessment year special assessments, payable over such period as the Management Committee may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Areas of the Project or any other part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration. This paragraph shall not be construed as an independent source of authority for the Management Committee to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other paragraph hereof. Any amount assessed pursuant thereto shall be assessed to Owners proportionately (as proportions are described in paragraph 18(c)). Declarant's interest in the Common Areas shall be determined on the same basis set forth in subparagraph (c) above. Notice in writing of this amount of such special assessment and the time for payment thereof shall be given promptly to the Owners, and payment shall be due no less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such dates. Special Assessments may be assessed only with the assent of sixty-seven percent (67%) of all Unit Owners.

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f. LIENS FOR UNPAID ASSESSMENTS. All sums assessed to any Unit pursuant to this section, together with interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Management Committee. Such lien shall be superior to all other liens and encumbrances on such Unit, except only for:

- (1) Governmental assessment authority; and
- (2) Encumbrances on the interest of the Unit Owner recorded prior to the date the notice of the lien provided for was recorded, which by law would be a lien prior to subsequently recorded encumbrances.

All other lienors acquiring liens on any Unit after this Declaration shall have been recorded shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instrument creating such liens.

To evidence a lien for sums assessed pursuant to this Section, the Management Committee may prepare a written notice of lien setting forth the amount of the assessment, the due date, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such notice shall be signed by the Management Committee and may be recorded in the office of the County Recorder of Iron County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by foreclosure by the Management Committee in the same manner in which mortgage or trust deed on real property may be foreclosed in Utah. In any such foreclosure, the Owner shall be required to pay the cost and expenses of such proceeding, the cost and expenses of filing the notice of lien, and all reasonable attorney's fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The lien shall also secure, and the Owner shall also be required to pay to the Management Committee, any assessments against the Unit which shall become due during the period of foreclosure. The Management Committee shall have the right and the power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

g. RELEASE OF LIEN. A release of notice of lien shall be executed by the Management Committee and recorded in the office of the County Recorder of Iron County, State of Utah, upon payment of sums secured by a lien which has been made the subject of a recorded notice of lien.

h. PAYMENT BY ENCUMBRANCER. Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payments such encumbrancer shall be

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subrogated to all rights of the Management Committee with respect to such lien, including priority. The Management Committee shall report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for longer than thirty (30) days after the same shall have become due; provided, however, that such encumbrancer first shall have furnished to the Management Committee written notice of such encumbrance.

- i. **PERSONAL OBLIGATION ASSESSMENTS.** The amount of any annual or special assignment against any Unit shall be the personal obligation of the Owner thereof to the Management Committee. Suit to recover money judgment for such personal obligation shall be maintained by the Management Committee without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit.
- j. **INFORMATION CONCERNING UNPAID ASSESSMENTS.** Upon payment of a reasonable fee not to exceed Ten Dollars (\$10) and upon written request of the Owner or mortgagee, prospective mortgagee or prospective purchaser of a Unit, the Management Committee shall issue a written settlement setting forth the amount of the unpaid assessment, if any, with respect to such Unit; and the amount of the current yearly assessment and the portion thereof which has theretofore been paid; credit for advance payment of prepaid items including, but not limited to, an Owner's share of prepaid insurance premiums and such settlement shall be conclusive upon such Management Committee in favor of such persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of the mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessment and the personal obligation of the purchaser shall be released automatically if the statement is not furnished within the ten (10) day period provided herein and thereafter an additional written request is made by such purchaser and is not complied with within ten (10) days and the purchaser subsequently acquires the Unit.
- k. **PURCHASER'S OBLIGATION.** Subject to the provisions of Subparagraph (h), a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.
- l. **COLLECTION BY THE COMMITTEE.** It is recognized that the Committee under this Declaration will maintain the Common Areas of the Project, except as otherwise contained herein. It is further to levy assessments for the purposes of

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performing functions it is authorized to perform within the Project. With respect to the Units in the Project, the Management Committee shall be authorized to collect from the Unit Owners and enforce liability for the payment of assessments levied pursuant to this Declaration.

