Photo Courtesy of Brooke Smith

Golf Course Finance Advisory Committee

Official Report on the Evaluation of Golf Course Options as proposed by Councilman Rob Crawley

October 13, 2015

Entity:
The Cedar Hills Golf Club
10640 Clubhouse Drive
Cedar Hills, UT 84062

Established	2001
Pro Shop	801-796-1705
Location	Mouth of American Fork Canyon
Website	http://cedarhillsgolfutah.com/
Configuration	6,600 yard , 18-hole, par 72 championship course

Report Summary

This report recommends that city council NOT adopt Option A or B proposed by Councilman Rob Crawley which calls for the closure of the Cedar Hills golf course. This report provides extensive detail on the reasons which fall into the primary categories:

- **Financial risk**
- **Legal challenges**
- **Social and Ethical Implications**

Some of the major factors:

1. Would create legal risk with the golf Bond, Development Agreement, Conservation Easement, City of Highland, CCR's, The Cedars HOA, Internal Revenue Service, and Open Space commitments.
2. Selling St. Andrews Estates and applying proceeds to the golf bond may bring Internal Revenue Service implications that must be overcome which may necessitate funds to be held in escrow until the year 2023. Financial projections lack substantive detail to be considered accurate. Park costing not clearly defined. Legal expense is incalculable. Lacks costing for services The Cedars funds, etc.
3. Public comment encouraged keeping the golf course open and finding ways to improve its financials without closing it.
4. Social and ethical implications with residents are significant as the city would be re-shaped by closing the golf course.
5. Closing the course would create discord and reduce harmony amongst residents.
6. The Golf course financial picture has improved in recent years and trending in a positive direction

Table of Contents

Table of Contents 3

Table of Appendix's 4

Committee Members 5

Executive Summary 6

1. Golf Course Options as proposed by Councilman Rob Crawley 7-9

2. Golf Course Current Financial Status 10-14

3. Legal Review 15-32

4. Social Contract 33-35

5. Committee Conclusions 36-42

6. Committee Recommendation and Votes 43-51

7. Appendix 52-242

Courtesy of Alan Fullmer

Table of Appendix

Option A as proposed by Councilman Crawley September 2015 52
Option B as proposed by Councilman Crawley September 2015 53
Option A and B Finanical Estimates provided by Councilman Crawley 54-59
Option B Golf Re-Configuration proposed by Councilman Crawley 60
Park Improvement Costs proposed by Councilman Crawley 61
Option B Harvey Park Savings proposed by Councilman Crawley 62
Cedar Hills Financial Numbers 63-67
Memo City Council: Golf Course Legal Issues Aug 13, 2015. 68-74
Memo to City Council Legal Authority for Development of the Golf Course 75-89
Memorandum Development of Golf Course Property 90-91
Release of City-Owned Lots from CC&R's 92-98
Cedar Hills Development Agreement. 99-103
Step by Step Process to Amend CC&R's. 104-108
Power of a municipility to subdivide, improve, develop real property 109-114
Disposal of Publicaly Owned Property. 115
Development Agreement The Cedars. 116-134
The Cedar's CC&R's. 135-179
Open Space Conservation Easement 180-182
Master Resolution General Obligation Bond Series 2012 183-224
Meeting Agendas……..... 225-232
Revised Options A and B as proposed by Councilman Crawley 10/7/2015…..... 233-242

Golf Course Finance Committee

Committee members were appointed by Mayor Gygi and were unanimously approved by city council. Committee members represent a diverse group of residents from across the city and committee members possess a variety of skills which have aided the establishment of this report.

- **Chair**: Rick Stewart
- Gary Gygi, Mayor
- David Bunker, City Manager
- Chandler Goodwin, Asst. City Manager
- Greg Gordon, Recreation Director
- Charl Louw, City Finance Director
- Trent Augustus, City Council Member
- Rob Crawley, City Council Member
- Mark Webb
- Priscilla Leek
- Rob Olsen
- Brent Aaron
- David Driggs
- Mark Horne

Executive Summary

On August 6th, 2015 the Golf Course Finance Committee (committee was reconvened by Mayor Gygi. The primary purpose of reconvening the committee was to review Options A and B which were proposed by Councilman Rob Crawley as they relate to the future of the Cedar Hills Golf Course. The committee recommends that the city council NOT implement either Options A and B given that each, but in particular Option B would have a considerable negative implications in the form of financial, legal, social and ethical concerns. This exhaustive 242 page report details the reasons for this conclusion. The proposed options create extensive and complex scenarios that cannot be fully understood without a complete reading of this report. It is strongly suggested that one read this entire report before making a conclusion as to the future of the golf course.

There has been interest from residents and political candidates to review ALL of the options related to the golf course. This report is a review of all known facts as of the date of this writing.

In summary, Option A is to keep the golf course open and to seek ideas on how to pay down the golf debt and Option B details how the golf course could be reconfigured into park (s) space with portions of the golf course being sold. Both of these options have been reviewed by the committee to ascertain their viability and are evaluated within this report. Option B became the predominant focus of the committee as that option was primarily proposed by Councilman Rob Committee meetings were publicly noticed and were well attended by the residents of Cedar Hills. The committee received a significant amount of public input during this process.

Public meetings were held on:

Golf Course Finance Advisory Committee Meeting- October 28, 2015

Golf Course Finance Advisory Committee Meeting- October 13, 2015

Golf Course Finance Advisory Committee Meeting - September 24, 2015

Golf Course Finance Advisory Committee Meeting - September 10, 2015

Golf Course Finance Advisory Committee Meeting - August 26, 2015

Golf Course Finance Advisory Committee Meeting - August 20, 2015

Golf Course Finance Advisory Committee Meeting - August 13, 2015

Golf Course Finance Advisory Committee Meeting - August 6, 2015 (1st meeting)

This report is provides the facts discovered during the review process and offers a perspective as viewed by committee members. This report includes information provided by the public, city staff, present and past legal council and committee members.

1. Original Option A –proposed by Councilman Crawley

(Note: Late revision Alternate Option A in Appendix)

Option A proposes to keep the Cedar Hills golf course as currently constituted, offers ideas on paying down the bond and provides Pros and Cons for the Option.

Option A Proposal:

- Keep running the golf course.
- Continue to look for ways to decrease the subsidies from residents
- Sell St. Andrews Estates lots East of Canyon Road
- Continue to have resident taxes subsidize the bond debt and the golf course

- **Option A proposes the sale of St. Andrews Estate lots east of Canyon Road with the intent to pay down the bond**
- **Proposes a continuance on looking for ways to decrease subsidies from residents**
- **No unexpected changes for homes which surround the golf course**
- **The bond will continue to be funded by property taxes**

Option A Pros:

- There is less effort and less short term trauma to the city
- Those that have bought homes in the Cedars will not have unexpected changes to the area surrounding their homes.
- Those that enjoy having a golf course in Cedar Hills will continue to enjoy the golf course

Option A Cons:

- The debate and anger over the golf course would not likely go away for many years to come and the residents will continue to subsidize the course
- The city would continue to be short on park space for their recreational programs
- The bond payment will continue on our property taxes until approximately 2030
- With the subsidy and bond payment, the resident's appetite for other city amenities will not be high. I.e. restricts other improvements to the city.

2. Option B - proposed by Councilman Crawley (Note: Late revision Alternate Option B in Appendix)

Option B proposes selling approximately 97 acres of the golf course, recommends diverting monies allocated to the future Harvey Park towards the golf bond, and proposes additional parks) be built on remaining portions of the golf course.

- **Option B proposes the sale of St. Andrews Estate lots east of Canyon Road and portions of the golf course within Highland City with the intent of paying off the bond in full**
- **Proposes a an estimage of $4.8 million in savings over the next 20 years**
- **Cedar Hills would no longer own or operate a golf course**

Option B Proposal:

- Issue RFP (Request For a Proposal) for selling 30 acres east of Canyon Road.
- Issue RFP (Request For a Proposal) for selling 60 acres in Highland City.
- Continue golf course operations until legitimate offers are received for both properties that will pay off the bond.
- Sell the two plots and pay off the bond simultaneously.
- Continue to irrigate and maintain remaining holes.
- Use the funds that would have been spent on the golf course to enhance the remaining "parks" until satisfactory.
- Offer to Harvey's to buy only part of their land for $850,000 currently in escrow.
- Allow residents who border the golf course the option to buy additional land into the golf course area at the lowest legal price up to 1/5 acre.
- Zone sellable land in Cedar Hills (holes 13,14, and 15) for larger lots to satisfy green space requirements.
- Separate from the current decision would be a future decision about whether to convert hole 10 into a cemetery.

Option B Pros:

- Approximately $4,800,000 in savings over the next 20 years.
- Rather than a golf course that residents have to pay for there would be parks that the residents can use for free.
- The debate over the golf course would end bringing more peace to the city.
- With $3,000,000 of planned improvements on the land, there could be additional features added such as playgrounds,
- Pavilions, soccer fields, etc.

Option B - proposed by Councilman Crawley continued

- There would be enough soccer field space that our city wouldn't have to go to other cities to host soccer games.
- The city could consider other features that it wanted to add to our city budget without taxes becoming out of line with other cities.
- Separate from the current decision would be a future proposal about whether to convert hole 10 into a cemetery.
- We would not make any changes if we didn't get proposals that were high enough to pay off the bond. If we did get them
- We would have options. If we didn't get these proposals, the argument would be put to bed.

Option B Cons:

- The debate over the future of the golf course could temporarily intensify.
- The Harvey park in the South end of the city would be smaller in exchange for larger park areas in the North areas of the city.
- There would be more land developed on the East side of Canyon road in additional to planned St. Andrew's Estates. (20 acres less green space in city)
- Although there is no obligation of the city to subsidize the golf course indefinitely, the city could have to defend itself against potential litigants
- The notoriety of having a beautiful golf course would not be there for Cedar Hills.

3. Golf Course Current Financial Overview

This section explains current and recent financial circumstances and projections. Because the golf course is subsidized annually by tax dollars the topic creates a debate within the community on the value to residents and whether the city should continue to subsidize the golf course.

CITY OF CEDAR HILLS

Schedule of Revenues, Expenditures, and Changes in Fund Balances - Actuals
Golf Special Revenue Fund (Excluding Events and Grill)

	Actuals 2013	Actuals 2014	Estimated 2015*
REVENUES			
Fees:			
Green Fees	$ 538,030	$ 533,478	$ 546,954
Practice Range	23,178	24,920	25,228
Pro shop	60,554	58,466	63,501
Concessions	10,269	8,461	8,844
Season passes	59,653	78,114	73,132
Other	6,901	4,368	31,684
Investment earnings	-	-	291
Total revenues	698,585	707,807	749,634
EXPENDITURES			
Salaries, wages, and employee benefits	400,802	409,556	398,045
Materials, supplies, and services	369,722	395,201	406,153
Capital outlay	38,000	47,885	-
Total	808,524	852,642	804,198
Excess of revenues over expenditures	(109,939)	(144,835)	(54,565)
Other financing sources (uses):			
Operating transfers in	2,209,358	206,237	147,863
Operating transfers out	(3,000)	(3,000)	-
Total other financing sources (uses)	2,206,358	203,237	147,863
Net change in fund balance*	2,096,419	58,402	93,298
Fund balance at beginning of year	(2,132,828)	(36,409)	21,993
Fund balance at end of year	$ (36,409)	$ 21,993	$ 115,291

CITY OF CEDAR HILLS

Schedule of Revenues, Expenditures, and Changes in Fund Balances - Actuals
Golf Special Revenue Fund (Excluding Events and Grill)

	Budgeted 2016	Projected 2017	Projected 2018	Projected 2019	Projected 2020	Projected 2021
REVENUES						
Fees:						
Green Fees	$ 555,000	$ 566,100	$ 577,422	$ 588,970	$ 600,750	$ 612,765
Practice Range	23,000	23,460	23,929	24,408	24,896	25,394
Pro shop	52,200	53,244	54,309	55,395	56,503	57,633
Concessions	2,000	2,040	2,081	2,122	2,165	2,208
Season passes	39,000	39,780	40,576	41,387	42,215	43,059
Other	-	-	-	-	-	-
Investment earnings	-	-	-	-	-	-
Total revenues	671,200	684,624	698,316	712,283	726,528	741,059
EXPENDITURES						
Salaries, wages, and employee benefits	446,380	455,308	464,414	473,702	483,176	492,840
Materials, supplies, and services	384,820	400,213	416,221	432,870	450,185	468,192
Capital outlay	380,000	-	-	-	-	-
Total	1,211,200	855,520	880,635	906,572	933,361	961,032
Excess of revenues over expenditures	(540,000)	(170,896)	(182,319)	(194,289)	(206,833)	(219,973)
Other financing sources (uses):						
Operating transfers in	540,000	170,896	182,319	194,289	206,833	219,973
Operating transfers out	-	-	-	-	-	-
Total other financing sources (uses)	540,000	170,896	182,319	194,289	206,833	219,973
Net change in fund balance*	-	(0)	0	(0)	0	0
Fund balance at beginning of year	115,291	115,291	115,291	115,291	115,291	115,291
Fund balance at end of year	$ 115,291	$ 115,291	$ 115,291	$ 115,291	$ 115,291	$ 115,291

General Notes

Additional sales taxes approximately $40,000 netted, starting FY 2012
Additional water charges of $31,000 starting fiscal year 2014
2012 & 2013 Golf Trades were moved from Green Fees to Season Passes
* 2015 financials are preliminary estimates
2015 Golf Trades $33,436
2014 Golf Trades $40,200
2013 Golf Trades $17,500
2015 other income approximately $29,000 in Questar easements

Financial statements can be used to support both sides of the topic depending on ones point of view. Financials show the golf course subsidy has been going down each year, but they also show there is a subsidy. It is not the role of the committee to ascertain whether the subsidy is reasonable. Each resident has a different threshold on how much they are willing to support the golf course financially.

However, in the process of evaluating the proposal developed by Councilman Crawley, the committee considered the tax burden of Cedar Hills in relation to other cities in the county. The information published in the "State of the City" report for 2014 (this is the latest report available) shows that Cedar Hills is just slightly below the average for "Property Tax $ Per Household." The average for the 20 cities in the analysis is $428 per year and Cedar Hills is $427 per year. If you look at the Property Tax $ Per Household as a percentage of Median Income, Cedar Hills ranks 14th out of 20. The reason the property tax burden on the residents was a consideration in the analysis the committee performed is that the committee wanted to evaluate Councilman Crawley's proposal in light of the current economic conditions in the city and the state.

Because Councilman Crawley's proposal suggests such massive changes to the city, includes numerous undefined risks, and would negatively impact a large number of the city's residents, the committee's evaluation had to consider whether the ends justify the means. The "ends" or ultimate objectives of Councilman Crawley's proposal are not specific, but one of the ends is generally about "having more park space." Although having more park space may be something we want, elimination of the golf course is not the only way or even the best way to achieve that goal. There are other more affordable and less controversial and disruptive means to add park space in the city

In 2015, the golf course had an estimated operational subsidy of $54,585 which is an improvement over the historical average. However, 2016 has a budgeted subsidy of $540,000 due in large measure to a one time capital outlay of $380,000 for a maintenance building. Projected subsidies are conservatively budgeted to modestly increase. Revenues are also conservatively projected to remain essentially flat. This conservative budgeting approach minimizes the swings in financial forecasting that has occurred in years past, but opponents to the golf course use this approach to demonstrate that things are not improving financially.

There are equipment replacement needs that may increase expenses in the next few years. Subsidies in recent years have begun to diminish. Increased revenue from the golf course and community events center can continue to reduce the subsidy if marketed well.

Another viewpoint is a comparison on how much the city subsidizes an acre of park vs. an acre of golf . For example, the 2015 estimated operational subsidy for the golf course is $54,856. The operational subsidy for all parks in 2015 was $149,449. An alternate way to look at the golf finances is to compare it to parks. If you use 50 irrigated acres for the golf course vs 32.7 irrigated acres of parks, the subsidy is significantly lower for the golf course acres.

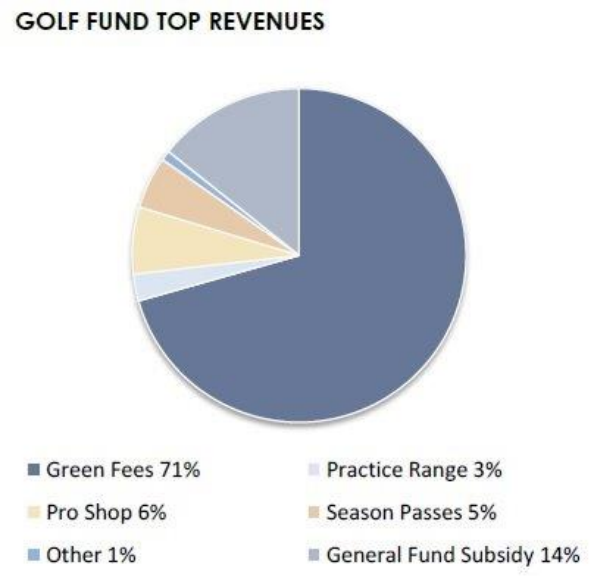
For the fiscal year 2015 parks are anticipated to be subsidized at $174,200. The golf course is expected to be subsidized $160,000 plus the construction of a maintenance building, which is budgeted at $380,000.

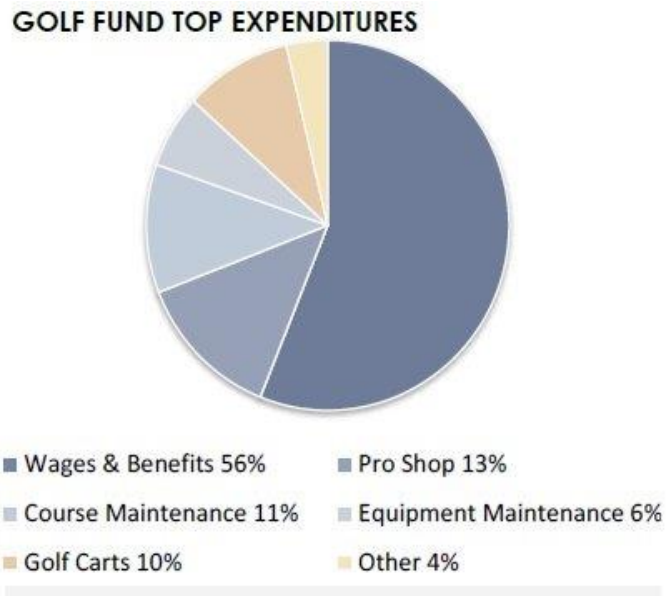
This page intentionally left blank

The Golf Fund - 2015 Budget Document

Revenues include green fees, practice range, and pro shop revenue. When total budgeted expenditures are compared to projected revenues, the golf course is estimated to be in the red. This shortfall includes all operating and non-operating expenditures. The cash needed in 2015 to cover the annual operating cash deficit will be subsidized by approximately $110,000 from the City's General fund.

Expenditures in the golf fund are spread over several categories. Top expenditures include wages and benefits, golf cart rental, pro shop inventory, and course maintenance.





Source: Cedar Hills 2015 Budget Document

See in-depth financials within the Appendix.

4. Legal Review

The legal review section provides legal answers from committee members and city council members to assigned legal counsel. Responses are from Kirton McConkie and Eric Johnson who represented the bond related legal questions. No editing of legal response has occurred in this section. This section and corresponding documents in the Appendix are of great significance as the legal aspects of this discussion likely will determine the true cost and timeline for implementation of Option A or B.

RESPONSES TO COMMITTEE LEGAL QUESTIONS 2.0

We (Kirton McConkie and Eric Johnson) are pleased to provide answers to the Golf Course Finance Committee's "Legal Questions 2.0." Understandably, certain questions have required us to exercise discretion to avoid unnecessarily divulging the City's legal defenses and/ or strategies.

Please also note that the answers to any question will be multi-faceted and multi-layered depending on the facts or any non-golf decision of the City. Deal specific analysis will be required under any scenario.

Questions from David Driggs and seconded by others

1. Will you author a brief for each of the topics below? The brief can be high level and meant for public consumption. In this brief could you outline the issues and ramifications to the City if the golf course was to be closed?

4.1 Bond

A) A review of the 2012 General Obligation Bond covenants reveals two significant provisions relating to alterations of land usage at the golf course.

The Master Resolution Authorizing the Issuance and Sale of $5,570,000 General Obligation Refunding Bonds Series Adopted by the Cedar Hills City Council December 2012 contains two relevant provisions in the "Form of Bond":

> *Optional Redemption: The Bonds maturing on or prior to February 1, 2023 are not subject to optional redemption prior to maturity. The Bonds maturing on or after to February 1, 2024 are subject to redemption at the option of the Issuer on February 1, 2023, or on any dater thereafter, in whole or in part, from such maturities or parts thereof as may be selected by the Issuer, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed, plus accrued interest thereon to the redemption date. (emphasis added).*

Further, while the Bond Resolution allows a complete or partial sale of the Project (meaning, the golf course), all proceeds from the sale must be used to pay down the bonds. Under this scenario the mandatory redemption provision is useful for the City. Nevertheless, under a different scenario, like several of those proposed by Mr. Crawley, it may or may not be the case that instead of merely selling the golf course outright there may be a partial sale of golf course property, a conversion of the remainder into parks and recreational facilities (thus, an alienation). In such event, the mandatory redemption could trigger, thereby requiring the City to pay the entire amount of the bonds – but without the money to do so. If enough money is generated to redeem the bonds, there is no problem, but this must be calculated carefully to avoid a large outstanding obligation without the ability to pay it.

For reference, the provision reads as follows:

> *Mandatory Redemption: The Bonds are subject to Mandatory Redemption on whole or in part on any date if the Project or any portion thereof is sold or otherwise alienated by the Issuer or any other action occurs after the issue date to cause either the private business tests or the private loan financing test as defined by the Code to be met and Bonds or any portion thereof may be deemed to be nonqualifying bonds and the Bonds may be so redeemed at a redemption price equal to 100% of the principal amount thereof and accrued interest to the redemption date upon not less than thirty (30) days; prior notice.*

In other words, in the event the City were to attempt to convert the golf course to anything other than a golf course, the outstanding General Obligation Bonds would be subject to immediate mandatory redemption. Accordingly, if the City wants to convert the golf course into something else, it must be prepared for the financial ramifications of such a decision in multiple aspects, but in particularly in respect to mandatory repayment of the Bonds, which are currently outstanding.

Under IRS regulations, bonds can only be advanced refunded once. The 2012 Bonds were an advanced refunding. Therefore, as a general matter, no 2013 Bonds could be refunded prior to 2023 when the call restriction expires.

Second, the 2012 Bonds, like the 2005 Bonds they were refunded, have an exception to the rule above called mandatory redemption. The mandatory redemption provision provides that if any portion of the golf course is alienated or sold then the proceeds must be used to redeem the 2012 Bonds. The mandatory redemption provision allows some or all of the golf course to be sold, but only if the proceeds are used to pay off the 2012 Bonds. The City cannot payoff the 2012 Bonds prior to 2023 with any monies, other than proceeds from the sale of the golf course

Third, the mandatory redemption provision is largely in harmony with IRS regulations that allow a sale of public property under limited circumstances, see Internal Revenue Service Implications section below.

Development Agreement

A) The Development Agreement between the City of Cedar Hills and Lone Peak Links LLC (LPL) establishes the framework for all discussions surrounding the golf course. Think of it as the "Constitution" for all ancillary matters. Signed on February 16, 2001, it is still in effect, inasmuch as the City continues to do business with LPL under the agreement.

The Development Agreement establishes a number of subsidiary restrictions on the use of land in and around the golf course. Among these are the Covenants, Conditions and Restrictions ("CCRs"), also filed on February 16, 2001. The CC&Rs pertain to the planned residential development, now largely completed, in and around the golf course.

Additionally, the Development Agreement puts in place a Conservation Easement ("Conservation Easement") upon the golf course proper and upon many of the properties in the development. The Conservation Easement is subject to the Utah Land Conservation Easement Act, which includes provisions for the termination of such easement.

Subsequently, a "Memorandum of Understanding" (MOU) dated December 11, 2007, between the Mayor of Cedar Hills and LPL modifies the Development Agreement, as follows: "LPL further agrees to release conservation easements it has on the Cedar Hills golf course, as requested by the City, and LPL agrees that it will not dispute in any way the development by the City of all or any portion of the Cedar Hills golf course east of Canyon road or any reconfiguration of the Cedar Hills golf course."

Conservation Easement

A) Section 2.5.1 of the Development Agreement includes the grant to the City of a Conservation Easement: "In order to preserve the open space qualities of the golf course, developer hereby requests and the City agrees that a conservation easement over the golf course be granted to the City, concurrently with the recordation of the first plat."

The language of the Conservation Easement, "Open Space Conservation Easement," makes clear that the City is the holder of the easement, and that such easement is granted subject to the Utah Land Conservation Easement Act, UCA 57-18. The document also notes: "The easement herein granted is perpetual."

Notwithstanding the "perpetual" nature of the easement, as the holder of the conservation easement, the City is entitled to remove the easement. Section 57-18-5 of the Land Conservation Easement Act reads:

> *A conservation easement may be terminated, in whole or in part, by release, abandonment, merger, nonrenewal, conditions set forth in the instrument creating the conservation easement, or in any other lawful manner in which easements may be terminated.*

Other Easements

A) The memo produced by prior City Attorneys Smith Hartvigsen illuminates other easements that might exist on parcels of the development. From the memo of August 12, 2006, we read:

A warranty deed dated January 18, 2002, and recorded on January 24, 2002 … conveyed the golf course parcels … to the [Municipal Building Authority] from the Developer. It stated that it was subject to certain easements, conditions, covenants, restrictions and matters of record as set forth in an exhibit attached to the Warranty Deed. Most of the items are existing easements in favor of utility companies, UDOT, the federal government, or nearby cities. Presumably, these encumbrances would not significantly affect the City's opportunity to develop the property inasmuch as these encumbrances would have to be respected in any event and are likely necessary for development.

A footnote to that section of the memo adds:

> *Specifically, the Warranty Deed lists easements in favor of American Fork City, State Road Commission of Utah, Metropolitan Water District of Salt Lake City, Utah Power & Light Company, Mountain Fuel Supply Company, Mountain States Telephone & Telegraph Company, Utah Department of Transportation, U.S. West Newvector Group, Inc., the United States of America, the U.S. Department of Agriculture, Forest Service, Highland City, Pacificorp, and Ivy C. Page (for the purpose of constructing a fill slope and the placement of fill material).* There was also an existing lease, option, and addendum of lease in favor of U.S. West New Vector Group, Inc.

Highland City related

A) We have not had the opportunity to review the existence of a conservation easement on portions of the course in the City of Highland. It is likely that similar CCRs would also restrict development on portions of the course in the City of Highland, namely Holes 1-8 and/or Hole 9.

CCR's

A) Covenants, conditions and restrictions (CCRs) are a commonly-used tool land-use planning and regulation. The Covenants, Conditions and Restrictions and Home Owner Bylaws of The Cedars development in Cedar Hills include these sections:

1.04Persons Bound by These Covenants, Conditions, Restrictions and Agreements. All conditions, covenants, restrictions and agreements herein stated shall run with the land comprising the Subdivision, and all owners, purchasers or occupants thereof shall by acceptance of contracts or deeds be conclusively deemed to have consented and agreed with the present and future owners of said land . . . to conform to and observe the following covenants, conditions, restrictions and agreements as to the use thereof . . .. (CCRs, Section 1.04)

1.05Land Use. No lot shall be used except for residential, open space, public and private utilities, and related purposes. No building shall be erected, altered, or permitted to remain on any lot other than one detached single-family dwelling as shown on the final plat and a private garage for not more than three (3) vehicles. The Architectural Review Committee ... shall have the authority to further limit the number and stories and the height of structures for new construction on the lots at its sole and exclusive discretion, as described herein.

While the provisions of the Development Agreement do not "run with the land," in those portions of the development with CCRs, such CCRs do "run with the land" and hence are enforceable by property owners within the development.

Additionally, it should be noted that the CCRs provide for the removal of certain lots from the subdivision by the developer. In this case, the CCRs and Homeowners Association bylaws no longer apply to those lots.

HOA's

A) The CCRs create The Cedars Homeowners Association, Inc., (HOA) which provides each owner acquiring a lot in the development with automatic membership in the HOA.

The CC&Rs provide that if *more than 50 percent* of the total votes in the HOA can be obtained, the CC&Rs may be "amended, modified, or repealed." *HOA Bylaw,* § 17.01. Furthermore, an amendment is not effective "unless and until a written instrument setting forth (a) the amended, modified, repealed or new bylaw, (b) the number of votes cast in favor of such action, and (c) the total votes of the HOA, shall have been executed and verified by the current president of the HOA and mailed to each member of the HOA." *Id.*

Besides the unilateral action of the developer, the HOA amendment process is the other way to remove CCRs from properties within the development.

Internal Revenue Service Implications

Under IRS regulations, bonds can only be advanced refunded once. The 2012 Bonds were an advanced refunding. Therefore, as a general matter, no 2013 Bonds could be refunded prior to 2023 when the call restriction expires.

Second, the 2012 Bonds, like the 2005 Bonds they were refunded, have an exception to the rule above called mandatory redemption. The mandatory redemption provision provides that if any portion of the golf course is alienated or sold then the proceeds must be used to redeem the 2012 Bonds. The mandatory redemption provision allows some or all of the golf course to be sold, but only if the proceeds are used to pay off the 2012 Bonds. The City cannot payoff the 2012 Bonds prior to 2023 with any monies, other than proceeds from the sale of the golf course

Third, the mandatory redemption provision is largely in harmony with IRS regulations that allow a sale of public property under limited circumstances, as follows.

1. At the time the bonds were issued, the City reasonably expected to use the bond proceeds for a public purpose for the entire life of the bonds (there is a question whether this first prong would be met because the mandatory redemption provision was originally put in place in 2005. It would be safest to get an IRS ruling on this point. Valid arguments can be made that the City does satisfy this prong, but if the sale were attacked this seems to be the most likely area for attack. In our City where citizens have filed lawsuits against officials and employees, and where initiatives and referendums have abounded, it is arguable that the safest course is also the wisest course).

2. The bond proceeds must have been used for a qualified use for 5 years from the date the bonds were issued or the facility was placed in service. (presumably this is satisfied since the golf course has been in service since around 2002 and also bonding has been in place on the golf course since 2002).

3. The new owner must pay fair market value in an arms-length transaction. (satisfaction of this requirement will depend on how the golf course is sold)

4. The sale (often called a change in use) must not be an attempt to abuse the applicable IRS tax regulations. (again this will depend on how the transaction is handled and if an attack were raised under the first requirement, then the attacker would likely also claim the sale was an attempt to abuse IRS regulations)

5. The City must take a remedial action within 90 days of the sale which usually means within 90 days the sale proceeds must be used to call the bonds on their earliest date, which for mandatory redemption, would mean they are contemporaneously refunded at the time any portion of the golf course is sold.

The safest course of action will be for the City to seek an IRS ruling on whether the City satisfies the first requirement above before any portion of the golf course is sold.

Any other legal issues

2. **Along with this brief, can you provide copies of the documents you have reviewed to form your legal opinions. It may be that we will want to provide these documents as an appendix for the public to read as well.**

   A) The documents which we have used to form our legal opinions on these matters are the "Golf Course Documents" provided to the City Council in anticipation of the meeting August 13, 2015.

3. **Please clarify whether you think it sound from a legal perspective to put forth an RFP**

   A) There are a number of legal issues to be considered prior to issuing an RFP to sell all or part of the golf course. The most important of these restrictions/limitations include:

1. The continuing applicability of the Development Agreement between the City of Cedar Hills and Lone Peak Links LLC, dated February 16, 2001.
2. The provisions of the Master Resolution Authorizing the Issuance and Sale of $5,570,000 General Obligation Refunding Bonds Adopted by the Cedar Hills City Council, in December 2012 ("Master Resolution"), particularly in regards to mandatory redemption of the bonds "in whole or in part on any date if the Project or any portion thereof is sold or otherwise alienated by the Issuer."
3. The existence of Conditions, Covenants, and Restrictions (CCRs) upon many, but not all, of the properties included in the golf course development.
4. A Conversation Easement put in place upon additional lands (including some not covered by CCRs) as part of the Development Agreement.

Overcoming any of these individual issues will prove challenging; overcoming the totality of them will be even more so.

A) The only point at which there would be no ramifications to issuing an RFP to sell all or part of the golf course would be at the extinguishment of the Development Agreement, an effective resolution to the challenge of mandatory redemption raised by the Master Resolution, or other payment of the outstanding bonds, a resolution to the existence of any CCRs and/or Conservation Easements, and the City's affirmative decision to close the golf course.

Questions from Rick Stewart

1. **Will the attorney be allowed the time and budget to write a brief as David requests?**

2. **Could the legal binder from Kirton McConkie provide us a framework to write our own paper? (see Jenny's questions)**

   A) As long as privilege is preserved, yes.

4.10 Questions from Brent Arron

1. **What barriers are there to putting St. Andrews Estates back up for sale? Especially in light of the fact that altering the land didn't trigger mandatory bond redemption and St. Andrews Estates has been listed for sale at least once already.**

   A) The primary barrier to putting St. Andrew's Estates up for sale is the possibility that such a sale could trigger the "Mandatory Redemption" provision of the Master Resolution authorizing the sale of bonds. If the sale of such property in no way alienates the golf course, then the proceeds of such a sale must be used to redeem the bonds, in whole or in part,

   The specific language of the provision with the Master Resolution states that:

The Bonds are subject to Mandatory Redemption in whole or in part on any date if the Project or any portion thereof is sold or otherwise alienated by the Issuer or any other action occurs after the issue date to cause either the private business tests or the private loan financing test as defined by the [Internal Revenue Service] Code to be met and Bonds or any portion thereof may be deemed to be nonqualifying bonds and the Bonds may be so redeemed at a redemption price equal to 100% of the principal amount thereof and accrued interest to the redemption date upon not less than thirty (30) days' prior notice.

Putting aside the language from the Master Resolution, it appears as though the "Memorandum of Understanding" (MOU) dated December 11, 2007, between the Mayor of Cedar Hills and Lone Peak Links, LLC (LPL), addresses one possible concern about a restriction imposed by the Development Agreement. In that MOU, "LPL further agrees to release conservation easements it has on the Cedar Hills golf course, as requested by the City, and LPL agrees that it will not dispute in any way the development by the City of all or any portion of the Cedar Hills golf course east of Canyon road or any reconfiguration of the Cedar Hills golf course." In other words, this MOU can be viewed as a contractual modification to the Development Agreement permitting the city to develop portions of Holes 13, 14, and 15 without violating the Development Agreement.

The conversion of St. Andrews didn't alienate the Property (meaning the golf course – it is still operational), and therefore no mandatory redemption, yet.

2. **What density restrictions, if any, exist for St Andrews Estates? Can it be listed for commercial development or just residential?**

   A) The density restrictions are arrived at as follows: The Development Agreement provides for a density of 725 units. In the 2007-2008 timeframe, when St. Andrew's Estate was being considered for development, the City identified the number of lots in all plats in the development, tabulating 703 approved lots. The difference between 725 and 703 led to the platting out of 22 additional lots.

The City is able to alter density requirements according to its standard zoning procedures.

Questions from Daniel Zappala

1) **How do the CC&Rs restrict land use for parcels that are open space or designated as the golf course? I see restrictions on density and use in the development agreement, but not the CC&Rs. Yet the memo from Smith Hartvigsen from August 2015 indicates that there are restrictions in the CC&Rs that prevent development of the course (see Footnote 3).**

The CCRs only restrict land use for those parcels subject to such CCRs. According to best information to which we have access, these CCRs apply to developments in Plats B, C, D, F, and I. Portions of the golf course (at a minimum, portions of Holes 10, 11, 12, 16, 17 and 18), are within Plat B, and hence development of that portion of the golf course is subject to the CCRs).

2) **Which parcels do the CC&Rs cover? The memos we have received indicate Plat H (the area east of Canyon Road) is not covered, yet I find CC&Rs recorded with Plat H in the county property system:**

A) http://www.utahcounty.gov/LandRecords/property.asp?av_serial=369050206001

(See the Declaration of 3/7/2006)

We have reviewed this matter thoroughly and acknowledge that for the property with Serial Number 36:905:0206, Designated as 3925 W CEDAR HILLS DR CEDAR HILLS, UT 84062, or, legally as LOT 206, PLAT H, THE CEDARS AT CEDAR HILLS PRD SUBDV., AREA 29.746 AC, there appears to be, within the abstract, a covenant dated October 10, 2005, and which was recorded on March 7, 2006.

A review of the document in question, "The Cedars Planned Unit Development Declaration of Covenants, Conditions and Restrictions & Home Owner Bylaws," reveals it to be the same standard form for Plats B, C, D, F and I. Indeed, second page of the declaration reads that Lone Peak Links, LLC, is "the legal and beneficial owner of a certain tract of land known as The Cedars Plat 'I'…."

It is possible that this document, which on the face of it purports to impose CCRs upon Plat I and not Plat H, has been misfiled.

3) **The Warranty Deed on Plat H (same URL above, document dated 2/8/2010) indicates there is a perpetual, non-exclusive easement for the golf course on this property. What effect does this have on the property and its potential uses?**

A) This document, "Warranty Deed," refers in section "Parcel 4a" to a "perpetual non- exclusive use easement for the purpose of golf course construction, operation, access and maintenance over" the property appropriately described as Plat H. This appears to refer to the Open Space Conservation Easement.

Section 2.5.1 of the Development Agreement includes the grant to the City of a Conservation Easement: "In order to preserve the open space qualities of the golf course, developer hereby requests and the City agrees that a conservation easement over the golf course be granted to the City, concurrently with the recordation of the first plat."

The language of the Conservation Easement, "Open Space Conservation Easement," makes clear that the City is the holder of the easement, and that such easement is granted subject to the Utah Land Conservation Easement Act, UCA 57-18. The document also notes: "The easement herein granted is perpetual."

Notwithstanding the "perpetual" nature of the easement, as the holder of the conservation easement, the City is entitled to remove the easement. Section 57-18-5 of the Land Conservation Easement Act reads:

A conservation easement may be terminated, in whole or in part, by release, abandonment, merger, non-renewal, conditions set forth in the instrument creating the conservation easement, or in any other lawful manner in which easements may be terminated.

4) **The development agreement removes all density from Plat H. The MOU with LPL indicates only that LPL will not dispute development east of Canyon Road, and the conservation easement has been removed, but the development agreement has not been amended to provide density on Plat H. Given that the development agreement is still in force, does this prohibition in the agreement preclude any development?**

A) Although the MOU indicates that "LPL further agrees to release conservation easements it has on the Cedar Hills golf course, as requested by the City," it should be noted that it is the City, and not LPL, that is the holder of the Conservation Easement.

Given the MOU's apparently effective amendment of the Development Agreement, it is possible that the Development Agreement's removal of all density from Plat H is no longer valid. Also please note this statement from footnote 1 in the Memorandum by Smith Hartvigsen dated August 27, 2007:

It is not clear whether this statement of density [referring, as this question does, to the density of 0 for Plat H] is a binding limitation or merely a proposed density. For example, Section 1.1.3 states that Plat C shall have 68 units, but the recorded Plat C has 69 units. Section 1.1 also only lists Plats A through J as part of the Cedars, but Plats K through O have also been recorded as part of the Cedars. Plats D, E, I and J all have fewer units than the number of units listed in Section 1.1. So, it appears that the numbers of units for all plats listed in Section 1.1 is merely the proposed number of units necessary to achieve the maximum density of 725, and that they do not create a binding limitation on each plat. However, the Developer might assert the argument that the numbers of units listed in Section 1.1 are maximum unit densities applicable to each listed phase.

A) We do not have information about actions by the City to officially terminate removal of the conservation easement.

5) **The memo from Smith Hartvigsen from August 2015 (sic) indicates that "because the city of Cedar Hills and the MBA accepted the open space and golf course parcels, they acknowledged the conditions limiting the property to those uses. Hence, because the city and MBA took title subject to the recorded CC&Rs and plats, the City and MBA are bound by the restrictive covenants they contain, as would be any purchaser." Does this apply to just the properties west of Canyon Road, or also those to the east, given that CC&Rs are also recorded on Plat H as indicated above?**

A) It should be noted that the Microsoft Word format for this particular memo from Smith Hartvigsen was created with a flexible date field. That means that every time that Word document was opened, a new date with the current date was populated. Hence, the reference to it as a memo with an August 2015 is in error. According to the macro information associated with the Word file, it appears that this document was created no later than July 28, 2005, and possibly several months earlier. Indeed, the more comprehensive Smith Hartvigsen memo from August 12, 2006, begins with the note that "This memorandum is an update to the memorandum dated April 7, 2005, and includes updated analysis based on new statutory and case law."

In regards to the question at hand, it appears – based on information provided in answers to previous questions – that CCRs apply only to properties west of Canyon Road.

6) The same memo dated August 2015 (sic) states "Furthermore, lot owners purchased lots within the subdivision relying on the existence of the golf course, and therefore, any attempt to disregard the open space and golf course use restrictions would likely subject the City to takings challenges in which lot owners may assert that the City had taken a valuable property interest without just compensation." Does this apply to Plat H (east of Canyon Road)?

A) No, it does not apply to Plat H, for reasons identified in answers to previous questions.

Additionally, the statement in the Smith Hartvigsen memo from 2005 was specifically addressing whether the City was bound to respect the CCRs upon properties for which there were correctly recorded CCRs.

Here it should be noted that the provisions of the Development Agreement do not "run with the land." By contrast, those portions of the development with CCRs do "run with the land." Hence CCRs – as opposed to provisions of the Development Agreement – are enforceable by property owners within the development.

In regards the standing to file suit under the Development Agreement, we respectfully decline to answer to preserve legal strategies and defenses which may be needed at some point.

7) **There are CC&Rs recorded on homes in Highland, as part of The Greens development. Do these restrict development of the portions of the course in Highland?**

A) It is likely that such CCRs will restrict development on portions of the course in the City of Highland.

8) **Is there a conservation easement on portions of the course in Highland city limits?**

A) We have not had the opportunity to review the existence of a conservation easement on portions of the course in the City of Highland.

9) **Given all of the above, which portions of the course is it legal for the city to develop, if any?**

A) Plat H is the most likely target for development. This could be done, provided that the Open Space Conservation Easement has or can be terminated; provided that the Development Agreement's restriction are deemed to have been terminated, settled, or otherwise satisfied (particularly in regard to its restrictions on overall density of 725 units); and provided that the provisions that the mandatory redemption provision of the bonds is satisfied addressed.

Questions from Mark Web - Development Agreement

1. **Who are the parties to the Development Agreement?**

A) The parties to the Development Agreement are the City and Lone Peak Links, LLC.

2. Do any third parties or property owners have rights under the Development Agreement?

A) No. "A third party may not sue a city to enforce a development agreement unless it is an intended third-party beneficiary." (Memo of August 6, 2016, at 5) Section 13.13 of the Development Agreement specifically states that the "Agreement does not create any third party beneficiary rights…."

The purchasers of lots in the Cedars are not parties to the Development Agreement. At most, homeowners in the Cedars are only incidental third-party beneficiaries of the benefits flowing from the Development Agreement. The primary intent of the Development Agreement was to limit the Developer as to the number of units it could construct in the Cedars, while preserving areas of open space and golf course. Of course, potential buyers could be benefited by the plan for the Cedars, but such benefits are purely incidental to the Development Agreement's primary objective – limiting the Developer as to density and design. (Memo of August 12, 2006., at 6)

3. Does the Agreement expire? Do any of the obligations under the Agreement expire or change over time?

A) The Development Agreement will expire when its terms are fulfilled. Inasmuch as the City continues to do business with LPL as per the Development Agreement, it is still in effect. Section 13.3 of the Development Agreement contemplates its own termination: "The Term of this Agreement shall extend until the obligations and requirements herein are completed in conformance with City subdivision, construction, and bonding requirements." According to the August 12, 2006, memo, "[W]hen all plats have been recorded, bond posted, infrastructure completed and accepted by the City, and the performance guarantee bond released, by the express terms of the Development Agreement, it will terminate. (See generally City Code, Title II, and Title 9, Chap. 2.)"

4. What obligations does the Agreement place on the primary parties with respect to the golf course property?

A) The Development Agreement places CCRs on those portions of the golf course in Plat B (at a minimum, Holes 10, 11, 12, 16, 17 and 18), a Conservation Easement on other portions of the golf course, including those portions in Plat H, and overall density restrictions on all properties included within the development.