19. USE OF UNIT.

- a. SINGLE FAMILY HOUSE. Each of the Units in the Project is intended to be used for single family residential housing and is restricted to such use.
- b. RESTRICTIONS CONCERNING COMMON AREAS. There shall be no obstruction of the Common Areas by the Owners, their tenants, guests or invitees without prior written consent of the Management Committee. The Management Committee may by rules and regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Units or the Common Areas. Nothing shall be kept or stored in any part of the Common Areas without the prior written consent of the Management Committee, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Areas, except upon consent of the Management Committee.
- c. MISCELLANEOUS RESTRICTIONS. Nothing shall be done or kept in any Unit or in the Common Areas or in any part thereof which would result in the cancellation of the insurance on the Project over what the Management Committee, but for such activity, would pay, without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body. No damage to or waste of the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Management Committee and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner. No noxious, destructive or offensive activity shall be carried out in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.
- d. ANIMALS. No livestock type animals or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Areas. An Owner or tenant may keep in a Unit, on a permanent basis, a total of one cat or one dog, weighing no more than twenty (20) pounds, subject to strict observance of the rules and regulations

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adopted by the Management Committee. The dog or cat of a long-term guest (resident) cannot be kept in a Unit if it would add a second animal to a Unit.

- e. NO RECREATIONAL VEHICLES. No Owner shall store in any Unit or in the Common Areas any recreational vehicle, including but not limited to boats, motorhomes/RV's, snowmobiles, two, three or four wheel off road vehicles not legally driveable on the highways of the State of Utah.
 - f. NO VIOLATION OF RULES AND REGULATIONS. No Owner shall violate the rules and regulations of the use of the Units and the Common Areas as adopted from time to time by the Management Committee.
 - g. RESTRICTIONS ON ALTERATIONS. No structural alterations to any Unit shall be made by any owner without the prior written notice of the Management Committee.
20. INSURANCE AND BOND COVERAGE. The Management Committee, acting as agent for the Association, shall secure or cause to be secured and maintained at all times the following insurance and bond coverage on behalf of the Association:
- a. A policy or policies of fire and casualty insurance with extended coverage endorsement, or the full insurable replacement value of the Common Areas. Such policy or policies shall be made payable to the Committee and all persons holding an interest in the Project or any of the Units, as their interests may appear.
 - b. The securing of appropriate fidelity bond coverage is recommended for any person or entity handling funds of the Association, including, but not limited to, employees of the professional managers. Such fidelity bonds should name the Association as an obligee, and be written in an amount equal to at least 150 percent (150%) of the estimated annual operating expenses of the Project, including reserves.
 - c. A policy or policies insuring the Committee, the Manager, and the Unit Owners against any liability incident to the ownership, use or operation of the Project or of any Unit which may arise among themselves, to the public, and to any invitees or tenants of the Project of the Unit-Owners. Limits of a liability under such insurance shall not be less than \$300,000 for any person injured, \$1,000,000 for all persons injured in any one accident, and \$1,000,000 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive basis and shall provide a cross liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced.
 - d. The following additional provision shall apply with respect to insurance:

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- (1) In addition to the insurance described above, the Committee shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with projects similar to the Project in construction, nature and use.
- (2) The Committee shall have the authority to adjust losses.
- (3) Insurance secured and maintained by the Committee shall not be brought into contribution with insurance held by the individual Unit Owners or their mortgages.
- (4) Each policy of insurance obtained by the Committee shall, if possible, provide a waiver of the insurer's subrogation rights with respect to the Committee, the Manager, the Unit Owners, and their respective servants, agents, and guests; that it cannot be canceled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Committee or of the Manager without prior written defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners.
- (5) Any Unit Owner may obtain additional insurance at his own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Committee.
- (6) Notwithstanding anything herein contained to the contrary, insurance coverage must be in such amounts and meet other requirements of the Federal National Mortgage Association and the Veteran's Administration.