5. **If third parties have any rights or the ability to make a claim under the agreement what rights or claims could they make?**

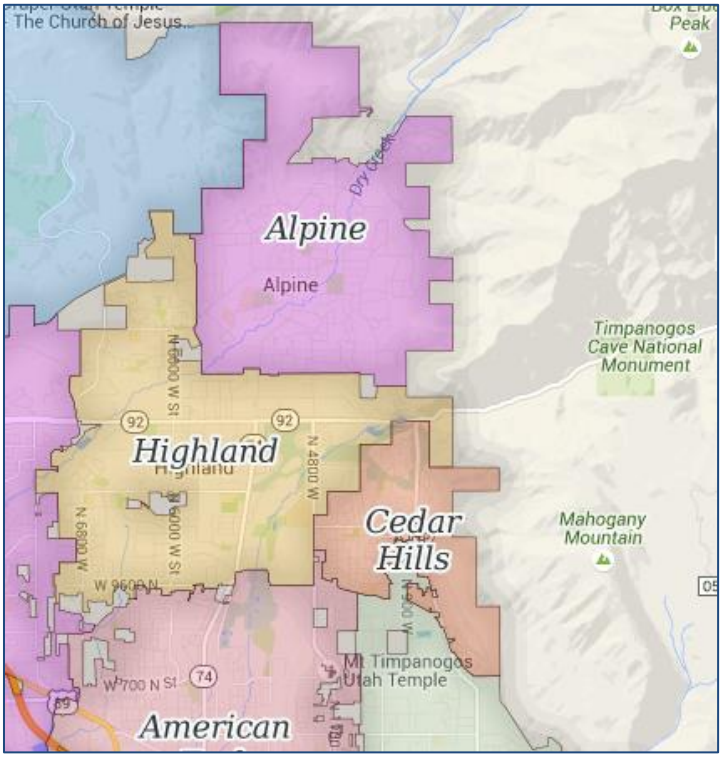
A) We respectfully decline to answer to preserve legal strategies and defenses which may be needed at some point.

1. **What are the obligations of the city and to whom are the obligations under the Bond with respect to the golf course land?**

Note from Mark: If any of these questions requires significant research time he would be happy with general answers in an effort to reduce costs to the city

2. **If the city were to convert the golf course into housing property, parks, soccer fields, and parking lots, what are the consequences under the Bond?**

Not yet answered by legal



Questions from Rob Crawley

1. **In order to sell holes 13-15 and the Highland plats, what documents would have to be signed and by whom in order to make it legal?**

   A) Holes 13-15 in Plat H are, as indicated above, the most likely target for development. This could be done, provided that the Open Space Conservation Easement has or can be terminated; provided that the Development Agreement's restriction are deemed to have been terminated, settled, or otherwise satisfied (particularly in regard to its restrictions on overall density of 725 unites); and provided that the provisions that the mandatory redemption portion of the Master Agreement can also be satisfied.

2. **Could the city legally gift some additional land to those that border the golf course in exchange for the loss of value caused by discontinuing operations of the golf course?**

   A) Whether or not this or other creative resolution methods could be used will depend on the specific facts or a final proposal by the City. It is premature to speculate as to the exact legal and commercial strategies that might be available to the City.

Questions from Jenny Reese

1. **Can Jenny publish the memorandum provided by Kirton McConkie with the final analysis so residents can read it? I think it does a great job of providing insight into the legal issues.**

   A) We would prefer to review and re-issue a public version of the memorandum of August 13, 2015. (Note: Mayor Gygi granted permission for disclosure of this memorandum enclosed in Appendix)

2. **Can the golf committee get access to the entire binder provided by Kirton McConkie. It's long but has good information that may be helpful as the FAQ's are drafted.**

   A) Other than the memorandum of August 13, 2015 (see prior answer), no proprietary information was included in the "Golf Course Documents" binder of August 13, 2015.

Questions from Pricilla Leek and seconded by David Driggs

1. **What are the legal ramifications of awarding compensation to landowners affected by the sale of the golf course? Will we set a precedent for further trouble?**

   A) Whether or not this or other creative resolution methods could be used will depend on the specific facts or a final proposal by the City. It is premature to speculate as to the exact legal and commercial strategies might be available to the City.

Questions from Charl Louw

There is certain language that may be helpful from our legal team, which is used for accounting contingency disclosure purposes on a legal confirmation. We may want them to disclose the range of reasonable possible loss for pursuing Rob's proposal. There are three categories a legal confirmation usually groups loss contingencies. 1. A loss is probable. 2. A loss is reasonably possible. 3. A loss is remote. A loss is probable means the future event will likely occur. If a significant loss is probable or remote, then I would want David Shaw to make this as clear as possible. They could apply this language to each agreement that would need to be updated with Rob's proposal. Based on the feedback I have heard so far, I would think a significant loss is reasonably possible or probable, but maybe I have a misunderstanding.

A) We would be pleased to provide this level of analysis if and when the City makes a preliminary decision to move forward with a proposal other than to operate and maintain the golf course as is.

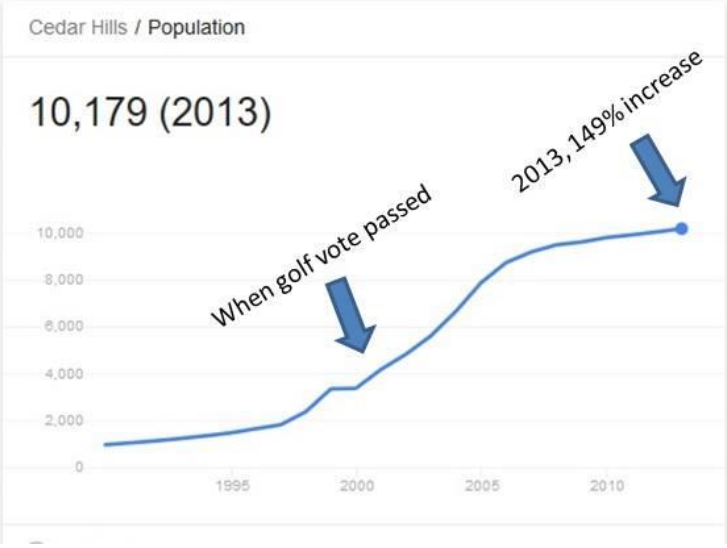
5. Social Contract

Many in the community, especially those who reside in the Cedars, purchased their homes in part, because of the proximity to the course and the recreational opportunity it provided and the open space it created. The city has grown in large numbers since the golf course was built and, as pointed out in public comment, the golf course was a big draw. New residents have been part of the reason the course continues to improve financially.

The committee points out that given the current performance of the golf course and the average tax burden of Cedar Hills, it would be irresponsible to pursue Option B given its plan would significantly impact a large portion of our community in a negative way. (It is important to note that the committee is cognizant of the fact that if the city were in financial trouble and had an excessive tax burden, it might be the responsible thing to do to look at selling off city assets like the golf course or parks rather have the city face bankruptcy.) It may create a new and larger justifiably angry group of families and individuals who… entered into a legal and in this case a "social contract" when they purchased their homes near the golf course. Not to mention all who originally voted for the golf course and have supported it for the past twelve years. There is a high level of anxiety about the future of the golf course with residents that primarily own homes adjacent or near the golf course. Most of the public comment in committee meetings came from residents of the Cedars. The Cedar is surrounded by golf course property and Option B calls for the selling of much of it to a third party and the reconfiguration of the reminder into park space that has not yet been defined.

- In 1999, Cedar Hills had 2,000 residents. In 2014, there were over 10,000.
- Since 1999, property values have increased 59% and taxes have decreased 62%
- In 2006, the golf course bond debt was 10.26% of property taxes; today it is 5.84%

Source: State of the City 2014



Population growth in Cedar Hills. 149% of the growth occurred after the initial golf course vote.

Cedar Hills experienced rapid growth from 2001 to 2007, but recently, growth in the city has slowed significantly due to the current economic environment, and the limitations of available developed property. North Utah County continues to grow at a faster pace than that of Cedar Hills.

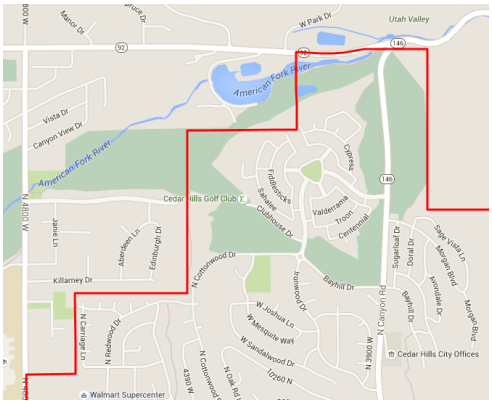
Population and growth estimates and their resultant rates serve as one of the drivers for calculating many of the revenue projections in the General Fund. Revenues that have the general population as their base are expected to increase along with the population at a rate of 1.0 percent from the previous year. On the other hand, revenues that have only *new* growth as their base, such as building permit revenues, would be expected to remain flat, or slightly decrease from the previous year. Various other revenue and expenditure items, which require distinct and often more complex models for projection, hearken back to population and growth estimates.

The Development agreement that the city of Cedar Hills enter into with the developer Lone Peak Links, allows for no development of Golf course land inside of city limits. The purpose of this was to limit the developer's ability to develop land reserved for open space and also to protect the value of homes built in the Cedars development. Neither party, the city nor the developer, would be allowed to alter that agreement unless both parties agreed on the change.

In an effort to reduce our bond debt the City negotiated with Lone Peak Links to allow for a reconfiguring of hole 15 on the east side of canyon road, creating land the city could then sell for development. This development would allow the golf course to remain intact, preserve the bulk of our open space, and protect the investment of The Cedars residents.

In an effort to help reduce contention in the city and to help pay down the bond debt, The Cedars Home Owners Association did not mount any legal challenge to the proposed rezoning and encouraged the developer to allow the city to relax restrictions on the land east of canyon road without dispute.

Councilman Crawley's Option B plan now calls or all of the land east of canyon road to be sold for housing development. This would eliminate a large amount of open space and result in the complete closure of the entire golf course. The residents of The Cedars in good faith gave up their rights to challenge this type of development east of canyon road with the expectation the city would deal with them in good faith. Councilman Crawley's Option B proposal targets the land east of canyon road for development specifically because this good faith negation left the land vulnerable. Councilman Crawley's plan also includes funds to fight any legal challenge filed by residents. We believe attempts to take advantage of this zoning loophole violates a social contract with the citizens of the Cedars and could be perceived as unethical.



The Cedars Development surrounded by golf course properties

Cedars Development Agreement and Financial Impact

Option B would necessitate the elimination of the development agreement that exists between The Cedar and the city of Cedar Hills. This agreement requires that the Cedars maintain their streets, provide snow removal, maintain common areas and park, pay for our own Pressured Irrigation and and electricity in the common areas. The Cedars agreed to provide these services as part of the golf course open space topic. The city would not need to inccur these fees, but it likely would e a source of contention if the Cedars were required to continue paying for these services when a golf course not longer exists.

The Cedars 2015 operating budget for these services is as follows:

Reserve Funding (covers street maintenance repairs): $57,000
Utilities (electricity and PI): $3,661
Common Area Maintenance and Landscaping (park, park strips - Briggs and Nielsen streets): $36,900 Street Sweeping: $800
Snow Removal: $7,850
Total: $106,211

In 2015, Cedars household pays $40 per month for these services.

6. Conclusions

Committee Conclusions on Option A and B

Conclusions Introduction

The committee assignment from Mayor Gygi was to evaluate options on the golf course as proposed by Councilman Crawley and to ascertain the impact of these options on the City of Cedar Hills. From the outset of meetings, the goal was to ascertain if either of these options would be "better" for Cedar Hills.

The committee recognizes that some residents oppose Cedar Hills owning a golf course. Reasons for opposition are numerous but frequently fall along the lines of the proper role of government or that financial projections have not yet been fulfilled. Some do not want to fund something they do not use, etc. The committee's intent is not to address the distant past or to sway ones political views. Rather this report focuses on today's current situation, the options proposed and what the impact would be if those options were implemented.

Public Opinion

The committee encouraged public comment and received regular attendance by the public with public comment often taking up the first 20-30 minutes of the meeting. Residents were limited to three minutes for comment. Public comment is available within the audio recordings found on the City of Cedar Hills web site. It should be noted that significant discussion was held outside committee meetings on social media and elsewhere. The committee did not use any of that public clamor as a basis for its conclusions.

The predominant theme from public comments was to keep the golf course as currently constituted and to find ways to improve the success of the golf course financially and for the public to accept the idea of owning the golf course. Not a single resident called for closing the golf course. Three residents suggested that options be looked at, all the facts revealed, and then those options be brought to a vote by the residents of Cedar Hills. The committee has explored the options, as requested. One can read this document in its entirety to form an educated opinion about the best way to move forward with the golf course.

St. Andrews Estates

St. Andrews Estates resides on the east side of canyon road and at one point was part of the golf course. The City of Cedar Hills reconfigured this land in an effort to sell the land and pay down the golf debt. It was taken off of the market due to declining real estate values.

The city now has the option of selling or retaining this property. Selling St. Andrews Estates is a city council decision and this committee makes no suggestion on that matter other than to state that committee members were divided. Some members believe the city could use the St. Andrews Estate property for a public use rather than deploying Option B to increase park space. Part of the goal for Option B is to increase park space in the city some committee members believe.

Option A and B both call for the sale of St. Andrews Estates. The committee did not arrive on a consensus as to whether that should be done. Options A and B both call for the proceeds to be used for paying down the bond and reducing the tax impact upon residents of the city. What the options do not indicate is that due to terms with the golf bond (see bond document in appendix) such a premature partial bond payment of this kind, according to legal counsel, should not be pursued until Internal Revenue Service implications are dealt with (see Legal Review and Appendix) and may not be permitted until 2023. In other words, should St. Andrews Estates be sold those funds may have to be held in escrow until 2023 or until the City of Cedar Hills could make a lump sum payment and pay off the bond in full. If St. Andrews Estates were sold, residents may not see the financial benefit for at least 8-9 years

Conclusion on Option B Proposal

Option B proposes selling approximately 97 acres of the golf course, originally recommended diverting monies allocated to the future Harvey Park towards the golf bond, and proposes additional parks be built on remaining portions of the golf course.

Option B is the option that the committee spent the most time on and is the option that has the greatest impact on the City of Cedar Hills financially, legally and socially. The committee received Options A and B (see appendix) from Councilman Crawley on September 10, 2015 with it becoming an agenda item for discussion on September 24, 2105 * when Councilman Crawley presented Options A and B in its entirety.

Selling of Land

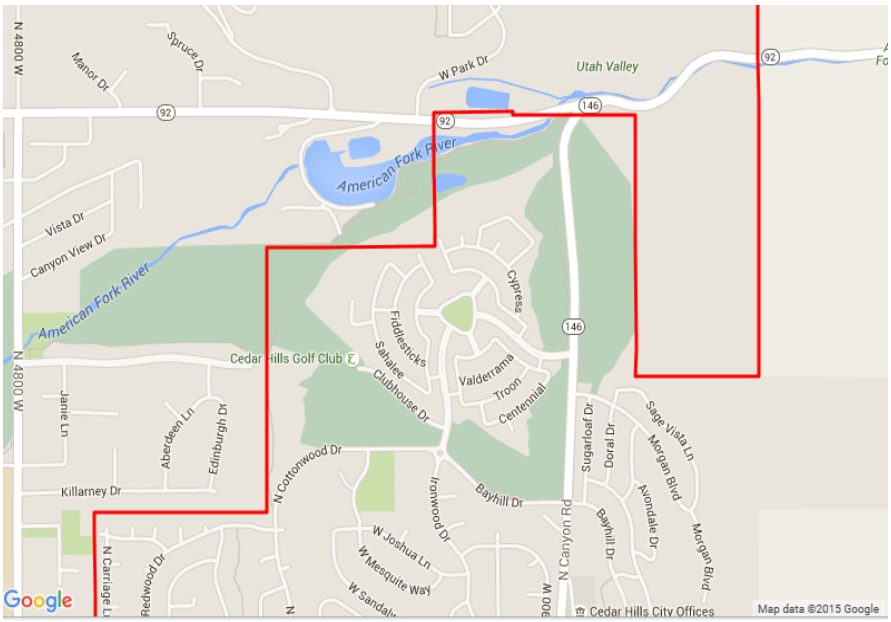
Option B calls for closing the golf course. It seeks to sell 97.9 acres (59%) which encompasses golf holes 1-9 and 13-15. It should be recognized that the selling of these properties would eliminate the golf course as a viable golf entity. One of the legal issues surrounding the sale of golf course land is that such a sale would lead to a change on the use of the golf course and the bond which is solely for a golf course making the bond due in full. In other words, these lands would likely need to be sold for the asking price of the bond (approximately $5.57 million), and necessitate timing within close proximity of each other. A single buyer would be preferred so that money would be available to pay the bond in full. The city does not have the cash on hand to make up the shortfall if the golf course property does not sell simultaneously.

Further, such a sale would need to go through without any party bringing legal grievance to the city whether founded or frivolous a legal impediment could delay payments from the sale or chase away a buyer. The committee found that the likelihood of these circumstances falling into place given the complexities and legal issues at hand to be unlikely to succeed. Is it possible? Yes, but not without significant risk to the city and not without strong public support.

City of Highland

68 acres of the "to be sold" land is in the City of Highland. The golf course interweaves throughout the two city boundaries, leaving land use issues that would need to be resolved. According to city staff and council, the City of Highland has not been open to allowing any development on the golf course parcel in Highland. The portion of golf course within the City of Highland contributes to their allocation of open space. This aspect likely lowers the likelihood of a successful sale of that portion of land to a third party unless an investor wanted to buy the land but had no desire to develop it. The City of Highland would need to relinquish this open space from their General Plan for this property to be compelling to a buyer. The committee could not identify a motivating factor for Highland to reassign allocated open space, but acknowledges that there is a chance that such an effort might be successful.

It should be recognized that Cedar Hills owns the golf course land that resides in Highland leaving it in control of how the gateway to our city appears.



Highland City Boundary with golf course

Continue Golf Course Operations while under sale

Option B calls for the continued operations of the golf course while legitimate offers are received for St. Andrews and the land in Highland City. The committee was concerned that golf revenues would suffer due to the surrounding uncertainty of future golf operations. For example, would an entity want to book the golf course for their future event not knowing if the course will be in operation? Even today, because of incessant talk of Options such as A and B current golfers inquire when the golf course is closing. Reduced golf and event revenues should be budgeted should Option B be pursued.

Continue to irrigate and maintain remaining holes.

Most on the committee found this aspect of Option B a little puzzling given the elimination of the golf course. However, what is meant by "remaining holes" is that the remaining portions of open space would be maintained and watered until they were developed into parks. One potential undefined financial aspect of Option B is the reconfiguring golf course into park space and whether this would necessitate the moving or major pressurized irrigation lines. This needs to be explored and possibly budgeted.

Use the funds that would have been spent on the golf course to enhance the remaining "parks" until satisfactory.

The committee found this aspect of Option B to lack enough definition to support it or to determine its accuracy. Forward looking cost estimates on undefined parks and what is considered "satisfactory" is too nebulous to arrive at a conclusion. What is satisfactory? To whom? How many parks are being proposed and where? What amenities will be offered? How much funds are needed? Option B allocated monies for this aspect of the plan, but lacks the detail necessary to project any numbers with confidence. The committee felt it unwise to attempt to project costs as proposed.

As Option B closes the golf course and provides for "parks" had the parks been better defined or master planned there may have been something compelling to compare the golf course too but the plan lacks such substance. Does the public want small parks with few amenities or larger parks with many amenities? Could Option B be replacing one form of subsidy for a more expensive one (see Financial Review?

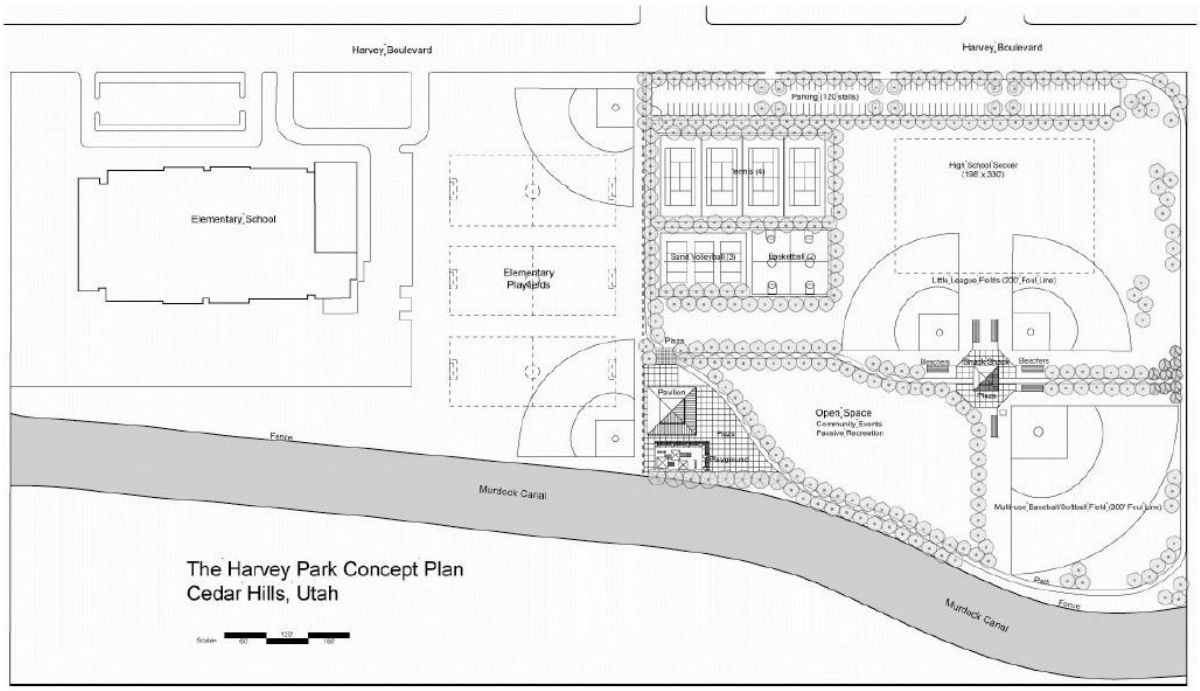
Offer to Harvey's to buy only part of their land for $850,000 currently in escrow. **(Note: A late Option B revision eliminates this aspect from the plan, but committee review is provided nonetheless should this idea return)**

A late Option revision eliminated this aspect from consideration, but the original analysis is provides here in case this topic returns in the future. To date the City of Cedar Hills has spent significant time and legal expense in an effort to procure the Harvey Park parcel which has been set aside as park space. Option B proposes, reducing that park size and reallocating funds designated for the Harvey Park to be used for funding aspects of Option B.

The committee feels that the Harvey Park was intended for all residents to enjoy, but changing it's scope would leave the southern end of the city without the park they thought they were going to get as defined in the General Plan. There is concern that modifying this resident expectation so that more parks can be created on the north side of Cedar Hills could lead to the very same concerns that opponents to the golf course may feel unfulfilled expectations. Option B is contrary to that outlined within the City of Cedar Hills General Plan. The General Plan calls for:

"The Harvey parcel at 12.4 acres is vitally important for accommodating recreation in the City of Cedar Hills. It is the only large piece of flat ground available for recreation. It can easily be connected by trail to Sunset Park and Forest Creek Park/Trail. It has been designed to accommodate one (1) regulation size high school soccer field, one (1) pony size baseball diamond, two (2) little league baseball/softball diamonds, four (4) tennis courts, three (3) volleyball courts, two (2) basketball courts, a passive recreation and picnic area with picnic tables and pavilions, one (1) large playground, restrooms, storage, a jogging loop, and parking."

Further this aspect of the Option B requires the cooperation of the Harvey's which the relationship to date has been mired in legal maneuvering.



Harvey Park Concept Plan from the General Plan

Allow residents who border the golf course the option to buy additional land into the golf course area at the lowest legal price up to 1/5 acre.

The lowest legal price would need to be ascertained but likely should be put out for public bid. The city cannot award the purchase of land to residents without a public bidding/offer process. This plan could lead to a myriad of buyers owning land next to residents and or public space. Would these lands be maintained? What would they be used for? The committee recognizes that Option B reduces open space with residents and this part of the plan is an acknowledgment of such The committee questions the necessity for residents to spend money to obtain open space that was already being provided for by the City of Cedar Hills. This aspect of Option B increases the financial burden on residents in order to maintain the quality of life that already exists. Given these concerns the committee feels that this portion of the Option is unfeasible.

Zone sell-able land in Cedar Hills (holes 13,14, and 15) for larger lots to satisfy green space requirements.

Option B calls for green space enjoyed by the public to be transitioned to private land owners in the form of larger lots. The committee recognizes that larger lots may help with property values concerns. Taking green space away from nearby residents violates the spirit or social contract that the city have been providing such residents. Will nearby residents be willing (or able) to pay to meet the cities green space requirements?

Separate from the current decision would be a future decision about whether to convert hole 10 into a cemetery.

The committee has no opinion as to whether Hole 10 should be a cemetery other than the position stated within our recommendation to City Council. Future land use planning is not within the scope of this committee and should be left to the Planning Commission and City Council.

Financial review

Due to many of the financial numbers being forward looking projections, the committee had a difficult time ascertaining their accuracy. Many of the numbers are forward looking projections or estimates. Numbers have also been changed throughout the review process. For example, at one point in Option B there was $1 million set aside to fight legal battles with residents of Cedar Hills after the committee discussed the merits of creating plaintiffs out of city residents that number was reduced to $250,000 in a revised Option B. The committee feels that the legal issues are extensive and it is impossible to estimate the legal expense as this point, but the committee does predict a strong likelihood of legal action taken against the city.

One of the reasons opponents of the golf course continue to pursue avenues like Option B, is that they feel the projected numbers in 2001 to obtain public acceptance for the golf course were inaccurate. The committee wishes to avoid the distrust and discord caused by renewed accusations of manipulating numbers to obtain a preferred outcome.

After reviewing the financials provided in Option B, the committee has no confidence that the projected forward looking numbers are accurate. If a replacement to the golf course had been master planned and bids obtained for the cost, than maybe a closer estimate could be drawn, but as it stands with Option B there is too much ambiguity with the outcome and legal challenges to forecast an accurate estimate on the true costs of Option B. Another example of cost allocations not accounted for are the services that the city may need to provide for the Cedars development (See Cedars Development Agreement).

This report contains all the numbers proposed in Option A and B for review and critique by the public at large within the Appendix

* After the committee completed its evaluation of Options A and B, Councilman Crawley revised the options and released them to the public. He subsequently submitted the revised options to the committee upon committee request via email on 10/7/2015. They appear in the Appendix

7. Recommendations to City Council

The Golf Course Finance Committee does NOT recommend that the city pursue Option B. The predominant reasons are:

- The plan lacks specificity on what the city landscape would look like in the end. What kind of parks would we have and at what expense? If the parcels could be sold what would they be used for? Homes? Farming? Nothing? At present the city has been master planned with a golf course, to reverse course and add more houses and parks without significant public demand for such is not suggested. What is the compelling replacement to the golf course? Had a master plan with actual costs and blueprints been proposed a true evaluation of cost could be procured and the public could truly decide which they prefer.
- In enacting, Option B attempts to predict the legal expenses, but the reality is this is an unknown cost which could be significant and timely. The original Option B allocated $1 million dollars to be spent legally fighting Cedar Hills own residents. This would put an undue financial impact on our residents who would likely have to spend a similar amount of money. It would also create further discord in the city. The committee feels it is unethical to place such a financial impact on residents for the purpose of selling portions of the golf course to a developer and to increase park space when the city already has potential parks space at St. Andrews and the Harvey Park.
- Cedar Hills has grown 149% since the golf course was created. This growth is indicative of an acceptance of the city having a golf course. It is impossible to predict what the growth would have been without the course but public comment cites the golf course as a major draw to coming to Cedar Hills whether one plays golf or not.
- The closure of the golf course would reduce the amount of open space the city possesses.

7. Recommendations to City Council

- The legal hurdles include immediate and complete payment of the bond, CCR's, Cedars HOA, Development Agreements, Conservation Easements, Highland City, the Harvey family, Internal Revenue Service and frivolous and non-frivolous lawsuits from residents or third parties. The city should increase its legal budget should it pursue Option B.
- The golf course has been a historic source of contention in the city, the reality of closing the course, selling more land to developers, and changing land use next to residents will likely create an even larger group of residents who would no longer feel in harmony with their city.
- The golf course financials are improving and the subsidy has been diminishing in recent years. The committee feels that continued progress should be made to further improve the financial picture. Should the city fail to make appropriate progress in future years Option A and B can always be looked at a later date, however having a solid plan to keep the golf course and find ways to improve its financial success will be aided by removing the constant contention surrounding this issue.
- Their are ethical and moral issues involved in changing the culture and landscape of Cedar Hills with the 149% that selected Cedar Hills as a home. The committee strongly suggests that it is unethical to change the golf course to something else without wide spread public support or desperate financial need. Today public support is opposite of Option B. Public comment supported keeping the golf course and not one person during public comment would support the closing of the golf course.
- Opponents of the golf course want to increase "harmony" on this topic, but each election cycle fail to be the ones that compromise and accept the fact that the city owns a golf course. The reality is closing the course, selling land to developers, and changing the land use next to residents will only create an even larger group of residents who no longer feel in harmony with their city.
- Option B seeks to increase park space, but it also calls for reducing park space with the Harvey Park and eliminates the possibility of using city land for parks altogether by selling St. Andrews. It would simpler, more ethical and carry less financial and legal risk to use the Harvey Park as planned and the St. Andrews estates for public use rather than dissolve the golf course in an effort to increase park space.
- The golf course financials are improving and the subsidy has been diminishing in recent years. The committee feels that continued progress should be made to further improve the financial picture. Should the city fail to make appropriate progress in future years Option A and B can always be looked at a later date.

7. Recommendations to City Council

- The cost per acre to operate a golf course is less than the cost of acre for park space according to the city financials (see Financial Review and Appendix)
- At present the city is financially sound and can meet it's financial obligations. There is not a pressing need to liquidate city assets to remain financially solvent.
- The Community Event center was built in part to support the needs of the golf course. Closing the golf course could lead to monies spent on this building to be wasted. Events, in particular wedding receptions and corporate events are reserved on the premise of it being held at a "golf course club house". Committee had concern that it may be more difficult to market event bookings should the Community Event Center no longer be associated with a golf course.

Voting Questions

1. Do you believe Rob Crawley's Option-B solution as outlined in this report is a viable plan

	YES	NO
Brent Aaron	X	
David Driggs		X
Gary Gygi		X
Mark Horne	X	
Mark Webb		X
Pricilla Leek		X
Rick Stewart		X
Rob Crawley	X	
Rob Olsen		X
Trent Augustus		X

TOTAL	3	7

2. Do you recommend Rob Crawley's option B proposal be adopted by the city council?

	YES	NO
Brent Aaron		X
David Driggs		X
Gary Gygi		X
Mark Horne		X
Mark Webb		X
Pricilla Leek		X
Rick Stewart		X
Rob Crawley		X
Rob Olsen		X
Trent Augustus		X

TOTAL		10

3. Do you believe the current economic status of the golf course is sustainable?

	YES	NO
Brent Aaron	X	
David Driggs	X	
Gary Gygi	X	
Mark Horne	X	
Mark Webb	X	
Pricilla Leek	X	
Rick Stewart	X	
Rob Crawley	X	
Rob Olsen	X	
Trent Augustus	X	

TOTAL	10	

4. Do you believe that for now, barring any significant change in economic status, the best course of action for the City Council is to fully support and promote the golf course and make reasonable efforts to improve its financial viability going forward?

	YES	NO
Brent Aaron	X	
David Driggs	X	
Gary Gygi	X	
Mark Horne	X	
Mark Webb	X	
Pricilla Leek	X	
Rick Stewart	X	
Rob Crawley	X	
Rob Olsen	X	
Trent Augustus	X	

TOTAL	10	

5. As a member of the Golf Course Finance Advisory Committee do you feel you have been given enough time and opportunity to fully express your point of view, share your facts and express your opinions?

	YES	NO
Brent Aaron	X	
David Driggs	X	
Gary Gygi	X	
Mark Horne	X	
Mark Webb	X	
Pricilla Leek	X	
Rick Stewart	X	
Rob Crawley	X	
Rob Olsen	X	
Trent Augustus	X	

TOTAL	10	

6. Even though you may agree or disagree with the conclusions and recommendations of this committee do you believe that our treatment of the issues has been completely transparent, that there has been no effort to deceive in the presentation of the financial and legal information and that nothing we know of has been hidden or kept from the public?

	YES	NO
Brent Aaron	X	
David Driggs	X	
Gary Gygi	X	
Mark Horne	X	
Mark Webb	X	
Pricilla Leek	X	
Rick Stewart	X	
Rob Crawley	X	
Rob Olsen	X	
Trent Augustus	X	

TOTAL	10	

Option A as proposed by Councilman Crawley (Page 1)

	A	B	C	D	E	F	G	H	I	J	K
1	Golf Course Option "A" Pros and Cons					Page 1					
2											
3											
4	Proposal										
5	1)	Keep running the golf course.									
6	2)	Continue to look for ways to decrease the subsidies from residents									
7	3)	Sell St. Andrews Estates lots East of Canyon Road									
8	4)	Continue to have resident taxes subsidize the bond debt and the golf course.									
9											
10	Pros										
11	1)	There is less effort and less short term trauma to the city									
12	2)	Those that have bought homes in the Cedars will not have unexpected changes to the area surrounding their homes.									
13	3)	Those that enjoy having a golf course in Cedar Hills will continue to enjoy the golf course									
14											
15	Cons										
16	1)	The debate and anger over the golf course would not likely go away for many years to come and the residents will continue to subsidize the course									
17	2)	The city would continue to be short on park space for their recreational programs									
18	3)	The bond payment will continue on our property taxes until approximately 2030									
19	4)	With the subsidy and bond payment, the residents appetite for other city amenities will not be high. I.e. restricts other improvements to the city.									
20											

Option B as proposed by Councilman Crawley (Page2)

	A	B	C	D	E	F	G	H	I	J	K
1		**Golf Course Option "B" Pros and Cons**				Page 2					
2											
3											
4		**Proposal**									
5	1)	Issue RFP (Request For a Proposal) for selling 30 acres east of Canyon Road.									
6	2)	Issue RFP (Request For a Proposal) for selling 60 acres in Highland City.									
7	3)	Continue golf course operations until legitimate offers are received for both properties that will pay off the bond.									
8	4)	Sell the two plots and pay off the bond simultaneously.									
9	5)	Continue to irrigate and maintain remaining holes.									
10	6)	Use the funds that would have been spent on the golf course to enhance the remaining "parks" until satisfactory.									
11	7)	Offer to Harvey's to buy only part of their land for $850,000 currently in escrow.									
12	8)	Allow residents who border the golf course the option to buy additional land into the golf course area at the lowest legal price up to 1/5 acre.									
13	9)	Zone sellable land in Cedar Hills (holes 13,14, and 15) for larger lots to satisfy green space requirements.									
14	10)	Separate from the curent decision would be a future decision about whether to convert hole 10 into a cemetery.									
15											
16		**Pros**									
17	1)	Approximately $4,800,000 in savings over the next 20 years.									
18	2)	Rather than a golf course that residents have to pay for there would be parks that the residents can use for free.									
19	3)	The debate over the golf course would end bringing more peace to the city.									
20	4)	With $3,000,000 of planned improvements on the land, there could be additional features added such as playgrounds,									
21		pavilions, soccer fields, etc.									
22	5)	There would be enough soccer field space that our city wouldn't have to go to other cities to host soccer games.									
23	6)	The city could consider other features that it wanted to add to our city budget without taxes becoming out of line with other cities.									
24	7)	Separate from the curent decision would be a future proposal about whether to convert hole 10 into a cemetery.									
25	8)	We would not make any changes if we didn't get proposals that were high enough to pay off the bond. If we did get them									
26		We would have options. If we didn't get these proposals, the argument would be put to bed.									
27											
28		**Cons**									
29	1)	The debate over the future of the golf course could temporarily intensify.									
30	2)	The Harvey park in the South end of the city would be smaller in exchange for larger park areas in the North areas of the city.									
31	3)	There would be more land developed on the East side of Canyon road in additional to planned St. Andrew's Estates. (20 acres less green space in city)									
32	4)	Although there is no obligation of the city to subisidize the golf course indefinitely, the city could have to defend itself against potential litigants									
33	5)	The notoriety of having a beautiful golf course would not be there for Cedar Hills.									

Estimate Option "A" and "B" as proposed by Councilman Crawley (Page 3)

5		Option "A"	Option "B"	Difference	Cumulative Diff.
6	2016	$ (821,270.00)	$ (441,270.00)	$ 380,000.00	$ 380,000.00
7	2017	$ (574,416.00)	$ (644,416.00)	$ (70,000.00)	$ 310,000.00
8	2018	$ (546,239.00)	$ (639,527.00)	$ (93,288.00)	$ 216,712.00
9	2019	$ (558,609.00)	$ (493,288.00)	$ 65,321.00	$ 282,033.00
10	2020	$ (571,353.00)	$ (493,288.00)	$ 78,065.00	$ 360,098.00
11	2021	$ (564,693.00)	$ (493,288.00)	$ 71,405.00	$ 431,503.00
12	2022	$ (557,420.00)	$ (493,288.00)	$ 64,132.00	$ 495,635.00
13	2023	$ (559,920.00)	$ (493,288.00)	$ 66,632.00	$ 562,267.00
14	2024	$ (564,720.00)	$ (493,288.00)	$ 71,432.00	$ 633,699.00
15	2025	$ (564,320.00)	$ (493,288.00)	$ 71,032.00	$ 704,731.00
16	2026	$ (563,820.00)	$ (413,288.00)	$ 150,532.00	$ 855,263.00
17	2027	$ (563,220.00)	$ (93,288.00)	$ 469,932.00	$ 1,325,195.00
18	2028	$ (562,520.00)	$ (93,288.00)	$ 469,232.00	$ 1,794,427.00
19	2029	$ (561,140.00)	$ (93,288.00)	$ 467,852.00	$ 2,262,279.00
20	2030	$ (433,873.73)	$ (93,288.00)	$ 340,585.73	$ 2,602,864.73
21	2031	$ (201,000.00)	$ (93,288.00)	$ 107,712.00	$ 2,710,576.73
22	2032	$ (201,000.00)	$ (93,288.00)	$ 107,712.00	$ 2,818,288.73
23	2033	$ (201,000.00)	$ (93,288.00)	$ 107,712.00	$ 2,926,000.73
24	2034	$ (201,000.00)	$ (93,288.00)	$ 107,712.00	$ 3,033,712.73
25	2035	$ (201,000.00)	$ (93,288.00)	$ 107,712.00	$ 3,141,424.73
26		$ (9,572,533.73)	$ (6,431,109.00)	$ 3,141,424.73	
27		See Page 4	See Page 5		
28					
29		Additional Savings From Harvey Park		$1,712,300	See Page 11
30		Total Savings from Option "B"		$ 4,853,724.73	
31					
32					

Option "A" Costs as proposed by Councilman Crawley (Page 4)

Option "B" Costs (Assuming we sell the golf course and sell property in Highland and East of Canyon Road) Page 5

	Golf Course Cash		Other Items		Total Cost
2016	$ (821,270.00)	A	$ 380,000.00	J	$ (441,270.00)
2017	$ (574,416.00)	A	$ (70,000.00)	I	$ (644,416.00)
2018	$ (546,239.00)	A	$ (93,288.00)	C	$ (639,527.00)
2019	$ (400,000.00)	B	$ (93,288.00)	C	$ (493,288.00)
2020	$ (400,000.00)	B	$ (93,288.00)	C	$ (493,288.00)
2021	$ (400,000.00)	B	$ (93,288.00)	C	$ (493,288.00)
2022	$ (400,000.00)	B	$ (93,288.00)	C	$ (493,288.00)
2023	$ (400,000.00)	B	$ (93,288.00)	C	$ (493,288.00)
2024	$ (400,000.00)	B	$ (93,288.00)	C	$ (493,288.00)
2025	$ (400,000.00)	B	$ (93,288.00)	C	$ (493,288.00)
2026	$ (320,000.00)	B	$ (93,288.00)	C	$ (413,288.00)
2027			$ (93,288.00)	C	$ (93,288.00)
2028			$ (93,288.00)	C	$ (93,288.00)
2029			$ (93,288.00)	C	$ (93,288.00)
2030			$ (93,288.00)	C	$ (93,288.00)
2031			$ (93,288.00)	C	$ (93,288.00)
2032			$ (93,288.00)	C	$ (93,288.00)
2033			$ (93,288.00)	C	$ (93,288.00)
2034			$ (93,288.00)	C	$ (93,288.00)
2035			$ (93,288.00)	C	$ (93,288.00)
	$ (5,061,925.00)		$ (1,369,184.00)		$ (6,431,109.00)

Costs & Revenue Associated With Discontinuing Golf Course

Sale of 30 Acres East of Canyon Road	$ 3,300,000.00	D
Sale of 60 Acres in Highland City	$ 3,000,000.00	E
Negotiations/Legal Battles	$ (1,000,000.00)	F
Legal and Consulting Fees	$ (250,000.00)	G
Pay Down of golf course debt (2017)	$ (5,120,000.00)	H
	$ (70,000.00)	I

A Same as option "A" prior to making any changes.

B Spend $400,000 per year on improvements to the remaining areas until they are satisfactory (Total $3,120,000-See Page 10)

C Estimated cost to maintain additional park space each year. See

D Estimated revenue on sale of holes 13, 14, and 15 based on $110,000 Per Acre with 30 acres

E Estimated revenue on sale of holes 1-9 in Highland City based on $50,000 Per Acre with 30 acres

F The city may have some negotiations and/or legal defense costs relating to this plan. However, the city is under no obligation to any group To subisidize the golf course indefinitely. The city has had a 10-year good faith effort to make it profitable. These costs are unknown at this time.

G There would be costs that would need to be incurred by the city in order to verify the land value for the sellable land

H Assuming the sale happened in 2017 the balance would be $5,120,000 which would come due upon a sale of any of the golf course property. (see page 8)

I Total net amount of revenues from sale of golf course and costs associated with the changes.

J Money saved by not building a golf maintenance shed. $380,000 per current city council bids.

Option "B" Costs as proposed by Councilman Crawley (Page 5)

Option "B" Costs (Assuming we sell the golf course and sell property in Highland and East of Canyon Road) Page 5

	Golf Course Cash		Other Items		Total Cost
2016	$ (821,270.00)	A	$ 380,000.00	J	$ (441,270.00)
2017	$ (574,416.00)	A	$ (70,000.00)	I	$ (644,416.00)
2018	$ (546,239.00)	A	$ (93,288.00)	C	$ (639,527.00)
2019	$ (400,000.00)	B	$ (93,288.00)	C	$ (493,288.00)
2020	$ (400,000.00)	B	$ (93,288.00)	C	$ (493,288.00)
2021	$ (400,000.00)	B	$ (93,288.00)	C	$ (493,288.00)
2022	$ (400,000.00)	B	$ (93,288.00)	C	$ (493,288.00)
2023	$ (400,000.00)	B	$ (93,288.00)	C	$ (493,288.00)
2024	$ (400,000.00)	B	$ (93,288.00)	C	$ (493,288.00)
2025	$ (400,000.00)	B	$ (93,288.00)	C	$ (493,288.00)
2026	$ (320,000.00)	B	$ (93,288.00)	C	$ (413,288.00)
2027			$ (93,288.00)	C	$ (93,288.00)
2028			$ (93,288.00)	C	$ (93,288.00)
2029			$ (93,288.00)	C	$ (93,288.00)
2030			$ (93,288.00)	C	$ (93,288.00)
2031			$ (93,288.00)	C	$ (93,288.00)
2032			$ (93,288.00)	C	$ (93,288.00)
2033			$ (93,288.00)	C	$ (93,288.00)
2034			$ (93,288.00)	C	$ (93,288.00)
2035			$ (93,288.00)	C	$ (93,288.00)
	$ (5,061,925.00)		$ (1,369,184.00)		$ (6,431,109.00)

Costs & Revenue Associated With Discontinuing Golf Course

Sale of 30 Acres East of Canyon Road	$ 3,300,000.00	D
Sale of 60 Acres in Highland City	$ 3,000,000.00	E
Negotiations/Legal Battles	$ (1,000,000.00)	F
Legal and Consulting Fees	$ (250,000.00)	G
Pay Down of golf course debt (2017)	$ (5,120,000.00)	H
	$ (70,000.00)	I

A Same as option "A" prior to making any changes.

B Spend $400,000 per year on improvements to the remaining areas until they are satisfactory (Total $3,120,000-See Page 10)

C Estimated cost to maintain additional park space each year. See

D Estimated revenue on sale of holes 13, 14, and 15 based on $110,000 Per Acre with 30 acres

E Estimated revenue on sale of holes 1-9 in Highland City based on $50,000 Per Acre with 30 acres

F The city may have some negotiations and/or legal defense costs relating to this plan. However, the city is under no obligation to any group To subisidize the golf course indefinitely. The city has had a 10-year good faith effort to make it profitable. These costs are unknown at this time.

G There would be costs that would need to be incurred by the city in order to verify the land value for the sellable land

H Assuming the sale happened in 2017 the balance would be $5,120,000 which would come due upon a sale of any of the golf course property. (see page 8)

I Total net amount of revenues from sale of golf course and costs associated with the changes.

J Money saved by not building a golf maintenance shed. $380,000 per current city council bids.

Bond Amortization as proposed by Councilman Crawley (Page 6)

	A	B	C	D	E	F	G	H
6	Interest Compounding			Each six month period				
7	Loan Date			12/20/2012				
8	Final Payment Date			2/1/2035				
9	Net Interest Cost			2.48131%				
10								
11	Date	Effective Int.	Interest	Principal	Payment	Balance		
12	12/20/2012					$ 5,570,000		
13	2/1/2013		$ 15,616	$ 65,000	$ 80,616	$ 5,505,000	A	
14	8/1/2013	2.4672%	$ 67,910		$ 67,910	$ 5,505,000	A	
15	2/1/2014	2.4672%	$ 67,910	$ 50,000	$ 117,910	$ 5,455,000	A	
16	8/1/2014	2.4715%	$ 67,410		$ 67,410	$ 5,455,000	A	
17	2/1/2015	2.4715%	$ 67,410	$ 50,000	$ 117,410	$ 5,405,000	A	
18	8/1/2015	2.4759%	$ 66,910		$ 66,910	$ 5,405,000	A	
19	2/1/2016	2.4759%	$ 66,910	$ 55,000	$ 121,910	$ 5,350,000	A	
20	8/1/2016	2.4807%	$ 66,360		$ 66,360	$ 5,350,000		
21	2/1/2017	2.4807%	$ 66,360	$ 230,000	$ 296,360	$ 5,120,000		
22	8/1/2017	2.5023%	$ 64,060		$ 64,060	$ 5,120,000		
23	2/1/2018	2.5023%	$ 64,060	$ 230,000	$ 294,060	$ 4,890,000		
24	8/1/2018	2.5260%	$ 61,760		$ 61,760	$ 4,890,000		
25	2/1/2019	2.5260%	$ 61,760	$ 240,000	$ 301,760	$ 4,650,000		
26	8/1/2019	2.5531%	$ 59,360		$ 59,360	$ 4,650,000		
27	2/1/2020	2.5531%	$ 59,360	$ 240,000	$ 299,360	$ 4,410,000		
28	8/1/2020	2.5832%	$ 56,960		$ 56,960	$ 4,410,000		
29	2/1/2021	2.5832%	$ 56,960	$ 250,000	$ 306,960	$ 4,160,000		
30	8/1/2021	2.5582%	$ 53,210		$ 53,210	$ 4,160,000		
31	2/1/2022	2.5582%	$ 53,210	$ 250,000	$ 303,210	$ 3,910,000		
32	8/2/2022	2.5299%	$ 49,460		$ 49,460	$ 3,910,000		
33	2/2/2023	2.5299%	$ 49,460	$ 260,000	$ 309,460	$ 3,650,000		
34	8/2/2023	2.5677%	$ 46,860		$ 46,860	$ 3,650,000		
35	2/2/2024	2.5677%	$ 46,860	$ 270,000	$ 316,860	$ 3,380,000		
36	8/1/2024	2.6130%	$ 44,160		$ 44,160	$ 3,380,000		
37	2/1/2025	2.6130%	$ 44,160	$ 275,000	$ 319,160	$ 3,105,000		
38	8/1/2025	2.6673%	$ 41,410		$ 41,410	$ 3,105,000		
39	2/1/2026	2.6673%	$ 41,410	$ 280,000	$ 321,410	$ 2,825,000		
40	8/1/2026	2.7335%	$ 38,610		$ 38,610	$ 2,825,000		
41	2/1/2027	2.7335%	$ 38,610	$ 285,000	$ 323,610	$ 2,540,000		
42	8/1/2027	2.8157%	$ 35,760		$ 35,760	$ 2,540,000		
43	2/1/2028	2.8157%	$ 35,760	$ 290,000	$ 325,760	$ 2,250,000		
44	8/1/2028	2.8951%	$ 32,570		$ 32,570	$ 2,250,000		
45	2/1/2029	2.8951%	$ 32,570	$ 295,000	$ 327,570	$ 1,955,000		
46	8/1/2029	3.0000%	$ 29,325		$ 29,325	$ 1,955,000		
47	2/1/2030	3.0000%	$ 29,325	$ 300,000	$ 329,325	$ 1,655,000		
48	8/1/2030	3.0000%	$ 24,825		$ 24,825	$ 1,655,000		
49	2/1/2031	3.0000%	$ 24,825	$ 315,000	$ 339,825	$ 1,340,000		
50	8/1/2031	3.0000%	$ 20,100		$ 20,100	$ 1,340,000		
51	2/1/2032	3.0000%	$ 20,100	$ 320,000	$ 340,100	$ 1,020,000		
52	8/1/2032	3.0000%	$ 15,300		$ 15,300	$ 1,020,000		
53	2/1/2033	3.0000%	$ 15,300	$ 330,000	$ 345,300	$ 690,000		
54	8/1/2033	3.0000%	$ 10,350		$ 10,350	$ 690,000		
55	2/1/2034	3.0000%	$ 10,350	$ 340,000	$ 350,350	$ 350,000		
56	8/1/2034	3.0000%	$ 5,250		$ 5,250	$ 350,000		
57	2/1/2035	3.0000%	$ 5,250	$ 350,000	$ 355,250	$ -		
58								
59	A-Until the end of 2016 there are still remaining payments from the previous bond that was refinanced with this bond.							
60								

Bond Amortization Option "A" as proposed by Councilman Crawley (Page 7)

	A	B	C	D	E	F	G	H
1	Bond Amortization Schedule Assuming Sale of St. Andrews Estates For $1.5M in 2017							Page 7
2								
3								
4	Bond Amount			$5,570,000				
5	Bi-annual payment			Based on Schedule				
6	Interest Compounding			Each six month period				
7	Loan Date			12/20/2012				
8	Final Payment Date			2/1/2035				
9	Net Interest Cost			2.48131%				
10								
11	Date	Effective Int.	Interest	Principal	Payment	Balance		
12	##########					$ 5,570,000		
13	2/1/2013		$ 15,616	$ 65,000	$ 80,616	$ 5,505,000		
14	8/1/2013	2.4672%	$ 67,910		$ 67,910	$ 5,505,000		
15	2/1/2014	2.4672%	$ 67,910	$ 50,000	$ 117,910	$ 5,455,000		
16	8/1/2014	2.4715%	$ 67,410		$ 67,410	$ 5,455,000		
17	2/1/2015	2.4715%	$ 67,410	$ 50,000	$ 117,410	$ 5,405,000		
18	8/1/2015	2.4759%	$ 66,910		$ 66,910	$ 5,405,000		
19	2/1/2016	2.4759%	$ 66,910	$ 55,000	$ 121,910	$ 5,350,000		
20	8/1/2016	2.4807%	$ 66,360		$ 66,360	$ 5,350,000		
21	2/1/2017	2.4807%	$ 66,360	$ 230,000	$ 296,360	$ 5,120,000		
22	8/1/2017	2.5023%	$ 64,060	$ 1,500,000	$ 64,060	$ 3,620,000	A	
23	2/1/2018	2.5023%	$ 45,292	$ 248,768	$ 294,060	$ 3,371,232		
24	8/1/2018	2.5260%	$ 42,578		$ 61,760	$ 3,371,232		
25	2/1/2019	2.5260%	$ 42,578	$ 259,182	$ 301,760	$ 3,112,051		
26	8/1/2019	2.5531%	$ 39,727		$ 59,360	$ 3,112,051		
27	2/1/2020	2.5531%	$ 39,727	$ 259,633	$ 299,360	$ 2,852,418		
28	8/1/2020	2.5832%	$ 36,842		$ 56,960	$ 2,852,418		
29	2/1/2021	2.5832%	$ 36,842	$ 270,118	$ 306,960	$ 2,582,300		
30	8/1/2021	2.5582%	$ 33,030		$ 53,210	$ 2,582,300		
31	2/1/2022	2.5582%	$ 33,030	$ 270,180	$ 303,210	$ 2,312,120		
32	8/2/2022	2.5299%	$ 29,247		$ 49,460	$ 2,312,120		
33	2/2/2023	2.5299%	$ 29,247	$ 280,213	$ 309,460	$ 2,031,907		
34	8/2/2023	2.5677%	$ 26,086		$ 46,860	$ 2,031,907		
35	2/2/2024	2.5677%	$ 26,086	$ 290,774	$ 316,860	$ 1,741,134		
36	8/1/2024	2.6130%	$ 22,748		$ 44,160	$ 1,741,134		
37	2/1/2025	2.6130%	$ 22,748	$ 296,412	$ 319,160	$ 1,444,722		
38	8/1/2025	2.6673%	$ 19,268		$ 41,410	$ 1,444,722		
39	2/1/2026	2.6673%	$ 19,268	$ 302,142	$ 321,410	$ 1,142,579		
40	8/1/2026	2.7335%	$ 15,616		$ 38,610	$ 1,142,579		
41	2/1/2027	2.7335%	$ 15,616	$ 307,994	$ 323,610	$ 834,585		
42	8/1/2027	2.8157%	$ 11,750		$ 35,760	$ 834,585		
43	2/1/2028	2.8157%	$ 11,750	$ 314,010	$ 325,760	$ 520,575		
44	8/1/2028	2.8951%	$ 7,536		$ 32,570	$ 520,575		
45	2/1/2029	2.8951%	$ 7,536	$ 320,034	$ 327,570	$ 200,541		
46	8/1/2029	3.0000%	$ 3,008		$ 29,325	$ 200,541		
47	2/1/2030	3.0000%	$ 3,008	$ 200,541	$ 203,549	$ -		
48								
49	A-According to option "A" St. Andrews Estates sells for $1,500,000 in 2017							

Bond Amortization Option "B " as proposed by Councilman Crawley (Page 8)

	A	B	C	D	E	F	G	H	I	J
1	Bond Amortization Schedule-Option "B"					Page 8				
2										
3										
4	Bond Amount			$5,570,000						
5	Bi-annual payment			Based on Schedule						
6	Interest Compounding			Each six month period						
7	Loan Date			12/20/2012						
8	Final Payment Date			2/1/2035						
9	Net Interest Cost			2.48131%						
10										
11	Date	Effective Int	Interest	Principal	Payment	Balance				
12	12/20/2012					$ 5,570,000				
13	2/1/2013		$ 15,616	$ 65,000	$ 80,616	$ 5,505,000	A			
14	8/1/2013	2.4672%	$ 67,910		$ 67,910	$ 5,505,000	A			
15	2/1/2014	2.4672%	$ 67,910	$ 50,000	$ 117,910	$ 5,455,000	A			
16	8/1/2014	2.4715%	$ 67,410		$ 67,410	$ 5,455,000	A			
17	2/1/2015	2.4715%	$ 67,410	$ 50,000	$ 117,410	$ 5,405,000	A			
18	8/1/2015	2.4759%	$ 66,910		$ 66,910	$ 5,405,000	A			
19	2/1/2016	2.4759%	$ 66,910	$ 55,000	$ 121,910	$ 5,350,000	A			
20	8/1/2016	2.4807%	$ 66,360		$ 66,360	$ 5,350,000				
21	2/1/2017	2.4807%	$ 66,360	$ 230,000	$ 296,360	$ 5,120,000				
22	8/1/2017	2.5023%	$ 64,060		$ 64,060	$ 5,120,000	Pay off bond with proceed from land sales			
23										
24	A-Until the end of 2016 there are still remaining payments from the previous bond that was refinanced with this bond.									
25										

Golf Course Area as proposed by Councilman Crawley (Page 9)

1	Golf Course Area						Page 9	
2								
3								
4	Golf Parcel #s	Acreage						
5	36:903:0107	13.24		East part of holes 1-8				
6	36:903:0105	6.25		Clubhouse part of the tee box area and trail down to tee boxes				
7	36:903:0111	12.73		Holes 11 and 12				
8	36:905:0206	29.75		Holes 13, 14, 15				
9	36:903:0110	10.89		Hole 10				
10	11:055:0312	10.06		Hole 9				
11	36:903:0112	2.23		1/2 of hole 16				
12	36:903:0113	18.37		Hole 17 and 1/2 of hole 16				
13	36:903:0143	17.4		Hole 18 and driving range				
14	11:055:0321	44.8		West part of holes 1-8				
15	Golf Total	165.72						
16								
17								
18								
19								
20	Area By Hole	Hole Long Yardage	Total Acres (est.)	Irrigated (Est.)				
21	Hole #1	382	8.1	2.72				
22	Hole #2	370	7.9	3.49				
23	Hole #3	188	4.0	0.79				
24	Hole #4	454	9.7	3.49				
25	Hole #5	221	4.7	0.91				
26	Hole #6	494	10.5	3.49				
27	Hole #7	433	9.2	3.49				
28	Hole #8	183	3.9	0.69				
29	Hole #9	428	10.1	3.63				
30	Hole #10	526	10.9	5.37	*			
31	Hole #11	137	3.2	0.46	*			
32	Hole #12	411	9.5	3.76	*			
33	Hole #13	366	11.3	2.76				
34	Hole #14	332	10.2	1.55				
35	Hole #15	268	8.3	1.80				
36	Hole #16	363	8.2	2.77	*			
37	Hole #17	403	12.4	3.59	*			
38	Hole #18	417	8.7	2.33	*			
39	Driving Range		14.95	7	*			
40			165.7	54.10				
41								
42	*-Plan "B" areas to maintain as parks			25.28				
43	Less decreased acres maintained at Harvey Park			(5.00)				
44	Net Increase in Park Area			20.28				
45								
46	Per City Finance Director Yearly Maintenance Costs			$4,600	Per Acre			
47	Increased park maintenance costs			$ 93,288				

Park Improvements as proposed by Councilman Crawley (Page 10)

	A	B	C	D	E
1	Improvement Costs Per Park Area			Page 10	
2					
3		Low	Medium	High	
4					
5	Restroom	$ 75,000	$ 85,000	$ 95,000	A
6	Parking Lot	$ 250,000	$ 300,000	$ 350,000	
7	Playground	$ 50,000	$ 70,000	$ 100,000	
8	Pavillion	$ 20,000	$ 30,000	$ 40,000	
9	Regrade/Change Irrigation	$ 20,000	$ 100,000	$ 200,000	
10	Other	$ 50,000	$ 200,000	$ 300,000	
11		$ 465,000	$ 785,000	$ 1,085,000	
12					
13					
14					
15					
16	Park on Holes 11 and 12	$ 785,000			
17	Park on Holes 16 and 17	$ 785,000			
18	Park on Hole 18 and Range	$ 1,085,000			
19	Hole 10 Development	$ 465,000	B		
20		$ 3,120,000			
21					
22					
23	A-As the restroom was already built in the Bayhill park area there is				
24	no benchmark costs from the Bayhill park proposal. Through discussions				
25	with staff, the cost of the restroom at Mesquite Park was verified as				
26	approximately $75,000.				
27					
28	B-Because hole 10 does not border homes, the residents				
29	may want other types of facilities here such as cemetery in which				
30	case we would not pay for things such as a pavillion and playground, etc.				

Conceptual Cost Estimate - Bayhill Park
BC&A Concept (C)

Project: Bayhill Park — Date: 8/17/2015

Owner: City of Cedar Hills — Prepared by: JKT - Bowen Collins & Associates

Item	Quantity	Units	Unit Cost	Cost
Parking Lot				
Mobilization	1.00	LS	$ 25,000.00	$ 25,000
Engineering Design	1.00	LS	$ 3,934.00	$ 75,000
Quality Control	1.00	LS	$ 4,000.00	$ 4,000
Construction Surveying	1.00	LS	$ 3,500.00	$ 3,500
Clearing and Grubbing and Trail Removal	1.00	LS	$ 10,000.00	$ 10,000
Parking Lot Asphalt (4")	10,000.00	SF	$ 2.50	$ 25,000
Untreated Base Course (8")	290.00	CY	$ 35.00	$ 10,150
Pavement Marking Tape	450.00	LF	$ 2.00	$ 900
Curb and Gutter	675.00	LF	$ 25.00	$ 16,875
5' Sidewalk	500.00	LF	$ 25.00	$ 12,500
ADA Pedestrian Access Ramp	1.00	EA	$ 2,250.00	$ 2,250
Trail - 12' Wide (3" Asphalt over 8" UTBC)	320.00	LF	$ 45.00	$ 14,400
Concrete Driveway Flared, 7-inch Thick	30.00	SY	$ 50.00	$ 1,500
Fill parking	6,000.00	CY	$ 16.00	$ 25,001
Fine Grading	30,000.00	SF	$ 0.10	$ 3,000
Sewer and Storm Drain Improvements	1.00	LS	$ 10,000.00	$ 10,000
Landscape and Irrigation	15,000.00	SF	$ 2.50	$ 37,500
1" Water Service Connection	1.00	EA	$ 3,500.00	$ 3,500
Bollards for MWDSLS Access	3.00	EA	$ 200.00	$ 600
Retaining Walls	700.00	SF	$ 50.00	$ 35,000
Handrail Along Top of Wall	270.00	LF	$ 25.00	$ 6,750
Subtotal				**$ 322,426**
Playground, Play Area and Pavilion				
Landscape and Irrigation	20,000.00	SF	$ 2.50	$ 50,000
Playground (2-5 yrs) and Swing Set	1.00	EA	$ 20,000.00	$ 20,000
Pavilion	1.00	LS	$ 20,000.00	$ 20,000
Pavilion Pad	8.00	CY	$ 300.00	$ 2,400
Bark for Playground Fall Surface	50.00	CY	$ 115.00	$ 5,750
Benches	2.00	EA	$ 500.00	$ 1,000
Bathroom Finish	1.00	LS	$ 7,500.00	$ 7,500
Drinking Fountain	1.00	EA	$ 1,000.00	$ 1,000
Subtotal				**$ 107,650**

Park Improvements as proposed by Councilman Crawley (Page 11)

Harvey Park Savings Page 11

Harvey Park is a 12 acre area that the City was hoping to buy from the Harvey's. The city has filed a motion to condemn the property but the Harvey's and the city have fought over this issue for several years. The appraisal for condemning the property came in at approximately $150,000. The reason the price is lower than market is because it is part of the open space required by the high density housing just East of the school and therefore is currently zoned as open space.

Currently the city has approximately $850,000 in escrow that must be used to purchase land for parks. If the City converts the Golf Course to parks, the need for the whole 12 acres will be diminished. The city would save money by only purchasing approximately 5 acres instead of 12 using only the funds that have been escrowed for this purchase. This would save the city approximately $950,000. Additionally, the city would save approximately $2.50 per square foot on the landscape and irrigation or $762,300. With the large fields at Deerfield Elementary (right next to where the planned Harvey Park is) there would be a large amount of usable green space for soccer and other uses.

Price we are expecting to pay ($150,000 *12)	$1,800,000
Price we would pay using escrow funds only	$850,000
Difference (land purchase savings)	$950,000
Acres reduced (12-5)	7
Square feet per acre	43,560
Total square feet reduced	304,920
Cost of landscape and irrigation per square foot	$2.50
Land Development Savings	$762,300
Total Savings	$1,712,300

Schedule of Revenues, Expenditures, and Changes in Fund Balances - Actuals
Golf Special Revenue Fund (Excluding Events and Grill)

	Actuals 2013	Actuals 2014	Estimated 2015*	Budgeted 2016	Projected 2017	Projected 2018	Projected 2019	Projected 2020	Projected 2021
REVENUES									
Fees:									
Green Fees	$ 538,030	$ 533,478	$ 546,954	$ 555,000	$ 566,100	$ 577,422	$ 588,970	$ 600,750	$ 612,765
Practice Range	23,178	24,920	25,228	23,000	23,460	23,929	24,408	24,896	25,394
Pro shop	60,554	58,466	63,501	52,200	53,244	54,309	55,395	56,503	57,633
Concessions	10,269	8,461	8,844	2,000	2,040	2,081	2,122	2,165	2,208
Season passes	59,653	78,114	73,132	39,000	39,780	40,576	41,387	42,215	43,059
Other	6,901	4,368	31,684	-	-	-	-	-	-
Investment earnings	-	-	291	-	-	-	-	-	-
Total revenues	698,585	707,807	749,634	671,200	684,624	698,316	712,283	726,528	741,059
EXPENDITURES									
Salaries, wages, and employee benefits	400,802	409,556	398,045	446,380	455,308	464,414	473,702	483,176	492,840
Materials, supplies, and services	369,722	395,201	406,153	384,820	400,213	416,221	432,870	450,185	468,192
Capital outlay	38,000	47,885	-	380,000	-	-	-	-	-
Total	808,524	852,642	804,198	1,211,200	855,520	880,635	906,572	933,361	961,032
Excess of revenues over expenditures	(109,939)	(144,835)	(54,565)	(540,000)	(170,896)	(182,319)	(194,289)	(206,833)	(219,973)
Other financing sources (uses):									
Operating transfers in	2,209,358	206,237	147,863	540,000	170,896	182,319	194,289	206,833	219,973
Operating transfers out	(3,000)	(3,000)	-	-	-	-	-	-	-
Total other financing sources (uses)	2,206,358	203,237	147,863	540,000	170,896	182,319	194,289	206,833	219,973
Net change in fund balance*	2,096,419	58,402	93,298	-	(0)	0	(0)	0	0
Fund balance at beginning of year	(2,132,828)	(36,409)	21,993	115,291	115,291	115,291	115,291	115,291	115,291
Fund balance at end of year	$ (36,409)	$ 21,993	$ 115,291	$ 115,291	$ 115,291	$ 115,291	$ 115,291	$ 115,291	$ 115,291

General Notes
Additional sales taxes approximately $40,000 netted, starting FY 2012
Additional water charges of $31,000 starting fiscal year 2014
2012 & 2013 Golf Trades were moved from Green Fees to Season Passes
* 2015 financials are preliminary estimates
2015 Golf Trades $33,436
2014 Golf Trades $40,200
2013 Golf Trades $17,500
2015 other income approximately $29,000 in Questar easements

Capital Outlay in Motor Pool Fund	38,000	47,885	100,000	350,000	100,000	75,000	80,000	95,000	80,000
	808,524	852,642	889,172	1,181,200	947,824	919,780	941,676	973,910	976,488
	(109,939)	(144,835)	(139,829)	(510,000)	(263,200)	(221,464)	(229,393)	(247,381)	(235,429)

Schedule of Revenues, Expenditures, and Changes in Fund Balances - Actual & Projected
Golf Debt Service Fund

	Actual 2013	Actual 2014	Unaudited 2015	Projected 2016	Projected 2017	Projected 2018	Projected 2019	Projected 2020	Projected 2021
REVENUES									
Taxes:									
Current property taxes	$ 387,596	$ 330,577	$ 274,696	$ 309,970	$ 322,000	$ 322,000	$ 322,000	$ 322,000	$ 322,000
Delinquent property taxes	-	12,774	15,608	10,000	10,000	10,000	10,000	10,000	10,000
Penalty & Interest on property taxes	-	473	556	300	300	300	300	300	300
Motor vehicle taxes	-	37,525	31,611	31,000	31,000	31,000	31,000	31,000	31,000
Total tax revenues	387,596	381,349	322,471	351,270	363,300	363,300	363,300	363,300	363,300
Investment earnings	-	171	-	-	-	-	-	-	-
Total revenues	387,596	381,520	322,471	351,270	363,300	363,300	363,300	363,300	363,300
EXPENDITURES									
Debt Service:									
Principal	335,651	205,000	210,000	220,000	230,000	230,000	240,000	240,000	250,000
Interest	147,219	155,020	147,820	140,420	132,720	128,120	123,520	118,720	113,920
Trustee fees	800	800	850	850	800	800	800	800	800
Total expenditures	483,670	360,820	358,670	361,270	363,520	358,920	364,320	359,520	364,720
Excess of revenues over expenditures	(96,074)	20,700	(36,199)	(10,000)	(220)	4,380	(1,020)	3,780	(1,420)
Fund balance at beginning of year	31,550	31,550	52,250	16,051	6,051	5,831	10,211	9,191	12,971
Fund balance at end of year	$ (64,524)	$ 52,250	$ 16,051	$ 6,051	$ 5,831	$ 10,211	$ 9,191	$ 12,971	$ 11,551
Current property tax debt levy plus projected operatonal deficit	$ (497,535)	$ (475,412)	$ (329,261)	$ (849,970)	$ (492,896)	$ (504,319)	$ (516,289)	$ (528,833)	$ (541,973)

Golf Course Financial History

City Financial Report

Fiscal Year	Capital Projects Fund 2002	Capital Projects Fund 2003	Golf Course Enterprise Fund Started 2004	Golf Course Enterprise Fund 2005	Golf Course Enterprise Fund 2006	Golf Course Enterprise Fund 2007	Golf Course Enterprise Fund 2008	Golf Course Enterprise Fund 2009	Golf Course Enterprise Fund 2010	Golf Course Enterprise Fund 2011	Includes Grill & Events 2012	Golf Carts Converted to Operating Lease 2013	Special Revenue & Debt Service Fund without Grill & Events 2014	Special Revenue & Debt Service Fund without Grill & Events 2015
Operations Collected	$ -	$ -	$ 566,611	$ 726,397	$ 640,286	$ 652,168	$ 800,282	$ 747,211	$ 679,970	$ 653,011	$ 765,929	$ 848,979	$ 707,807	$ 749,634
Operations Spent	-	-	(586,216)	(730,111)	(633,500)	(642,718)	(719,954)	(656,690)	(748,994)	(735,881)	(703,703)	(915,906)	(804,757)	(804,198)
Net Cash operations	-	-	(19,605)	(3,714)	6,786	9,450	80,328	90,521	(69,024)	(82,870)	62,226	(66,927)	(96,950)	(54,565)
Principal Paid on Debt	-	-	(91,524)	(101,146)	(6,532,886)	(278,011)	(241,481)	(253,831)	(226,171)	(256,803)	(313,903)	(335,651)	(205,000)	(210,000)
Interest & Trustee Fees Paid on Debt	48,549	(40,846)	(264,535)	(332,860)	(235,564)	(363,987)	(300,642)	(285,347)	(270,513)	(267,758)	(255,977)	(148,019)	(155,820)	(147,820)
Cash for Debt & Operations	48,549	(40,846)	(375,664)	(437,720)	(6,761,664)	(632,548)	(461,795)	(448,657)	(565,708)	(607,431)	(507,654)	(550,597)	(457,770)	(412,385)
Property Tax for Golf Course	-	-	-	-	-	385,791	386,945	385,195	385,320	398,591	397,300	387,596	343,824	290,860
Motor Vehicle Fees Allocated	-	-	-	-	-	-	-	-	-	-	-	-	37,525	31,611
Net Cash Flow after Tax Levy & Motor Vehicle	$ 48,549	$ (40,846)	$ (375,664)	$ (437,720)	$ (6,761,664)	$ (246,757)	$ (74,850)	$ (63,462)	$ (180,388)	$ (208,840)	$ (110,354)	$ (163,001)	$ (113,946)	$ (121,525)

General Note:

Most capital purchases were financed with debt, so capital acquisitions were not included in this table until 2014. Purchases were also made with impact fees and unrestricted fund balance from the Capital Projects Fund, which isn't included.

Capital Outlay Spent/Trade in or sold	(2,094,158)	(4,870,968)	(549,881)	-	(118,827)	(192,848)	(628,341)	(346,791)	-	(215,025)	(2,253,552)	47,503	(47,885)	(100,000)
Financing	6,427,000	-	568,911	40,240	6,250,000	278,712	-	172,432	-	-	-	-	-	-
Impact Fees	-	-	-	-	-	-	-	-	-	371,726	2,506,655	-	-	-

Golf Course Debt	MBA Lease Rev Bond	MBA Lease Rev Bond	MBA Lease Rev Bond	MBA Lease Rev Bond	GO Bond	GO Bond	GO Bond	GO Bond	GO Bond	GO Bond	GO Bond	GO Bond	GO Bond	GO Bond
Bond	6,427,000	6,427,000	6,427,000	6,427,000	6,250,000	6,185,000	$ 6,060,000	$ 5,930,000	$ 5,795,000	$ 5,655,000	$ 5,510,000	$ 5,985,000	$ 5,780,000	$ 5,570,000
Equipment Capital Leases	-	-	477,000	416,481	310,595	275,226	259,816	313,972	406,357	289,554	120,651	-	-	-
Total Debt	$ 6,427,000	$ 6,427,000	$ 6,904,000	$ 6,843,481	$ 6,560,595	$ 6,460,226	$ 6,319,816	$ 6,243,972	$ 6,201,357	$ 5,944,554	$ 5,630,651	$ 5,985,000	$ 5,780,000	$ 5,570,000
Debt transactions net of bond payments			$ (29,420)	$ (107,367)	$ (341,450)	$ (256,207)	$ (157,690)	$ (154,433)	$ (111,814)	$ (139,753)	$ (185,322)	$ (123,394)	$ -	$ -

General Note:

Calling the bond early requires an escrow account that includes the original principal and interest amount needed for three years, which would have been paid anyway, but now the interested related amount is considered an addition to principal. The partially refunded 2005 GO bond will be paid off in 2016.

Other items that may be considered														
Tax adjustment	-	-	(35,000)	(40,000)	(35,000)	(35,000)	(45,000)	(40,000)	(35,000)	(35,000)	(18,000)	-	-	-
Water allocation	-	-	(31,000)	(31,000)	(31,000)	(31,000)	(31,000)	(31,000)	(31,000)	(31,000)	(31,000)	(31,000)	-	-
Land Lease Benefit Offset	-	-	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	24,000	24,000	24,000
Maintenance Allocation Offset	-	-	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Other items subtotal	-	-	(49,000)	(54,000)	(49,000)	(49,000)	(59,000)	(54,000)	(49,000)	(49,000)	(32,000)	(2,000)	29,000	29,000
Debt, Operations, Other Before Taxes & Fees	48,549	(40,846)	(424,664)	(491,720)	(6,810,664)	(681,548)	(520,795)	(502,657)	(614,708)	(656,431)	(539,654)	(552,597)	(428,770)	(383,385)

Golf Course Financial History and Projections

City Financial Report

Fiscal Year Actuals	Capital Projects Fund 2002	Capital Projects Fund 2003	Golf Course Enterprise Fund Started 2004	Golf Course Enterprise Fund 2005	Golf Course Enterprise Fund 2006	Golf Course Enterprise Fund 2007	Golf Course Enterprise Fund 2008	Golf Course Enterprise Fund 2009	Golf Course Enterprise Fund 2010	Golf Course Enterprise Fund 2011	Includes Grill & Events 2012	Golf Carts Converted to Operating Lease 2013	Special Revenue & Debt Service Fund without Grill & Events 2014**	Special Revenue & Debt Service Fund without Grill & Events 2015**
Operations Cash Flow	$ -	$ -	$ (19,605)	$ (3,714)	$ 6,786	$ 9,450	$ 80,328	$ 90,521	$ (69,024)	$ (82,870)	$ 62,226	$ (66,927)	$ (96,950)	$ (54,565)
Comparability adjustment*	$ -	$ -	$ (95,420)	$ (178,367)	$ (407,450)	$ (322,207)	$ (233,690)	$ (225,433)	$ (177,814)	$ (205,753)	$ (234,322)	$ (154,394)	$ -	$ -
Net Operations	$ -	$ -	$ (115,025)	$ (182,081)	$ (400,664)	$ (312,757)	$ (153,362)	$ (134,912)	$ (246,838)	$ (288,623)	$ (172,096)	$ (221,321)	$ (96,950)	$ (54,565)
Bond Debt Service, Financing Proceeds, Impact Fees & Capital Asset Transactions	$ 4,381,391	$ (4,911,814)	$ (307,609)	$ (286,399)	$ (295,827)	$ (299,927)	$ (1,012,774)	$ (559,104)	$ (384,870)	$ (228,107)	$ (131,455)	$ (312,773)	$ (408,705)	$ (457,820)
Combined with Net Operations	$ 4,381,391	$ (4,911,814)	$ (422,634)	$ (468,480)	$ (696,491)	$ (612,684)	$ (1,166,136)	$ (694,016)	$ (631,708)	$ (516,730)	$ (303,551)	$ (534,094)	$ (505,655)	$ (512,385)

Golf Fiscal Year Projections***	2016	2017	2018	2019	2020	2021
Planned Operational Subsidy	$ 160,000	$ 170,896	$ 182,319	$ 194,289	$ 206,833	$ 219,973
New Maintenance Building	$ 380,000	$ -	$ -	$ -	$ -	$ -
G.O. Bond Debt Service	$ 361,270	$ 363,520	$ 358,920	$ 364,320	$ 359,520	$ 364,720

General Notes:

***Change from capital leases to operating leases and motor pool charges shifts expenses from financing to operations, addition of $31,000 water usage charges, and tax adjustment**

**** Net operations of events and concessions at the community centery, if included, would have improved operational numbers by $38,098 for 2014 and $91,584 for 2015**

*****One-time cost for maintenance building included in 2016, and gradual replacement of maintenance equipment included each year**

City Financials- Community event revenues

Breakdown of Community Services, Parks, Golf 2015 Budget		7/1/2014	6/30/2015	6/30/2015		
Updated 9/25/2015		Original Budget	Adjusted Budget	Actual	Actual as % of Adj. Budget	
	Classes at the Events Center					
10-35-111	Recreation, Cultural Classes Revenues	$ 25,000.00	$ 25,000.00	$ 18,167.90	73%	
10-65-300	Recreation, Cultural Class Expenses	$ (25,000.00)	$ (15,000.00)	$ (10,964.07)	73%	
		$ -	$ 10,000.00	$ 7,203.83		Net contribution
	Events					
10-35-112	Event Center Rentals	$ 140,000.00	$ 246,100.00	$ 257,771.20	105%	Budget
10-35-120	Event Center Concessions	$ 14,400.00	$ 14,400.00	$ 10,177.87	71%	
10-65-110	Manager compensation	$ (25,714.00)	$ (25,714.00)	$ (25,597.61)	100%	Other allocations to Recreation, & Golf
10-65-120	Event Staff Coordinators & Support staff	$ (45,680.10)	$ (56,480.10)	$ (53,478.25)	95%	60% budget lines with Events
10-65-150	Benefits	$ (18,055.50)	$ (26,166.60)	$ (24,125.66)	92%	60% budget lines with Events
10-65-200	Materials & Supplies	$ (10,395.00)	$ (24,255.00)	$ (24,119.61)	99%	99% allocation
10-65-210	Dues & Subscriptions	$ -	$ -	$ -		
10-65-211	Education & Training	$ (500.00)	$ (500.00)	$ -	0%	25% allocation
10-65-250	Utilities	$ (24,500.00)	$ (24,500.00)	$ (21,406.33)	87%	
10-65-290	Communications/Telephone	$ (3,000.00)	$ (3,000.00)	$ (1,527.50)	51%	75% allocation
10-65-550	Credit Card Fees	$ (4,500.00)	$ (4,500.00)	$ (3,889.36)	86%	
10-65-610	Advertising	$ (6,500.00)	$ (3,500.00)	$ (1,015.00)	29%	
10-65-615	Insurance	$ (1,400.00)	$ (1,400.00)	$ (1,183.76)	85%	
10-65-620	Building Maintenance	$ (17,200.00)	$ (17,200.00)	$ (20,021.68)	116%	
		$ (3,044.60)	$ 73,284.30	$ 91,584.33	125%	Contribution to General Fund
		$ (89,136.70)	$ (23,561.50)	$ 41,606.37	-177%	Community Services, Recreation & Events' Total Contribution to the General fund
	Parks					
10-35-130	Park Reservations	$ 1,600.00	$ 1,600.00	$ 4,912.00	307%	
10-64-240	Park Maintenance	$ (154,500.00)	$ (162,500.00)	$ (141,869.46)	87%	
10-64-245	Parks, Trails, & Beautification Committee	$ (4,200.00)	$ (4,200.00)	$ (3,991.87)	95%	
10-64-250	Utilities	$ -	$ (8,500.00)	$ (8,500.00)	100%	
		$ (157,100.00)	$ (173,600.00)	$ (149,449.33)	86%	Net subsidy for 33 acres of Parks and Open Space plus Public Works time
	Golf Operations					
20-30-XXX	Golf Revenue	$ 661,500.00	$ 704,136.00	$ 749,633.74	106%	net of taxes
20-35-300	Golf Subsidy & Utility Transfer	$ 110,363.00	$ 147,863.00	$ 147,863.00	100%	
	Golf Expenditures	$ (771,863.00)	$ (851,999.00)	$ (804,198.42)	94%	
		$ -	$ -	$ 93,298.32		Net cash after subsidy to Golf Operations
	Golf Debt Service					
	Debt Service	$ (358,670.00)	$ (358,670.00)	$ (358,670.00)	100%	
	Property Tax Debt Levy	$ 278,020.00	$ 278,020.00	$ 274,695.96	99%	
	Motor Vehicle Fee, Delinquent tax, Interest	$ 34,250.00	$ 34,250.00	$ 47,775.07	139%	
	Fund Balance	$ 46,400.00	$ 46,400.00	$ 52,250.10	113%	
		$ -	$ -	$ 16,051.13		Fund balance for future debt service

CEDAR HILLS

KIRTON | McCONKIE

MEMORANDUM

ATTORNEY CLIENT PRIVILEGED COMMUNICATION

DATE: August 13, 2015

TO: The Honorable Gary Gygi, Council Member Trent Augustus, Council Member Rob Crawley, Council Member Michael Geddes, Council Member Jenni Rees Council Member Daniel Zappala

CC: David Bunker, City Manager, Chandler Goodwin, Assistant City Manager

FROM: David J. Shaw and Drew Clark, City Attorneys

SUBJECT: Golf Course Legal Issues

CONFIDENTIAL

This memorandum is intended to provide a high-level overview of the documents which provide restrictions on the City's ability to convert the Golf Course at Cedar Hills into something other than a golf course. We are aware that Councilmen Rob Crawley has proposed several alternative uses for the golf course land, and the Golf Course Finance Committee has been convened to evaluate the viability of such proposals. While it is, in nearly all circumstances, possible to unwind existing restrictive covenants, the cost, both in time and dollars, must factor seriously into whether or not such a conversion of land is wise and/or feasible. The nature of the restrictive covenants is such that the ability of the City to unwind the various restrictive covenants and contractual obligations would likely significantly increase the City's cost and likely its legal liability exposure. Even assuming the City wanted to undertake steps to convert the golf course into something else, the likelihood of litigation will be high and the associated costs unknown. What is certain is that, if litigation ensues, the costs of such litigation will likely render any such conversion unfeasible from a cost perspective.

The remainder of this memorandum is intended solely to discuss the documents which exist and which would need to be grappled with in the event of a land conversion of the golf course. These include the following: Development Agreement, Covenants, Conditions and Restrictions, Conservation Easement, Homeowners' Association Agreements, The 2012 General Obligation Bond Agreements, and the City of Highland Conservation Easement.[1] Each of the foregoing documents is described in brief detail below, however, more detailed legal analysis of each may be contained in one or more of the legal memoranda also included in this binder.

While we did not perform the legal analysis or research indicated in the memoranda in this binder, we have reviewed the same and take no issue with the research. That said, we will

[1] To the extent we have copies of these, they are included in this binder.

ATTORNEYS AT LAW | Kirton McConkie Building, 50 East South Temple, Salt Lake City, UT 84111 801.328.3600 801.321.4893
1800 World Trade Center, 60 East South Temple, Salt Lake City, UT 84111 801.328.3600 801.321.4893
Thanksgiving Park Four, 2600 W. Executive Parkway, Ste. 400, Lehi, UT 84043 801.426.2100 801.426.2100

4824-2018-5382.v1

defer to Mr. Eric Johnson for further explanation of his research, inasmuch as we are under the understanding that he will be in attendance at the Special City Council Meeting tonight. We now then turn to a brief description of each of the foregoing documents.

Introduction and Summary of Issues

There are a number of legal issues raised by the existence of the Golf Course at Cedar Hills. The most important of these are put in place by the February 16, 2001, Development Agreement ("Development Agreement") between the City of Cedar Hills and Lone Peak Links LLC. The Development Agreement establishes the framework for the restrictions on land currently in place in and around the golf course.

The Development Agreement establishes a number of subsidiary restrictions on the use of land in and around the golf course. Among these are the Covenants, Conditions and Restrictions ("CCRs"), also filed on February 16, 2001. The CC&Rs pertain to the planned residential development, now largely completed, in and around the golf course.

Additionally, the Development Agreement puts in place a Conservation Easement ("Conservation Easement") upon the golf course proper and upon many of the properties in the development. The Conservation Easement is subject to the Utah Land Conservation Easement Act, which includes provisions for the termination of such easement.

There are three additional issues to be considered in evaluating potential changes to the operation of the golf course and surrounding areas. These include the Home Owner Association agreements ("HOA Agreement"), covenants associated with the 2012 General Obligation Bond ("Bond Covenants"), and the existence of the City of Highland Conservation Easement ("Highland Easement"). The City of Highland Easement has not been reviewed. However, a review of the 2012 General Obligation Bond covenants revealed two significant impediments on alterations of land usage.

The Master Resolution Authorizing the Issuance and Sale of $5,570,000 General Obligation Refunding Bonds, Series Adopted by the Cedar Hills City Council December 2012 contains two relevant provisions in the "Form of Bond:"

> Optional Redemption: **The Bonds maturing on or prior to February 1, 2023 are not *subject to optional redemption prior to maturity.*** The Bonds maturing on or after to February 1, 2024 are subject to redemption at the option of the Issuer on February 1, 2023, or on any dater thereafter, in whole or in part, from such maturities or parts thereof as may be selected by the Issuer, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed, plus accrued interest thereon to the redemption date. (emphasis added).

Further, the Bond Resolution prohibits the City from selling or alienating all or any portion of the Project (meaning, the golf course), as follows:

> Mandatory Redemption: The Bonds ***are subject to Mandatory Redemption on whole or in part on any date if the Project or any portion thereof is sold or otherwise alienated by the Issuer*** or any other action occurs after the issue date to cause either the private business tests or the private loan financing test as defined by the Code to be met and

CONFIDENTIAL

Bonds or any portion thereof may be deeded to be nonqualifying bonds and the Bonds may be so redeemed at a redemption price equal to 100% of the principal amount thereof and accrued interest to the redemption date upon not less than thirty (30) days; prior notice. (emphasis added)

In other words, in the event the City were to attempt to confer the golf course to anything other than a golf course, the outstanding General Obligation Bonds would be subject to immediate mandatory redemption. Moreover, if the City were to convert any of the land financed by the General Obligation Bonds to a use which is primarily for the benefit of a private entity or private individuals, it would likely violate the private business and private loan financing tests of the Internal Revenue Service and would, therefore, trigger mandatory redemption of the Bonds. Accordingly, if the City wants to convert the golf course into something else, it must be prepared for the financial ramifications of such a decision in multiple aspects, but in particularly in respect to mandatory repayment of the Bonds, which are currently outstanding.

Development Agreement

The Development Agreement provides both the framework and the triggering event for the CCRs, for the Conservation Easement, and for restrictions on homeowners in development properties that are subject to the HOA Agreement.

Many of these restrictions are designed to be perpetual in nature. Such a perpetual intent does not make it impossible to unwind any particular restriction on land use, depending upon the particular circumstance. Each restriction is governed by a different framework of rules, with each to be considered below.

However, an important threshold question is whether the terms of the Development Agreement have been completed, and hence extinguished, or whether the Development Agreement remains in effect. We do not have sufficient information to know whether all lots in the development have been completed, or if they are still underway. If the former, then the Development Agreement may very well still be intact. If the latter, the Terms of the Development Agreement may have expired on their own.

If the Development Agreement remains in effect, its terms provide an additional impediment to any course of action by the City of Cedar Hills designed to change the status quo regarding the land in and around the golf course. If the Development Agreement remains in effect, it is likely to be enforceable under Utah law. Therefore, any attempt to develop golf course or open space lands would likely be in breach of the Development Agreement.

On the other hand, the Development Agreement may already be terminated. If so, it poses no impediment to an altered approach to development or land use on the part of the City. Section 13.3 of the Development Agreement contemplates its own termination: "The Term of this Agreement shall extend until the obligations and requirements herein are completed in conformance with City subdivision, construction, and bonding requirements." In a memo on the Legal Authority for the Development of Golf Course, dated August 12, 2006, prior City Attorney, Eric Johnson of Smith Hartvigsen, PLLC, noted: "This provision contemplates that the Development Agreement will last only until all the Developer's duties are completed under the City ordinance. Therefore, when all plats have been recorded, bond posted, infrastructure completed and accepted by the City, and the performance guarantee bond released, by the

CONFIDENTIAL

express terms of the Development Agreement, it will terminate. (*See generally* City Code, Title II, and Title 9, Chap. 2.)"