21. THE DECLARANT'S RIGHT TO DEVELOP THE LAND OUTSIDE THE BOUNDARIES OF PHASE I AND II

- a. Declarant reserves the right to develop the land outside the boundaries of Phase I and II, including any other adjoining or non-adjoining land it owns or may acquire, according to its own discretion and interests. Declarant has the option and right to use the land outside the boundaries of Phase I and II to expand the Cedar Park Townhomes P.U.D., i.e., to build new Phases of Cedar Park Townhomes. Declarant also has the option and right to expand the Cedar Park Townhomes P.U.D. to include land beyond that described in Exhibit A. Declarant reserves and retains, however, the right to develop land outside the boundary of Phase I and II, for other purposes, and to not include said development within Cedar Park Townhomes P.U.D., and thus to keep it outside the scope and control of this Declaration, in its sole discretion, and Declarant retains the benefit and rights regarding hooking up to utility infrastructure for any such various

development plans as set forth herein. The only development limitation or restriction on Declarant is that it operates within the zoning laws of Cedar City; Declarant is not obligated to use the land outside the boundary of Phase I and II for additional Phases of Cedar Park Townhomes.

b. The option to expand the Project to include new Phases of Cedar Park Townhomes may be accomplished by Declarant by its filing:

(1) an additional subdivision plat or plats creating additional planned unit developments on the property described above, stating on each plat the intention to have the property described on said plat bound by the terms, covenants and conditions of this Declaration.

c. Regardless of how and for what type of development the Declarant may elect to engage in on land neighboring the borders of Phase I and II, and whether or not the Declarant or his successors or assigns, shall have access to, and the right to hook up to, the utility infrastructure built for the Project (including, but not limited to, infrastructure for water, sewer, gas, telephone, electricity, and other utility services), in order to provide for extensions of said infrastructure to provide for utility service to annexed or additional construction on adjoining land, without any charge or fee whatsoever, and the Owners take their ownership rights, individually and collectively, subject to this right on the part of the Declarant, and to the extent necessary under the law, recognize and relinquish any right to object to any licenses and/or easements in favor of the Declarant, and grant such licenses ad/or easements as are necessary for this to occur or as may be necessary to access and fully utilize said utility infrastructure, without limitation.

22. AMENDMENTS. Except as provided below, the vote of the Owners of 75% of the total number of Units planned for the entire Cedar Park Townhomes P.U.D. shall be required to amend this Declaration. Any amendment so authorized shall be accomplished through the recordation of an appropriate Amended Declaration executed by the Management Committee. In such instrument, the Committee shall certify that the vote required by this Paragraph for Amendment has occurred. In no way shall this document be amended so as to remove Declarant or its assignees as the Management Committee prior to the time that title has passed from the Declarant to the purchaser for 75% of all Units planned to be built for the entire Cedar Park Townhomes P.U.D., unless the Declarant expressly elects to waive his rights to act as the Management Committee by the process set forth above.

23. CONSENT EQUIVALENT TO VOTE. In those cases in which this Declaration required the vote of a stated percentage of the Unit Owners interest for the authorization of approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the necessary percentage of Undivided Ownership Interest.

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25. MORTGAGE PROTECTION. Notwithstanding anything to the contrary in the Declaration:

- a. An adequate reserve fund for replacement or repair of the Common Areas must be established and shall be funded by regular monthly payments rather than by special assessments.
- b. There shall be established a working capital fund for the initial months of operation of the Project equal to a minimum amount of two months estimated Common Area charge for each Unit.
- c. The Committee may terminate any management agreement for the Project upon thirty (30) days written notice thereof, and the term of any such agreement shall not exceed one year, renewable by agreement of the parties for successive one-year periods.
- d. In the event of substantial damage to or destruction of any part of the Common Areas, the institutional holder of any first mortgage on a Unit shall be entitled to timely written notice of any such damage or destruction. No Unit Owner or other party shall be entitled to priority over such institutional holder with respect to the distribution to such Unit of any insurance proceeds.
- e. If any Unit or portion thereof, or the Common Areas or any portion thereof, is made the subject matter of any condemnation by a condemning authority, the institutional holder of any first mortgage on a Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition, and no Unit Owner or other party shall have priority over such institutional holder with respect to the distribution to such Unit of the proceeds of an award or settlement.
- f. Units available for lease will be restricted to less than thirty percent (30%) of total livable units in the P.U.D. Any lease agreement shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and Bylaws and that any failure by the lessee to comply with the terms of such document shall be a default under the lease. All leases shall be in writing. A copy of any lease shall be filed with the Management Committee.
- g. Each holder on the lien of the first mortgage lien on a Unit who comes into possession of a Unit by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or any purchase at a foreclosure sale, shall take the Unit free of any unpaid claims or assessments and charges against the Unit which accrue prior to the time such holder comes into possession of the Unit,