Additionally, the August 12, 2006, memo evaluates the rights of a third party to sue to enforce the Development Agreement, and concludes that such rights do not exist. "A third party may not sue a city to enforce a development agreement unless it is an intended third-party beneficiary." (*Id.*, at 5) Section 13.13 of the Development Agreement specifically states that the "Agreement does not create any third party beneficiary rights…."

> The purchasers of lots in the Cedars are not parties to the Development Agreement. At most, homeowners in the Cedars are only incidental third-party beneficiaries of the benefits flowing from the Development Agreement. The primary intent of the Development Agreement was to limit the Developer as to the number of units it could construct in the Cedars, while preserving areas of open space and golf course. Of course, potential buyers could be benefited by the plan for the Cedars, but such benefits are purely incidental to the Development Agreement's primary objective – limiting the Developer as to density and design. (*Memo of August 12, 2006.*, at 6)

Hence the City is the only party other than Lone Peak Links that has an interest in the Development Agreement restrictions imposed upon the land in and around the golf course. If the Development Agreement has been terminated, it no longer imposes such restrictions upon the City. Notwithstanding the foregoing, nothing in the Development Agreement would automatically prohibit a purchaser of lots in The Cedars from attempting to bring suit challenging the termination or expiration of the Development Agreement, or otherwise seeking to enforce any of its covenants. The costs of any such litigation would likely be substantial and must be factored into any cost-benefit analysis of a conversion of golf course lands.

Conditions, Covenants, and Restrictions

With regard to Conditions, Covenants, and Restrictions governing the use of particular plats of land, there are two issues to be considered: (1) Are there CCRs existing on a particular piece of property in and around the golf course? (2) If there are CCRs existing, what parties have the ability to amend those CCRs, and how would they go about doing so?

(1) What CCRs Currently Exist on Which Properties?

Section 7 of the Development Agreement contain information about the CCRs on the plats under development in this Planned Residential Development ("PRD"). The chart below summarizes the CCRs for each plat:

Plat	Type of Development	CCRs
A	Non-private PRD	To be reviewed and approved by the City
B	Private PRD	Included in Attachment O to the Development Agreement
C	Private PRD	Included in Attachment O to the Development Agreement

CONFIDENTIAL

D	Private PRD	Included in Attachment O to the Development Agreement
E	Not part of PRD	None
F	Private PRD	Included in Attachment O to the Development Agreement
G	Not part of PRD	None
H	Not part of PRD	None
I	Private PRD	Included in Attachment O to the Development Agreement
J	Non-private PRD	To be reviewed and approved by the City
K	Not part of PRD	None
O	Not part of PRD	None

In the past, in requests from the City, the prior City Attorney has addressed questions with regard to particular parcels of land in and around the golf course. These have included:

- Lot 206, Plat H, located east of Canyon Road, or Hole 15 - this area is <u>not</u> subject to a CCR.
- A parcel referred to as "Parcel 4A," also referred to as Lot 1, Plat E - this areas is also <u>not</u> subject to a CCR.
- Lot 104, Plat B, also known as the driving range parcel - this <u>is encumbered</u> by a CCR
- Lot 106, Plat B, also known as the Grove - this <u>is encumbered</u> by a CCR

While the provisions of the Development Agreement do not "run with the land," in those portions of the development with CCRs, such CCRs do "run with the land" and hence are enforceable by property owners within the development.

(2) *May CCRs Be Removed from Properties, and By Whom?*

If Declarant developer Lone Peak Links still owned property in the development, it could amend or remove CCRs at its sole discretion, per paragraph 6.05 of the CCRs.

Who, besides the developer, may remove CCRs from properties within the development? The Homeowners Association has the authority to do so.

According to the August 12, 2006, memo, "the plain language of the CC&Rs indicates that if certain lots are removed from the Subdivision the terms of the CC&Rs and HOA Bylaws might no longer apply to those lots." (*Memo*, at 10.)

The following is language from the CCRs:

> All conditions, covenants, restrictions and agreements herein stated shall run with the **land comprising the Subdivision**, and all owners, purchasers or occupants thereof shall by acceptance of contracts or deeds be conclusively deemed to have consented and agreed with the present and future owners of said land . . . to conform to and observe the following

CONFIDENTIAL

covenants, conditions, restrictions and agreements as to the use thereof . . . (CCRs, Section 1.04)

The memo of August 12, 2006, continues:

> An argument could be made that this provision means that all land once comprising the Subdivision should be forever encumbered by the CC&Rs. However, that interpretation seems unlikely because the term "Subdivision" is defined as The Cedars Plat B, and is used interchangeably with the term "Development." The term "Development" is defined as "the planned unit development known as The Cedars **as it exists at any given time**." (Development Agreement Section 2.10, emphasis added.) This phrase presupposes that the scope and extent of the Development could and would change over time. (*Memo*, at 10; some internal citations omitted)

Additionally, because the CCRs have been recorded, there is not likely to be a valid cause of action by a third-party property owner for breach of any implied covenant. The prior attorneys for the City also wrote a separate memo setting forth the authority and process for the Cedars Homeowners Association to amend the CCRs and the HOA Bylaws. That memo concludes that "if the developer does not agree to amend the CC&Rs, however, the HOA amendment provision is the only other way to modify the CC&Rs." (*Memo of October 3, 2006*)

Conservation Easement

Section 2.5.1 of the Development Agreement includes the grant to the City of a Conservation Easement: "In order to preserve the open space qualities of the golf course, developer hereby requests and the City agrees that a conservation easement over the golf course be granted to the City, concurrently with the recordation of the first plat."

The language of the Conservation Easement, "Open Space Conservation Easement," makes clear that the City is the holder of the easement, and that such easement is granted subject to the Utah Land Conservation Easement Act, UCA 57-18. The document also notes: "The easement herein granted is perpetual."

Notwithstanding the "perpetual" nature of the easement, as the holder of the conservation easement, the City is entitled to remove the easement. Section 57-18-5 of the Land Conservation Easement Act reads:

> A conservation easement may be terminated, in whole or in part, by release, abandonment, merger, nonrenewal, conditions set forth in the instrument creating the conservation easement, or in any other lawful manner in which easements may be terminated.

Again, whether the Development Agreement has been terminated is crucial to the analysis. The release of the easement may be contrary to the stated purpose of Section 2.5.1 of the Development Agreement. However, as the memo notes: "The conservation easement instrument itself refers to the easement as authorized by the Conservation Easement Act. That act expressly allows for the termination of conservation easements and its relevant provisions were in place when the instrument was executed and have remained unchanged since enactment in 1985. (*Memo*, at 14.)

CONFIDENTIAL

The City may amend its General Plan, Zoning Ordinances and Zoning Map, but must follow established City procedures in order to do so.

Conclusion

If the Development Agreement has been terminated, there is a clear path forward for the City to terminate the Conservation Easement and undertake development activities on Plats E, G, H, K and O. No CCRs encumber such properties. Even with termination of the Development Agreement, development activities on the other Plats are more problematic, as a successful vote of the Homeowners Association would be necessary to remove CC&Rs.

If the Development Agreement has not been terminated, any development activity on the lands in and around the golf course will be problematic.

Yet, even assuming the Development Agreement, the CC&Rs and the Conservation Easement can be adequately and affordably resolved toward one or more of Councilman Crawley's ideas, the City would still need to come up with enough money to pay off the existing Bonds, and all of this prior to any real discussions about the cost of land conversion itself. Any such discussions, of necessity, must include the total or near-loss of revenue currently derived from golf course activities. In other words, converting the golf course will likely cost much more money, but we will defer to the Golf Course Finance Committee as to a determination of those amounts.

If you have any questions about the contents of this memorandum, please do not hesitate to call me.

CONFIDENTIAL

SMITH | HARTVIGSEN PLLC
ATTORNEYS AT LAW

MEMORANDUM

PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION PREPARED IN ANTICIPATION OF POTENTIAL LITIGATION

To: CITY OF CEDAR HILLS, CITY COUNCIL

From: SMITH HARTVIGSEN, PLLC

Date: AUGUST 12, 2006

Re: LEGAL AUTHORITY FOR DEVELOPMENT OF GOLF COURSE

This memorandum is an update to the memorandum dated April 7, 2005, and includes updated analysis based on new statutory and case law.

BACKGROUND

On February 16, 2001, Lone Peak Links, LC (**"Developer"**) entered into a development agreement (**"Development Agreement"**) with the City of Cedar Hills (**"City"**). The City Council ratified the Development Agreement. That same day, the Developer executed a Declaration of Covenants, Conditions and Restrictions (**"CC&Rs"**).[1] The Development Agreement and the CC&Rs pertained to a planned residential development (**"PRD"**) that the Developer proposed to the City which would include construction of a golf course and residential development to surround it. The Developer and the City entered into other agreements as well. The City eventually purchased the golf course from the Developer.

To finance the construction of the golf course, the City issued a municipal bond through its municipal building authority (**"MBA"**). Bond payments were due in 2005, but the City, unable to repay the bond obligation, issued a general obligation bond to refund the original bond, thereby extending the repayment period. To avoid non-payment on the bond, the City is exploring all legal possibilities, including vacating or amending the Subdivision plat as to a portion owned by the City or MBA in an effort to escape the provisions of the CC&Rs, HOA Bylaws, and the Development Agreement, which burden the property.

The City and MBA own several lots located within The Cedars subdivision (**"Subdivision"**). The City is considering development opportunities for some of the lots it owns, including (1) a church and residential development on Lot 206, Plat H, located east of

[1] In 2006, the HOA and Developer recorded amended CC&Rs. Amended CC&RS are listed as Entries Nos. 2228, 2229, 26837, and 26838. Amended HOA Bylaws are listed as Entry No. 26839. The Developer amended the CC&Rs in 2001, Entry No. 44111, to add Plat D to their coverage. None of the amendments have any significant impact on the analysis in this memorandum.

Canyon Road and a parcel referred to as Parcel 4A, (2) residential development on Lot 104, Plat B, whereon the driving range is located, and (3) either residential development or golf course on Lot 106, Plat B, known as "The Grove."

Lot 206 in Plat H is not part of the HOA nor encumbered by the CC&Rs, but it is burdened by a conservation easement. "Parcel 4A" seems to be part of Lot 1 in Plat E, which is also located east of Canyon Road and not subject to the HOA or CC&Rs. Lot 104, in Plat B, is the driving range parcel and is encumbered by the CC&Rs and is also burdened by a conservation easement. Lot 106, or the Grove, is subject to the CC&Rs and was dedicated to the City as an open space parcel.

ANALYSIS

1. The Development Agreement Likely Is Enforceable by the Parties, until it is Terminated or Modified.

a. The Development Agreement likely is enforceable.

On May 2, 2005, Utah's Municipal Land Use, Development, and Management Act was amended to authorize municipalities to enter into ". . . development agreements that they consider necessary or appropriate for the use and development of land within the municipality, including . . . development agreements governing uses, density, open spaces . . . unless expressly prohibited by law." Utah Code Ann. § 10-9a-102 (Supp. 2005) (the **"Act"**). While the Development Agreement predates the Act, it is significant that Utah now formally recognizes that a development agreement can be a legal and effective means by which a municipality can support and regulate land use and development within its borders. While Utah courts have not yet had the opportunity to address the enforceability of development agreements, the trend in other states has been "to allow such agreements unless they constitute a usurpation of the municipality's zoning authority. *See Larkin v. City of Burlington*, 772 A.2d 553, 557 (Vt. 2001). The statutes of many states that authorize the use of development agreements contain provisions limiting the duration of and providing a means for terminating such agreements. Provisions found in development agreements that limit the length and extent to which the agreement preserves zoning have been held to be enforceable. *See Bollech v. Charles County*, 166 F. Supp. 2d 443, 454 (D. Md. 2001); *see also Santa Margarita Area Residents v. San Luis Obispo County*, 84 Cal. App. 4th 221, 233 (2001). In such cases, the courts have found that in entering into such an agreement the municipality was exercising, and not abdicating, its police powers in order to promote development. *Id.*

Applying the Act and the foregoing case law to the case at hand, a persuasive argument could be made that the Development Agreement is enforceable for the following reasons. First, the Development Agreement does not change, but only preserves the zoning of Plat H. (Dev. Agr. § 1.1.) In other words, the Development Agreement does not involve illegal contract zoning whereby the City exacted a performance or promise from the Developer in exchange for its agreement to rezone the property. *See Bollech*, 166 F. Supp. 2d at 453. More importantly, the Development Agreement arguably is an exercise of, rather than a limitation on, the City's police

power undertaken to enhance the general welfare of the public through the development of the land subject to the Development Agreement. *See id.* at 454. Second, the Development Agreement is of limited duration and will terminate upon the completion of the obligations and requirements therein, in conformance with the City subdivision, construction, and bonding requirements. (Dev. Agr. § 13.3.) The fact that the Development Agreement does not restrict permanently the zoning laws in place at the time the Development Agreement was executed could support a finding that it is enforceable.

In light of the foregoing, if the City attempted to unilaterally develop Plat H or any golf course or open space parcels, the City would most likely be in breach of the Development Agreement for the following reasons. First, because Section 1.1 of the Development Agreement provides that Plat H "shall develop in the H-1 Hillside Zone" classification, rezoning Plat H prior to the termination of the Development Agreement could arguably be a breach thereof. In addition, under Section 1.1 of the Agreement, both the City and the Developer agreed to limit the overall density of the development to 725 units.[2] Accordingly, even if the City were able to rezone without liability, permitting the overall density of the project to exceed 725 units may also result in a breach of the Development Agreement. Similarly, because all the development rights and the densities of the open space and golf course areas have been transferred in accordance with the Development Agreement to the Development Cluster Area, those parcels could not be developed without renegotiating acceptable density levels with the Developer. (Dev. Agr. §§ 2.3.2, 2.5.1.) Furthermore, under the Development Agreement, the City agreed to "maintain the Open Space Parcels as open space and part of the City's public park system." (Dev. Agr. § 2.3.4.) Similarly, in Section 2.5.1 of the Development Agreement, the City agreed "in order to preserve the open space qualities of the golf course . . . that a conservation easement over the golf course be granted to the City." Accordingly, any development of those parcels would be inconsistent with the terms of the Development Agreement as it presently exists.

b. Once the Development Agreement is terminated, its terms may no longer govern the Subdivision.

A development agreement is a contract and is to be interpreted according to general rules of contract construction. *See Bollech v. Charles County*, 166 F. Supp. 2d 443, 455 (D. Md. 2001); *see also View Condominium Owners Ass'n v. MSICO, LLC*, 2005 UT 91, ¶ 21, 127 P.3d 697, citing *Swenson v. Erickson*, 2000 UT 16, ¶11, 998 P.2d 807 (applying general rules of contract construction to interpreting declarations of covenants), and resort to extrinsic evidence as an aid to construction is only allowed where there is ambiguity. *Id.* The duration of the Development Agreement, like any other contractual term, is best determined by resort to the plain language of the agreement.

[2] The total of 725 units is a sum of the total units specified for each plat, which the Development Agreement recites as having "been proposed and approved . . . with the following densities applicable to each of the approved phases . . ." (Dev. Agr. § 1.1.) Whether the plats, as finally approved and recorded, is equal to or lesser than the total allowable units is unknown. If the Developer decides to develop less than 725 units, the question arises as to whether the City could develop these additional units. However, the Development Agreement does not contemplate any residential development by the City. Therefore, it is unlikely that the City could develop these extra units until the Development Agreement terminates or is modified.

The Development Agreement specifically provides when it terminates. "The term of this Agreement shall extend until the obligations and requirements herein are completed in conformance with the City subdivision, construction, and bonding requirements." (Dev. Agr. § 13.3.) This provision contemplates that the Development Agreement will last only until all the Developer's duties are completed under the City ordinances. Therefore, when all plats have been recorded, bond posted, infrastructure completed and accepted by the City, and the performance guarantee bond released, by the express terms of the Development Agreement, it will terminate. (*See generally* City Code, Title 11, and Title 9, Chap. 2.)

Opponents likely will argue that the City also has obligations and requirements in the Development Agreement that could last in perpetuity, such as maintaining the golf course as open space. (*See* Dev. Agr. § 2.3.4.) However, the language of the provision states that the obligations and requirements shall be completed in conformity with the City's ordinances. Hence, if the City has obligations pursuant to its ordinances, e.g., releasing the performance guarantee bond when infrastructure is accepted, then the duties under the ordinances will be completed when it does so. Furthermore, the types of ordinances cited as controlling are "subdivision, construction, and bonding requirements." (Dev. Agr. § 13.3.) The City's role in these ordinances is ministerial, e.g., to ensure the subdivision process is followed and the plat recorded, to conduct building inspections, to accept completed infrastructure, and to release the infrastructure bond, but the primary obligations and requirements are burdens that the Developer must bear.

The City' risk for liability under the Development Agreement is greatly reduced when the Development Agreement terminates according to its terms. While the Development Agreement may actually terminate upon the completion of all requirements and obligations, pursuant to Section 13.3, the risk of breaching the Development Agreement is reduced even further once the Developer has sold all its lots within the Subdivision. At that point it likely would lack an economic motivation to challenge perceived breaches of the Development Agreement or be able to withstand a motion to dismiss if it sued claiming breach of contract.

c. *A possible exception to the general rule that development agreements are enforceable is the policy concern that former city councils may not bind future city councils in the exercise of governmental powers.*

Government contracts that extend beyond the term of the governing body that originally entered into the contract trigger public policy concerns. Such contracts, if enforced, potentially allow a former governing body to perpetuate its policies beyond its term and thereby limit a successor governing body's ability to respond to the public's changing needs. *Uintah Basin Medical Center v. Hardy*, 2002 UT 92, ¶9, 54 P.3d 1165, 1167. The governmental/proprietary function test is a rule that is often applied to determine the enforceability of contracts against cities. *Id.* at ¶11. Under the governmental/proprietary function test, "a contract is (1) unenforceable against successor governing bodies if it involves a governmental power or function, but (2) enforceable against successor governing bodies if it involves a proprietary power or function and is of a reasonable duration." *Id.* Establishing zoning districts within the city is a governmental function, i.e., legislation. *Walton v. Tracy Loan & Trust Co.*, 97 Utah 249, 92 P.2d 724, 726 (1939). Conversely, contracts involving water, electricity, gas supply,

sewer systems and sewer disposal treatment are exercises of business or proprietary powers by the governing body of a municipality and are binding on future governing bodies for reasonable period of time. *Bair v. Layton City Corp.*, 6 Utah 2d 138, 147-148, 307 P.2d 895, 902 (1957). The governmental/proprietary test is also followed in other states. *See Spray v. City of Albuquerque*, 608 P.2d 511, 513 (N.M. 1980); *see also Marco Development Corp. v. City of Cedar Falls*, 473 N.W.2d 41, 42 (Iowa 1991). Accordingly, some development agreements that purport to bind cities in the exercise of their police power or governmental functions, such as zoning, have been held invalid when developers have sought to enforce them. *See Larkin v. City of Burlington*, 772 A.2d 553, 556-557 (Vt. 2001); *see also Crossroads West LLC v. Town of Parker*, 929 P.2d 62, 65 (Colo. Ct. App. 1996).

A development agreement that mandates open space requirements, density limitations, and other limitations purporting to be a restraint on the City's governmental powers may be held invalid. Because zoning is a legislative act, *Walton*, 92 P.2d at 726, the City may alter its zoning districts, the zoning map, and other ordinances governing open space, density, planned residential developments, etc., to best meet the changing needs of the City. A municipality's police powers include the power to anticipate and prevent dangers and protect the City's residents. *See Crossroads West LLC*, 929 P.2d at 65. The City's needs have changed since it first entered into the Development Agreement. The City's primary objective now is to discharge a burdensome bond obligation. A reading of the Development Agreement with Lone Peak, especially provisions related to density, open space, and other zoning issues, appears to primarily bind the Developer – despite some language to the contrary. Even if the Development Agreement were intentionally designed to bind the City, under the governmental function test the current City Council may not be bound by it to the extent it purports to restrict the City Council's governmental powers to legislate and re-zone areas within the City. On the other hand, if the City had a contract for trash removal, the City could not avoid enforcement of that agreement because it involves a mere proprietary function. *Bair*, 307 P.2d at 902. Despite any language in the Development Agreement or associated agreements with the Developer to the contrary, a court using the governmental function test may find the City is not bound to the open space, density, and land use provisions set forth therein. Conversely, with the recent revisions to the Act, which became effective after the original April 7, 2005, memorandum, development agreements are now specifically listed as a tool for local governments to use in accomplishing the purposes of the Act. Utah Code Ann. § 10-9a-102 (Supp. 2005). Further research has indicated that the legal theories in this subsection represent a minority position and, although this would be a matter of first impression in Utah, it is very doubtful that the government functions test would be adopted in Utah, which means that the development agreement is probably enforceable.

d. A third party may not successfully sue to enforce the Development Agreement.

Usually, a person who did not sign a contract cannot enforce it. A person who is not a party to a contract but can enforce it is called a "third-party beneficiary." While an intended third-party beneficiary may sue to enforce a contract, an incidental third-party beneficiary may not. *Tracy Collins Bank & Trust v. Dickamore*, 652 P.2d 1314, 1315 (Utah 1982). This basic rule of contract law applies to development agreements as well. A third party may not sue a city to enforce a development agreement unless it is an intended third-party beneficiary. *See East*

Meadows Co., LLC v. Greeley Irr. Co., 66 P.3d 214, 217 (Colo. Ct. App. 2003). Similarly, an owner of land covered by a development agreement lacked standing to sue a city, where the owner was not a party to the development agreement, had not purchased property from any party to the agreement, and was not a third-party beneficiary of the agreement. *Richland Calabasas L.P. v. City of Calabasas*, 45 Fed. Appx. 661, 662, 2002 WL 1941183 (9th Cir. 2002). The Court of Appeals of Michigan also held that a person who was not a party to a development agreement but was incidentally benefited by it was not entitled to enforce the development agreement as a third-party beneficiary. *J. DiPonio & Son, Inc. v. PM Group, Inc.*, 2001 WL 1512053 (Mich. Ct. App. 2001).

Extensive research has failed to disclose major exceptions to this rule. There have been a few Utah cases involving development agreements. None of these cases, however, reached the merits of the question of whether a third party could enforce the terms of a development agreement, but were disposed of on other grounds. *See Oakwood Village, LLC, v. Albertsons, Inc.*, 2004 UT 101, ¶32, 104 P.3d 1226, 1237 (suit by a *party* to a development agreement to enforce an implied covenant); *see also United Park City Mines Co. v. Stichting Mayflower Mountain Fonds*, 2006 UT 35, --- P.3d ---- (case dealing with marshalling evidence on appeal stemmed from partition of property owned by tenants in common, with some land being subject to a development agreement); *see also Foutz v. City of South Jordan*, 2004 UT 75, ¶¶6, 7, 14, 100 P.3d 1171, 1174 (dismissing challenge that zoning did not conform to master development agreement because petitioners had not initiated the appeal within the 30-day statutory limitation period); *see also Carpenter v. Riverton City*, 2004 UT 68, ¶2, 103 P.3d 127, 127 (challenge of authority of city council to adopt a development agreement's plan as the zoning scheme for an area – not specifically seeking enforcement of the development agreement against the city).

Section 13.13 specifically states that the "Agreement does not create any third party beneficiary rights, [it being] understood by the parties that (i) all rights of action and enforcement of the terms and conditions of [the] Agreement shall be reserved to the City and the Developer . . ." On the other hand, the Development Agreement also provides that the "Agreement shall be recorded and shall be a covenant running with the Property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof." (Dev. Agr. § 13.1.) Thus, the issue is whether the purchasers of building lots within the Subdivision may have standing to enforce the Development Agreement from which they stand to benefit.

The purchasers of lots in the Cedars are not parties to the Development Agreement. At most, homeowners in the Cedars are only incidental third-party beneficiaries of the benefits flowing from the Development Agreement. The primary intent of the Development Agreement was to limit the Developer as to the number of units it could construct in the Cedars, while preserving areas of open space and golf course. Of course, potential buyers could be benefited by the plan for the Cedars, but such benefits are purely incidental to the Development Agreement's primary objective – limiting the Developer as to density and design. Although the Development Agreement mentions that the Cedars was designed to insure the health, safety, and general welfare of City residents, no specific third-party beneficiaries are mentioned in the Development Agreement. Property owners in the Cedars are unlikely to be successful with a

claim for breach of the Development Agreement between the City and the Developer based on the third-party beneficiary theory.

Related to the foregoing is the issue as to whether the Development Agreement confers any property rights in third parties, such as the purchasers of building lots in the Subdivision. As noted, Section 13.1 of the Development Agreement provides that the Development Agreement shall be a covenant running with the Property described therein. In Utah, a covenant that runs with the land benefits and/or burdens the land and must possess the following characteristics: (a) the covenant must touch and concern the land, (b) the covenanting parties must intend that the covenant run with the land, and (c) there must be privity of estate. *Flying Diamond Oil Corp. v. Newton Sheep Co.*, 776 P.2d 618, 622-623 (Utah 1989).

All three of these characteristics appear to exist with respect to the Development Agreement, the City, the Developer, and the purchasers of building lots. The Restatement of Property, Section 543, however provides that "the benefit of a promise can run with land only if it is a promise respecting the use of land of the beneficiary of the promise." *Id.* at n.8. While the law recognizes that the beneficiary of the promise may be a person who is not a party to the transaction that created the promise, a third-party beneficiary can enforce the promise only if such third party was an intended beneficiary of the promise. *See* Restatement (Third) of Property § 2.6, and comment e; *see also* Restatement (Second) of Contracts § 302. In accordance with the Restatement of Contracts, a third-party beneficiary of a promise is an intended beneficiary if such was the intent of the parties to the promise and such beneficiary is either a donee or a creditor beneficiary of the promise. A beneficiary who is not an intended beneficiary is an incidental beneficiary. In accordance with Section 13.13 of the Development Agreement, no third party rights were created thereunder. Therefore, the lot purchasers are at best incidental beneficiaries of the Development Agreement who lack the right to enforce the same. *Broadwater v. Old Republic Surety*, 854 P.2d 527, 536 (Utah 1993). Accordingly, the covenants contained in the Development Agreement do not run with the land with respect to individual lot purchasers. This conclusion is consistent with other provisions of the Development Agreement, which, for example, govern the transfer of the project and successors and assigns. (*See* Dev. Agr., Part 11.) While the Development Agreement is not always clear on this point, it appears that an individual lot purchaser was never intended to be responsible for the obligations of the Developer under the Development Agreement (even though such individual is "a purchaser of the Cedars or any portion thereof" for the purposes of Section 11.1). Similarly, the Developer undoubtedly never intended to relinquish any of its rights in and control over the Development to such purchasers. Accordingly, the most reasonable interpretation of Section 13.1 is that the Development Agreement does run with the land but only with respect to the City, the Developer and the Developer's successors and assigns under the Development Agreement. Thus, an individual lot purchaser would not have a property interest in the Development Agreement as a result of Section 13.1.

A final issue with respect to third parties is that involving the concept of promissory estoppel. Under Utah law, a claim for estoppel arises when a party by his or her actions, representations, or admissions or by silence when an obligation to speak exists, induces another to reasonably rely on such actions, representations, admissions or silence to their detriment. *Kelly v. Richards*, 83 P.2d 731, 734 (Utah 1938).

The Development Agreement, in accordance with its express terms, was recorded "in order to put prospective purchasers or other interested persons on notice as to the terms and provisions [thereof]." (Dev. Agr. § 13.1.) As a consequence, if purchasers in the Subdivision had notice that the City had agreed to "maintain the Open Space Parcels as open space and part of the City's public park system, (*see* Dev. Agr. § 2.3.4), it would be reasonable for a lot purchaser to rely on the City's representation in making a decision to purchase a lot in the Subdivision. If the City were to subsequently develop the Open Space Parcels, including the "Grove," the City could expect at least some lot owners to file suit to enjoin such action or for damages incurred as a result of the failure of the City to maintain the designated open space. On the other hand, such purchasers arguably took notice of the provisions in the Development Agreement dealing with its termination and with the lack of third party beneficiary rights.

e. The parties may renegotiate and amend the Development Agreement.

Contracts can always be modified. *Fisher v. Fisher*, 907 P.2d 1172, 1177 (Utah Ct. App. 1995). "Where such a modification is agreed upon, the terms thereof govern the rights and obligations of the parties under the contract, and any pre-modification contractual rights which conflict with the terms of the contract as modified must be deemed waived or excused." *Rapp v. Mountain States Tel. & Tel. Co.*, 606 P.2d 1189, 1191 (Utah 1980).

Of course, the City, the Developer, and the HOA may agree to alter the terms of the Development Agreement to exempt Plats B and H from the Subdivision, to increase density, to limit open space, to amend the CC&Rs, or to alter any other provision contained in the Development Agreement and associated agreements between the City and the Developer. This, of course, is the path with the least risk of legal challenge.

2. The CC&Rs Contain Use Restrictions that Run With the Land as to Lots West of Canyon Road, but an Amendment of Some Kind May Exempt Parcels Owned by the City from their Provisions.

a. The CC&Rs do not apply to Plat H or Parcel 4A, and therefore do not restrict construction of a church or residential development, leaving only the Development Agreement and the conservation easement as limitations on development.

Because the CC&Rs do not apply to Plat H, they do not prevent construction of a church or residential development on Lot 206, leaving only the Development Agreement and the conservation easement as restrictions to development. With an eye towards minimizing risk, this is probably the best place for development because the CC&Rs contain language restricting uses in the plats to which they apply. (*See* Dev. Agr. § 1.05.)

The Developer conveyed an easement to the MBA over a parcel referred to as Parcel 4A "for the purpose of golf course construction, operation, access and maintenance . . ." Best efforts to locate Parcel 4A have led to the conclusion that it may no longer exist in that form. The City is the record owner of Lot 1, Plat E. When the legal description of Parcel 4A is compared to Lot

1, Plat E, the two descriptions cover much of the same land. (*See* **Exhibit A**, Parcel 4A superimposed on Lot 1, Plat E.)

Neither the CC&Rs nor the Development Agreement refers to Parcel 4A. However, the Development Agreement likely applies to Lot 1, Plat E. (*See* Dev. Agr. § 1.1.5) (limiting the density of Plat E to 201 units and observing that "the intent of this section is strictly to limit the future density in Plat E. Furthermore, any future development on the Proposed Plat E is subject to the City's Preliminary and Final Plat approval process.") Again, only the Development Agreement and the conservation easement restrict the use of Lot 206, Plat H. However, there does not seem to be any restriction contained on the plat as to the use of Lot 1.

b. The Developer, as the Declarant, may amend the CC&Rs at its sole discretion.

Whether the CC&Rs may be amended turns on the content of the previously-recorded CC&Rs and subsequent amendments. Paragraph 6.05 of the CC&Rs permits the declarant, Lone Peak Links, LLC, "at any time, at its sole discretion, to amend this Declaration [i.e., the CC&Rs] in a manner in which it believes will be most beneficial for the Subdivision, so long as it owns lots within the Subdivision." The interpretation of this covenant is a question of law, and will be guided by the same rules of construction used to interpret contracts. *Cecala v. Thorley*, 764 P.2d 643, 644 (Utah Ct. App. 1988). Words in restrictive covenants should be given their ordinary meaning. *Duffy v. Sunburst Farms East Mut. Water & Agr. Co., Inc.*, 604 P.2d 1124, 1127 (Ariz. 1979).

Lone Peak still owns lots in the Cedars. Convinced that it would be in the best interests of the Subdivision to amend and re-record the CC&Rs, Lone Peak, it seems clear, may certainly do so. Those property owners who have bought lots in the Cedars subdivision did so with record notice of the express terms of the CC&Rs. Such property owners, therefore, should have no valid cause of action against either the City or the MBA, as owners of lots in Plat B, for violations of the CC&Rs if the city-owned lots are properly exempted. The logic is straightforward and clear: if a property owner should be held to have record notice of the provisions of the CC&Rs that benefit and burden the lots in the subdivision, that same property owner must be held to have record notice of the provision allowing the Developer, in its sole discretion, to modify the CC&Rs.

c. Contrary to the rule in some jurisdictions, a recent Utah case suggests that because a plat amendment is contemplated by the plain language of the CC&Rs, such an amendment may remove the vacated area from their provisions.

The rule in some jurisdictions is that a plat amendment alone will not terminate restrictive covenants.[3] Very recently, the Utah Supreme Court held that a plat amendment and a declaration

[3] *See Bob Layne Contractor, Inc. v. Buennagel*, 301 N.E.2d 671, 678 (Ind. Ct. App. 1973) (statutory vacation alone does not affect restrictive covenants incorporated in plat and running with the land); *Buck v. Dunn*, 275 P.2d 296, 297 (Okla. 1954) (among those rights and privileges which may not be abridged or destroyed by vacation of a portion of plat and restoration of the property to its unplatted condition are the benefits from restrictive covenants); *Edwards v. Ohio State Students Trailer Park Coop.*, 88 N.E.2d 178, 181 (Ohio Com. Pl. 1949) (a decree vacating a portion of a plat would not destroy restrictions as to the use of the premises). Thorough research has failed to reveal contrary authority.

of covenants must be read together, and if possible, harmonized without resort to extrinsic evidence if their plain language is unambiguous. *View Condominium Owners Ass'n v. MSICO, LLC*, 2005 UT 91, ¶¶ 21, 27, 127 P.3d 697. The Court declared, "We interpret the provisions of the Declaration as we would a contract," *id.* at ¶21, citing *Swenson v. Erickson*, 2000 UT 16, ¶11, 998 P.2d 807, and resort to extrinsic evidence as an aid to construction is only allowed where there is ambiguity. *Id.* The Court also observed that an ambiguity only exists when the declaration is "capable of more than one reasonable interpretation because of uncertain meanings of terms, missing terms, or other facial deficiencies." *View Condominium*, 2005 UT 91, at ¶21, quoting *Fairbourn Commercial, Inc. v. American Housing Partners, Inc.*, 2004 UT 54, ¶11, 94 P.3d 292. The Court agreed that a declaration of covenants must be construed together with an amended plat. *View Condominium*, 2005 UT 91, ¶24, 127 P.3d 697, citing *Rowley v. Marrcrest Homeowners' Ass'n*, 656 P.2d 414, 417 (Utah 1982).

In this case, the plain language of the CC&Rs indicates that if certain lots are removed from the Subdivision the terms of the CC&Rs and HOA Bylaws might no longer apply to those lots. A thorough review of the CC&Rs has failed to disclose any "uncertain meanings of terms, missing terms, or other facial deficiencies." *See Fairbourn Commercial, Inc. v. American Housing Partners, Inc.*, 2004 UT 54, ¶11, 94 P.3d 292. Rather, the plain language of the CC&Rs themselves, because it is unambiguous, should control the analysis of whether an amended plat could work to terminate restrictive covenants contained in the CC&Rs. There is language in the CC&Rs that suggests so:

> All conditions, covenants, restrictions and agreements herein stated shall run with the ***land comprising the Subdivision***, and all owners, purchasers or occupants thereof shall by acceptance of contracts or deeds be conclusively deemed to have consented and agreed with the present and future owners of said land . . . to conform to and observe the following covenants, conditions, restrictions and agreements as to the use thereof . . .

(CC&Rs § 1.04, emphasis added.) An argument could be made that this provision means that all land once comprising the Subdivision should be forever encumbered by the CC&Rs. However, that interpretation seems unlikely because the term "Subdivision" is defined as The Cedars Plat B, (*id.* Recital No. 1), and is used interchangeably with the term "Development." (*See id.*) The term "Development" is defined as "the planned unit development known as The Cedars ***as it exists at any given time***." (*Id.* § 2.10, emphasis added.) This phrase presupposes that the scope and extent of the Development could and would change over time.

In *View Condominium* the Court based its holding on the fact that the plat amendment and declaration of covenants could be easily reconciled by the plain language of the declaration because no ambiguity existed. 2005 UT 91, at ¶27, 127 P.3d at 704. In *View Condominium* the Court reasoned that because the declaration reserved Lot 5 as a parking lot, the amended plat's Lot 5 should be used as a parking lot as specified in the declaration. The Court concluded that "well-settled law precludes us from considering extrinsic evidence to vary the terms of an unambiguous written agreement." *Id.* It was on these grounds that the Court held the restrictive covenant that Lot 5 be used for a parking lot was unaffected by a plat amendment that was facially consistent with the declaration. *Id.*

By the same token, the plain language of the CC&Rs indicates that they apply only to Lots within the Subdivision. Therefore, assuming that the plat could be amended or vacated as to portions owned by the City or MBA, and an amended plat recorded, those portions would no longer be part of the Development or Subdivision as defined by the CC&Rs (*see id.*, §§ 1.04, 2.10), and therefore, arguably no longer subject to the provisions of the CC&RS or HOA Bylaws.

Although one could argue that the CC&Rs are ambiguous based on the language that the CC&Rs "shall be made for the direct, mutual and reciprocal benefit of each and every lot created on [Plat B or Development] . . .and shall, as to the owners of each lot within the Subdivision, . . . operate as conditions, covenants, restrictions and agreements running with the land for the benefit of all other lots in the Subdivision" (*see* CC&Rs § 1.02), that language expressly states that the mutual and reciprocal benefit is for Lots within the Subdivision or Development. A "Lot" is defined as any one of the parcels of land within the Development. (*See id.* § 2.12). Again, "Development" is defined as the "planned unit development known as The Cedars ***as it exists at any given time***." (*Id.* § 2.10, emphasis added.) Hence, the CC&Rs even contemplated amendment of the subdivision plat,[4] making it more difficult for a court to find no ambiguity between a plat amendment and the CC&Rs.

Although the holding in *View Condominium* was that a developer could not terminate restrictive covenants contained in a declaration by amending the plat alone, that holding was based on the general rules of contract construction. In that case, when the amended plat and the unamended declaration were read together, there was no facial conflict or ambiguity. *View* Condominium, 2005 UT 91, at ¶¶26-27, 127 P.3d at 704. Therefore, the Court upheld the restrictive covenant that Lot 5 be used as a parking lot. In this case, however, applying the rule set forth in *View Condominium* that plats and declarations of covenants must be read together according to their plain language, *see* 2005 UT 91, at ¶¶ 21, 27, 127 P.3d at 702, 704, leads to the conclusion that a plat amendment or vacation may exempt the vacated portion from the provisions of the CC&Rs because the plain language of the CC&Rs contemplate such amendments, and furthermore, that the CC&Rs apply only to Lots within the Subdivision. Reading the two writings together, the CC&Rs and an amended plat, a court could conclude that an amended plat could exempt certain lots from the CC&Rs.

Utah statutes govern the method and procedure to amend a subdivision plat. *See* Utah Code Ann. § 10-9a-608. A city may unilaterally amend a subdivision plat as long as it complies with the procedure prescribed by statute. *Id.* § 10-9a-608(1)(a). Of course, the City must also comply with its own ordinance provisions for amending or vacating a subdivision plat. *See* City Cedar Hills Code § 11-6-4. However, the City must find that "the public interest will not be materially injured by the proposed vacation, alteration, or amendment, and that there is good cause for [it] . . ." before amending the "plat or any portion of the plat . . ." Utah Code Ann. § 10-9a-609(1). Prior to 2005, a city was also required to find that no "person will be materially

[4] Other evidence that the plat could be amended is present throughout the CC&Rs. *See* CC&Rs §§ 2.16 ("property annexed to the Development as provided in this Declaration"), 6.05 (Declarant's right to amend CC&Rs), 1.07 (Expansion of Development), etc.

injured by . . . the amendment." *See* Utah Code Ann. § 10-9-810(1)(b) (2004) ("If the responsible body or officer is satisfied that neither the public *nor any person* will be materially injured by the proposed vacation, alteration, or amendment, and that there is good cause for the vacation, alteration, or amendment, the legislative body, by ordinance, may vacate, alter, or amend the plat, any portion of the plat, or any street or lot."); *see also Arnell v. Salt Lake County Bd. of Adjustment*, 2005 UT App 165, ¶13, n.8, 112 P.3d 1214, 1220 (finding that enactment of a slope ordinance does not impermissibly amend plat without making the finding that no person or the public will be harmed). In 2005, S.B. 60 removed the requirement for finding that no person will be materially injured by the proposed vacation or amendment, requiring only a finding that the public interest will not be materially injured.

While the City may amend the subdivision plat if it finds that the public interest will not be materially injured, any adversely affected person may appeal the final decision of the land use authority, or City Council, by filing a petition for review with the District Court within 30 days of the decision becoming final. Utah Code Ann. § 10-9a-801(2)(a). During this appeal period the City will be at risk that its decision to vacate or amend the plat will be challenged. Once the 30-day appeal period has expired, however, if no petitions have been filed, the decision would enjoy repose and the City's risk for such action will be greatly diminished. In fact, "the petition is barred unless it is filed within 30 days after the appeal authority's decision is final."[5] *Id.* § 10-9a-801(6).

d. *Because CC&Rs have been recorded, no third-party property owner likely will have a valid cause of action for breach of any implied covenants.*

Written and recorded CC&Rs supersede any implied covenants. *Dansie v. Hi-Country Estates Homeowners Ass'n*, 1999 UT 62, ¶25, 987 P.2d 30, 36; *St. Benedict's Dev. Co. v. St. Benedict's Hospital*, 811 P.2d 194, 198 (Utah 1991). A property owner may only sue on the basis of real violations of the recorded CC&Rs, not any implied covenants. *Id.* The Supreme Court of Utah has held that it is a "long-standing, well-accepted requirement that covenants are to be embodied in a written instrument bearing the covenantor's signature." *Dansie v. Hi-Country Estates Homeowners Ass'n*, 1999 UT 62, ¶25, 987 P.2d 30, 36. The Court continued, "Admittedly, there are certain instances where covenants can be imposed by implication, such as 'from the language of a deed or lease or from the conduct of the parties.' . . . *Those instances, however, are extreme, and, '[a]s a general rule, . . . not favored in the law.'*" *Id.* (emphasis supplied) (citing *St. Benedict's Dev. Co. v. St. Benedict's Hospital*, 811 P.2d 194, 198 (Utah 1991)) (emphasis added). The Court concluded, "For such a covenant to be impliedly imposed on property, "the support for it must be 'plain and unmistakable' or it must be 'necessary' as a matter of law." *Dansie*, 1999 UT at ¶25; *St. Benedict's Dev. Co.*, 811 P.2d at 198. Other jurisdictions concur. *Enron Oil & Gas Co. v. Joffrion*, 116 S.W.3d 215, 222 (Tex. App. 2003); *Plaza Associates v. Unified Development, Inc.*, 524 N.W.2d 725, 728 (Minn. Ct. App. 1994); *Saro Investments v. Ocean Holiday Partnership*, 441 S.E.2d 835, 839 (S.C. Ct. App. 1994).

[5] This analysis is the same for decisions to amend the zoning applicable to the property, i.e., once the City Council's decision to amend the zoning becomes final, adversely affected persons have 30 days to file a petition in the District Court.

Owners of lots in the Cedars subdivision have standing to enforce the terms of the CC&Rs. CC&Rs § 6.01. Other property owners should have no valid cause of action against the City for any implied covenants, because there exists express written and recorded covenants, unless the covenant is "necessary as a matter of law" and the support for it "plain and unmistakable." *Dansie*, 1999 UT at ¶25; *St. Benedict's Dev. Co.*, 811 P.2d at 198. Because written CC&Rs have been executed and recorded for the Cedars, no implied covenants likely govern the subdivision. The CC&Rs that have been recorded are express covenants which obviate the need for any implied covenants; therefore, no cause of action will likely accrue based on implied covenants. In any event, even if written and recorded covenants somehow did not preclude implied covenants, there are in the present case no "plain and unmistakable" servitudes, "necessary as a matter of law," which were somehow intended but not included in the explicit CC&Rs.

e. *Deed restrictions in the warranty deed by which the MBA took title to the golf course parcels referred to the CC&Rs and Development Agreement, but did not add any significant substantive restrictions.*

A warranty deed dated January 18, 2002, and recorded on January 24, 2002, as Entry No 8522 ("Warranty Deed"), conveyed the golf course parcels (Lots 104, 105, 107, 110, 111, 112 and 113, Plat B, and Lot 206, Plat H) to the MBA from the Developer. It stated that it was subject to certain easements, conditions, covenants, restrictions and matters of record as set forth in an exhibit attached to the Warranty Deed. Most of the items are existing easements in favor of utility companies, UDOT, the federal government, or nearby cities.[6] Presumably, these encumbrances would not significantly affect the City's opportunity to develop the property inasmuch as these encumbrances would have to be respected in any event and are likely necessary for development.

The Warranty Deed also recited that the property was subject to the CC&Rs and the Development Agreement. The Warranty Deed merely refers to and incorporates the "matters contained in a document captioned [CC&Rs]." Likewise, the Warranty Deed also refers to and incorporates the provisions of the Development Agreement, but does not expand its terms or add anything to that analysis.