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except for a pro-rata reallocation of such assessments or charges to all Units in the Project, including the mortgaged Unit.

h. Any lien which the Committee may have on any Unit attributable to such Unit will be subordinate to the lien or equivalent security interest of any first mortgage on a Unit recorded prior to the date any such Common Expense assessments become due.

i. Unless at least two-thirds (2/3) of the holders of the liens of the first mortgages (based on one vote for each mortgage lien held) of Units have given their prior written approval, the Association shall not:

(1) By act or omission, seek to abandon or terminate the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

(2) Change the pro-rata interest on obligations of any Unit for (a) purpose of levying assessment or charges or allocating distribution of hazard insurance proceeds or condemnation awards.

(3) Make any material amendment to the Declaration or to the Bylaws of the Association, including, but not limited to, any amendment which would change ownership to the Common Areas, except as provided in Paragraph 23.

(4) By act of omission, seek to amend, partition, subdivide, encumber, sell or transfer the Common Areas. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas of the Project shall not be deemed a transfer within the meaning of this Subparagraph.)

(5) Use hazard insurance proceeds for losses to any Unit property (whether to Units or to the Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Units and/or Common Areas of the Project.

j. Mortgage protection, notwithstanding all other provisions hereto:

(1) The liens created hereunder upon any Unit shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage or trust deed with first priority over such mortgages) upon such interest made in good faith and for value, provided that after the foreclosure or trust deed termination of any such document, there

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may be a lien created pursuant to Paragraph (h) hereof, of the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same affect and be enforced in the same manner as provided herein.

(2) No amendment to this paragraph shall affect the rights of the holder of any such mortgage recorded prior to the recordation of such amendment that s not joined on the execution thereof.

(3) By subordination agreement executed by a majority of the Management Committee, the benefits of (1) and (2) above may be extended to mortgages not otherwise entitled thereto.

26. DUTY OF OWNER TO PAY TAXES ON UNIT OWNED. It is understood that each Unit in the Project is subject to separate assessment and types of taxes and assessments authorized by law, and that as a result thereof no taxes of a Unit will be assessed or levied against the Project as such. Accordingly, each Unit Owner will pay and discharge any and all taxes and assessments which may be assessed against him on his Unit.

27. ENFORCEMENT. Each Unit Owner shall comply strictly with the provisions of this Declaration and with the administrative rules and regulations drafted pursuant thereto as the same may be lawfully amended from time to time and with decisions adopted pursuant to this Declaration and administrative rules and regulations, and failure to comply shall be grounds for an action to recover sums due for damage or injunctive relief or both, maintainable by the Management Committee or Manager on behalf of the Unit Owners, or in proper case, by an aggrieved Unit Owner.

28. INDEMNIFICATION OF MANAGEMENT COMMITTEE. Each member of the Committee shall be indemnified and held harmless by the Unit Owners against all costs, expenses and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorney's fees reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said Committee.

a. Notwithstanding any provision of this Declaration to the contrary, any proceeding, suit or action as may be deemed necessary to recover a money judgment respective any assessments levied or fixed by the Management Committee shall be maintained on behalf of the Association at the instance and suit of the Committee.

29. COVENANT TO RUN WITH LAND: COMPLIANCE. This Declaration and all the provisions thereof shall constitute covenants to run with them, and/or equitable

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servitudes, as the case may be, and shall be binding upon and inure to the benefit of Declarant, any parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assignees. Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of this Declaration, the Bylaws, and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Committee on behalf of the Unit Owners, or, in a proper case, by an aggrieved Unit Owner. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents to, and agrees to, be bound by each and every provision of this Declaration.