3. The Holder of a Conservation Easement May Release It.

The Utah statute authorizing conservation easements also allows such easements to be removed by the entity holding the easements. The Utah Code states, "A conservation easement may be terminated, in whole or in part, by release, abandonment, merger, nonrenewal, conditions set forth in the instrument creating the conservation easement, or in any other lawful manner in

[6] Specifically, the Warranty Deed lists easements in favor of American Fork City, State Road Commission of Utah, Metropolitan Water District of Salt Lake City, Utah Power & Light Company, Mountain Fuel Supply Company, Mountain States Telephone & Telegraph Company, Utah Department of Transportation, U.S. West Newvector Group, Inc., the United States of America, the U.S. Department of Agriculture, Forest Service, Highland City, Pacificorp, and Ivy C. Page (for the purpose of constructing a fill slope and the placement of fill material). There was also an existing lease, option, and addendum of lease in favor of U.S. West New Vector Group, Inc. An inspection of the details of each of these instruments is beyond the scope of this review.

which easements may be terminated." Utah Code Ann. § 57-18-5. This provision offers a limit to the perpetual nature of conservation easements.

Although conservation easements have been recorded for golf course parcels, and although the instruments declare the easements to be perpetual, the City, as the easement holder, may release them by executing a release, as specifically allowed by statute. The statute treats the termination of conservation easements no differently than termination of other easements. Release of the easement, however, may be contrary to the apparent intent of section 2.5.1 of the Development Agreement, in which the City agreed that a conservation easement over the golf course was to be granted. However, the conservation easement instrument itself refers to the easement as authorized by the Conservation Easement Act. That act expressly allows for the termination of conservation easements and its relevant provisions were in place when the instrument was executed and have remained unchanged since enactment in 1985.

4. The City May Amend the General Plan, the Zoning Ordinances, and the Zoning Map.

It may be necessary for the City Council to amend the City's General Plan if a new zoning designation would be inconsistent with the General Plan's land use map. It may do so by following the procedures outlined in Utah statutes. *See* Utah Code Ann. §§ 10-9a-404, -203, -204 (Supp. 2005). The Planning Commission is required to hold a public hearing on the proposed General Plan amendment. Utah Code Ann. §§10-9-404 (Supp. 2005). Thereafter, the City Council may adopt the general plan amendment after making any changes it deems necessary. *Id.* However, the general plan is only an advisory guide for land use decisions, although the City Council may adopt an ordinance mandating compliance with the general plan. Utah Code Ann. §10-9a-405 (Supp. 2005).

The City may amend the Land Use Element of the General Plan to allow for re-designation of open space and residential areas as long as it conforms to the procedures set forth by statute.

The City Council also "may amend (i) the number, shape, boundaries, or area of any zoning district; (ii) any regulation of or within the zoning district; or (iii) any other provision of the zoning ordinance." Utah Code Ann. § 10-9a-503(1) (Supp. 2005). However, the City Council may not amend the zoning ordinance or map without first submitting the proposed amendment to the planning commission for its recommendation. Utah Code Ann. § 10-9a-503(2) (Supp. 2005).

The City may amend any provision of the zoning ordinances or the zoning map as long as it complies with statutory procedures. For example, the City may amend § 10-6B-4.B of the City Code to allow PRDs in R-1-11,000 zones. The City may also change the City's Zoning Ordinance and Map to rezone Plat H and parts of Plat B to R-1-11,000. The Planning Commission, however, has 30 days from written notice, from the City Council as to desired or contemplated changes to the zoning ordinance and map, to forward its recommendations of approval or denial of zoning amendments to the City Council. City Code § 10-1-7.A. The City

Council must hold a public meeting on the desired changes to the Zoning Ordinance and to the Zoning Map. City Code § 10-1-7.A and Utah Code Ann. § 10-9a-502(2) (Supp. 2005).

CONCLUSION

In summary, the City has legal authority to pursue development of Plat H as soon as the Development Agreement has terminated and the conservation easement released. Utah has recently recognized development agreements as tools to regulate land development, and developing law from other jurisdictions recognizes the enforceability of development agreements. However, by its own terms, the Development Agreement may terminate soon. A possible theory to escape enforcement of the Development Agreement is that it is invalid to the extent it purports to limit governmental functions such as zoning. Furthermore, third parties are not likely to be successful in seeking enforcement of the Development Agreement. Of course, the Developer and the City are free to negotiate and amend the Development Agreement to alter terms relating to open space, density, and CC&Rs, this being the avenue of least risk.

The City is not likely to face a successful challenge from property owners based on violations of the CC&Rs if the Developer or the HOA amends them to exempt lots owned by the MBA or the City. Because express CC&Rs have been written and recorded, no claims should arise from implied covenants. Because the CC&Rs apply to plat B in the Cedars development, the CC&Rs must be amended for any open space in plat B to be developed. However, the CC&Rs do not apply to plat H (golf course east of Canyon Road), but it is still subject to the Development Agreement and conservation easement. A few jurisdictions hold that a plat amendment alone will not remove restrictive covenants. A recent Utah case, while reaching the same conclusion, held that an amended plat and the CC&Rs must be read according to their plain language. The CC&Rs in this case suggest that a plat amendment may remove lots from the CC&Rs. Utah law provides that the conservation easement may be released by the holder. Finally, the City has authority to amend its general plan, the zoning ordinances, and the zoning map.

Considering all these variables, Plat H seems to be the best place for development to occur because it is not subject to the CC&Rs and because the Development Agreement may soon terminate.

This memorandum is intended to set forth the potential issues in the event of a challenge by the Developer or property owners in the Cedars and does not assess the likelihood of such a challenge occurring. The purpose of this memorandum is to inform the City Council of its powers and alternatives. The City Council is charged with determining the best course of action to pursue.

SMITH | HARTVIGSEN PLLC
ATTORNEYS AT LAW

MEMORANDUM

PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

To: Eric T. Johnson
From: Bryan Bryner
Date: August 27, 2007
Re: Development of Golf Course property

Issue

Can Cedar Hills develop a subdivision on Hole 15 of the Cedar Hills Golf Course without violating the Development Agreement that the City entered into with the developer of The Cedars?

Brief Answer

No, Cedar Hills may not legally take action to develop the golf course property because any such development would likely be a breach of several provisions of the Development Agreement.

Analysis

On February 16, 2001, Lone Peak Links, LC (**"Developer"**) entered into a development agreement (**"Development Agreement"**) with the City of Cedar Hills (**"City"**) for a planned residential development that the Developer proposed to the City which would include construction of a golf course and residential development to surround it. The City eventually purchased the golf course from the Developer. The City is now considering subdividing and developing Hole 15 of the golf course, which is located east of Canyon Road on Lot 206, Plat H. Lot 206 in Plat H is currently subject to the Development Agreement.

If the City unilaterally developed Plat H or any golf course or open space parcels, the City would most likely be in breach of the Development Agreement for the following reasons:

1. Section 1.1 of the Development Agreement provides that Plat H "shall develop in the H-1 Hillside Zone" classification. The H-1 zone requires a minimum lot size of 0.80 acres, but the City's proposed subdivision contains lots ranging in size from 0.27 acres to 0.48 acres. Rezoning Plat H to accommodate the desired lot sizes would likely be a breach of Section 1.1.

2. Section 1.1 of the Agreement limits the overall density of the development to 725 units. The recorded Plats A through O include lots for 714 units, but the City's proposed subdivision would include 27 lots. Any subdivision of Plat H

that would increase the overall density of the project to exceed 725 units would likely result in a breach of the Development Agreement.

3. Section 1.1.8 of the Development Agreement appears to limit the density of Plat H to 0 units.[1]

4. Under Section 2.5.1 of the Development Agreement, "all development rights have been removed from the Golf Course areas" and the densities have been removed and included in the development clusters in the Cedars.

The Development Agreement cannot be breached once it terminates. The Development Agreement specifically provides that it will terminate when "the obligations and requirements herein are completed in conformance with the City subdivision, construction, and bonding requirements." (Dev. Agr. § 13.3.) This provision contemplates that the Development Agreement will last only until all the Developer's duties are completed under the City ordinances. Therefore, when all plats have been recorded, bond posted, infrastructure completed and accepted by the City, and the performance guarantee bond released, by the express terms of the Development Agreement, it will terminate. (*See generally* City Code, Title 11, and Title 9, Chap. 2.). It is our understanding that the Developer has not completed all of his obligations, including subdivision and construction requirements. Therefore the Development Agreement is still valid and in force.

The City's options for developing Hole 15 without violating the Development Agreement include:

1. Renegotiate and amend the Development Agreement with the Developer to exempt Plat H from the Subdivision, to increase density, or to alter any other provision contained in the Development Agreement and associated agreements between the City and the Developer. This, of course, is the path with the least risk of legal challenge.

2. Wait until the Developer completes his requirements and obligations under the Development Agreement so the Development Agreement terminates and is no longer in force.

CONCLUSION

In summary, the City has legal authority to pursue development of Plat H, but only after the Development Agreement has terminated or the Developer and the City renegotiate and amend the Development Agreement to alter terms relating to density and zone classification.

---

[1] It is not clear whether this statement of density is a binding limitation or merely a proposed density. For example, Section 1.1.3 states that Plat C shall have 68 units, but the recorded Plat C has 69 units. Section 1.1 also only lists Plats A through J as part of the Cedars, but Plats K through O have also been recorded as part of the Cedars. Plats D, E, I and J all have fewer units than the number of units listed in Section 1.1. So, it appears that the numbers of units for all plats listed in Section 1.1 is merely the proposed number of units necessary to achieve the maximum density of 725, and that they do not create a binding limitation on each plat. However, the Developer might assert the argument that the numbers of units listed in Section 1.1 are maximum unit densities applicable to each listed phase.

SMITH | HARTVIGSEN PLLC
ATTORNEYS AT LAW

MEMORANDUM

To: CEDAR HILLS CITY COUNCIL

From: SMITH HARTVIGSEN, PLLC

Date: AUGUST 11, 2015

Re: RELEASE OF CITY-OWNED LOTS FROM CC&RS

QUESTION PRESENTED

Whether city-owned portions of the Cedars Subdivision are subject to the CC&Rs, and if so, whether the lots may be released.

BRIEF ANSWER

The use of city-owned property must conform to valid restrictions that encumber the property. There are a few possible theories for exempting portions of the Cedars from the CC&Rs, but they will be costly and potentially risky.

FACTUAL BACKGROUND

In 2001 and 2002, Lone Peak Links, LLC (**"Developer"**), conveyed various parcels to the City and Municipal Building Authority (**"MBA"**) for use as open space and a golf course, in conjunction with the approval of subdivision and planned residential development plans. The deed to the MBA made the conveyance subject to a recorded Declaration of Covenants, Conditions and Restrictions (**"CC&Rs"**), as well as the Development Agreement between the Developer and the City.[1] However, the deed to the City arguably made the property subject only to the recorded CC&Rs.[2]

---

[1] The deed by which the MBA took title to the property contained the clause: "Subject to the following easements, conditions, covenants, restrictions and matters of record as set forth on Exhibit 'B' attached hereto and incorporated herein by reference hereto." Exhibit B listed the Development Agreement and the CC&Rs as items to which the grant was subject, using the following language:

> 41. The terms, covenants and conditions of that certain Development Agreement by and between Lone Peak Links, LLC, and the City of Cedar Hills;
> Recorded: March 7, 2001 as Entry No. 21551:2001 of Official Records.
> 42. The matters contained in a document captioned Covenants, Conditions and Restrictions (deleting therefrom any restrictions based on race, color or creed).
> Recorded: March 7, 2001 as Entry No. 21552:2001 of Official Records.

[2] The deed by which the City took title to the open space parcels stated that the conveyance was "subject to easements, conditions, covenants, and restrictions of record."

ANALYSIS

1. The City and MBA parcels are bound by the CC&Rs.

Property encumbered with restrictive covenants obligate the owner of the servient tenement to use the property only in accordance with the substance of the restrictive covenant. *Forest Meadow Ranch Property Owners Ass'n, LLC, v. Pine Meadow Ranch Home Ass'n*, 2005 UT App 294, ¶32, --- P.3d --- (documents setting forth plat designations for planned developments can have the effect of creating restrictive covenants that are binding on all subsequent development), citing *View Condo. Owners Assoc. v. MSICO, LLC*, 2004 UT App 104, ¶16, 90 P.3d 1042. Unambiguous restrictive covenants in CC&Rs will be enforced as written. *Swenson v. Erickson*, 2000 UT 16, ¶11, 998 P.2d 807; *see also* V. Woerner, Annotation, *Maintenance, Use, or Grant of Right of Way over Restricted Property as Violation of Restrictive Covenant*, 25 A.L.R.2d 904 (1952) ("While restrictions in deeds are not favored in law, they will be construed as found. In construing restrictive covenants, the question is primarily one of intention, and . . . the intention of the parties as shown by the agreement governs . . .").

Utah law is sparse on the issue of whether the general rule to enforce restrictive covenants as written applies differently to publicly-owned land. However, the majority rule is that where a dedication or conveyance of land to the public is done as part of a development scheme, upon which neighboring property owners relied in purchasing from the dedicator, the owners have an easement in the continued use of the dedicated property for the designated purpose, which entitles them to claim compensation or damages. *See* Annotation, *Diversion of Park Property to Other Uses as Taking of Damaging Neighboring Property without Compensation*, 83 A.L.R. 1435 (1933), *citing Poole v. Rehoboth*, 80 A. 683, 686 (Del. Ch. 1911) (property dedicated to public use cannot be used for another public use inconsistent with the dedication because purchasers relied on restriction).

If land is dedicated to a municipality with deed restrictions, a municipality must ensure that the land is used consistent with the deed restrictions. *White v. Township of Upper St. Clair*, 799 A.2d 188, 195 (Penn. Commw. 2002). Other cases have held that dedication of land for park purposes creates a public trust limiting the use of the property to the dedicated purpose, even if the desired use is another public use. *See City of Wilmington v. Lord*, 378 A.2d 635, 639 (Del. 1977) (dedication restricting land for use as a park, though land was subsequently used as a golf course, did not allow construction of water tank by city); *see also Anderson v. Mayor and Council of Wilmington*, 137 A.2d 521, 523 (Del. Ch. 1958) (city sought to build school on land dedicated as a park). Land owners who purchase in reliance on a particular development scheme that involves dedication of property to the public for a particular use are entitled to sue to enjoin use of the property in a manner contrary to the use for which the land was dedicated. McQuillin, Municipal Corporations, § 52.36 (Supp. 2004); *see also Poole*, 80 A. at 685-686. Finally, in determining any inconsistency of use, restrictions in a deed given by a private individual donating land as a park must be strictly construed against a donee government. *City of Wilmington*, 378 A.2d at 639.

Despite the need to raise revenue, the City may not use the open space and golf course lots in a manner inconsistent with the CC&Rs. The Cedar Hills situation is similar to the case

City of Wilmington v. Lord, wherein land was dedicated for park purposes and used as a golf course. 378 A.2d 635 (Del. 1977). In that case, the city needed to erect a water tower to adequately serve city residents, which the court recognized was an important public use. *Id.* at 638. In that case, however, the court ruled that in accepting the property the city had acknowledged the condition restricting the use of the land. *Id.* at 638-639. Likewise, because the City of Cedar Hills and the MBA accepted the open space and golf course parcels, they acknowledged the conditions limiting the property to those uses. Hence, because the City and MBA took title subject to the recorded CC&Rs and plats, the City and MBA are bound by the restrictive covenants they contain, as would be any other purchaser. Furthermore, lot owners purchased lots within the subdivision relying on the existence of the golf course, and therefore, any attempt to disregard the open space and golf course use restrictions[3] would likely subject the City to takings challenges in which lot owners may assert that the City had taken a valuable property interest without just compensation.

2. Only a few theories, fraught with risk and cost, may exempt city-owned lots from the CC&Rs.

Even if property is encumbered by covenants restricting its use, the City may obtain a release of the lot owners' rights by purchase or by acquiring those rights by eminent domain. *See Duke v. Tracy*, 252 A.2d 749, 754 (N.J. Super. 1969). Also, if neighborhood conditions have significantly changed, restrictive covenants may no longer apply.

a. Purchase

The least risky course of action would be to purchase a voluntary release of the restrictive covenants. This begs the question, "From whom must the release be purchased?"

Theoretically, the City could negotiate and obtain a release from each property owner. On the other hand, if one lot owner does not want to release the City, a full release will not be obtained, and the City could face litigation over a taking of that lot owner's property. Because the Cedars Committee is authorized to act on behalf of the HOA, representing all lot owners within the Plats B, C, D, F, and I of the subdivision,[4] the City could negotiate with and purchase from the HOA via the Cedars Committee a release of the CC&Rs. *See* CC&Rs § 9.04(5) ("The Cedars Committee shall have all the powers, duties and responsibilities . . . provided by this Declaration . . . including, but not limited to . . . (5) To enter into contracts, deeds, leases and/or other written instructions or documents.") However, the Cedars Committee likely would have to obtain at least 50 percent of the total votes in the HOA to obtain consent to sell a release of the restrictive covenants to the City. §§ 8.11, 17.01. Such would be the same amount of support required to amend the CC&Rs.

This is legally different from amendment of the CC&Rs, but it has the same practical result. The City would end up paying to be exempted from the CC&Rs, and the Developer has

[3] The CC&Rs restrict the use of lots to the uses set forth on the recorded plats. CC&Rs §§ 1.03, 1.05. All lots owned by the City are designated as open space. All lots owned by the MBA are designated as golf course.
[4] Lots located west of Canyon Road.

already indicated that the City would have to pay for the Developer to exercise its right to amend the CC&Rs.

b. Changed neighborhood conditions

A restrictive covenant may be held unenforceable due to changed neighborhood conditions, but the change must be so great as to neutralize the benefits of the restriction to the point of defeating its object and purpose. *Crimmins v. Simonds*, 636 P.2d 478, 479 (Utah 1981); *Metropolitan Inv. Co. v. Sine*, 14 Utah 2d 36, 41, 376 P.2d 940, 943 (1962).

In *Crimmins*, the court found that even though homeowners had begun to operate home businesses in violation of a covenant prohibiting trade and business within a subdivision plat, the business activities in their homes did not change the "predominant character of the neighborhood from residential to commercial," and the court refused to set aside the covenant. *Crimmins*, 636 P.2d at 480. In *Sine*, the parties agreed that a motel should not be built on the property in question because the grantor was in the motel business. The court found that because the grantor was still in the motel business and the number of motels in the area had actually increased since the parties agreed to the restrictive covenant, the restriction was still valuable to the grantor, and the court refused to set aside the restriction. *Sine*, 376 P.2d at 943.

It is unlikely that a court would conclude that the neighborhood conditions have changed in the Cedars so much so as to neutralize the benefits of the restrictive covenant limiting the use of the lots to open space and golf course. The land uses in the subdivision are primarily the same as originally intended. The golf course is still being used as a golf course. Surely the restrictive covenants are still valuable to the Developer and lot owners because they ensure the land will only be used as golf course and open space. For lot owners located adjacent to the golf course the restrictions are especially valuable. Typically, homeowners pay a premium to be located adjacent to open space and golf courses. The subdivision is only a few years old, and lots are still being sold in the subdivision subject to the restrictive covenants.

c. Eminent domain

Although condemnation of all interests in the property is possible, it is potentially risky, costly, and cumbersome. There are approximately 287 lots in Plats B, C, D, F, and I of the subdivision, exempting lots owned by the City and the MBA from the total. The City of Highland owns some lots. The Developer and its related entities still own several lots, and surely will vigorously oppose condemnation. From a practical standpoint, any litigation involving such a large group of potential defendants would be unwieldy and costly.

To be successful in a condemnation suit, the City must demonstrate that a restrictive covenant is an interest that can be taken by eminent domain and that four conditions precedent will be satisfied: (1) the use for which the property is to be taken is authorized by law, (2) the taking is necessary for such use, (3) construction and use of the property will commence in a reasonable time, and (4) if the property is already devoted to a public use, the public use to which it is to be applied is a more necessary public use. Utah Code Ann. § 78-34-4; *Utah State Road Comm'n v. Friberg*, 687 P.2d 821, 827, n.5 (Utah 1984). A condemning agency "must be

prepared to establish that it has complied with all necessary conditions precedent." *Friberg*, 687 P.2d at 829.

1. A restrictive covenant is a property interest that can be taken by eminent domain.

The kinds of property subject to the eminent domain right are practically unlimited. *Intermountain Sports, Inc. v. Department of Transp.*, 2004 UT App 405, ¶11, 103 P.3d 716, 719. In Utah, under the principles of eminent domain, property is not limited to land or improvements thereon, . . . but every species of property which the public needs may require, . . . including legal and equitable rights of every description . . ." *Bagford v. Ephraim City*, 904 P.2d 1095, 1098 (Utah 1995). Other jurisdictions hold specifically that a restrictive covenant is the proper subject of a condemnation proceeding. *Schara v. Anaconda Co.*, 610 P.2d 132, 136 (Mont. 1980); *Mercantile-Safe Deposit and Trust Co. v. Mayor and City Council of Baltimore*, 521 A.2d 734, 740-741 (Md. 1987) (a restrictive covenant running with the land is a compensable right for condemnation purposes), citing Nichols, *The Law of Eminent Domain* § 6161 (3d ed. 1985), *II American Law of Property* § 9.40 (1952), and *Restatement of Property* § 566 (1944).

A decree of condemnation can extinguish all interests in the property, including easements and restrictive covenants found in CC&Rs, and vest fee simple title in the City. Utah statute provides that a city may acquire the entire fee simple as long as it pays just compensation to all those owning an interest in the property. Utah Code Ann. § 78-34-2. The recorded CC&Rs will have no application if a court orders fee title vested in the City.

2. Conditions Precedent

Although a restrictive covenant is an interest that may be taken by eminent domain, the City must still demonstrate that it can satisfy the four conditions precedent.

a. Use authorized by law

"Before property can be taken it must appear (1) that the use to which it is to be applied is a use authorized by law." Utah Code Ann. § 78-34-4; *Utah State Road Comm'n v. Friberg*, 687 P.2d 821, 827, n.5 (Utah 1984); *Cornish Town v. Koller*, 817 P.2d 305, 310 (Utah 1991).

This will probably be the most difficult element to show. It will depend greatly on how the use is characterized. A search of Utah law has failed to disclose residential development as a use for which eminent domain is authorized. It is not one of the enumerated uses in the statute. *See* Utah Code Ann. § 78-34-1. Therefore, the legal basis for condemnation will have to be founded upon the general right to condemn in behalf of "all other public uses for the benefit of any . . . city or incorporated town, or the inhabitants thereof," *see* Utah Code Ann. § 78-34-1(3), in conjunction with the City's obligation to repay bond debt according to the repayment schedule.

Notwithstanding, it will be an uphill battle for the court to recognize the sale of the golf course to allow residential construction as a means of raising revenue to repay a bond obligation as a use authorized by law. It is a question of first impression in Utah. The Supreme Court of

Utah has held money cannot be exacted by eminent domain, but only by taxation. *Kimball v. City of Grantsville*, 19 Utah 368, 378, 381, 57 P. 1, 3-4 (Utah 1899). Extending the reasoning, if the City wants to raise revenue, it must do so by taxation, not by the taking of private property. Furthermore, a condemning agency has the burden of proving its right to exercise the power of eminent domain. *Utah State Road Comm'n v. Friberg*, 687 P.2d 821, 829 (Utah 1984), *citing Monetaire Mining Co. v. Columbus Rexall Consolidated Mines Co.*, 53 Utah 413, 174 P. 172 (1918) and *Tanner v. Provo Bench Canal & Irrigation Co.*, 40 Utah 105, 121 P. 584 (1911). "The [City] must be prepared to establish that it has complied with all necessary conditions precedent." *Id.*

b. Necessity

Utah law provides that "[b]efore property can be taken it must appear . . . (2) that the taking is necessary to such use . . ." Utah Code Ann. § 78-34-4(2). Courts are deferential to a legislative body's determination of whether a particular parcel is necessary. *Williams v. Hyrum Gibbons & Sons Co.*, 602 P.2d 684, 688 (Utah 1979); *citing Postal Tel. Cable Co. of Utah v. Oregon S. L. R. Co.*, 23 Utah 474, 484, 65 P. 735, 739 (1901).

If the City Council determines that the property is necessary, and passes a condemnation resolution setting forth its reasons, including the strong desire not to default on its bond obligation, a court will likely defer to this legislative judgment.

c. Use of the property to commence promptly

Utah law provides, "Before property can be taken it must appear . . . (3) that construction and use of all property sought to be condemned will commence within a reasonable time as determined by the court, after the initiation of proceedings under this chapter . . ." Utah Code Ann. § 78-34-4(3); *Friberg*, 687 P.2d at 827, n.5 (recognizing this as a condition precedent to a taking).

The property will be promptly devoted to the use for which it was condemned. The City should, as soon as possible, implement its plan to market the golf course to the highest bidder.

3. A more necessary public use

If property is already devoted to a public use, the public use to which it is to be applied is a more necessary public use. Utah Code Ann. § 78-34-4(4); *Friberg*, 687 P.2d at 827, n.5 (recognizing conditions precedent); *Williams v. Hyrum Gibbons & Sons Co.*, 602 P.2d 684, 687 (Utah 1979) (listing conditions precedent).

Assuming the property is already devoted to a public use (open space and municipal golf course), and assuming that the use to which it is to be put is a public use, as discussed above, the use for which the property is being acquired must be more necessary than its current use. On the other hand, if the proposed use to repay a bond obligation is not a public use, ipso facto, it is not a more necessary public use.

The repayment of the bond obligation is a more necessary public use because if it is not done, the public use to which the property is currently devoted may disappear if the City defaults and the lender forecloses on the property. Needless to say, default on the bond would have immeasurable long-term negative impacts on the City that will outweigh the benefits obtained from the golf course.

CONCLUSION

The open space and golf course parcels owned by the City and the MBA are bound by the use restrictions contained in the CC&Rs. Any attempt to ignore them may be challenged as a unconstitutional taking of a valuable private property interest. Other potential theories may release the restrictive covenant from property, but such are costly and risky. It is unlikely that neighborhood conditions have sufficiently changed to release the restrictions. Purchase of a release will be as difficult and costly as outright amendment of the CC&Rs. Condemnation is uncertain because it will be difficult to characterize the proposed use as a use authorized by law. Furthermore, litigation involving all owners of lots in the subdivision as potential defendants will be costly and awkward.

SMITH | HARTVIGSEN | PLLC
ATTORNEYS

MEMORANDUM

To: Eric Johnson
From: Kristen Byrd
Date: July 11, 2006
Re: Cedar Hills Development Agreement

ISSUE

Can the City of Cedar Hills pass an ordinance changing the zoning of property it acquired under a development agreement without being held liable for breach of contract?

BRIEF ANSWER

Although both statutory guidelines and case law are very sparse regarding the enforceability of development agreements, it is likely that the City will be held liable for breach of contract due to the zoning change.

ANALYSIS

a. Statutory Provisions

Utah's Development Agreement Statute is very brief. It merely states that, "municipalities . . . may enter into . . . development agreements that they consider necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings . . ." Utah Code § 10-9a-102. Few cases have interpreted this statute since its enactment in 2005, and no cases are applicable to the instant issue. Other states, however, have development agreement statutes that are more detailed and that address both the content and enforceability of development agreements. Some representative provisions include:

- "The burdens of the development agreement are binding on, and the benefits of the development agreement inure to, the parties to the agreement and to all their successors in interest and assigns." Ariz. Rev. Stat. § 9-500-05(d); Cal. Gov't Code § 65865.5; Fla. Stat. Ann. §163.3239
- "A development agreement shall specify:
  a) the duration of the development agreement
  b) the permitted uses of property subject to the development agreement
  c) the density and intensity of uses and the maximum height and size of proposed buildings within such property
  d) provisions for reservation or dedication of land for public purposes." Ariz. Rev. Stat. § 9-500-05(h)(1); Or. Rev. Stat. § 94.504(2)

- A vested property right, once established as provided in this article, precludes any zoning or land use action by a local government or pursuant to an initiated measure which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development of use of the property as set forth in a site specific development plan. Colo. Rev. Stat. § 24-68-105
- A development agreement shall be enforceable by any party thereto notwithstanding any change in any applicable general or specific plan, zoning subdivision, or building regulation adopted by the municipality or parish entering the agreement which alters or amends the rules or regulations specified [at the time of execution of the agreement]. La. Rev. Stat. Ann § 33.4780.26
- The parties to an agreement and their successors in interest are bound to the agreement after the agreement is recorded. Md. Ann. Code. Art 66B, § 13.01(k)(2); Nev. Rev. Stat. § 278.0203(2)
- The execution of a development agreement is a proper exercise of county and city police power and contract authority. Wash. Rev. Code Ann § 36.70B.170(4).
- The city may modify or suspend the provisions of the development agreement if the city determines that the failure of the city to do so would place the residents of the territory subject to the development agreement, or the residents of the city, or both, in a condition dangerous to their health and safety, or both. Cal. Gov't Code § 65865.3(b); La. Rev. Stat. Ann § 33.4780.25(b)

These statutory provisions from other states are of course not binding on a Utah court, and a Utah court will likely assume that the Utah Legislature had good reason for the briefness of the development agreement statute. These provisions do, however, demonstrate the recent trend towards recognizing the legality and binding nature of development agreements. In addition, the fact that the Utah legislature recently specifically authorized development agreements underscores the argument for their enforceability. An unenforceable development agreement would be of little value to either party.

b. Case Law

Case law on the enforceability of development agreements is also sparse; the law is not well developed in this area. In Larkin v. City of Burlington, the Court summed up nicely the current status of the law governing development agreements: "It is well-settled that a municipality cannot contractually deprive itself of legislative or governmental powers. Accordingly, courts are likely to find illegal contract zoning where there is an express bilateral agreement that bargains away the municipality's future use of the police power. Courts, however, have recognized the need for land-use agreements between developers and municipalities to assure stability in permitting large projects; thus, the trend has been to allow such agreements unless they constitute a usurpation of the municipality's zoning authority. In fact, several states have codified the process for entering into development agreements. While these statutes generally authorize local governments to assure developers that zoning regulations in effect until the project is completed, they also require provisions in the agreement that pertain to the duration of the agreement and the conditions upon which the agreement may be terminated. Even so, "the extent to which a local government may validly restrict or limit its future use of the police power under statutorily authorized development agreements is an issue that has not as yet been clearly resolved by state courts." 772 A.2d 553, 556-557 (Vt 2001). Although the law governing development agreements is still unresolved, the following cases, treatises, and law review articles addressing development agreements have found that such agreements are ordinarily

enforceable by either party. Development agreements, as long as they are just, fair, reasonable, and equitable at the time of their execution, are increasingly not seen as a surrender or abnegation of a governmental function, but rather as a legitimate exercise of police power that promotes development. Typically, development agreements may only be unilaterally modified by the city if a failure to do so would pose a danger to the health, safety and/or welfare of the residents of the city.

Bollech v. Charles County, Maryland, 166 F. Supp. 2d 443 (Md. Dist Ct 2001).

Developers sued the county, claiming that the county breached a development agreement when it rezoned a tract of land and impaired the contract. Although in this case, the developers failed to perform their obligations, making the contract unenforceable, had the developers performed their obligations, the contract might have been enforceable if it passed the following test outlined by the court:

The real test for whether a county entered into "contract zoning" is not whether the county entered into a contract preserving zoning in exchange for promises from a developer, but whether the arrangement it did make is an exercise of or limitation on the government's police powers. *Id.* at 453. Rather than merely a semantic distinction, this test looks to the more general proposition of whether an agreement was made to benefit the general welfare. *Id.* Under this standard, municipalities generally should be bound by agreements so long as those agreements are for the public good. *Id.* at 454. Development agreements are not illegal contract zoning *ab initio. Id.* Development agreements are defined as "agreements between a municipality and a developer under which site specific conditions may be imposed but the right to develop in compliance therewith is 'vested' at least for a certain period of time." *Id.* The limitations on the length and the extent to which the Agreement preserves zoning, and the fact that the Agreement merely preserves, but does not specifically change, the property's zoning, indicate that in making the Agreement, the County was exercising rather than abdicating its police powers to promote development. *Id.*

Santa Margarita Area Residents Together v. San Luis Obispo County, 100 Cal.Rptr.2d 740 (Cal. 2d Dist 2000)

Area residents association petitioned for a writ of mandate to set aside a development agreement between county and landowner. Court held that the freeze on zoning of the project pursuant to the development agreement was not an unconstitutional surrender by the county of its right to exercise its police powers in the future

A contract that appears to have been fair, just, and reasonable at the time of its execution, and to have been prompted by the necessities of the situation or in its nature advantageous to the municipality at the time it was entered into, is neither void nor voidable merely because some of its executory features may extend beyond the terms of officer of the members of the legislative body which entered into the contract. *Id.* at 748.

A governmental entity does not contract away its police power unless the contract amounts to the surrender or abnegation of a proper governmental function. The zoning freeze in the Agreement is not such a surrender or abnegation. The Project must be developed in accordance with the County's general plan, and the Agreement does not permit construction until the County has approved detailed building plans. The Agreement retains the County's discretionary authority in the future and, in any event, the zoning freeze is for five years. It is not of unlimited duration. The County concluded that the zoning freeze in the Agreement advances

the public interest by preserving future options. This type of action is more accurately described as a legitimate exercise of governmental police power in the public interest than as a surrender of police power. *Id.*

John Martinez, Local Government Law § 16.55 (Vol. 3 1997)

Under the section entitled Development Agreements, the treatise states that a zoning ordinance passed contrary to the provisions of a validly executed annexation or development agreement is probably void. This statement references *Morrison Homes Corp v. City of Pleasanton* and *Meegan v. Village of Tinley Park,* in support, and both cases summarized *infra.*

Morrison Homes Corp. v. City of Pleasanton, 58 Cal.App.3d 724 (1976)

An action was brought by a real estate developer against the city for breach of series of agreements between the developer and the city providing for the city's annexation of the developer's tracts and the furnishing of sewer connections. Court held that the agreements were a binding enforceable obligation of the city, that the city did not exceed its authority in entering into the annexation agreements, and that the contractual obligations which were fair when entered into were binding on successor councils.

Although the city correctly cites the general rule that a municipality may not 'contract away' legislative and governmental functions, the effect of the rule, however, is to void only a contract which amounts to a city's surrender, or abnegation, of its control of a properly municipal function. *Id.* at 734. No provision of the various agreements supports the inference, nor is there evidence otherwise, that any of them involved a surrender by the city of its control of the annexation process or of its sewer operation. The general rule is accordingly inapplicable. *Id.* The annexation agreements were "just, reasonable, fair, and equitable" as approved by the respective City Councils at the times of their execution. The onset of materially changed conditions is not a ground for voiding a municipal contract which was valid when made, nor is the contracting city's failure to have foreseen them. *Id.* at 735.

Meegan v. Village of Tinley Park, 288 NE2d 423 (1972)

Plaintiffs brought mandamus action for issuance of building permits to erect a gasoline station on property pursuant to an annexation agreement. The court held that the agreement could have been enforced during the statutory five-year period. The annexation agreement itself specifically provided that no subsequent change in the ordinances would affect any rights under the agreement. The ordinance amending the zoning classification was a nullity insofar as the annexation agreement was concerned. As long as the annexation agreement was in effect, the parties with a right to enforce the agreement could have done so and their rights would not have been curtailed or impaired by the amendment to the zoning ordinance. *Id.* at 358-359.

City of West Hollywood v. Beverly Towers, Inc., 805 P.2d 329 (Cal 1991)

City sued landlords for declaratory judgment that condominium conversion regulations applied to landlords who had obtained tract maps from county. The Court held that the municipality could not enforce condominium conversion regulations enacted after the real estate developer secured the final subdivision map approval.

Development agreements between a developer and a local government limit the power of that government to apply newly enacted ordinances to ongoing developments. Unless otherwise provided in the agreement, the rules, regulations, and official policies governing permitted uses,

density, design, improvement, and construction are those in effect when the agreement is executed. *Id.* at 334-335.

Although typically not cited to a court, the following law review articles help elucidate the conflict between the reserved powers doctrine and the Contracts Clause, and summarize the current trend upholding development agreements.

Shelby D. Green. Development Agreements: Bargained-For Zoning that is Neither Illegal Contract Nor Conditional Zoning. 33 Cap. U. L. Rev. 383 (2004-2005).

Development agreements are subject to challenge if the decision to freeze the applicable zoning rules and regulations to those existing at the time of execution of the agreement is, based on offers or agreement that inhibit the municipality's police powers, the municipality promising in the resulting ordinance not to apply new zoning restrictions to the development. Courts have recognized the need for land-use agreements between developers and municipalities to assure stability in permitting large projects. Thus, the trend has been to allow such agreements unless they constitute an abandonment of the municipality's zoning authority. *Id.* at 489-490.

Development agreements should not be regarded as a form of contract zoning because while the development agreements do involve an agreement, the city does not bargain away its legislative discretion to the extent that it reserves the power unilaterally to terminate the agreement if required by the public safety, health, or welfare. Some binding obligation on the municipality is necessary if development agreements are to have their intended benefit. However, a binding obligation having been fully considered in compliance with the public notice and hearing process, and undertaken in the public interest, should be upheld as not running afoul of the basic principle prohibiting the contracting away of police powers. Rather the obligation should be regarded as an exercise of police powers. *Id.* at 496, 497.

Brad K. Schwartz. Development Agreements: Contracting for Vested Rights. 28 B.C. Envtl. Aff. L. Rev. 719 (2001)

To violate the reserved powers doctrine, the test is whether an essential attribute of state power has been contracted away. To violate the reserved powers doctrine, a police power, such as zoning, must be contracted away in its entirety for a long period of time. *Id.* at 735.

David L. Callies and Julie A. Tappendorf. Unconstitutional Land Development Conditions and the Development Agreement Solution: Bargaining for Public Facilities After Nollan and Dolan. 51 Case W. Res. L Rev. (2000-2001).

The dominant view is that development agreements, drafted to reserve some governmental control over the agreement, do not contract away the police power, but rather constitute a valid present exercise of that power. *Id.* at 673.

CONCLUSION

Although the law governing development agreements is unresolved, especially in Utah, enacting a zoning ordinance contrary to the development agreement is risky at best, and the City will likely be held liable for breach of contract. Development agreements are increasingly valid and enforceable against cities. The fact that the instant development agreement preserved the current zoning rather than rezoning the property and the fact that the contract is of limited duration underscores the argument for the agreement's enforceability.

SMITH | HARTVIGSEN PLLC
ATTORNEYS AT LAW

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
PRIVILEGED MEMORANDUM

To: CEDAR HILLS CITY COUNCIL

From: SMITH HARTVIGSEN, PLLC

Date: OCTOBER 3, 2006

Re: STEP-BY-STEP PROCESS TO AMEND CC&RS

This memorandum sets forth the authority that the Cedars Homeowners Association possesses to amend the CC&Rs and HOA Bylaws. Also included, is a step-by-step road map to accomplish the amendment.

I. LEGAL AUTHORITY TO AMEND CC&RS

Amendment provision

The CC&Rs recorded for the Cedars subdivision contain two amendment provisions. Besides the Declarant's reserved right to amend, § 6.05, the CC&Rs can be amended by a vote of the Home Owners Association ("HOA"), § 17.01.

The CC&Rs require the Declarant to establish an HOA. CC&Rs § 7.01. After the HOA is established, voting rights are determined on a one vote per lot basis. *Id.* § 8.03. Each member or proxy representing a lot shall be entitled to vote at a meeting (other than election of the Cedars Committee). *Id.* § 8.11.

The CC&Rs provide that if *more than 50 percent* of the total votes in the HOA can be obtained, the CC&Rs may be "amended, modified, or repealed."[1] *Id.* § 17.01. Furthermore, an amendment is not effective

> "unless and until a written instrument setting forth (a) the amended, modified, repealed or new bylaw, (b) the number of votes cast in favor of such action, and (c) the total votes of the HOA, shall have been executed and verified by the current president of the HOA and mailed to each member of the HOA." *Id.*

[1] Interestingly, because the HOA is authorized to repeal the CC&Rs, it could simply act to repeal the CC&Rs entirely, and adopt new and more suitable CC&Rs. Once the CC&Rs are repealed, the Declarant cannot amend them to reinstate them because the Declarant's right to amend only pertains to "this Declaration" only. CC&Rs § 6.05. Or, the HOA could repeal the CC&Rs as to particular lots or plats, making those areas not subject to the CC&Rs. At least, the HOA should repeal the Declarant's right to amend provision, Section 6.05.

Therefore, no amendment may become effective without action by the HOA president, who was selected by the Declarant. On the other hand, there is no provision that the president of the HOA may withhold certification of the vote.

Because more than 50 percent of the total votes in the HOA are required, amendment by this method may be difficult to achieve. The requirement is not 50 percent of the votes cast, but "more than fifty percent (50%) of the *total votes of the HOA*" (emphasis added). *Id.* Therefore, without a widespread sentiment that the CC&Rs should be amended, lot owners will likely not care enough to vote to amend them. Low voter turnout resulting in fewer votes cast is as detrimental as votes cast against amending the CC&Rs. Furthermore, the Declarant still owns lots in the subdivision, and will be entitled to vote on the issue of amending the CC&Rs. By the same token, the City and the Municipal Building Authority also own lots in the subdivision. Each lot gets one vote.

When an amendment may occur – meeting dates

A vote to amend the CC&Rs can occur either at the HOA's annual meeting or at a special meeting called by the Cedars Committee, the President of the HOA, or by the written request of HOA members holding at least 20 percent of the total votes of the HOA. *Id.* § 8.05.

Annual meeting. The annual meeting is initially established by the CC&Rs as the second Saturday in March, at 10:00 am, e.g., March 11, 2006. *Id.* § 8.04.

Special meeting. "Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called from time to time by the Cedars Committee or by the president, and *shall be immediately called by the president upon the written request of members holding not less than twenty percent (20%) of the total votes of the HOA*. Such written requests shall state the purpose or the purposes of the meeting and shall be delivered to the Cedars Committee or the president. In case of failure to call such meeting within twenty (20) days after such request, such member may call the same." *Id.* § 8.05.

Place of Meetings. The Cedars Committee may designate any place in Utah County. A majority of the members may designate any place in Utah as the place for holding a meeting. *Id.* § 8.06.

Role of the Cedars Committee

The CC&Rs provide that the Declarant shall appoint the Cedars Committee. *Id.* § 9.02. The Cedars Committee is responsible for the management and maintenance of the Subdivision and the administration of the Cedars HOA. *Id.* § 9.01. The CC&Rs declared the initial members of the Cedars Committee to be Keith Nielsen, Craig Nielsen, Ty Briggs, Kenneth Briggs, and Max Morgan. *Id.* § 9.08. Whether these individuals are still the members of the Cedars Committee is unknown because the Declarant has the right to fill any vacancies within the Committee for so long as the Declarant owns any lots in the Subdivision, and because the Declarant may permit vacancies in the Cedars Committee to be filled by an election of a majority

of the lot owners.[2] *Id.* § 9.02. The Cedars Committee is charged with managing and maintaining the subdivision and administering the affairs of the HOA. *Id.* § 9.01.

The CC&Rs do not grant the Cedars Committee the right to prevent the HOA from amending the CC&Rs. The CC&Rs grant the Cedars Committee the power and duty to enforce the CC&Rs. *Id.* § 9.04(3). The Cedars Committee (the Board of Directors of the HOA) is not granted the authority to amend the CC&Rs—only the Declarant or the HOA may do that. However, the CC&Rs state that "the Cedars Committee may exercise all of the powers of the HOA," including powers vested in the HOA by the CC&Rs, "except those powers which are by law or by the foregoing documents *vested solely in the members*." *Id.* § 9.03 (emphasis added). It is possible to argue, then, that the Cedars Committee may also amend the CC&Rs because the power is given to the HOA in Section 17.01. However, it seems that the power to amend is vested solely in the HOA because of the way that amendment is accomplished, namely voting based on lot ownership.

Record of Ownership and Fixing Record Date

Upon purchasing a lot in the Cedars, each Owner is required to promptly furnish to the HOA a certified copy of the record instrument by which the owner obtained title to the lot. The copy is maintained in the records of the HOA. *Id.* § 8.02.

The Cedars Committee may determine a "Record Date," the date by which it determines which members are entitled to notice of an HOA meeting. The Record Date may not be more than 50 days nor less than 10 days prior to the meeting. If the Cedars Committee does not designate a Record Date, the date on which notice of the meeting is mailed is deemed to be the date for determining members entitled to vote at the meeting. Only the persons or entities appearing in the records of the HOA as Owners of record of Lots in the Development shall be deemed to be the members of record entitled to notice and to vote at the meeting. *Id.* § 8.08. Therefore, it is very important that all owners make sure their information is on record with the HOA.