30. EMERGENCY SERVICES. The Management Committee shall provide access to emergency personnel (fire, ambulance, police) by telephone access from Iron County Dispatch and an onsite manual release secured in a box with a pad-lock that may be cut. In the event emergency vehicle have to damage property to gain access to the Project, the Management Committee shall hold the City/County harmless.
31. WAIVER. No provision contained I this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.
32. NUMBER AND GENDER. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural; the plural the singular; and the use of any gender shall include all genders.
33. SEVERABILITY. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.
34. TOPICAL HEADINGS. The headings appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to described, interpret, define or otherwise affect the content, meaning or intent of this Declaration or any paragraph or provision thereof.
35. EFFECTIVE DATE. This Declaration shall take effect upon recording in the Office of the County Recorder of Iron County, State of Utah.

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Exhibit A

The land referred to in this commitment is described as follows:

Parcel 1

Beginning at the Southwest Corner of Lot 49, WILLOWWOOD SUBDIVISION UNIT #4, thence North 89°33'16" East along the Subdivision Boundary 851.24 feet, thence South 00°27'49" East along the 1/16 line 366.90 feet, thence North 89°21'28" East 180.00 feet, thence South 00°27'49" East 24.90 feet, thence South 89°20'59" West 200.23 feet to a point of curve, thence around the arc of a curve to the left with a radius of 100.00 feet a distance of 51.22 feet (the chord of said curve bears South 74°40'30" West 50.67 feet), thence South 60°00'00" West 76.27 feet to a point of curve, thence around the arc of a curve to the right with a radius of 100.00 feet a distance of 51.33 feet (the chord of said curve bears South 74°42'23" West 50.77 feet), thence South 89°24'46" West 645.91 feet to the East line of North Field Road, thence North 00°33'08" West along the East line of North Field Road 457.20 feet to the point of beginning.

Loss and excepting therefrom the following described tract of land

Beginning at a point on the South Line of Willowwood Subdivision Unit #4 which is situated North 89°33'16" East 428.92 feet from the Southwest Corner of Lot 49 of said subdivision, thence continuing North 89°33'16" East 422.33 feet; thence South 0°27'49" East along the 1/16 line 366.90 feet; thence North 89°21'28" East 180.00 feet; thence South 0°27'49" East 24.90 feet; thence South 89°20'59" West 200.23 feet to a point of a curve, thence around the arc of a curve to the left with a radius of 100.00 feet a distance of 51.22 feet (chord of said curve bears South 74°40'30" West 50.67 feet), thence South 60°00'00" West 76.27 feet to a point of a curve, thence around the arc of a curve to the right with a radius of 100.00 feet a distance of 51.33 feet (the chord of said curve bears South 74°42'23" West 50.77 feet); thence South 89°24'46" West 229.16 feet, thence North 0°35'14" West 179.00 feet; thence South 89°24'46" West 63.00 feet, thence North 0°35'14" West 179.00 feet; thence South 89°24'46" West 83.00 feet, thence North 0°35'14" West 130.00 feet; thence North 89°24'46" East 75.45 feet, thence North 0°35'14" West 147.14 feet to the point of beginning.

Parcel 2

Beginning at a point on the South Line of Willowwood Subdivision Unit #4 which is situated North 89°33'16" East 428.92 feet from the Southwest Corner of Lot 49 of said subdivision, thence continuing North 89°33'16" East 422.33 feet, thence South 0°27'49" East along the 1/16 line 366.90 feet, thence North 89°21'28" East 180.00 feet, thence South 0°27'49" East 24.90 feet, thence South 89°20'59" West 200.23 feet to a point of a curve, thence around the arc of a curve to the left with a radius of 100.00 feet a distance of 51.22 feet (chord of said curve bears South 74°40'30" West 50.67 feet), thence South 60°00'00" West 76.27 feet to a point of a curve, thence around the arc of a curve to the right with a radius of 100.00 feet a distance of 51.33 feet (the chord of said curve bears South 74°42'23" West 50.77 feet), thence South 89°24'46" West 229.16 feet, thence North 0°35'14" West 179.00 feet; thence South 89°24'46" West 63.00 feet; thence North 0°35'14" West 179.00 feet; thence South 89°24'46" West 63.00 feet, thence North 0°35'14" West 130.00 feet, thence North 89°24'46" East 75.45 feet, thence North 0°35'14" West 147.14 feet to the point of beginning.

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