II. Step-by-Step Outline

To amend the CC&Rs and HOA Declaration, following the HOA's amendment provision, *id.* § 17.01, the following steps must be done in order:

1. Record of Ownership

Ensure that the City, the Municipal Building Authority ("MBA"), and as many lot owners as possible, have filed a copy of the deed or other instrument of conveyance by which they acquired title to the lot in the Subdivision with the Secretary of the HOA. Only those lots on

[2] The current business registration on file with the Utah Department of Commerce lists Craig D. Nielsen, Jenny Carr, Keith C. Nielsen, Kenneth Briggs, and Ty Briggs as Directors of the Cedars Homeowners Association, Inc. Jenny Carr may have replaced Max Morgan as a member on the Cedars Committee, assuming that the membership of the Cedars Committee is the same as the Directors of the Cedars Homeowners Association, Inc.

record with the Subdivision when the Cedars Committee fixes the record date are entitled to vote at the meeting.

2. Draft Amendment to CC&Rs and HOA Bylaws

Before support can be gathered for any proposed amendment, it must be drafted. The best amendment would entirely exempt lots owned by the City and the MBA from the CC&Rs and HOA Bylaws.

3. Determine How Many Votes Are Needed

Determine how many lots are in the Subdivision. Determine how many lots the City and the MBA can vote for. Obtain support of other lot owners, either by encouraging attendance at the meeting, or by obtaining written authorization to act as a proxy for the lot owner, to ensure at least fifty percent (50%) of all lots will vote for the amendment.

4. Educate Lot Owners

A real effort must be made to contact and inform each lot holder of the necessity of amending the CC&Rs and HOA Bylaws or the necessary fifty percent (50%) will not be achieved. Informational fliers, public meetings, information posted on the city website, and grass roots door-to-door contact may all help to educate the lot owners.

5. Obtain Proxy Authorization

Proxies are allowed to vote for a member if the member or its attorney executes a written instrument authorizing the proxy to act for the member. If a lot is jointly held, each member must authorize the proxy in writing. The instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the secretary of the HOA.

The City could generate a limited power of attorney for the sole purpose of voting to amend the CC&Rs, and obtain the signatures of lot owners, thereby obviating the need for all lot owners to be present at the meeting. As long as the City may cast at least 50 percent of the votes, whether as the owner of golf course and open space lots, or as a proxy for other lot owners, the other members need not attend the meeting. Obtaining proxy authorization well in advance of the meeting will give the City an accurate idea of whether success is likely.

6. Schedule Special Meeting or Wait for Annual Meeting

In garnering support for the amendment, a petition could be signed by lot owners requesting the calling of a special meeting. Likewise, the written authorization to vote as proxy could also include the power to request the calling of a special meeting. As long as the City can obtain proxy authorization for more than 50 percent of the lots, it can have the meeting at its convenience. Otherwise, the City must take care to schedule the meeting with the Cedars Committee when attendance will be maximized.

The City must determine the date of the Annual Meeting because the CC&Rs give the Cedars Committee the authority to change the date and time of the annual meeting. *See id.*, § 8.04. Although the CC&Rs initially established the second Saturday in March at 10:00 am as the meeting date and time, the Cedars Committee may have altered it since.

7. Notice of Meetings

The Cedars Committee bears the burden of sending notice of meetings. The Cedars Committee "shall cause to be written or printed a notice of the time, place, and purpose of all meetings of the members, whether annual or special, to be delivered, not more than fifty (50) nor less than ten (10) days prior to the meeting to each member. If mailed, such notice shall be deemed to have been delivered when deposited in the U.S. mail addressed to the member at his registered address, with first class postage thereon prepaid. Each member shall register with the HOA such member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the HOA. If no address is registered with the HOA, the member's Lot address shall be deemed to be his registered address for purpose of the notice hereunder." *Id.* § 8.07.

8. Quorum

Ensure that members or holders of proxies entitled to cast more than fifty percent (50%) of the total votes of the HOA are present. If a quorum is not achieved, the members and proxies present may adjourn the meeting to a later date despite not having a quorum. As long as the City has proxies sufficient to cast fifty percent (50%) of the total votes of the HOA, quorum will be established and the vote to amend the CC&Rs and HOA Bylaws will carry.

9. Attend Meeting and Cast Votes and Proxy Votes

The City must attend the meeting to cast its votes and the proxy votes it obtained, if any. If the City does not obtain at least fifty percent (50%) of the total lots in the Subdivision to vote for the amendment, the vote will not carry.

III. Conclusion

Of course, the amendment may not be easy to achieve. If the Developer does not agree to amend the CC&Rs, however, the HOA amendment provision is the only other way to modify the CC&Rs.

SMITH | HARTVIGSEN PLLC
ATTORNEYS AT LAW

MEMORANDUM

PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

To: Eric T. Johnson
From: Bryan Bryner
Date: September 3, 2007
Re: Power of a municipality to subdivide, improve and develop real property

Issue

1. Does Cedar Hills have the power to subdivide, develop and improve real property and sell individual lots for a profit?
2. If so, what restrictions and limitations are placed on the City's exercise of this power?

Brief Answer

1. It is not clear whether Cedar Hills has power to subdivide because the Utah legislature has only granted to cities the power to "improve" real property, but has not given specific authorization to cities themselves to subdivide and develop individual lots. In light of other statutory and constitutional principles, and the case law that has evolved placing limits on a city's authority to improve and dispose of its real property, it would appear that a city does not have such authority.
2. Any subdivision, development and sale of Hole 15 of Cedar Hills' golf course must not violate the terms of the Development Agreement, must comply with all local, state and federal laws, must be for a "public purpose" or in the "public interest," and can only be done after release of the conservation easement burdening the property.

   As of the date of this memorandum, the Development Agreement is still a valid and binding contract, and any development of Hole 15 as proposed by Cedar Hills will likely breach the terms of the Development Agreement.

Analysis

I. Background

On February 16, 2001, Lone Peak Links, LC (**"Developer"**) entered into a development agreement (**"Development Agreement"**) with the City of Cedar Hills (**"City"**) for a planned residential development that the Developer proposed to the City which would include construction of a golf course and residential development to surround it. The City eventually purchased the golf course from the Developer. The City is now considering subdividing and developing Hole 15 of the golf course, which is located east of Canyon Road on Lot 206, Plat H. Lot 206 in Plat H is currently subject to the Development Agreement.

II. Legal Analysis

1. City's Authority to Subdivide, Develop and Improve Real Property

It is a well-established principle of Utah law that a city may only exercise those powers specifically enumerated and delegated to cities by the Utah legislature:

> Municipalities have only those powers which are given in express words necessarily or fairly impliable in or incident to the power specifically granted or essential to the accomplishment of the declared objects and purposes of the corporation.

American Petroleum Co. et al. v. Ogden City et al., 62 P.2d 557, 558 (Utah 1936). The Utah legislature has conferred upon a city council specific authority relating to the improvement and disposition of real property. Under Utah law, a city council may:

> (iii) . . . purchase, receive, hold, sell, lease, convey, and dispose of real and personal property for the benefit of the municipality, whether the property is within or without the municipality's corporate boundaries, if the action is in the public interest and complies with other law;
>
> (iv) improve, protect, and do any other thing in relation to this property that an individual could do . . . .

UTAH CODE ANN. § 10-8-2(1)(a). Although this express legislative grant of authority to cities does not expressly grant the power to subdivide property, it allows a city to take any action in relation to its property "that an individual could do." Cedar Hills City Code provides that "any person" may subdivide property, *see* Cedar Hills City Code § 11-4-1, and defines "person" as "[a]ny public or private corporation, firm, partnership, association, organization, government or any other group acting as a unit, as well as a natural person," City Code § 1-3-2. In spite of these statutory authorizations regarding the disposition and improvement of city property, Cedar Hills' authority to subdivide and develop the golf course property is not unlimited, but is subject to several limitations, as described below, which may effectively bar Cedar Hills' intended subdivision and development of the golf course property.

2. Limitations on City's Authority to Subdivide and Develop Real Property

a. Contract limitations based on the Development Agreement

Contractual obligations place limitations on the City's authority to subdivide and develop Hole 15 of the golf course. Hole 15 is located on Lot 26, Plat H, which is located east of Canyon Road and is still subject to the Development Agreement. If the City unilaterally develops Plat H or any golf course or open space parcels, the City would be in breach of the Development Agreement for the following reasons:

1. Section 1.1 of the Development Agreement provides that Plat H "shall develop in the H-1 Hillside Zone" classification. The H-1 zone requires a minimum lot size of 0.80 acres, but the City's proposed subdivision contains lots ranging in size from 0.27 acres to 0.48 acres. Rezoning Plat H to accommodate the desired lot sizes would likely be a breach of Section 1.1.

2. Section 1.1 of the Agreement limits the overall density of the development to 725 units. The recorded Plats A through O include lots for 714 units, but the City's proposed subdivision would add 27 lots to the development. Any subdivision of Plat H that would increase the overall density of the project to exceed 725 units would likely result in a breach of the Development Agreement.

3. Section 1.1.8 of the Development Agreement appears to limit the density of Plat H to 0 units. Adding any residential units to Plat H would likely breach this term of the Development Agreement.

4. Under Section 2.5.1 of the Development Agreement, "all development rights have been removed from the Golf Course areas" and the densities have been removed and included in the development clusters in the Cedars. Accordingly, building in the golf course areas would likely be a breach of the Development Agreement.

The Development Agreement specifically provides that it will terminate when "the obligations and requirements herein are completed in conformance with the City subdivision, construction, and bonding requirements." (Dev. Agr. § 13.3.) This provision contemplates that the Development Agreement will last only until all the Developer's duties are completed under the City ordinances. Therefore, when all plats have been recorded, bond posted, infrastructure completed and accepted by the City, and the performance guarantee bond released, by the express terms of the Development Agreement, it will terminate. (*See generally* City Code, Title 11, and Title 9, Chap. 2.). It is our understanding that the Developer has not completed all of his obligations, including subdivision and construction requirements. Therefore the Development Agreement is still valid and in force.

The City's options for developing Hole 15 without violating the Development Agreement include:

1. Renegotiate and amend the Development Agreement with the Developer to exempt Plat H from the Subdivision, to increase density, or to alter any other provision contained in the Development Agreement and associated agreements between the City and the Developer. This, of course, is the path with the least risk of legal challenge.

2. Wait until the Developer completes his requirements and obligations under the Development Agreement so the Development Agreement terminates and is no longer in force.

b. Limitations of city to engage and compete in private business enterprise

Although a city has certain statutory authority regarding the disposition and improvement of its real property, as mentioned above, Utah law imposes several limitations on that authority and may bar Cedar Hills' intended development of the golf course property.

A city is a municipal corporation, the object of which is to "perform certain local public functions as a subordinate branch of the state government." *See* McQuillin, MUNICIPAL

CORPORATIONS § 36:2. Cities are not intended to be private, profit-generating enterprises. Nevertheless, in the furtherance of its public functions a municipality may, in certain circumstances, engage in enterprises in which the municipality competes directly with private businesses. The United States Supreme Court has held that "a state may, in the public interest, constitutionally engage in a business commonly carried on by private enterprise, levy a tax to support it, and compete with private interests engaged in a like activity." *Puget Sound Power & L. Co. v. City of Seattle*, 291 U.S. 619, 624 (1934) (citations omitted). As a subordinate branch of the state government, municipalities also have these same powers to engage in and compete with common private enterprises. *See Ogden City v. Stephens*, 445 P.2d 703, 704 (Utah 1968) (quoting *Bowman v. Kansas City*, 233 S.W.2d 26 (Mo. 1950)). Accordingly, cities routinely engage in providing water service, garbage removal, electrical power service, and other public utility services.

However, a city may only engage in such private enterprises "if it is in the public interest and for a public purpose." *See Ogden City*, 445 P.2d at 704; *Puget Sound*, 291 U.S. at 624; *see also* U.C.A. § 10-8-2(1)(a)(iii). Unfortunately, as mentioned above, no hard and fast rule has been established for what qualifies as "public interest" or "public purpose," and very few Utah cases have addressed this issue. As a matter of course, Utah courts have effectively limited "public purposes" to activities specifically delegated by legislation to municipalities. *See American Petroleum Co. v. Ogden City*, 62 P.2d 557 (Utah 1936); *Ogden City*, 445 P.2d at 704.

In *Ogden City*, the court held that a city's condemnation and operation of a public parking garage constituted a public purpose for which the city could compete with other privately-owned parking garages because "[t]he right to take the land for off-street parking is conferred upon all cities by statute." 445 P.2d at 704; *see also* UTAH CODE ANN. § 10-8-8.

In *American Petroleum Co. v. Ogden City*, 62 P.2d 557 (Utah 1936), the city used city funds to purchase gasoline, then resold that gasoline to individuals in an effort to create more competition to keep prices down and prevent exploitation by gasoline monopolies. The court rejected the argument that this was a public purpose, specifically noting that the Legislature had not expressly granted authority to cities to "prevent exploitation of its inhabitants by monopolies, combinations, and understandings designed to keep up prices inordinately in such articles as fuel, milk, food, gasoline, and other necessities of life by dealing in the same." *Id.* at 558.

In *Rich v. Salt Lake City Corp.*, 437 P.2d 690 (Utah 1968), the Utah Supreme Court seemed to adopt a more liberal approach to interpreting specific Legislative grants of authority to cities as "public purposes" in the context of engaging in proprietary enterprises: "[T]he legislature by granting to the cities the power of operating and acquiring street railways did in fact intend to empower the cities to furnish public transportation of passengers over the city streets by rail or otherwise," including a transportation system involving the use of trolleys and motor buses. *Id.* at 692.

We cannot say that the law that has developed in Utah would allow Cedar Hills to engage in the business of subdividing, developing and selling the publicly-owned golf course property. There is little indication that such development activities could be said to be a "public purpose" or in the "public interest" to the extent that they benefit the public as a whole and not just a few individuals. Furthermore, under the narrow legal analysis adopted in the *American Petroleum* line of cases, there is currently no specific legislative grant of authority for a city to subdivide real estate and develop individual lots in order to generate revenue to pay off city debt. As in

American Petroleum, a city's good-faith intent to protect the economics and prosperity of the citizens of the city is not a valid public purpose in the absence of a specific, express legislative authorization to do so.

This matter is complicated even more where the city controls the permitting process for its competitors engaged in the same business. Here, the city has control over all subdivision and zoning approvals necessary, and thus is in a position of a potential conflict of interest when other subdividers and developers don't have that control. Challenges of a city's participation in the private development process in similar cases have been successful. For example, in Brian Head Town several town council members also engaged, as individuals, in the development of land they owned in the town. The council members' developments were approved much quicker than other private developers' projects, and the other developers' projects lost significant value due to their delayed approvals. The developers successfully sued the town, obtaining millions of dollars in damages.[1] As illustrated by this case, a city's position and ability to control development approvals will put the city under intense scrutiny if the city also engages in private subdivision and development of land.

c. Utah statutory limitations

Utah law also places statutory limits on a city's authority to subdivide and develop land. *See* UTAH CODE ANN. § 10-8-2. The city's action to sell or dispose of subdivided real property must be in the "public interest." Unfortunately, there is little guidance in the statute and case law as to what constitutes "public interest" for purposes of selling or disposing of real property. Nevertheless, the legal analysis of what constitutes "public interest" will be similar to the analysis described above with the *American Petroleum* line of cases.

Second, the city's action must comply with all other laws. This will obviously include compliance with all local, state and federal laws. For example, a city must adhere to all laws and restrictions governing the financing of the improvement and development of real estate. Under Utah law, a city must adhere to Title 10, Chapter 6, Uniform Fiscal Procedures Act for Utah Cities ("UFPA").[2] In the event appropriation of city funds to finance the development is not covered by the UFPA, the city council may "appropriate money for corporate purposes only." U.C.A. § 10-8-2(1)(a)(i). "Corporate purposes" are defined as "any purpose that, in the judgment of the municipal legislative body, provides for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality . . ." U.C.A. § 10-8-2(3). However, before money may be appropriated, such as for improvements to subdivide and develop real estate, a study must be done by the city and made available, and a public hearing held, regarding the public purpose of the appropriation. U.C.A. § 10-8-2(3)(a)–(e). Other financial limitations include laws regarding entering into debt without elections and using tax revenue for private enterprises.

Third, real property owned by the city may only be disposed of in the manner prescribed by statute. Section 10-8-2(4) requires notice and a public hearing prior to disposal of a significant parcel of public property, and courts strictly enforce all procedural requirements. In *Toone v. Weber County*, 57 P.23d 1079 (Utah 2002), the Utah Supreme Court invalidated a sale

---

[1] This case is not reported.

[2] The intent of this memorandum is not to delve into the complexities of the UFPA, but rather put the reader on notice that the exercise of the city's delegated powers is limited to complying with all other laws, including the UFPA.

of county land to an individual because the county did not follow all statutory procedures relating to the sale of county land. At the time of the sale, the County Land Use, Development and Management Act required that a proposed sale of county land be submitted to the planning commission before the land could be sold. *Id.* at 1083. The court held that "[b]ecause the County did not submit the proposed sale of the Wolf Creek Park property to its planning commission for review and recommendation, the sale is void." *Id.*

d. Restrictive covenant limitations

Finally, Lot 206 in Plat H is not part of the HOA nor encumbered by the CC&Rs, but it is burdened by a conservation easement. Pursuant to the terms of the Development Agreement, the Developer of the Cedars recorded the conservation easement in favor of the City of Cedar Hills. Under this conservation easement, all development rights were removed from Lot 206 and the lot is to remain as open natural area, except for the construction of the golf course.

Conservation easements may be removed by the entity holding the easements. The Utah Code states, "A conservation easement may be terminated, in whole or in part, by release, abandonment, merger, nonrenewal, conditions set forth in the instrument creating the conservation easement, or in any other lawful manner in which easements may be terminated." Utah Code Ann. § 57-18-5. This provision offers a limit to the perpetual nature of conservation easements.

Although the conservation easement has been recorded for Lot 206, and although the instruments declare the easements to be perpetual, the City, as the easement holder, may release it by executing a release, as specifically allowed by statute. See U.C.A. § 57-18-5. Once the conservation easement is released, Lot 206 will no longer be burdened by its prohibitions against development. Nevertheless, since the conservation easement was required by the Development Agreement, release of the conservation easement could also be a breach of the Development Agreement.

Conclusion

Utah law grants to cities authority to improve and dispose of its real property, but such authority is subject to other limitations that may bar Cedar Hills from subdividing the property and developing individual lots. These other limitations include those imposed by the Development Agreement, Utah statutes, principles of municipal government, and restrictive covenants such as the conservation easement. As of the date of this memorandum, the Development Agreement is still a valid and binding contract on the City, and any development of Hole 15 as proposed by Cedar Hills will likely breach the terms of the Development Agreement.

1. Disposal of Publicly-owed Property

Property acquired for a particular specific use is to be held by a municipality for that purpose and no other. McQuillin, Municipal Corporations § 28.39 (1999). When private property is conveyed on condition that it be used for one public use, it cannot be appropriated to another or different public use. *Id.*; *see also Warren v. Lyons*, 22 Iowa 351; and *Glasgow v. St. Louis*, 87 Mo. 678 (the authorities of a city cannot lawfully appropriate to other uses land which ahs been dedicated to a particular use, nor can they divert it to uses foreign to those for which it was dedicated). Thus, municipal property held for a public use cannot be disposed of in violation of the terms upon which it is held. McQuillin § 28.39. Furthermore, a city cannot dispose of land in which there are private property rights. *Id.* Finally, although a city may dispose of its property under certain circumstances, it may only do so in cases where no rights of the original grantor or donor of the property are concerned. *Id.*

ENT 21551:2001 PG 1 of 142
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2001 Mar 07 3:07 pm FEE 0.00 BY JRD
RECORDED FOR CEDAR HILLS TOWN

DEVELOPMENT AGREEMENT
THE CEDARS

This Development Agreement (the "Agreement") is entered into as of this 16 day of Feb, 2001 between Lone Peak Links, L.L.C., a Utah Limited Liability Corporation, by and through Ken Briggs, (hereinafter the "Developer"), and the City of Cedar Hills, a political subdivision of the State of Utah, by and through the City Council, (the "City").

RECITALS:

WHEREAS, Developer owns or has a contract to purchase real property located within the incorporated City of Cedar Hills, Utah (the "Property") described in Exhibit "A" attached hereto, portions of which are located within the City's H-1 Hillside zone and portions of which are located within the City's Town-Site Residential zone.

WHEREAS, Developer is desirous of subdividing and improving the Property for the construction of a mix of single family dwellings and multi-family dwellings under the City's zoning ordinance and to that end has submitted and received concept approval of a golf course community referred to as "The Cedars", a copy of which is attached (Exhibit "B"). Furthermore, Developer has submitted and received a conditioned preliminary and final approval of Plats A through J of the development plan for the Property, final plat copies of which are shown on "Exhibit C."

WHEREAS, Due to the size and density of the development proposed by the Developer, the City is desirous of insuring, through this agreement, that the health, safety, and general welfare of City residents is protected through adequate transportation development, park and trail development, open space preservation, golf course development, and utility line development.

WHEREAS, Acting pursuant to its authority under Utah Code Annotated, §10-9-101, et seq., and after all required public notice and hearings, the City, in the exercise of its legislative discretion, has elected to process The Cedars in a manner resulting in the negotiation, consideration and approval of this Development Agreement and has concluded that the terms and conditions set forth herein serve a public purpose and promote the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of the City.

NOW, THEREFORE, in consideration of the premises above and the terms and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer hereby agree as follows:

TERMS AND CONDITIONS

1. **Development of the Property**

   1.1 Overall Density. Both parties agree to a overall density of no more than 725 units to be developed throughout the Property. Areas east of Canyon Road shall develop in the H-1 Hillside

zone, while areas west of Canyon Road shall develop in the Townsite Residential Zone. The Cedars has been proposed and approved by the City Council as a "phased" development, subject to the attached phasing plan (Exhibit "D") with the following densities applicable to each of the approved phases:

1.1.1 35 units in Plat A of The Cedars, including one site designated for a church.
1.1.2 103 units in Plat B of The Cedars.
1.1.3 68 units in Plat C of The Cedars.
1.1.4 76 units in Plat D of The Cedars.
1.1.5 201 units in Plat E (future multi-family phase). Both parties acknowledge that the future multi-family phase of the Cedars has received no approvals as to the development of the multi-family units and the intent of this section is strictly to limit the future density in Plat E. Furthermore, any future development on the proposed Plat E is subject to the City's Preliminary and Final Plat approval process.
1.1.6 27 units in Plat F of the Cedars.
1.1.7 0 units in Plat G. This is an open space plat containing 108.48 acres of open space.
1.1.8 0 units in Plat H. This is a golf course and open space plat containing 5.57 acres of open space and 31.3 acres of golf course.
1.1.9 65 units in Plat I of The Cedars.
1.1.10 150 units in Plat J of The Cedars.

1.2 Construction of Density. Both parties agree that, with regard to construction of homes within the project, the following:

1.2.1 No more than a total of 60 units within any plat west of Canyon Road shall be constructed prior to full construction of that portion of the southern connector road between Canyon Road and the Southern Entrance to Plat B, except in the instance of waivers granted in this section.
1.2.2 Developer agrees that the main boulevard portion (Briggs and Nielsen Boulevards) of the street subdivision improvements on the western portion of the development shall be constructed concurrently with any improvements within Plats B, and prior to any residential building permit issuance in any plats west of Canyon Road.
1.2.3 Developer agrees that development and construction of any improvements within Plat I is subject to substantial completion of all infrastructure improvements connecting Plat I to existing City infrastructure, that development and construction of any improvements within Plat F is subject to substantial completion of all infrastructure improvements connecting Plat F to existing City infrastructure, and that development and construction of any improvements within Plat J is subject to substantial completion of all infrastructure improvements connecting Plat J to existing City infrastructure
1.2.4 Both parties agree that issuance of building permits for any structure construction within the project is subject to the standard policies, procedure, building codes, ordinances, resolutions, and statutes of the City and that no waivers of these requirements are granted by virtue of this development agreement unless noted herein or otherwise agreed to by the City Council by motion. Requirements acknowledged by Developer include, but are not

limited to the following:

(i) Issuance of building permits shall only occur when all infrastructure, including utilities, culinary water and pressurized irrigation facilities, sewer, storm sewer, curbing, gutter, sidewalk, and asphalt are constructed and acceptable to the City.

(ii) Waiver to the above may be granted by allowing building permits to be issued for the project during winter weather conditions with the following stipulations (i)The permit shall be good only for inspections through and including the 4-way, (ii) Building could commence prior to asphalt only, but with all other infrastructure installed and accepted, and (iii) When the City engineer determines winter weather conditions no longer exist, the asphalt must immediately be installed.

(iii) All set-backs shall be in accordance with the approved lotting plan shown on Exhibit "E".

(iv) Building Permit Issuance for the Golf Course Club House or any other structure constructed or erected on the Golf Course shall be subject to site plan approval by both the Planning Commission and the City Council.

1.3 Recordation. The Developer and City acknowledge that Plats B, G, and H will be recorded in the office of the Utah County Recorder prior to December 31, 2000. All other Plats shall be recorded no later than December 31, 2001. Should the Developer record after these dates he agrees to pay the City, as a penalty, the equivalent property taxes it would have received from the property if it was recorded in the Utah County Recorder's Office. Payment of this penalty will be due November 30, 2001. Furthermore, the Developer acknowledges the utmost importance of the golf course feature to the approval of the density and design of the project and agrees that under no circumstances shall any recording of any plat occur prior to 1.) the City receiving positive proof of developers ownership of all portions of the golf course property within Cedar Hills as well as within Highland City and 2.) The City receiving positive proof of Highland City irrevocable construction approvals for the portion of the golf course within their municipal boundaries.

1.4 Layout & Design.

1.4.1 The City and Developer acknowledge that the plan for the Cedars(Exhibit "C") has been approved as a Planned Townsite Residential Development (PRD) by the City in accordance with City ordinances. Both parties acknowledge that final approval has been granted for the Project subject to certain conditions set forth at approval and that no plat recordation nor development shall occur on the property until such time as those conditions, as well as any applicable conditions set forth in this agreement, are met. Grading shall be allowed subject to the City Engineers approval and inspection.

1.4.2 Developer further agrees that all requests for approval of the multi-family phase within the project area will be in substantial compliance with the overall project plan for The Cedars unless otherwise requested and approved by the City.

1.4.3 A portion of The Southern Connector shown in the approved preliminary plan occupies territory not owned or controlled by Developer (Savage property, shown on Exhibit "B"). Both parties agree that under no circumstance will recordation or development occur of any portions of the development west of Canyon Road without the dedication of a road plat or similar instrument, to the City, securing the alignment of the Southern Connector.

1.5 Multi-family phase. Preliminary plan details shall be submitted to the City for the normal approval process for the multi-phase portion of this project. At the time of this agreement, it is intended that details be submitted at some future date, with a total density to not exceed 201 multi-family units. Developer and City agree to prepare a separate development agreement related to the multi-family portion at that time.

2. Park and Open Space

2.1 Green Space Dedication. Cedar Hills and Developer acknowledge that The Cedars includes separate parcels, containing approximately 9.45 total acres which are intended to be purchased by the City and developed as part of the City's green space and trail system (shown on Exhibit "C" and hereafter referred to as "Green Space and Trail Parcels"). Copies of the descriptions of the Green Space and Trail Parcels are attached (Exhibit "F") and by this reference made a part of this agreement. The City and Developer mutually agree that, for purposes of purchase, the value of the Green Space and Trail Parcels is hereby established at $122,000. The City hereby agrees to purchase and Developer hereby agrees to sell the Green Space and Trail Parcels for the above amount, subject to the following:

2.1.1 Developer will convey title of all the Green Space and Trail Parcels to the City by special warranty deed concurrently with the recording of the first subdivision plat within the Cedars, or December 1, 2001, whichever comes first.

2.1.2 The City agrees to pay Developer $122,000 upon conveyance of the parcels.

2.1.3 Developer agrees to construct, at standards provided by the City, a 10' asphalt path along the Bonneville shoreline Trail location and an 8' asphalt path along all other trail locations.

2.1.4 Where the Trail is located upon Golf Course parcels, Developer shall provide a 20' trail right-of-way easement.

2.2 Park Land Impact Fees. Developer agrees to pay all park land impact fees pursuant to City ordinances in place at the time of payment, subject to Section 13 of the Annexation Agreement.

2.3 Open Space. Developer and City agree that the open space provided for within the Cedars and dedicated to the City is adequate to meet City ordinance requirements of a minimum of 30% open space within this phase of the project area. Furthermore, both parties agree that open space requirements are satisfied pursuant to the following:

2.3.1 The City and Developer acknowledge that the Cedars has been approved as a PRD consisting of a mix of single-family and multi-family dwellings, together with appurtenant streets and open space areas. It is further acknowledged, that the approved

layout provides for: (1) the placement of the allowable number of dwellings on individual lots, which lots are smaller than permitted in conventional subdivision projects, and the concentration of the lots upon only a part of the Cedars (hereafter referred to as the "Development Cluster Area"), and (2) the designation of 6 separate remainder parcels and Plat G, of which 7.34 acres is designated as Public Facilities and 136.92 acres are identified on "Exhibit C" as open space parcels 1 through 6 and Plat G, which, because of severe physical limitations for housing development (steep slope, floodway, drainage, etc.) or other limitation, are to be retained as open space areas and conveyed to the City as the means of insuring their status as open space area in perpetuity (hereafter referred to as "Open Space Parcels").

2.3.2 Developer acknowledges that all rights of development appurtenant to the Open Space Parcels within The Cedars have been transferred and used within the Development Cluster Areas.

2.3.3 Developer hereby requests that the City accept title to the Open Space Parcels as the preferred method of preservation. A copy of the deeds conveying title to the Open Space Parcels is attached (Exhibit "G") and the City acknowledges receipt of the original. The open space parcels are designated as follows:

(i) Parcel 1. 5.57 acres
(ii) Parcel 2. 5.21 acres
(iii) Parcel 3. 7.26 acres
(iv) Parcel 4. 7.33 acres
(v) Parcel 5. 9.76 acres
(vi) Parcel 6. 0.65 acres
(vii) Plat G. 108.48 acres

2.3.4 The City hereby agrees to accept title to the Open Space Parcels and to maintain the Open Space Parcels as open space and part of the City's public park system. Developer agrees that upon conveyance of the Open Space Parcels to the City, the Open Space Parcels shall thereafter be construed as part of the City's public park system and shall be deemed available for use by the public in accordance with such rules and regulations as may be established by the City.

2.3.5 Both parties agree that all open space parcels shall be deeded to the City concurrently with the recordation of the first plat within the Cedars.

2.3.6 Developer agrees to provide private park and open space features within plats west of Canyon Road in accordance with the preliminary and final plat approvals (shown on Exhibit "C").

2.4 Landscaping. Landscaping for plats west of Canyon Road shall be bonded for and conform with the submitted and approved landscaping plan (Exhibit "H").

2.5 Open Space Preserved in Golf Course. Both parties agree on the following:

2.5.1 That for purposes of open space and recreational space preservation, all development rights have been removed from the Golf Course areas (shown on Exhibit "C"). The total

acreage of the golf course areas, used for open space calculations, is 115.17 acres, the density from which has been removed and included in the development clusters in the Cedars. In order to preserve the open space qualities of the golf course, developer hereby requests and City agrees that a conservation easement over the golf course be granted to the City, concurrently with the recordation of the first plat, in the format shown on Exhibit "I".

2.5.2 In order for the golf course property to apply for open space density bonuses, Developer agrees to certain privileges for City residents, to be memorialized in a separate agreement, but generally understood to include a.)No limitation of access for City residents and guests, b.)Discounted greens fees for City residents at a rate of 75% of the non-resident fee, c.) The primary name of the golf course to include the name "Cedar Hills."

2.5.3 Developer shall provide a performance guarantee acceptable by the City for the golf course construction prior to final plat recording of any phase within Plats E, F, I or J, or within 30 days of the City determining not to exercise the aforementioned option, whichever occurs first. In the instance that the City has exercised the option, per 2.5.4 below, prior to the recordation of Plats E, F, I or J, then the requirements of this section 2.5.3 are waived.

2.5.4 Developer has granted an exclusive option to the City to take over the responsibility to finance, construct, own, operate and maintain the golf course. Details of the option agreement are shown in Exhibit "J." In addition to the option agreement, Developer and City agree to the following with regard to the construction of the course:

(i) Because of a desire to move forward with the golf course in an expeditious manner, Developer agrees to move forward in the bidding, and construction of the mass grading and staking of the golf course. Construction is anticipated to begin on or about February 1, 2001.

(ii) Developer furthermore agrees that, once the design is complete and ready to go out to bid for the remainder of the golf course, Developer shall move forward with the bidding of the remainder portion of the golf course. This is anticipated to occur by March 1, 2001.

(iii) Developer and City agree that, should the City determine to exercise it's option to own, construct, operate, and maintain the golf course, the City would 1.) Assume the Developer's existing contract for mass grading and staking, 2.) Award the bid for the remainder of the course, and 3.) Reimburse Developer for the costs paid to the grading contractor for work completed. Developer and City acknowledge that the City anticipates making a decision on the option following receipt of all bids related to the golf course, as anticipated in 2.5.4(ii) above.

(iv) Developer agrees to conform with the following requirements with regard to the bidding process and contracts for the golf course:

1.) The City reserves the right to review and require three bids, from qualified golf course contractors, on the mass grading and remainder of the golf course.

2.) The bids and ultimate construction contracts must be based on a fixed price and shall require the contractor to provide for 100% payment and performance

bonds. Such bond shall be made payable to the City and shall be executed by a corporate surety licensed to transact business in the State of Utah and shall be in the full amount of the contract price.

3.) Each Construction Contract executed in connection with the Project must provide that it will be fully and freely assignable to the City without the consent of any other person; and that, if the Contract is assumed by the City, the Contractor will perform the agreements contained therein for the City.

4.) Each contractor and subcontractor shall be required to procure and maintain comprehensive general public liability and property damage insurance.

5.) Each contractor and subcontractor retained by the Developer shall be required to procure and maintain during the term of his contract and until the Golf Course is completed and accepted, builder's risk completed value insurance upon the Golf Course, insuring against loss or damage causes by fire, malicious mischief, vandalism and other such hazards.

6.) Each contractor and subcontractor shall be required to procure and maintain worker's compensation insurance.

7.) The City must be involved in all aspects of the bidding and contractor selection process. This is anticipated as an oversight role with the City giving input but not making the final decision with regard to selecting the contractor.

3. Transportation

3.1 Southern Connector to Cottonwood Drive. Developer acknowledges the following responsibilities with regard to the Southern Connector between Canyon Road and Cottonwood Drive:

3.1.1 Developer shall be responsible for the finance and construction of the Southern Connector between Canyon Road and Cottonwood Drive.

3.1.2 Developer shall acquire and dedicate, or cause to be dedicated to the City, the entire right-of-way width for the Southern Connector as shown on the preliminary plat, between Canyon Road and Cottonwood Drive. The dedication plat for said roadway is shown on Exhibit "K". Dedication of the Southern Connector shall occur concurrently with recordation of the first plat within the Cedars.

3.1.3 Developer shall construct, to full improvement, that portion of the Southern Connector between Canyon Road and the southern entrance to Plat B concurrently with improvements to Plat B. Additionally, concurrently with the recordation of the third plat, the Developer shall bond for the full improvement of that portion of the Southern Connector between Cottonwood Drive and the eastern edge of the Savage Park parcel. Construction shall occur when either Savage Industries has removed sufficient fill from the road area, or upon need for the golf course clubhouse access, whichever occurs first. Further, the City agrees to give timely notice to Savage Industries for the removal of the fill, so as not to impede Developer's commitment to construct.

3.1.4 Developer shall bond for the partial width (½ the width plus 10') of the northern half of the portion of the Southern Connector between the Savage Park Parcel and the southern

entrance to Plat B. This shall occur concurrently with the recordation of the fourth recorded plat. Construction shall occur when either Savage Industries has removed sufficient fill from the road area, or upon need for the golf course clubhouse access, whichever comes first. Further, the City agrees to give timely notice to Savage Industries for the removal of the fill, so as not to impede Developer's commitment to construct.

3.1.5 City Reimbursement for Improvements. The City hereby agrees to reimburse Developer for ½ the cost of improvements to the Southern Connector for the portion of the road constructed within the Savage Park Parcel, provided that the reimbursement shall be to a maximum of that amount collected for that purpose through the City's impact fee ordinance and shall be reimbursed as adequate funds are collected through the impact fee. Additionally, the City shall only be responsible for this reimbursement should the provisions for acquiring the park parcel be insured either through agreement or outright purchase.

3.1.6 City Reimbursement for Property. The City hereby agrees to reimburse Developer for that portion of the property costs for the Southern Connector which can reasonably, as determined by the City, be attributed to the impacts of future development on the entire Savage parcel less the park parcel. Those costs shall be incorporated into the City's impact fee ordinance and reimbursed to Developer as collected.

3.2 Canyon Road Improvements. Concurrently with recordation and improvement of the first plat within the Cedars, Developer agrees to bond for and fully improve that portion of Canyon Road which bisects The Cedars. Full improvements shall include the following:

3.2.1 For the portion of Canyon Road north of the northern entrance to the Cedars. Improvements shall include acceleration/deceleration lanes when necessary, and a 10' meandering asphalt path paralleling the road on the western side of the road.

3.2.2 For the portion of Canyon Road south of the northern-most entrance to the Cedars. Improvements shall include full width of asphalt, curbing and gutter, 10' asphalt trail on the eastern side and 4' sidewalk on the western side.

3.2.3 Construction of the two underground trail crossings connecting the eastern and western portions of the development, as delineated in 3.3.2 below. Bonding/Construction of the joint golf cart/pedestrian tunnel shall occur concurrently with the first plat, while bonding/construction of the pedestrian tunnel shall occur with the first recorded plat on the east side of Canyon Road.

3.2.4 All improvements shall conform with requirements set forth by UDOT and the City for this roadway.

3.3 Traffic-safety. In the interest of providing for traffic-safety within project streets, Developer and City agree to the following:

3.3.1 Traffic-calming. Developer agrees to provide bonding for and construct traffic-calming devices within the project area at trail crossings as shown on Exhibit "C"(typical designs attached in Exhibit "L").

3.3.2 Tunnel crossings. Developer agrees to provide bonding for and construct underground

pedestrian/golf cart crossings where the trail crossings intersect with Canyon Road at the locations shown on Exhibit "C". Designs and drawings for the tunnel crossings shall be provided to and approved by the City Engineer.

3.3.3 Round-a-bout. Developer agrees to provide bonding for and construct a round-a-bout, to the standard of design provided by the City, at the intersection of the Southern Connector and the southern access point to Plat B.

4. Utilities

4.1 Utility Extensions. Developer agrees to attach to existing utilities including water, sewer, storm sewer, and pressurized irrigation, where applicable and to make provision for underground cable utility conduit and City utility conduit pursuant to City Engineer requirements and City specifications. All extensions are to conform with requirements of the City Engineer.

4.2 Culinary Water. Developer hereby acknowledges that all portions of The Cedars lie at an elevation above that which is capable of culinary water service from the City's existing water tanks and that a new culinary water tank and delivery facilities will be required to be constructed prior to or concurrently with any residential development within The Cedars (Map shown on Exhibit "M"). Developer further acknowledges that the City does not have sufficient funding to construct a new water tank and delivery system providing service to the area within the time frame desired by Developer. Accordingly, in order to facilitate the early development of the property in accordance with the time frame desired by Developer, Developer hereby agrees that notwithstanding any approvals for Final Platting, The provisions of sections 9, 10, 11 and 12 of the Annexation Agreement between the City and Developer, shall apply to this Development Agreement.

4.3 Water Rights. Water rights shall be conveyed to the City in the amount and method determined by section 6, 7, and 8 of the Annexation Agreement between the City and Developer, and shall occur prior to or concurrently with any development within the Cedars.

4.4 Pressurized Irrigation. In lieu of providing approximately 400 acre-feet of irrigation water right to be used for the golf course portion of the project, Developer agrees to construct sufficient storage (shown on Exhibit "N")and supply facilities to supply irrigation water to the storage facilities and provide water for all portions of the City prior to or concurrently with any development within the Cedars. Furthermore, the City agrees to provide all the irrigation water rights for the golf course. Responsibilities related to each component of the pressurized irrigation system are as delineated in section 12 of the Annexation Agreement between the City and Developer.

4.5 Storm Drainage. Developer agrees to retain all storm-drainage within the project area or specified and approved areas outside the project. Storm Drain detention basins shall be constructed so as to be included within the development. Prior to any storm drain effluent entering any area of the golf course, it must be pre-treated. Developer agrees to grant storm drain easements for those

detention areas within approved lots.

5. **Impact Fees.**
Developer agrees to pay all impact fees as they currently exist or may be amended or added by City ordinance, unless otherwise waived by agreement with the City.

6. **Fencing Plan.**
Developer agrees to construct a decorative fence of the style indicated at locations shown on the landscaping plan (Exhibit "I"). The fencing or wall material shall be as shown in the Design Standards, as approved by the City.

7. **Conditions, Covenants, and Restrictions.**
The Cedars has been approved as a Planned Residential Development, a portion of which is to be developed as a private PRD (Plats B, C, D, I, and F) and a portion of which is to be developed as a non-private PRD (Plats A and J). As such the City and Developer agree to the following:

7.1 CCR's for Plat A and I. CCR's for Plats A and J shall be reviewed and approved by the City prior to any recordation of Plat A or J, at which time they shall record concurrently with Plat A and/or J.

7.2 CCR's and HOA for Plats B, C, D, I, and F. The attached CCR's and Home Owners Association Documents for Plats B, C, D, I, and F (Exhibit "O") have been reviewed and approved by the City and are hereby incorporated into this agreement and will be recorded concurrently with recording of Plats B, C, D, I, and F. Additionally, the HOA shall be assessed for and responsible for the landscaping and maintenance of the landscaped medians and park strips on the streets accessing and going through Plats B, C, D, I and F of the project.

7.3 Gating of Plats B, C, D, I, F. Developer and City agree that the roads appurtenant to Plats B, C D, I, and F, other than Briggs (10650 N) and Nielsen (4220 W) Boulevards, shall be private roads maintained by the HOA. Developer further agree that such roads shall not be gated from the public by Developer. However, the City acknowledges the right to gate by the future HOA and agrees that in the event that the HOA desires to gate such roads from public access, the HOA shall submit the gating plan to the City as an amendment to the site plan. Upon receipt of the gating plan, the City shall review the plan, make adjustments as deemed necessary by the City, and shall not unreasonably withhold approval. The City's review may include such issues as dimensions and material of the gate, gate operations, location, aesthetic considerations, safety considerations, and other considerations deemed appropriate by the City. Furthermore, should the HOA desire to gate such roads from public access, the City shall first have the option of making the roads public. Both parties agree that although Briggs and Nielsen Boulevards are to be public, the HOA shall be responsible for maintaining, at high standards, all landscaped areas within and adjacent to both public rights-of-way. Furthermore, the City agrees to indemnify the HOA from liability for injuries occurring in the public right-of-way.

8. **Architectural Standards of Homes.**
City approvals for The Cedars are based upon construction of homes in substantial conformance with attached Design Standards (Exhibit "P"). These design standards have been adopted by the City for this development and Developer agrees to build, or cause to be built, all homes in the Cedars in conformance with these Standards. Furthermore, due to the high level of fire hazard presented by the hillside, particularly the slope of the property, the existing and future vegetation, the direction the slope faces, the number of fire days in the area, and the windy conditions that are prevalent in the area, Developer agrees that no homes shall be constructed, in Plats A or J, with readily combustible exterior finishes including, but not limited to: wood shingles, wood soffits and facia, or wood siding.

9. **Engineering and Construction Standards.**
Developer agrees that all construction of utilities, tanks, infrastructure, and any other subdivision development issues are subject to approval by the City Engineer. While generally the standards used are as set forth in the adopted development construction standards, from time to time it is anticipated that unforeseen circumstances will require the Engineer to either waive, adapt, change, or add to certain standards. Developer agrees that this is necessary and appropriate and agrees to be bound by the decision of the City Engineer with regard to any reasonable development construction issues.

10. **Subdivision Improvement Bonding.**

10.1 Developer agrees to be held to all bonding requirements as set forth in City ordinances, resolutions, or policies, with the following exceptions:

10.1.1 Developer agrees to post the construction guarantee bond in the form of a cash bond in a form suitable to the City. Under no circumstances shall any portion of the bond be placed in the form of a surety or insurance bond.

10.1.2 Developer agrees to post the durability bond in the form of a letter of credit with bank approved by the City, in a form suitable to the City. Under no circumstances shall any portion of the bond be placed in the form of a surety or insurance bond.

10.1.3 Both parties agree that the construction guarantee for all public and private improvements shall be posted for 100% of improvements plus contingency amounts. In addition, both parties agree that the separate durability bond for the public improvements shall be posted at the same time as the construction guarantee in the amount of 25% of the cost of improvements, not to be released until completion of the durability period.

10.2 In exchange for the considerations the City has granted in 10.1 above, the Developer agrees to pay an additional $200,000 to the City for the purposes of purchasing public lands adjacent to the Development, in the Savage Parcel, $100,000 of which is for the Southern Connector land costs. Payment of the funds shall be at the time the City closes on the Savage Parcel with the Savage Companies, or three years, whichever comes first. As security for the funds, Developer agrees to deed four, recorded lots to the City to be held as collateral until such time as the funds are provided to the City (Deeds shown in Exhibit "Q"). The four lots shall be deeded to the City upon recordation of any plat beyond plat B.

11. Successors and Assigns.

11.1 Binding Effect. This Agreement shall be binding on the successors and assigns of Developer in the ownership or development of any portion of the Project. Notwithstanding the foregoing, a purchaser of the Cedars or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to the portion of the Project so transferred.

11.2 Transfer of Project. Developer shall be entitled to sell or transfer any portion of the Cedars subject to the terms of this Agreement upon written notice to and written consent from City, which consent shall not be unreasonably withheld, In the event of a sale or transfer of the Cedars, or any portion thereof, the seller or transferor and the buyer or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such transfer an agreement satisfactory to the City is executed by the City, the Developer, and transferee, which delineates and allocates each obligation between Developer and transferee and in which the transferee acknowledges the existence of this Agreement and agrees to be bound thereby. Said letter shall be signed by the buyer or transferee, notarized, and delivered to the City Recorder prior to the transfer or sale. In such event, the buyer or transferee of the parcel so transferred shall be fully substituted as Developer under this Agreement and Developer shall be released from any further obligations under this Agreement as to the parcel so transferred.

11.3 Sale of Platted Lots. Notwithstanding Paragraph 11.2, Developer shall not be required to notify City or obtain City's consent with regard to the sale or transfer to bonafide purchasers lots (i) for which final plats have been approved and recorded in accordance with this Agreement and (ii) which are intended for single family residential use.

12. Default

12.1 Events of Default. Upon the happening of one or more of the following events or conditions Developer shall be in default ("Default") under this Agreement:

12.1.1 A warranty, representation or statement made or furnished by Developer under this Agreement, including any Exhibits attached hereto, is intentionally false or misleading in any material respect when it was made.

12.1.2 A determination by City made upon the basis of substantial evidence following a periodic review under Paragraph 13.14 that Developer has not complied in good faith with one or more of the material terms or conditions of this Agreement.

12.1.3 Any other event, condition, act or omission which materially interferes with the intent and objectives of this Agreement.

12.2 Procedure Upon Default.

12.2.1 Upon the occurrence of Default, City shall give Developer thirty (30) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said Default must be satisfactorily cured. After proper notice and expiration of said thirty

(30) day cure period without cure, City shall hold a public hearing which has been noticed by publication and for which notice has been expressly provided to Developer. Thereafter, City may declare Developer to be in breach of Agreement and may take the actions specified in Paragraph 12.3 herein. Failure or delay in giving notice of Default shall not constitute a waiver of any Default, nor shall it change the time of Default.

12.2.2 City does not waive any claim of defect in performance by Developer if on periodic review City does not propose to modify or terminate this Agreement.

12.2.3 Any Default or inability to cure a Default caused by strikes, lockout, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar cases beyond the reasonable control of the party who has the obligation to perform shall excuse the performance by such party for a period during which any such event prevented, delayed or stopped any required performance or effort to cure a Default.

12.2.4 An express repudiation, refusal or renunciation of this Agreement, if the same is in writing and signed by Developer, shall be sufficient to terminate this Agreement and a hearing on the matter shall not be required.

12.3 Breach of Agreement. Upon Default as set forth in Paragraphs 12.1 and 12.2, City may declare Developer to be in breach of this Agreement and City may (i) withhold approval of any or all building permits or certificates of occupancy applied for in the Cedars until the breach has been corrected by Developer and the City shall be under no obligation to approve or to issue any additional building permits or certificates of occupancy for any dwelling within the Cedars until the breach has been corrected and (ii) draw upon the developers bond placed with the City. If City draws on the bond it shall not be under obligation to complete the improvements but may use the proceeds for engineering expenses, consultants, fees and charges, legal fees and costs, subdivision improvements, reimbursements, or other expenses connected with the Cedars as City may determine in its sole discretion. Notwithstanding the rights guaranteed by this Paragraph 12.3, City may pursue whatever additional remedies it may have at law or in equity. If City brings legal action against Developer or the issuer of the bond, and if City is successful in such litigation, Developer shall pay City's reasonable costs and attorneys' fees. The waiver of any one or more breaches of this Agreement shall not constitute a waiver of the remaining terms thereof.

13. General Terms and Conditions

13.1 Recording of Agreement. This Agreement shall be recorded and shall be a covenant running with the Property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

13.2 Construction of Agreement. This Agreement shall be construed so as to effectuate its public purpose of ensuring Improvements and Facilities are timely provided for the benefit of the ultimate purchasers of lots in the Project and to protect health, safety, and welfare of the

citizens of City.

13.3 Duration. The terms of this Agreement shall commence on, and the effective date of the agreement shall be, the effective date of the execution of this Agreement. The Term of this Agreement shall extend until the obligations and requirements herein are completed in conformance with City subdivision, construction, and bonding requirements.

13.4 State and Federal Law. The Parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of the Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect.

13.5 Enforcement. The parties to this Agreement recognize that City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event that Developer violates the rules, policies, regulations or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after fifteen (15) days written notice to correct the violation (or such longer period as may be established in the discretion of City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such fifteen (15) days and is continuing to use its reasonable best efforts to cure such violation, take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer. City shall be free from any liability arising out of the exercise of its rights under this paragraph.

13.6 No Waiver. Failure of a party hereto exercise any right hereunder shall not be deemed a waiver of any such right and shall not effect the right of such party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the City Council taken with the same formality as the vote approving this Agreement, no officer, official or agent of City has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind City by making any promise or representation not contained herein.

13.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior conflicting agreements, whether oral or written, covering the same subject matter, with the exception of the Annexation Agreement between the Developer and the City. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

13.8 Attorneys Fees. Should any party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgement based on this Agreement, or in any legal proceedings

whatsoever pertaining to this Agreement, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, and whether or not an action has actually commended, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all reasonable attorneys fees and all costs and expenses reasonably incurred in connection therewith. Should any judgment or final order be issued in any proceeding, said reimbursement shall be specified therein.

13.9 Notices. All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses:

To City:
Mayor
3925 W Cedar Hills Drive
Cedar Hills, UT 84062

With copies to:
Stan R. Smith, Esq.
P.O. Box 727
American Fork, UT 84003

To Developer:
Lone Peak Links, L.C.
Attn: Ken Briggs
P.O. Box 103
Provo, Utah 84603

With copies to:
Craig Nielsen
P.O. Box 103
Provo, Utah 84063

13.10 Applicable Law. This Agreement is entered into under and pursuant to, and is to be constructed and enforceable in accordance with, the laws of the State of Utah.

13.11 Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

13.12 Hold Harmless. Developer agrees to and shall hold City, its officers, agents, employees, consultants, special counsel and representatives harmless from liability for damages, just compensation restitution, judicial or equitable relief arising from the direct or indirect operations of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf which relates to the Project.

13.12.1 Exceptions to Hold Harmless. The agreements of Developer in Paragraph 13.12 shall not be applicable to (i) any claim arising by reason of the negligence or intentional actions of City, or (ii) attorneys fees under Paragraph 13.8 herein.

13.12.2 Hold Harmless Procedures City shall give written notice of any claim, demand, action or proceeding which is the subject of Developer's hold harmless agreement as soon as practicable but not later than thirty (30) days after the assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, Developer shall be entitle to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicate costs and expenses.

13.13 Relationship of Parties. The contractual relationship between City and Developer arising out of this Agreement is one of independent contractor and not agency. This Agreement does not create any third party beneficiary rights. It is specifically understood by the parties that (i) all rights of action and enforcement of the terms and conditions of this Agreement shall be reserved to City and Developer; (ii) the Project is a private development; (iii) City has no interest in or responsibilities for or duty to third parties concerning any Improvements to the Property unless City accepts the Improvements pursuant to the provisions of this Agreement or in connection with final subdivision plat approval; and (iv) Developer shall have the full power and exclusive control of the Property subject to the obligations of Developer set forth in this Agreement.

13.14 Annual Review. City shall review progress pursuant to this Agreement at least once every twelve (12) months to determine if Developer has complied with the terms of this Agreement. If City finds, on the basis of substantial evidence, that Developer has failed to comply with the terms hereof, City may declare Developer to be in Default as provided in Article 12 herein. City's failure to review at least annually Developer's compliance with the terms and conditions of this Agreement shall not constitute or be asserted by any party as a Default under this Agreement by Developer or City.

13.15 Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach of this Agreement, to specifically enforce any covenants or agreements set forth in this Agreement or to enjoin any threatened or attempted violation of this Agreement; or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fourth District Court, State of Utah, or in the Federal District Court for the District of Utah.

13.16 Title and Authority. Developer expressly warrants and represents to City that it is the record owner of, or has an agreement to purchase the Property constituting the Cedars, and further represents and warrants, together with the undersigned individual, that the undersigned individual has full power and authority to enter into this Agreement on behalf of the Developer. Developer and the undersigned individual understand that City is relying on such representations and warranties in executing this Agreement.

13.17 Headings for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

13.18 Exhibits Incorporated. All exhibits to this Agreement are incorporated herein and made a part hereof as if fully set forth herein. Both parties also agree to be held by the terms and conditions set forth in the Annexation Agreement for the properties, a copy of which is on file with the City.

13.19 Responsibilities of Parties. All responsibilities and requirements delineated herein should be

construed as pertaining to the entire development and not necessarily any one portion thereof. While certain responsibilities may be timed to occur with a particular plat, it should not be construed that any responsibility is severable from any other portion of the development, whether owned by Developer or his assigns.

IN WITNESS WHEREOF, this Development Agreement has been executed by City, acting by and through the City Council, pursuant to Council authorization, authorizing such execution, and by a duly authorized representative of Developer as of the above-stated date.

CITY: **CEDAR HILLS CITY COUNCIL**

By: _____
Brad Sears, Mayor

Attest: Gretchen F Gordon
~~Kim E. Holindrake, City Recorder~~
Gretchen Gordon, Deputy City Recorder

CEDAR HILLS CITY RECORDER SEAL STATE OF UTAH

DEVELOPERS: LONE PEAK LINKS, L.C.

By: _____ its: _____, mgr

By: _____ its: _____

STATE OF UTAH)
§
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me on this 16 day of February, 2000, for an on behalf of Lone Peak Links, LLC, by Kenneth Briggs Its _____ Manager.

Notary Public: _____

Notary Public
JENNIFER BORG
9 Exchange Place, Suite 810
Salt Lake City, Utah 84111
My Commission Expires
February 22, 2003
State of Utah

STATE OF UTAH)
§
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me on this _____ day of _____, 2000, for an on behalf of _____, by _____ Its _____ _____.

Notary Public: _____

Exhibits

Exhibit A	Legal Description of Entire Property
Exhibit B	Concept Plan for The Cedars
Exhibit C	C-1 Final Plat for Plat A
	C-2 Final Plat for Plat B
	C-3 Final Plat for Plat C
	C-4 Final Plat for Plat D
	C-5 Final Plat for Plat E
	C-6 Final Plat for Plat F
	C-7 Final Plat for Plat G
	C-8 Final Plat for Plat H
	C-9 Final Plat for Plat I
	C-10 Final Plat for Plat J
	C-11 Preliminary Plan for entire development
Exhibit D	Phasing Plan
Exhibit E	Lotting Plan.
Exhibit F	Green Space and Trail Deeds
Exhibit G	Deeds for Open Space Parcels
Exhibit H	Landscaping Plan for Plats B, C, D, I, F
Exhibit I	Conservation Easement over Golf Course Parcels.
Exhibit J	Option Agreement for Golf Course.
Exhibit K	Dedication Plat for South Connector.
Exhibit L	Typical Design for Traffic-calming Device.
Exhibit M	Upper Water Pressure Zone Area Map
Exhibit N	Water Storage Analysis for Pressurized Irrigation
Exhibit O	CCR's and HOA documents for Plats B, C, D, I, F
Exhibit P	Design Standards for homes within The Cedars
Exhibit Q	Deeds for 4 recorded lots, deeded to City.

60

After Recordation, return to:

EXHIBIT P

CC&R'S AND HOME OWNER BYLAWS FOR PLATS B,C,D,F,I

Kenneth G. Briggs
Lone Peak Links
1210 East 930 North
Provo, Ut 84604

ENT 21552:2001 PG 1 of 66
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2001 Mar 07 3:21 pm FEE 264.00 BY JRD
RECORDED FOR LONE PEAK LINKS LLC

THE CEDARS PLANNED UNIT DEVELOPMENT

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
&
HOME OWNER BYLAWS

LONE PEAK LINKS, L.L.C. AT THE CEDARS

Cedar Hills, Utah County, Utah

THIS DECLARATION ("Declaration") is made this 16 day of Feb, 2001 by Lone Peak Links L.L.C., A Utah corporation ("Declarant"), in its capacity as the owner and developer of The Cedars, a Planned Unit Development in Cedar Hills, Utah.

WHEREAS, LOAN PEAK LINKS, L.L.C., ("Declarant"), is the legal and beneficial owner of a certain tract of land known as The Cedars Plat "B", situated in Cedar Hills City, Utah County, State of Utah, hereafter referred to as the "Subdivision" or "Development".

WHEREAS, Declarant intends to sell individual lots in the Subdivision, which it desires to subject, pursuant to a general plan of improvement, to certain additional conditions, covenants, restrictions and agreements as hereinafter set forth.

NOW, THEREFORE, the undersigned Declarant declares that the property described heretofore is held and shall be sold, conveyed, leased, occupied, resided upon, mortgaged and held subject to the following restrictions, conditions, covenants and agreements between itself and the several owners and purchasers of said property and between themselves and their heirs, successors and assigns:

ARTICLE I

PURPOSE AND EFFECTUATION

1.01 Purpose. The purpose of this instrument is to provide for the preservation of the values of the Lots, Units and Common Areas within The Cedars, and for the maintenance of the roadways, sidewalks, parking, amenities, open spaces, landscaping, trees and all other Common Areas therein.

1.02 Mutual and Reciprocal Benefits. All of the conditions, covenants, restrictions and agreements set forth herein shall be made for the direct, mutual and reciprocal benefit of each and every lot created on the above-described property and shall be intended to create a mutual and equitable servitude upon each of said lots in favor of each other lot created on the aforesaid property and to create reciprocal rights and obligations

between the respective owners of all of the lots so created and to create a contract and estate between the grantees of said lots, their heirs, successors and assigns, and shall, as to the owners of each lot in the Subdivision, their heirs, successors and assigns, operate as conditions, covenants, restrictions and agreements running with the land for the benefit of all other lots in the Subdivision.

1.03 Effectiveness. From and after the effective date hereof: (a) Each part of the Development and each Lot and Unit lying within the boundaries of the Development shall constitute but constituent parts of a single planned unit development; (b) The Development shall consist of the Lots and of the Common Areas which are described and depicted on the Plats, together with such additional Lots and Common Areas, as may come into existence pursuant to the provision hereof relating to the Development; (c) The Declaration of Easements, Covenants, Conditions and Restrictions (Including Bylaws and Design Standards) for the Development shall consist of this document as the same may be modified, amended, supplemented, or expanded in accordance with the provisions hereof; (d) The plats of the Development shall consist of the instrument which is identified as The Cedars Planned Unit Development, Plats "B".

1.04 Persons Bound by These Covenants, Conditions, Restrictions and Agreements. All conditions, covenants, restrictions and agreements herein stated shall run with the land comprising the Subdivision, and all owners, purchasers or occupants thereof shall by acceptance of contracts or deeds be conclusively deemed to have consented and agreed with the present and future owners of said land and with his or their successors and assigns, to conform to and observe the following covenants, conditions, restrictions and agreements as to the use thereof and construction of residences and improvements thereon, for a period from the date hereof to January 1, 2025, at which time said covenants and restrictions shall be automatically extended for successive periods of 10 years, unless, by a vote of at least two-thirds (2/3) of the then owners of said lots, it is agreed to amend or release said covenants in whole or in part by an appropriate agreement in writing specifying the conditions, covenants, restrictions and agreements to be amended or released, and by filing said agreement with the office of the Utah County Recorder.

1.05 Land Use. No lot shall be used except for residential, open space, public and private utilities, and related purposes. No building shall be erected, altered, or permitted to remain on any lot other than one detached single-family dwelling as shown on the final plat and a private garage for not more than three (3) vehicles. The Architectural Review Committee (as described below) shall have the authority to further limit the number of stories and the height of structures for new construction on the lots at its sole and exclusive discretion, as described herein.

1.06 Initial Development Area. The provisions of the Declaration shall be applicable to the real property hereinafter described, all of which is situated within the boundaries of Plat "B", as identified under Section 2.15 of this Declaration and described on Attachment 1.

1.07 Expansion of Development. Declarant intends to sequentially develop the project on a phased basis, eventually covering all residential portions of Plat "B" and the Expansion Property. All or any portion of the real property within the area designated as Expansion Property may, at the discretion of the Declarant, be annexed to and become subject to the terms of this Declaration and thus become subject to the jurisdiction of the Association, provided that; (1) a final plat covering the Expansion Area or portion therefor, intended to be annexed shall first have been approved by the City, and (2) the plat together with a supplementary declaration having a form substantial as set forth on Attachment 2, shall have been executed and recorded at the office of the Utah County Recorder. The recordation of the supplementary declaration and final plat shall constitute and effectuate the annexation of the area, making the same subject to the functions, powers and

jurisdiction of the Association and all owners of lots in said subject property shall automatically become members of the Association.

ARTICLE II

DEFINITIONS

2.01 Architectural Review Committee (ARC). A committee established pursuant to authorization set forth under ARTICLE X and ARTICLE XII of the Declaration for the purpose of: (1) Overseeing and approving the initial design of homes within the Development and any subsequent additions or attachments thereto, (2) the design and placement of any accessory building, fences or other structures on a lot, and (3) the enforcement of the provisions of this declaration and any subsequent rules and policies adopted by the Cedars Committee. The initial ARC, to be appointed by the Declarant, shall consist of professionals in the housing industry. The subsequent ARC, to be appointed by the members of The Cedars Committee, after the initial ARC shall have been dissolved, shall consist of residents of The Cedars Planned Unit Development.

2.02 Articles shall mean and refer to The Cedars Planned Unit Development Declaration of Covenants, Conditions and Restrictions & Home Owner Bylaws, which are or shall be filed in the Office of the Division of Corporation and Commercial Code, State of Utah, as the same may be amended from time to time.

2.03 Assessment shall mean the amount which is to be levied and assessed against Lots and paid by each Owner to the Home Owners' Association for Association expenses as herein set forth.

2.04 Association shall mean The Cedars Home Owner Association (HOA), a Utah non-profit corporation, and its successors and assigns.

2.05 Board shall mean the Cedars Committee of the Association.

2.06 Bylaws shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration, and may be amended from time to time.

2.07 Common Areas shall mean all portions of the Development except the lots, units, golf course and shall include all property owned by the Association for the common enjoyment of the Owners such as all private undedicated roadways, common driveways, amenities, open spaces, common landscaping, structural common areas, if any, and the like, together with all easements appurtenant thereto, as reflected on the Plats.

2.08 Declarant shall mean Lone Peak Links, L.L.C., a Utah corporation, its successors and assigns, if any, as developers of The Cedars Development.

2.09 Declaration shall mean the Declaration of Easements, Covenants, Conditions and Restrictions and Bylaws of The Cedars, as embodied in this document and the same may be supplemented or amended from time to time.

2.10 Development shall mean the planned unit development known as The Cedars as it exists at any given time.

2.11 Limited Common Areas shall mean any Common Areas designated for exclusive use by the Owner of a particular Unit. Limited Common Areas that are identified on the Plat with same number or other designation by which a Unit is identified thereon shall be Limited Common Area for the exclusive use of the Owner of the Unit bearing the same number or designation.

2.12 Lot shall mean and refer to any of the separately numbered and individually described parcels of land within the Development as designated on the Plats, intended for single family residential use or open space.

2.13 Managing Agent shall mean any person or entity appointed or employed as Managing Agent by the Association.

2.14 Owner shall mean any person who is the owner of record (as reflected by the records in the office of the County recorder of Utah County, Utah) of a fee or undivided fee interest in any Lot and any contract purchaser of any Lot. Notwithstanding any applicable theory relating to mortgages, no Mortgagee nor any trustee or beneficiary of a deed of trust or trust deed shall be an owner unless such party acquires fee title pursuant to foreclosure or sale of conveyance in lieu thereof. Declarant shall be an Owner with respect to each Lot owned by it. Multiple owners of a particular Lot shall be jointly and severally liable as to all responsibilities of an Owner.

2.15 Plat shall mean and refer to the subdivision plats covering the Property entitled Plat B, The Cedars, A Planned Unit Development, Cedar Hills, Utah County, Utah, prepared and Certified by Robbing Mullen (a duly registered Utah Land Surveyor holding Certificated No. (368356), executed and acknowledged by Declarant, accepted by Cedar Hills City, and filed for record in the office of the County Recorder of Utah County, Utah concurrently with this Declaration, together with any portion of the territory shown on Plat "B" as expansion area, when a Final plan and attached documents shall have been approved by the city and recorded at the Office of The Utah County Recorders Office.

2.16 Property shall mean all land and improvements covered by this Declaration, including Common Areas and Lots and other property annexed to the Development as provided in this Declaration.

2.17 Reimbursement Assessment shall mean a charge against a particular Owner or his Lot for the purpose of reimbursing the Association for the cost incurred in bringing the Owner of his Lot or Unit into compliance with provisions of this Declaration, the Articles, Bylaws or rules and regulations of the Association, or any other charge designated as a Reimbursement Assessment in this Declaration, the Articles, Bylaws or rules and regulations of the Association, together with costs, interest, attorney's fees and other charges payable by such Owner pursuant to the provision of this Declaration.

2.18 The Cedars Committee shall mean the Board of Director of the Home Owner Association.

2.19 Unit shall mean a structure which is designed, constructed and intended for use or occupancy as a single family residence on a Lot, together with all improvements located on the same Lot and used in conjunction with such residence, including patios, decks, appliances, electrical receptacles and outlets, air conditioning compressors and other air condition apparatus.

ARTICLE III

DUTIES AND OBLIGATIONS OF OWNERS

3.01 Maintenance and Repairs. Each Owner shall at his own cost maintain his lot, unit and improvements constructed thereon in good condition and repair at all times. The painting or remodeling, rebuilding or modification of any Unit exteriors or parts thereof must be submitted to and approved by the ARC or the The Cedars Committee, if the ARC no longer exists as a separate body.

3.02 Standards. In deciding whether to approve or disapprove plans and specifications submitted to it, The ARC shall use the Design Standards Book, coupled with their best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Development conform to and harmonize with existing surrounding structures. If the plans and specifications meet such criteria, The ARC shall approve the same.

ARTICLE IV

ARCHITECTURAL AND STRUCTURAL CONTROL

4.01 Approval Required. For the purpose of further insuring the development of the Subdivision as a residential area of high standards, the owner or occupant of each lot, by acceptance of title thereto, or by taking possession thereof, covenants and agrees that no building, fence, or other structure shall be placed upon said lot unless and until the plans and specifications and plot plan have been approved in writing by the Architectural Review Committee, established pursuant to the terms of ARTICLE XII. Each such building, fence, or other structure shall be placed on the lot only in accordance with the plans and specifications and plot plans. No material alteration of the exterior appearance of any home or other structural improvement in the Subdivision shall be made without The ARC's written approval. No substitution of materials shall be used unless approval has been given from the ARC.

4.02 Plans and Specifications. In connection with said approval, complete plans and specifications of all proposed buildings, structures, walls, and exterior alterations, together with detailed plans showing the proposed location of the same on the particular lot, shall be submitted to the ARC before construction or alteration is started, and such construction or alteration shall not be started until written approval thereof is given by the ARC. All plans and specifications for such approval must be submitted at least fourteen (14) business days prior to the proposed construction starting date.

4.021 House square footage requirements. Ramblers shall consist of a minimum of 1,200 square feet finished on the main floor. Multi-level units shall consist of a minimum of 1,400 square feet finished. Two-story homes shall consist of a minimum of 1,600 square feet finished. All homes must fully comply with those standards found in The Cedars Design Standards Book.

4.022 Garage requirements. All homes must fully comply with those standards found in The Cedars Design Standards Book.

4.023 Exterior requirements. All homes must fully comply with those standards found in The Cedars Design Standards Book.

4.03 Approvals or Denials. As to the construction of all homes within the Subdivision, The ARC shall have the right to refuse to approve any design, plan or color for such improvements, construction or alterations, which is not suitable or desirable in the ARC's opinion, for any reason, aesthetic or otherwise, and in so passing upon such design, the ARC shall have the right to take into consideration the suitability of the proposed improvement, the material of which it is to be built and the exterior color scheme of the proposed home, the harmony thereof with the surroundings, the effect or impairment that such improvements will have on the view of surrounding building sites, and any and all facts which, in the ARC's opinion, shall affect the desirability or suitability of such proposed structure, improvements or alterations. Under no condition shall any pre-fabricated or mobile homes be allowed within the development. The approval of the ARC of any plans or specifications submitted for approval as herein required shall not be deemed to be a waiver by the ARC of its right to object to any of the features or elements embodied in such plans and specifications, if or when the same features or elements are embodied in the plans and specifications of any other improvements submitted for the ARC approval.

4.04 Modification or Improvement to Unit or Lot. Any exterior modification or improvement to unit or lot must be approved in writing from the ARC.

4.05 Architectural Procedures. All approvals or disapprovals shall be in writing. All decisions of the ARC shall be final, and neither the Declarant, or, the ARC nor their designated representatives shall be subject to any liability thereof. Any errors or omissions in the design of any building or landscaping, and any violations of city ordinances are the sole responsibility of the lot owners and/or their designer or architect. The ARC's review of plans shall in no way be construed as an independent review of the structural or mechanical adequacy of the proposed improvements, or the architectural soundness thereof, and neither the Declarant, The Cedars Committee nor the ARC shall have responsibility for a determination of such adequacy or soundness.

4.06 Moving of Structures. No structure of any kind shall be moved from any other place to the Subdivision without written approval of the ARC.

4.07 Compliance with Zoning Ordinances. All improvements in the Subdivision shall be placed and used upon the lots in accordance with the provisions of the applicable provisions of the Cedar Hills City zoning ordinances, unless otherwise modified or restricted by the covenants herein.

4.08 Temporary Structures. No trailer, tent, shack or other out-building shall be placed upon or used at any time within the Subdivision as a temporary or permanent residence.

4.09 Easements. Easements and rights of way are hereby reserved to the Declarant, its successors and assigns, in and over the real property within the Subdivision subject to this Declaration for the erection, construction, maintenance and operation therein or thereon of drainage pipes or conduits and pipes, poles, wires and other means of conveying to and from lots in said tract, gas, electricity, power, water, telephone services, sewage, cable T.V. and other things for convenience to the owners of lots in the Subdivision, including but not limited to, those shown on the Plat. No structures of any kind shall be erected over any of such easements except upon written permission of the Declarant, its successors or assigns. All purchasers of lots shall, by acceptance of contracts or deeds for every lot, thereby be conclusively deemed to have granted an easement to the Declarant to permit the Declarant to take any and all actions necessary to develop the Subdivision, and to improve, market and sell all lots owned by the Declarant therein.

4.10 Setbacks. No dwelling, house or other structure shall be constructed or situated on any lots created except in conformity with the "setback" as established on the Lotting and Set Back Plan as approved by the City. Technical terms such as "setback" and all other such terms as used in this Declaration shall be defined, where possible, and shall have the meaning assigned by the Cedar Hills City Zoning Ordinances or the Uniform Building Code, as applicable.

4.11 Fences and Walls. No fence or wall shall be erected, placed or altered on any yard of any Lot unless prior approval is given by the ARC and is in accordance with the Design Standards Book.

4.12 Change in Grade. The surface grade or elevation of the various lots in the Subdivision shall not be substantially altered or changed in any manner which would affect the relationship of such lot to other lots, common area in the Subdivision, or which would result in materially obstructing the view from any other lot in the Subdivision.

4.13 Utilities. All electric, television, cable television, telephone and other utility line installments and connections from the property line of any lot to the residence or structures thereon shall be placed underground.

ARTICLE V

NUISANCES AND RELATED MATTERS

5.01 Nuisances. No noxious or offensive activity shall be conducted upon any lot, nor shall anything be done thereon which may be an annoyance or nuisance to the neighborhood or the owners or occupants of any other lots in the Subdivision.

5.02 Pets. No barn, coop, shed, sty or building of any type shall be constructed for the purpose of housing pigs, cows, sheep, goats, horses, poultry, or any livestock, and none of the foregoing shall be kept, maintained or permitted at any place within the limits of the Subdivision. A reasonable number of household pets will be permitted in accordance with Cedar Hills City ordinances, so long as such pets do not constitute a nuisance for other residents of the Subdivision.

5.03 Storage. No campers, boats, snow mobiles, ATV's, jet skis or other water-related-vehicles, boat-trailers, house-trailers, or any other type of trailer, automobiles, trucks, motor homes, horse or other trailers shall be stored in excess of five (5) days in driveways, or other areas in open view within the Subdivision. No commercial vehicle exceeding three quarters (3/4) of a ton shall be kept or stored upon any lot unless such vehicle is kept or stored in an enclosed garage when not in use. No commercial vehicle owned or in the possession or under the control of any resident or occupant in the Subdivision shall be parked overnight in any street within the Subdivision. "Commercial vehicle" as defined in this document shall include, but not be limited to, any truck, pickup, van, bus, tractor, station wagon, taxi, automobile, trailer or other vehicle used primarily for business or other commercial purposes as distinguished from vehicles used primarily for the transportation of persons other than for hire or other than for business or other commercial purposes. All such uses must fully comply with those standards found in The Cedars Design Standards Book.

5.04 Signs. All signs must fully comply with those standards found in The Cedars Design Standards Book.

5.05 Drilling and Mining. There shall be no oil drilling, mining, quarrying or related operations of any kind permitted upon any lot.

5.06 Rubbish. No rubbish shall be stored or allowed to accumulate anywhere in the Subdivision, except in sanitary containers. Rubbish shall include, but not be limited to bushes or weeds, household wastes, and automobiles, campers, trailers, boats, or parts thereof, which have been in a state of disrepair or unassembled for a period exceeding fourteen (14) days. Trash, garbage or other wastes shall be kept in sanitary containers, maintained in a clean and sanitary condition and stored in garages screened by adequate planting or fencing so as to be concealed from view of neighboring lots and streets.

5.07 Transmitting and Receiving Equipment. No external radio, citizen's band, ham radio or any similar transmitting and/or receiving antennas or equipment shall be placed upon any structure or lot; provided, however, television and radio antennas or other electronic reception devices may be erected so long as they shall be completely erected, constructed and placed within the enclosed area of the dwelling or garage on the lot. Exceptions must first be approved in writing by The Cedars Committee. Any installation of a satellite reception dish on any lot shall be located so that it is obscured from view of the street and neighbors by fencing, plants or tasteful construction to obscure the dish, unless otherwise approved by the Cedar Committee. No satellite dish shall exceed 24" in diameter. All such uses must fully comply with those standards found in The Cedars Design Standards Book.

5.08 Installation and Maintenance of Landscaping. The homeowner or homebuilder shall plant the front and rear yards and landscape the front yard of all lots, including a sprinkling system, within 90 days of receiving an occupancy permit for the home, unless seasonal conditions preclude such planting, in which case the planting will be performed as soon as possible, but in no case later than June 1 of the first summer of ownership. If the home owner fails to maintain the front yard at an appropriate level as determined by the HOA, then the HOA will have the right to have a professional landscaping firm maintain the front yard at the appropriate level and the homeowner will be billed for such maintenance. All landscaping must fully comply with those standards found in The Cedars Design Standards Book.

ARTICLE VI

ADDITIONAL COVENANTS

6.01 Breach or Violation of Covenants. In the event of a violation or breach or attempted violation or breach of any of these covenants, restrictions, limitations, conditions, or agreements by any person or concern claiming by, through or under the Declarant, or by virtue of any judicial proceedings, the Declarant or The Cedars HOA, or the owner of any Lot in the Subdivision, or any of them, jointly or severally, shall be authorized to take such legal or administrative action as it deems appropriate and is consistent with the laws of the State of Utah, to enforce said Covenants, Conditions and Restrictions.

6.02 Recovery. In the event that the Declarant, The Cedars HOA, The Cedars Committee, or any property owners in this subdivision are successful in prosecuting any violation of these restrictive covenants, he may recover (in addition to any other damages) costs, and expenses of the litigation, including reasonable attorneys fees from the party found to be in violation thereof.

6.03 Effect or Waiver or Breach or Failure to Enforce. Each and all of the covenants, conditions, restrictions and agreements contained herein shall be deemed and construed to be continuing, and the

extinguishment of any right of re-entry or reversion for any breach shall not impair or affect any of the covenants, conditions, restrictions or agreements, so far as any future or other breach is concerned. It is understood and agreed by and between the parties hereto that no waiver of a breach of any of the covenants, conditions, restrictions, and agreements herein contained shall be construed to be a waiver of any other breach of the same, or other covenants, conditions, restrictions, and agreements; nor shall failure to enforce any one of such restrictions, either by forfeiture or otherwise, be construed as a waiver of any other restriction or condition.

6.04 Severability. Invalidation of any one or any portion of any one of these covenants and restrictions by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

6.05 Declarant's Right to Amend. The Declarant shall have the right, at any time, at its sole discretion, to amend this Declaration in a manner in which it believes will be most beneficial for the Subdivision, so long as it owns lots within the Subdivision.

BYLAWS
OF
THE CEDARS HOMEOWNERS ASSOCIATION, INC.
(A Utah Non-Profit Corporation)

THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI and XVII.

ARTICLE VII

THE CEDARS HOME OWNERS ASSOCIATION

7.01 Establishment of Home Owners Association. Declarant shall establish a Home Owners' Association (the "The Cedars HOA") to carry out the obligations so designated in this Declaration.

ARTICLE VIII

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

8.01 Membership. Every Owner upon acquiring title to a Lot shall automatically become a member of The Cedars Home Owners' Association and shall remain a member thereof until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association with respect to such Lot shall automatically cease and the succeeding Owner shall become a member. Membership in the Association shall be mandatory, shall be appurtenant to and may not be separated from the ownership of a lot.

8.02 Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract or notice of interest) to him or his Lot and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein shall notify the Association of the name and address of the Mortgage Company and also of the release of such Mortgage; and the Secretary of the Association shall maintain all such information in the records of the ownership. The Association may at any time obtain and rely on information from the Utah County Recorder regarding the Owner and Mortgagees of Lots.

8.03 Voting Membership. The Cedars HOA shall consist of one class of membership. All of the owners of a Lot in the Subdivision shall be a "Member". When more than one person holds an interest in any Lot, all such person shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

8.04 Annual Meetings. The annual meeting of members of the HOA shall be held on the second Saturday in March of each year at the hour of 10:00 o'clock a.m., beginning with the year following the year in which the Articles of Incorporation are filed, for the purpose of election. The Cedars Committee (if the members then have responsibility of so doing) shall be responsible for and transacting such other business as may come before the meeting. If the election of The Cedars Committee shall not be held on the day designated herein for the annual meeting of the members, or at any adjournment thereof, The Cedars Committee shall cause the election to held as a special meeting of the members to be convened as soon thereafter as may be convenient. The Cedars Committee may from time to time, by resolution, change the date and time of the annual meeting of the members.

8.05 Special Meetings. Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called from time to time by The Cedars Committee or by the president, and shall be immediately called by the president upon the written request of members holding not less than twenty percent (20%) of the total votes of the HOA. Such written requests shall state the purpose or the purposes of the meeting and shall be delivered to The Cedars Committee or the president. In case of failure to call such meeting within twenty (20) days after such request, such member may call the same.

8.06 Place of Meetings. The Cedars Committee may designate any place in Utah County, State of Utah, as the place of meeting for any annual meeting or for any special meeting called by The Cedars Committee. A waiver or notice signed by a majority of the members may designate any place, within the State of Utah, as the place for holding such meetings.

8.07 Notice of Meetings. The Cedars Committee shall cause to be written or printed a notice of the time, place, and purpose of all meetings of the members, whether annual or special, to be delivered, not more than fifty (50) nor less than ten (10) days prior to the meeting to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to have been delivered when deposited in the U.S. mail addressed to the member at his registered address, with first class postage thereon prepaid. Each member shall register with the HOA such member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the HOA. If no address is registered with the HOA, the member's Lot address shall be deemed to be his registered address for purpose of the notice hereunder.

8.08 Fixing of Record Date. Upon purchasing a lot in the Development, each Owner shall promptly furnish to the HOA a certified copy of the record instrument by which ownership of such Lot has been vested in such Owner, which copy shall be maintained in the records of the HOA. For the purpose of determining members entitled to notice or to vote at any meeting of the members, or any adjournment thereof, The Cedars Committee may determine a record date, which shall not be more than fifty (50) nor less than ten (10) days prior to meeting. If no record date is designated, the date on which notice of the meeting is mailed shall be deemed to be the record date for determining members entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the HOA on such record date as the Owners of record of Lots in the Development shall be deemed to be the members of record entitled to notice of and to vote at the meeting of the members and any adjournment thereof.

8.09 Quorum. At any meeting of the members, the presence of members, or holders of proxies, entitled to cast more than fifty percent (50%) of the total votes of the HOA shall constitute a quorum for the transaction of business. In the event a quorum is not present at a meeting, the members present (whether represented in person or by proxy), though less than a quorum, may adjourn the meeting to a later date. Notice thereof shall be delivered to the members as provided above. At the reconvened meeting, the members and proxy holders present shall constitute a quorum for the transaction of business.

8.10 Proxies. At each meeting of the members, each member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall be executed by the member himself or by his attorney thereunto duly authorized in writing. If a membership is jointly held, the instrument authorizing a proxy to act shall have been executed by all holders of such membership or their attorneys thereunto duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the secretary of the HOA or to such other officers or persons who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

8.11 Votes. With respect to each matter (other than the election of The Cedars Committee) submitted to a vote of the members, each member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Lot of such member, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, the Declaration, or Utah Law.

ARTICLE IX

THE CEDARS COMMITTEE

9.01 The Cedars Committee. The management and maintenance of the Subdivision and administration of the affairs of The Cedars HOA shall be conducted by the Cedars Committee, consisting of five (5) members, each member will serve for a term of one year. The Cedars Committee may act by any three (3) of its members, and any authorization approval or authority made by The Cedars Committee must be in writing and signed by at least three members.

9.02 Declarant Authority. It is intended that the Declarant shall appoint The Cedars Committee and may fill any vacancies within the Committee for so long as the Declarant owns any lots or other real property in the Subdivision. Declarant shall also have the right, at any time, at its sole discretion, to permit one or more of the members of the Cedars Committee to be elected by the vote of a majority of the lot owners. Any member of The Cedars Committee may resign from the Committee, at any time, upon written notice to the other members of The Cedars Committee. At such time as the Declarant no longer owns any lots within Plat "B" or any portion of the Expansion Area or any lots within any final plat or any portion of the Expansion Area annexed to the Development; or at such earlier time when the Declarant may determine appropriate, the selection of the members of The Cedars committee shall be determined by election by the members of the HOA rather than by appointment of the Declarant. Election of the members of the Committee shall be conducted at the first meeting of the lot owners following sale of the last lot owned by the Declarant or receipt of notification by the Declarant of his determination to allow appointment by election. Election shall be by majority vote cast by all owners or proxies in attendance at the meeting. The term of those members elected shall be for the remainder of the year in which they are elected and until the next annual meeting of the HOA. The number of the members of The Cedars Committee may be changed at any annual meeting after the Declarant's right of appointment of members of the Cedars Committee shall have been relinquished.

9.03 General Powers. The property, affairs, and business of the HOA shall be managed by the Cedars Committee. The Cedars Committee may exercise all of the powers of the HOA, whether derived from law, the Articles of Incorporation, these Bylaws, or the Declaration, except those powers which are by law or by the foregoing documents vested solely in the members. The Cedars Committee shall, among other things, prepare or cause to be prepared, plan and adopt an estimated annual budget for the estimated annual common expenses, providing the manner of assessing and collecting assessments, and keep or cause to be kept sufficient books and records with a detailed account of the receipts and expenditures affecting the Development and its administration, and specifying the maintenance and repair expenses of the Common Areas. The books and records shall be available for examination by all members at convenient hours on working days that shall be set and announced for general knowledge . All books and records shall be kept in accordance with good accounting procedures and shall be audited at least once a year by an auditor outside of the organization, as required by the Declaration. The Cedars Committee may by written contract delegate, in whole or in part, to a professional management organization or person such duties, responsibilities, functions, and powers as are properly delegable.

9.04 Duties of the Cedars Committee. The rights, duties and functions of The Cedars Committee shall be exercised by Declarant until the date the Articles are filed with the State of Utah, after which the initial

Cedars Committee named in Section 9.8 below, shall serve until the Declarant shall have relinquished authority to appoint members of the Cedars Committee and any remaining appointed members shall have been replaced by members elected by the HOA. The Cedars Committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided by this Declaration, the Articles and Bylaws, including, but not limited to, the following:

(1) To make and enforce all rules and regulations covering the operation and maintenance of the Subdivision.

(2) To maintain those common areas in the Subdivision listed below.

a. The common park
b. All private roads and appurtenant landscape areas.
c. The fifty foot buffer strip on the east side of Canyon Rd.

(3) To enforce the conditions, covenants, restrictions and agreements set forth herin and as may be hereafter adopted by the HOA.

(4) To serve as the Architectural Review Committee and perform the duties and tasks delegated thereto at any time no ARC shall exist.

(5) To enter into contracts, deeds, leases and/or other written instructions or documents and to authorize the execution and delivery thereof by the appropriate officers.

(6) To assess and collect fees from its Members to cover the costs of the maintenance of the common areas of the Subdivision and administration of The Cedars HOA.

(7) To open bank accounts on behalf of The Cedars HOA and to designate the signatures thereof.

(8) To bring, prosecute and settle litigation for itself, The Cedars HOA and the Subdivision.

(9) To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Members or Owners, items of personal property necessary or convenient to the management of the business and affairs of The Cedars HOA or for the operation of the Subdivision, including, without limitation, furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

(10) To keep adequate books and records.

(11) To do all other acts necessary for the operation and maintenance of the Subdivision and the performance of its duties as agent for The Cedars HOA, including the maintenance and repair of any portion of the subdivision and common improvements therein as deemed necessary to protect or preserve the Subdivision.

9.05 Liability. Members of The Cedars Committee, the officers and any assistant officers, agents and employees of The Cedars HOA shall be liable to the Members or Owners as a result of their activities as such for any mistake of judgment, negligent or otherwise, except for their own willful misconduct or bad faith; shall have no personal liability in contract to a Member, Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; shall have no personal liability in tort to any Member, Owner or any person or entity, direct or imputed, by virtue of acts performed by them in their capacity as such,

except for their own willful misconduct or bad faith, nor for acts performed for them in their capacity as such; and shall have no personal liability arising out of the use, misuse or condition of the Subdivision, which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

9.06 Indemnity. The Members shall indemnify and hold harmless any person, his heirs and personal representatives, from and against all personal liability and all expenses, including attorneys' fees, incurred, imposed or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, instituted by any one or more Members or Owners, or any other persons or entities, to which he shall be, or shall be threatened to be, made a party by reason of the fact that he is or was a member of The Cedars Committee or an officer or assistant officer, agent or employee of The Cedars HOA, other than to the extent, if any, that such liability or expense shall be attributable to his willful misconduct or bad faith, provided that in the case of any settlement, The Cedars Committee shall have approved the settlement, which approval is not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law, by agreement, by vote of The Cedars Committee or otherwise. The indemnification as contained herein shall be paid by The Cedars Committee on behalf of the Members and shall be assessed and collectible from the Members, including Declarant, on a pro rata basis in accordance with the number of votes of each Member or of Declarant.

9.07 Fidelity Bond. The Cedars Committee may procure appropriate fidelity bond coverage for any person or entity handling funds of The Cedars HOA.

9.08 The Cedars Committee Members: The initial members of The Cedars Committee shall be as follows:

Keith Nielsen
860 East 4500 South #303
S.L.C. UT. 84107

Craig Nielsen
860 East 4500 South #303
S.L.C. UT. 84107

Ty Briggs
860 East 4500 South #303
S.L.C. UT 84107

Max Morgan
860 East 4500 South #303
S.L.C. UT. 84107

Kenneth G. Briggs
860 East 4500 South #303
S.L.C. UT. 84107

9.09 Regular Meetings. The regular annual meeting of The Cedars Committee shall be held without other notice than this bylaw, and at the same place as the annual meeting of the members. The Cedars Committee may provide by resolution the time and place, within Utah County, State of Utah, for the holding of additional regular meetings without other notice than such resolution.

9.10 Special Meetings. Special meetings of The Cedars Committee may be called by or at the request of any of the members of The Cedars Committee. The person or persons authorized to call special meetings of The Cedars Committee may fix any place, within Utah County, State of Utah, as the place for holding any special meeting of The Cedars Committee called by such person or persons. Notice of any special meeting shall be given at least five (5) days prior thereto by written notice delivered personally, or mailed to each member of The Cedars Committee at his registered address, or by telegram. If mailed, such notice shall be deemed to have been delivered when deposited in the U.S. mail so addressed, with first class postage thereon prepaid. If notice is given by telegram, such notice shall be deemed to have been delivered when the telegram is delivered to the telegraph company. Any member of The Cedars Committee may waive notice of the meeting. The attendance of a member of

The Cedars Committee at a meeting shall constitute a waiver of notice of such meeting except where a member of The Cedars Committee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

9.11 Quorum and Manner of Action. A majority of the authorized number of The Cedars Committee shall constitute a quorum for the transaction of business at any meeting of The Cedars Committee. Except as otherwise required in these Bylaws, the Articles of Incorporation, or the Declaration, the act of a majority of The Cedars Committee present at any meeting at which a quorum is present shall be the act of The Cedars Committee. The Cedars Committee shall act only as a Board, and individually members of The Cedars Committee shall have no power as such.

9.12 Compensation. No Trustee shall receive compensation for any services that he may render to the HOA as a member of The Cedars Committee; however, that a member of The Cedars Committee may be reimbursed for expenses incurred in the performance of his duties as a member of The Cedars Committee to the extent that such expenses are approved by The Cedars Committee and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the HOA other than in his capacity as a member of The Cedars Committee.

9.13 Resignation Removal. A member of The Cedars Committee may resign at any time by delivering a written resignation to either the president or The Cedars Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any member of The Cedars Committee (other than a member of The Cedars Committee appointed by the Declarant) may be removed at any time, for or without cause, by the affirmative vote of the Owners holding more than fifty (50%) of the total number of votes appurtenant to all Lots in the Development, at a special meeting of the members duly called for such purpose.

9.14 Vacancies. If vacancies shall occur in The Cedars Committee by reason of the death, resignation, or disqualification of a member of The Cedars Committee (other than a member of The Cedars Committee appointed by the Declarant), or if the authorized number of The Cedars Committee shall be increased The Cedars Committee then in office shall continue to act, and such vacancies or newly created memberships shall be filled by a vote of The Cedars Committee then in office, though less than a quorum, in any way approved by such The Cedars Committee at the meeting. Any vacancy in The Cedars Committee occurring by reason of removal of a member of The Cedars Committee appointed by the Declarant, such vacancies shall be filed by appointments to be made by the Declarant. Any member of The Cedars Committee elected or appointed hereunder to fill a vacancy shall serve for the unexpired tem of his predecessor or for the term of the newly created Cedars Committee, as the case may be.

9.15 Informal Action by The Cedars Committee. Any action that is required or permitted to be taken at a meeting of The Cedars Committee, may be taken without a meeting if a consent in writing setting forth the action so taken, shall be signed by all of The Cedars Committee.

9.16 Amendments. The provision of this Article may not be amended, modified, or repealed, unless such amendment, modification, or repeal is approved by the affirmative vote of Owners holding more than fifty percent (50%) of the total number of votes appurtenant to all Lots in the Project.

9.17 Assistant Secretaries and Assistant Treasurers. The assistant secretaries and assistant treasures, in general, shall perform such duties as shall be assigned to them by the secretary or the treasurer, respectively, or by the president of The Cedars Committee.

9.18 Compensation. No officer shall receive compensation for any services that he may render to the HOA as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of his duties as an officer to the extent such expense are approved by The Cedars Committee and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the HOA other than in his capacity as an officer.

ARTICLE X

COMMITTEES

10.01 Designation of Committees. The Cedars Committee may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. No committee member shall receive compensation for services that he may render to the HOA as a committee member; provided, however, that a committee member may be reimbursed for expenses incurred in performance of his duties as a committee member to the extent that such expenses are approved by The Cedars Committee and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the HOA other that in his capacity as committee member.

10.02 Proceeding of Committees. Each committee designated hereunder by The Cedars Committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceeding and shall regularly report such proceeding to The Cedars Committee.

10.03 Quorum and Manner of Acting. At each meeting of any committee designated hereunder by The Cedars Committee, the presence of members consisting of at least a majority of the authorized membership of such committee (but in no event less than two members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by The Cedars Committee hereunder shall act only as a committee, and the individual members thereof shall have no power as such.

10.04 Resignation Removal. Any member of any committee designated hereunder by The Cedars Committee may resign at any time by delivering a written resignation to the president, The Cedars Committee, or the presiding officer of the committee of which he is a member. Unless otherwise specified herein, such resignation shall take effect upon delivery. The Cedars Committee may at any time, for or without cause, remove any member of any committee.

10.05 Vacancies. If any vacancy shall occur in any committee designated by The Cedars Committee hereunder, due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of The Cedars Committee.

ARTICLE XI

OFFICERS

11.01 Officers. The officers of The Cedars Committee shall include a president and a secretary, and such other officers as may from time to time be appointed by The Cedars Committee.

11.02 Election, Tenure, and Qualifications. The officers shall be chosen by The Cedars Committee annually at the regular annual meeting of The Cedars Committee. In the event of failure to choose officers at such regular annual meeting of The Cedars Committee, officers may be chosen at any regular or special meeting of The Cedars Committee. Each such officer (whether chosen at a regular annual meeting of The Cedars Committee or otherwise) shall hold his office until the next ensuing regular annual meeting of The Cedars and until his successor shall have been chosen and qualified, or until his death, or until his resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any one person may hold any two or more of such offices; provided, however, that the president may not also be the secretary. No person holding two or more offices shall act in or execute any instrument in the capacity of more than one office.

11.03 Subordinate Officers. The Cedars Committee may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the HOA determine. The Cedars Committee may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities and duties. Subordinate officers need not be member of the Cedars Committee or members of the HOA.

11.04 Removal. Any officer may resign at any time by delivering a written resignation to the president or to The Cedars Committee. Any officer or agent may be removed by The Cedars Committee whenever in its judgement the best interest of the HOA will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not itself create contract rights.

11.05 Vacancies. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other case, a new office shall be created. Such vacancies or newly created offices may be filled by The Cedars Committee at any regular or special meeting.

11.06 President. The president shall be the principal executive officer of the HOA and subject to the control of The Cedars Committee. The president shall in general supervise and control all of the business and affairs of the HOA. He shall, when present, preside at all meetings of the members and of The Cedars Committee. He may sign, with the secretary or any other proper officers of the HOA hereunto authorized by The Cedars Committee, any deeds, mortgages, bonds, contracts or other instruments which The Cedars Committee has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by The Cedars Committee or by these Bylaws to some other officer or agent or the HOA, or shall be required by law to otherwise be signed or executed; and in general shall preform all duties incident to the office of president and such other duties as may be prescribed by The Cedars Committee from time to time.

11.07 Secretary. The secretary shall (a) keep the minutes of the HOA and of The Cedars Committee in one or more books provided for the purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records of the HOA; and (d) in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the president or The Cedars Committee.

11.08 Treasurer. The Treasurer, if appointed, shall; (a) have custody of and be responsible for all funds of the HOA (b) receive and give receipt for moneys due and payable to the HOA from any source whatsoever, and deposit all such money in the name of the HOA in such banks, trust companies or other depositories as shall be determined by The Cedars Committee; and (c) in general perform all

of the duties incident to the office of the treasurer and such other duties as from time to time may be assigned to him by the president or The Cedars Committee.

11.09 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meeting and in the manner of voting, form of proxies, and method of ascertaining members present shall be deemed waived if no objection thereto is made at the meeting.

11.10 Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the members may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all the members entitled to vote with respect to the subject matter thereof.

ARTICLE XII

ARCHITECTURAL REVIEW COMMITTEE

12.01 Architectural Review Committee. There is hereby established an Architectural Review Committee (ARC) for the Cedars. The ARC shall consist of five (5) members. The ARC shall have the duty and responsibility to carry out the tasks set forth under ARTICLE IV, and shall pass upon, approve or reject any plans or specifications for improvements to be made on lots in the Subdivision, and to enforce the conditions, covenants and restrictions set forth herein, and standards found in "The Cedars Design Standards", set forth herein or made an attachments hereto, so that all structures shall conform to the restrictions and general plans, of the Declarant, The Cedars HOA, and The Cedars Committee, for the improvement and development of the whole Subdivision. The ARC may act by any three (3) of its members, and the approval of any plans for the construction of homes or improvements to The Cedars must have a stamp of approval and be signed by three (3) members of the ARC.

12.02 It is intended that the Declarant shall appoint the members of the ARC and may fill any vacancies therein for so long as the Declarant owns any lots or other real property in the Subdivision. Declarant shall also have the right, at any time, at its sole discretion, to permit one or more of the members of the ARC to be appointed by The Cedars Committee. Any member of the ARC may resign from the Committee, at any time, upon written notice to the other members of the ARC. At such time as the Declarant shall have relinquished authority to appoint members of the Cedars Committee, (See Section 9.02) the members of the ARC shall be appointed by The Cedars Committee, in accordance with the provisions of ARTICLE X.

12.03 The Initial Members of the Architectural Review Committee shall consist of:

Kenneth G. Briggs Keith Neilsen Craig Neilsen Ty Briggs Max Morgan

ARTICLE XIII

INDEMNIFICATION

13.01 Indemnification - Third-Party Actions. The HOA shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the HOA) by reason of the fact he is or was a member of The Cedars Committee or officer of the HOA, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by, in the connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the HOA, and with respect to any criminal action or proceeding, that the person had reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by any adverse judgement, settlement, or upon a plea of nolo contendere or its equivalent, shall not, or itself, create presumption that the person did not act in good faith and a manner which he reasonably believed to be in or not opposed to the best interest of the HOA or with respect to any criminal action or proceeding that the person had reasonable cause to believe that his conduct was unlawful.

13.02 Indemnification - Association Actions. The HOA shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the HOA by reason of the fact that he is or was a member of The Cedars Committee or officer of the HOA, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the HOA; provided, however, that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or intentional misconduct in the performance of his duty to the HOA, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability and in the view of all circumstances of the case, such person is fairly and reasonably entitled to the indemnity of such expenses which such court shall deem proper.

13.03 Determination. To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to the in Sections 1 or 2 of Article XIII hereof, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Sections 1 or 2 of Article XIII hereof shall be made by the HOA only upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Sections 1 or 2 hereof. Such determination shall be made either (a) by The Cedars Committee by a majority vote of disinterested members of The Cedars Committee or (b) by independent legal counsel in written opinion, or (c) by the affirmative vote of more than fifty percent (50%) of the total votes of the HOA at a meeting duly called for such purpose.

13.04 Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this Article may be paid by the HOA in advance of the final disposition of such action, suit, or proceeding upon a majority vote of a quorum of The Cedars Committee and upon receipt of an undertaking by or on behalf of the person to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the HOA as authorized by this article or otherwise.

13.05 Scope of Indemnification. The indemnification provided for by this article shall not be deemed exclusive of any other right to which those indemnified may be entitled under any provision in the HOA's Articles of Incorporation, Bylaws, agreements, vote of disinterested members or The

Cedars Committee, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. The indemnification authorized by this article shall apply to all present and future members of The Cedars Committee, officers, employees, and agents of the HOA shall continue as to such persons who cease to be benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

13.06 Insurance. The HOA may purchase and maintain insurance on behalf of any person who was or is a member of The Cedars Committee, officer, employee, or agent of the HOA, or who was or is serving the request of the HOA as a member of The Cedars Committee, director, officer, employee, or agent of another corporation, entity, or enterprise (whether for profit or not for profit), against any liability asserted against him incurred by him in any such capacity or arising out of his status as such, whether or not the HOA would have the power to indemnify him against such liability under the laws of the State of Utah, as the same may hereafter be amended or modified.

13.07 Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this article shall be expenses of the HOA and shall be paid with funds from the Common Expense Fund referred to in the Declaration.

ARTICLE XIV

FISCAL YEAR

14.01 Fiscal Year. The fiscal year of the HOA shall begin on the 1st day of January of each year and shall end on the 31st day of December next following; provided, however, that the first fiscal year shall begin on the date of incorporation.

ARTICLE XV

ASSESSMENTS

15.01 Agreement to Pay Assessments. The Declarant for each Unit within the Development, and for and as the Owner of the Property and every part thereof, hereby covenants and each Owner of any Unit(s) by the acceptance of a deed, contract, or other instrument of conveyance and transfer therefor, whether or not it be so expressed in said deed, contract, or other instrument, shall be deemed to covenant and agree with each other Owner and with the Association to pay to the Association all assessments made by the Association for the purpose provided in this Declaration. Such assessments shall be fixed, established, and collected from to time as provided in the Article IX.

15.02 Annual Assessments. Annual assessments shall be computed by The Cedars Committee of the Association and assessed against all Units in the Development based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out or connected with the maintenance and operation of the Common Areas.

Where such reserve is to be funded by monthly payments rather than extraordinary special assessment, and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such shall constitute the Common Expense, and all funds received from assessments under this Section shall be part of the Common Expense Fund.

15.03 Initial Annual Assessment. The initial annual assessment based upon current landscape and improvement estimates shall be Six-Hundred Dollars ($396.00) per Unit (See Attachment 3). Changes to the initial annual assessment shall be made by The Cedars Committee of the Association and be

based upon the Common Expenses which shall also be adjusted for current costs and inflation. A summary of the tasks to be performed by the HOA are an estimate of costs for each task as set forth on attachment 3.

15.04 Rate and Date of Assessment. The Common Expenses shall be apportioned and assessed to all Owners at a uniform rate which shall be in proportion to the number of Units in the Development.

15.05 Annual Budget. Annual assessments shall be made on a calendar year basis; provided the first annual assessment shall be for the balance of the calendar year remaining after the date fixed by the Association as the date of commencement of the Assessments. The association shall give written notice to each Owner as to the proposed budget and the amount of the annual assessment (hereinafter "Annual Assessment") with respect to his or her Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the calendar year. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessments for the upcoming calendar year and the major guideline under which the Development shall be operated during such annual period.

15.06 Payment. Each Annual Assessment shall be due and payable in monthly installments on the 1st day of each and every month and no separate notices of such monthly installment shall be required. Each monthly assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within (30) days after such date. In addition, in the event that any installment of the Annual Assessment is not paid within thirty (30) days of the date such installment becomes due, the Association may, at its option, and upon thirty (30) days' prior written notice to the Owner accelerate the due date for all remaining Annual Assessment installments for the calendar year and all accrued unpaid interest thereon. Payment of the Annual Assessment installments so accelerated shall be due at the expiration of said thirty (30) day notice period and installments so accelerated shall be due at the expiration of said thirty (30) day notice period and interest shall accrue on the entire sum at the rate of eighteen percent (18%) per annum from such date until paid in full. The failure of the Association to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provision of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date thirty (30) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

15.07 Inadequate Funds. In the event that the Common Expense Fund proves inadequate at anytime for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedures set forth in " Special Assessment" below, except that the vote of therein specified shall be necessary.

15.08 Special Assessments. In addition to the Annual Assessments authorized by this Article, The Cedars Committee on behalf of the Association may, levy at any time and from time to time, upon the affirmative vote of at least fifty-one percent (51%) of the members of the Association, special assessments (hereinafter "Special Assessments"), payable over such periods as the Association may determine, for the purpose of defraying.

ARTICLE XVI

RULES AND REGULATIONS

16.01 The Cedars Committee may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the project; provided, however, that such rules and regulations shall not be inconsistent with the right and duties set forth in the Articles of Incorporation, the Declaration, or these Bylaws. The members shall be provided with copies of all rules and regulations adopted by The Cedars Committee, and with copies of all amendments and revisions thereof.

ARTICLE XVII

AMENDMENTS

17.01 Except as otherwise provided by law, the Articles of Incorporation, the Declaration, or these Bylaws, may be amended, modified, or repealed and new bylaws may be made and adopted by the members upon the affirmative vote of more than fifty percent (50%) of the total votes of the HOA; provided, however, that such actions shall not be effective unless and until a written instrument setting forth (a) the amended, modified, repealed, or new bylaw, (b) the number of votes cast in favor of such action, and (c) the total votes of the HOA, shall have been executed and verified by the current president of the HOA and mailed to each member of the HOA.

The Cedars Committee

Date 16, Feb 2001

IN WITNESS WHEREOF, the undersigned has executed this document on this 16th day of FEB, 2001.

Lone Peak Links, L.L.C.

Signature 2/16/01 Date

Notary Public
JENNIFER BORG
9 Exchange Place, Suite 810
Salt Lake City, Utah 84111
My Commission Expires
February 22, 2003
State of Utah

ENT 26838:2006 PG 1 of 10
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2006 Mar 07 2:21 pm FEE 374.00 BY CS
RECORDED FOR MERIDIAN TITLE COMPANY
ELECTRONICALLY RECORDED

After Recordation, return to:

AMENDMENT TO CC&R'S AND HOME OWNER BYLAWS FOR PLATS B,C,D,F,I

The Cedars Home Owners Association
10732 Congressional
Cedar Hills, UT 84062

AMENDMENT TO THE CEDARS PLANNED UNIT DEVELOPMENT DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS & HOME OWNER BYLAWS

Pursuant to the provisions of Section 17.01 of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS & HOME OWNER BYLAWS, FOR THE CEDARS PLANNED UNIT DEVELOPMENT, PLATS B,C,D,F,I made the 16th day of February, 2001, by "Lone Peak Links, L.L.C.", and recorded on March 7, 2001 as Entry No. 44111-1997 at Book 0000 Page 0000 of the official records of the County Recorder of Utah County, State of Utah,(the "Declaration"), the majority of Lot owners within The Cedars Planned Unit Development, Plats "B", "C", "D", "F", "I" (the "Owners"), hereby modify the Declaration, as follows:

1. **BACKGROUND**. Section 17.01 of the "Declaration" permits the Owners by a vote of more than fifty percent (50%) of the total votes of the HOA to modify, repeal, or amend the Declaration. Given, therefore, the consensus of over fifty percent (50%) of the total votes of the HOA, the Owners modify, repeal, and amend the Declaration as provided herein.

2. **CONSIDERATION**. The Owners acknowledge the proffer and receipt of good and valuable consideration for this Amendment.

3. **MODIFICATION, REPEAL, and AMENDMENT**. The following sections of the Declaration are modified, repealed, and amended as follows:

6.01 Breach of Violation of Covenant. In the event of a violation or breach or attempted violation or breach of any of these covenants, restrictions, limitations, conditions, or agreements, as they may be amended from time to time, by any person or concern claiming by, through or under the Declarant, or by virtue of any judicial proceedings, The Cedars HOA or the owner of any Lot in the Subdivision, jointly or severally, shall be authorized to take such legal or administrative action as it deems appropriate, consistent with the laws of the State of Utah, to enforce said Covenants, Conditions, and Restrictions. This authorization, however, shall not extend to any dispute concerning or challenge to a proper amendment of these Covenants, Conditions, and Restrictions.

6.02 Recovery. In the event that The Cedars HOA, The Cedars Committee, or any property owners in the subdivision are successful in prosecuting any violation of these restrictive covenants, as they may be amended from time to time, such successful party may recover (in addition to any other damages) costs, and expenses of the litigation, including reasonable attorney's fees from the party found to be in violation thereof.

9.02 Election and Service. Election of the members of the Committee shall be conducted at the annual meeting of the lot owners. Election shall be by majority vote cast by all owners or proxies in attendance at the meeting. The term of those members elected shall be for the remainder of the year in which they are elected and until the next annual meeting of the HOA. The number of the members of The Cedars Committee may be changed at any annual meeting. Any member of The Cedars Committee may resign from the Committee, at any time, upon written notice to the other members of The Cedars Committee.

9.04 Duties of the Cedars Committee. The rights, duties and functions of The Cedars Committee shall be exercised by Declarant until the date the Articles are filed with the State of Utah, after which the initial Cedars Committee, named in Section 9.8 below, shall serve until the majority of lot owners of the HOA vote in new members from among themselves. The Cedars Committee shall

have all the powers, duties and responsibilities as are now or may hereafter be provided by this Declaration, the Articles and Bylaws, including, but not limited to, the following:

(1) To make and enforce all rules and regulations covering the operation and maintenance of the Subdivision.

(2) To maintain those common areas in the Subdivision listed below.
a. The common park
b. All private roads and appurtenant landscape areas.
c. The fifty foot buffer strip on the east side of Canyon Rd.

(3) To enforce the conditions, covenants, restrictions, and agreements set forth herein and as may be hereafter adopted by the HOA.

(4) To serve as the Architectural Review Committee and perform the duties and tasks delegated thereto at any time no ARC shall exist.

(5) To enter into contracts, deeds, leases and/or other written instructions or documents and to authorize the execution and delivery thereof by the appropriate officers.

(6) To assess and collect fees from its Members to cover the costs of the maintenance of the common areas of the Subdivision and administration of The Cedars HOA,

(7) To open bank accounts on behalf of The Cedars HOA and to designate the signatures thereof.

(8) To bring, prosecute and settle litigation for itself, The Cedars HOA, and the Subdivision.

(9) To own, purchase, or lease, hold and sell, or otherwise dispose of, on behalf of the Members or Owners, items of personal property necessary or convenient to the management of the business and affairs of The Cedars HOA or for the operation of the Subdivision, including, without limitation, furniture, furnishings, fixtures, maintenance equipment, appliances, and office supplies.

(10) To keep adequate books and records.

(11) To do all other acts necessary for the operation and maintenance of the Subdivision and the performance of its duties as agent for The Cedars HOA, including the maintenance and repair of any portion of the subdivision and common improvements therein as deemed necessary to protect or preserve the Subdivision.

9.13 Resignation or Removal. A member of The Cedars Committee may resign at any time by delivering a written resignation to either the president of the HOA or The Cedars Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any member of The Cedars Committee may be removed at any time, for or without cause, by the affirmative vote of the Owners holding more than fifty percent (50%) of the total number of votes appurtenant to all Lots in the Development, at a special meeting of the members duly called for such purpose.

9.14 Vacancies. If vacancies shall occur in The Cedars Committee by reason of the death, resignation, or disqualification of a member of The Cedars Committee, or if the authorized number of The Cedars Committee shall be increased, The Cedars Committee members then in office shall continue to act, and such vacancies or newly created memberships shall be filled by a vote of The Cedars Committee members then in office, though less than a quorum, in any way approved by such Committee members at the meeting during which such a vote is taken. Any member of The Cedars Committee elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor or for the term of the newly created Cedars Committee membership, as the case may be.

12.01 Architectural Review Committee. There is hereby established an Architectural Review Committee (ARC) for the Cedars. The ARC shall consist of five (5) members appointed by The Cedars Committee. The ARC shall have the duty and responsibility to carry out the tasks set forth under ARTICLE IV, and shall pass upon, approve, or reject any plans or specifications for improvements to be made on lots in the Subdivision, and to enforce the conditions, covenants, and restrictions set forth herein, and the standards found in "The Cedars Design Standards" set forth herein or made an attachments hereto, so that all structures shall conform to the restrictions and general plans of The Cedars HOA and The Cedars Committee, for the improvement and development of the whole Subdivision. The ARC may act by any three (3) of its members, and the approval of any plans for the construction of homes or improvements to The Cedars must have a stamp of approval from, and be signed by three (3) members of, the ARC.

12.02 The members of the ARC shall be appointed by The Cedars Committee, in accordance with the provisions of ARTICLE X. Any member of the ARC may resign from the Committee, at any time, upon written notice to The Cedars Committee.

4. Effective immediately, the members (and offices) of the Cedars Committee shall be

President Jeffrey Welch 10732 Congressional Cedar Hills, UT 84062	Secretary TK Plant 10737 Congressional Cedar Hills, UT 84062	Member Lynn Spencer 10695 Spyglass Cedar Hills, UT 84062
Member Kelton Busby 10752 Shinnecock Cedar Hills, UT 84062	Member Lynette Schloer 3999 Centennial Cedar Hills, UT 84062	

until the soonest an election can be reasonably held, on which date a general election will be held for all five positions of The Cedars Committee. Election shall be by majority vote cast by all owners or proxies in attendance at the meeting. The term of those members elected shall be for the remainder of the year in which they are elected and until the next annual meeting of the HOA.

5. The Cedars Committee shall permit the Declarant to serve as three (3) of the five (5) Architectural Review Committee positions for 'Plat I' only contingent upon the Declarant:
   a. Executing, verifying and mailing this amendment to each Member of the HOA with a postmark of no later than October 7, 2005.
   b. Enforcing the Conditions, Covenants, and Restrictions, and the standards found in "The Cedars Design Standards", so that all structures in 'Plat I' shall conform to the restrictions and general plans of The Cedars HOA.

6. The Declarant's right to amend as described in Section 6.05 of the Declaration shall be limited to 'Plat I'.

7. **SCOPE.** All provisions of the Declaration remain in effect except as modified, repealed, or amended by this instrument.

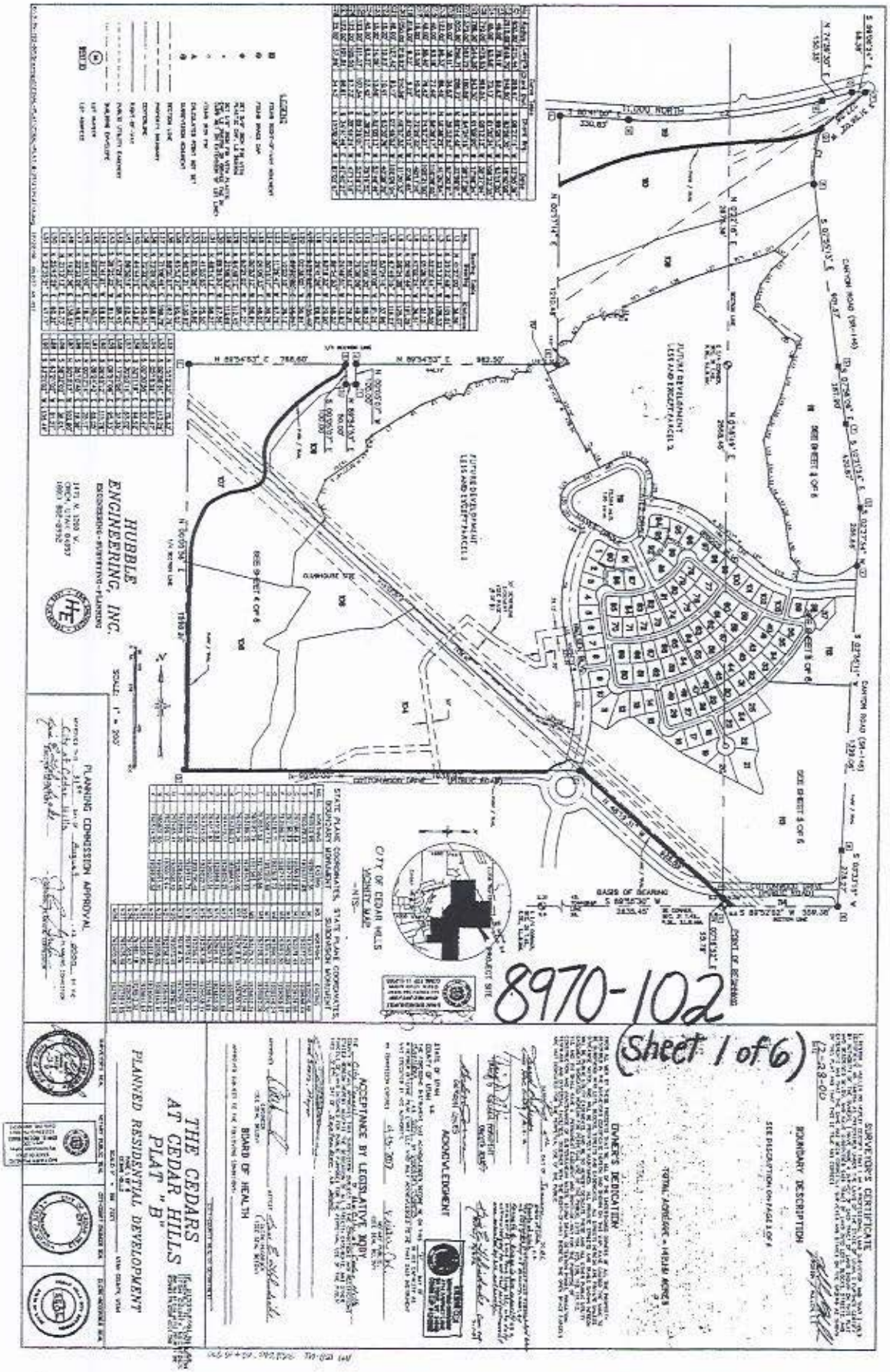
VOTING: Aye: 183 Nay: 2 Total Votes in the HOA: 284

Executed and Verified this 6 day of Oct, 2005,

Craig D Nielsen

By: CRAIG D. NIELSEN
President, Cedars
Homeowners Association

In the event that the document titled CEDARS PLANNED UNIT DEVELOPMENT AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS & HOME OWNER BYLAWS, FOR THE CEDARS PLANNED UNIT DEVELOPMENT, PLATS B,C,D,F,I made on or about September 2004, by "Lone Peak Links, L.L.C.", and mailed to lot owners on or about that time, and hosted on the website of the current management company, Field Master Community Management, (the "Declaration"), is determined by a court of competent jurisdiction to be the valid and enforceable DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS & HOME OWNER BYLAWS, for plats B,C,D,F, I of THE CEDARS PLANNED UNIT DEVELOPMENT, the Owners adopt the following amendment:


THE CEDARS
AT CEDAR HILLS
PLAT "B"
PLANNED RESIDENTIAL DEVELOPMENT
HUBBLE
ENGINEERING, INC.
PLANNING COMMISSION APPROVAL
BOARD OF HEALTH
ACCEPTANCE BY LEGISLATIVE BODY
ACKNOWLEDGEMENT
OWNER'S DEDICATION
SURVEYOR'S CERTIFICATE
BOUNDARY DESCRIPTION
CITY OF CEDAR HILLS
VICINITY MAP
-NTS-
BASIS OF BEARING
POINT OF BEGINNING
8970-102
(Sheet 1 of 6)

BOUNDARY DESCRIPTION

A PARCEL OF LAND LOCATED IN THE EAST 1/2 OF SECTION 31 AND IN THE WEST 1/2 OF SECTION 32 OF TOWNSHIP 4 SOUTH, RANGE 2 EAST, S.L.B.& M., UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS MONUMENT MARKING THE SOUTHEAST CORNER OF SAID SECTION 31, TOWNSHIP 4 SOUTH, RANGE 2 EAST, SAID POINT ALSO BEING THE REAL POINT OF BEGINNING.

THENCE N. 00°18'52" E. A DISTANCE OF 55.79 FEET; THENCE N. 45°15'31" W. A DISTANCE OF 329.89 FEET; THENCE WEST A DISTANCE OF 1939.83 FEET; THENCE N. 00°05'55" E. A DISTANCE OF 1889.31 FEET; THENCE N. 89°54'53" E. A DISTANCE OF 768.60 FEET; THENCE S. 00°05'07" E. A DISTANCE OF 100.00 FEET; THENCE N. 89°54'53" E. A DISTANCE OF 50.00 FEET; THENCE N. 00°05'07" W. A DISTANCE OF 100.00 FEET; THENCE N. 89°54'53" E. A DISTANCE OF 562.50 FEET; THENCE N. 00°17'14" E. A DISTANCE OF 1218.18 FEET TO THE SOUTH SIDE OF AN U.D.O.T. RIGHT-OF-WAY; THENCE ALONG SAID R.O.W. THE FOLLOWING 3 COURSES: 1) S. 88°41'00" E. A DISTANCE OF 330.82 FEET; 2) THENCE NORTHEASTERLY A DISTANCE OF 949.70 FEET ALONG THE ARC OF A 2915.02-FOOT RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 18°40'00", SUBTENDED BY A CHORD THAT BEARS N. 83°58'30" E. A DISTANCE OF 945.50 FEET; 3) THENCE N. 74°33'30" E. A DISTANCE OF 150.55 FEET; THENCE S. 89°06'24" E. A DISTANCE OF 88.38 FEET TO AN U.D.O.T. RIGHT-OF-WAY; THENCE ALONG SAID R.O.W. THE FOLLOWING 8 COURSES: 1) S. 51°26'02" W. A DISTANCE OF 277.28 FEET; 2) THENCE SOUTHWESTERLY A DISTANCE OF 271.44 FEET ALONG THE ARC OF A 650.00-FOOT RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 23°55'36", SUBTENDED BY A CHORD THAT BEARS S. 06°27'14" W. A DISTANCE OF 269.47 FEET; 3) THENCE S. 07°55'13" E. A DISTANCE OF 901.87 FEET TO A FOUND R.O.W. MONUMENT; 4) THENCE S. 07°56'08" E. A DISTANCE OF 287.50 FEET TO A FOUND R.O.W. MONUMENT; 5) THENCE S. 10°31'24" E. A DISTANCE OF 420.87 FEET TO A FOUND R.O.W. MONUMENT; 6) THENCE S. 02°37'34" W. A DISTANCE OF 266.66 FEET; 7) THENCE S. 07°35'11" W. A DISTANCE OF 1395.06 FEET TO A FOUND R.O.W. MONUMENT; 8) THENCE S. 05°17'15" W. A DISTANCE OF 278.27 FEET; THENCE S. 59°52'02" W. A DISTANCE OF 555.38 FEET TO THE REAL POINT OF BEGINNING, CONTAINING 189.86 ACRES OF LAND.

LESS AND EXCEPTING THE FOLLOWING TWO (2) PARCELS

PARCEL #1

A PARCEL OF LAND LOCATED IN THE EAST 1/2 OF SECTION 31 OF TOWNSHIP 4 SOUTH, RANGE 2 EAST, S.L.B.& M., UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS MONUMENT MARKING THE SOUTHEAST CORNER OF SAID SECTION 31, TOWNSHIP 4 SOUTH, RANGE 2 EAST; THENCE N. 00°18'49" E. ALONG THE SECTION LINE A DISTANCE OF 968.89 FEET; THENCE WEST A DISTANCE OF 135.34 FEET TO THE REAL POINT OF BEGINNING.

THENCE N. 89°59'33" W. A DISTANCE OF 155.36 FEET; THENCE N. 45°53'00" W. A DISTANCE OF 1408.60 FEET; THENCE N. 41°27'00" E. A DISTANCE OF 36.59 FEET; THENCE N. 25°22'49" W. A DISTANCE OF 101.51 FEET; THENCE N. 23°13'19" E. A DISTANCE OF 108.53 FEET; THENCE N. 55°27'49" E. A DISTANCE OF 193.01 FEET; THENCE N. 52°20'44" E. A DISTANCE OF 55.55 FEET; THENCE N. 01°39'04" W. A DISTANCE OF 51.15 FEET; THENCE N. 47°03'24" E. A DISTANCE OF 38.51 FEET; THENCE N. 56°45'16" E. A DISTANCE OF 181.26 FEET; THENCE N. 58°34'36" E. A DISTANCE OF 135.67 FEET; THENCE N. 67°49'19" E. A DISTANCE OF 116.27 FEET; THENCE S. 53°04'16" E. A DISTANCE OF 37.55 FEET; THENCE NORTHEASTERLY A DISTANCE OF 78.19 FEET ALONG THE ARC OF A 48.00-FOOT RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 93°18'50", SUBTENDED BY A CHORD THAT BEARS N. 69°09'13" E. A DISTANCE OF 69.83 FEET; THENCE N. 23°49'06" E. A DISTANCE OF 61.26 FEET; THENCE N. 74°05'30" E. A DISTANCE OF 89.23 FEET; THENCE N. 76°26'08" E. A DISTANCE OF 49.38 FEET; THENCE S. 81°45'45" E. A DISTANCE OF 70.31 FEET; THENCE NORTHEASTERLY A DISTANCE OF 83.68 FEET ALONG THE ARC OF A 45.00-FOOT RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 106°32'35", SUBTENDED BY A CHORD THAT BEARS N. 61°30'36" E. A DISTANCE OF 72.13 FEET; THENCE N. 24°46'51" E. A DISTANCE OF 42.83 FEET; THENCE N. 89°54'53" E. A DISTANCE OF 68.23 FEET; THENCE S. 26°41'28" E. A DISTANCE OF 478.94 FEET; THENCE N. 63°18'32" E. A DISTANCE OF 20.00 FEET; THENCE S. 26°41'28" E. A DISTANCE OF 99.93 FEET; THENCE S. 83°21'02" W. A DISTANCE OF 125.49 FEET; THENCE SOUTHWESTERLY A DISTANCE OF 100.55 FEET ALONG THE ARC OF A 122.00-FOOT RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 47°13'16", SUBTENDED BY A CHORD THAT BEARS S. 59°44'24" W. A DISTANCE OF 97.73 FEET; THENCE S. 02°38'05" W. A DISTANCE OF 56.94 FEET; THENCE SOUTHEASTERLY A DISTANCE OF 101.51 FEET ALONG THE ARC OF A 122.00-FOOT RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 47°40'27", SUBTENDED BY A CHORD THAT BEARS S. 34°41'49" E. A DISTANCE OF 98.61 FEET; THENCE S. 58°32'02" E. A DISTANCE OF 38.04 FEET; THENCE SOUTHEASTERLY A DISTANCE OF 37.58 FEET ALONG THE ARC OF A 25.00-FOOT RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 87°02'47", SUBTENDED BY A CHORD THAT BEARS S. 15°00'39" E. A DISTANCE OF 34.43 FEET; THENCE SOUTHWESTERLY A DISTANCE OF 478.55 FEET ALONG THE ARC OF A 715.00-FOOT RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 38°31'04", SUBTENDED BY A CHORD THAT BEARS S. 29°12'12" W. A DISTANCE OF 469.64 FEET; THENCE S. 10°03'10" E. A DISTANCE OF 39.15 FEET; THENCE S. 10°03'12" E. A DISTANCE OF 223.52 FEET; THENCE SOUTHEASTERLY A DISTANCE OF 244.28 FEET ALONG THE ARC OF A 780.00-FOOT RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 17°56'24", SUBTENDED BY A CHORD THAT BEARS S. 01°09'02" E. A DISTANCE OF 243.30 FEET TO THE REAL POINT OF BEGINNING. CONTAINING 31.47 ACRES OF LAND.

PARCEL #2

A PARCEL OF LAND LOCATED IN THE EAST 1/2 OF SECTION 31 AND IN THE WEST 1/2 OF SECTION 32 OF TOWNSHIP 4 SOUTH, RANGE 2 EAST, S.L.B.& M., UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS MONUMENT MARKING THE SOUTHEAST CORNER OF SAID SECTION 31, TOWNSHIP 4 SOUTH, RANGE 2 EAST; THENCE N. 00°18'49" E. ALONG THE SECTION LINE A DISTANCE OF 1569.53 FEET; THENCE EAST A DISTANCE OF 306.23 FEET TO THE REAL POINT OF BEGINNING.

THENCE NORTHWESTERLY A DISTANCE OF 182.75 FEET ALONG THE ARC OF A 370.00-FOOT RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 28°17'56", SUBTENDED BY A CHORD THAT BEARS N. 64°24'15" W. A DISTANCE OF 180.89 FEET; THENCE N. 50°15'17" W. A DISTANCE OF 102.90 FEET; THENCE N. 50°15'17" W. A DISTANCE OF 33.29 FEET; THENCE N. 50°15'17" W. A DISTANCE OF 166.37 FEET; THENCE NORTHWESTERLY A DISTANCE OF 290.71 FEET ALONG THE ARC OF A 505.00-FOOT RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 32°59'01", SUBTENDED BY A CHORD THAT BEARS N. 65°44'48" W. A DISTANCE OF 286.72 FEET; THENCE NORTHWESTERLY A DISTANCE OF 38.11 FEET ALONG THE ARC OF A 25.00-FOOT RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 87°20'50", SUBTENDED BY A CHORD THAT BEARS N. 39°33'52" W. A DISTANCE OF 34.53 FEET; THENCE N. 04°06'33" E. A DISTANCE OF 48.07 FEET; THENCE NORTHWESTERLY A DISTANCE OF 88.37 FEET ALONG THE ARC OF A 122.00-FOOT RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 41°30'04", SUBTENDED BY A CHORD THAT BEARS N. 16°38'38" W. A DISTANCE OF 86.45 FEET; THENCE N. 50°53'12" W. A DISTANCE OF 58.84 FEET; THENCE SOUTHWESTERLY A DISTANCE OF 111.37 FEET ALONG THE ARC OF A 122.00-FOOT RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 52°18'13", SUBTENDED BY A CHORD THAT BEARS S. 89°25'01" W. A DISTANCE OF 107.54 FEET; THENCE S. 63°21'02" W. A DISTANCE OF 81.27 FEET; THENCE N. 28°41'38" W. A DISTANCE OF 99.53 FEET; THENCE S. 63°18'32" W. A DISTANCE OF 20.00 FEET; THENCE N. 26°41'28" W. A DISTANCE OF 431.00 FEET; THENCE N. 64°49'12" E. A DISTANCE OF 112.45 FEET; THENCE N. 25°10'48" W. A DISTANCE OF 15.36 FEET; THENCE NORTHWESTERLY A DISTANCE OF 14.09 FEET ALONG THE ARC OF A 15.00-FOOT RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 53°48'49", SUBTENDED BY A CHORD THAT BEARS N. 52°05'13" W. A DISTANCE OF 13.58 FEET; THENCE NORTHWESTERLY A DISTANCE OF 82.27 FEET ALONG THE ARC OF A 45.00-FOOT RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 73°15'52", SUBTENDED BY A CHORD THAT BEARS N. 39°31'17" W. A DISTANCE OF 67.42 FEET; THENCE NORTHEASTERLY A DISTANCE OF 93.18 FEET ALONG THE ARC OF A 45.00-FOOT RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 118°38'05", SUBTENDED BY A CHORD THAT BEARS N. 53°36'17" E. A DISTANCE OF 77.40 FEET; THENCE N. 32°08'53" E. A DISTANCE OF 113.89 FEET; THENCE N. 58°14'13" E. A DISTANCE OF 48.27 FEET; THENCE S. 41°03'55" E. A DISTANCE OF 25.50 FEET; THENCE NORTHEASTERLY A DISTANCE OF 88.40 FEET ALONG THE ARC OF A 48.00-FOOT RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 105°31'00", SUBTENDED BY A CHORD THAT BEARS N. 74°57'37" E. A DISTANCE OF 76.43 FEET; THENCE SOUTHEASTERLY A DISTANCE OF 10.55 FEET ALONG THE ARC OF A 15.00-FOOT RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 40°17'18", SUBTENDED BY A CHORD THAT BEARS S. 72°25'32" E. A DISTANCE OF 10.33 FEET; THENCE NORTHEASTERLY A DISTANCE OF 9.22 FEET ALONG THE ARC OF A 818.00-FOOT RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 0°38'45", SUBTENDED BY A CHORD THAT BEARS N. 87°45'17" E. A DISTANCE OF 9.22 FEET; THENCE N. 01°55'28" W. A DISTANCE OF 45.89 FEET; THENCE N. 66°15'31" E. A DISTANCE OF 130.92 FEET; THENCE N. 83°53'37" E. A DISTANCE OF 65.00 FEET; THENCE N. 88°01'57" E. A DISTANCE OF 187.78 FEET; THENCE N. 71°08'45" E. A DISTANCE OF 199.78 FEET; THENCE N. 75°35'45" E. A DISTANCE OF 86.87 FEET; THENCE N. 70°32'16" E. A DISTANCE OF 90.24 FEET; THENCE N. 84°44'12" E. A DISTANCE OF 43.93 FEET; THENCE S. 58°50'16" E. A DISTANCE OF 92.43 FEET; THENCE S. 47°29'33" W. A DISTANCE OF 88.45 FEET; THENCE S. 39°35'25" W. A DISTANCE OF 31.27 FEET; THENCE S. 21°41'21" W. A DISTANCE OF 59.55 FEET; THENCE S. 05°26'17" W. A DISTANCE OF 55.17 FEET; THENCE SOUTHEASTERLY A DISTANCE OF 210.92 FEET ALONG THE ARC OF A 1050.00-FOOT RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 11°30'33", SUBTENDED BY A CHORD THAT BEARS S. 48°57'33" E. A DISTANCE OF 210.56 FEET; THENCE SOUTHEASTERLY A DISTANCE OF 10.55 FEET ALONG THE ARC OF A 15.00-FOOT RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 40°38'39", SUBTENDED BY A CHORD THAT BEARS S. 63°30'36" E. A DISTANCE OF 10.41 FEET; THENCE SOUTHEASTERLY A DISTANCE OF 127.43 FEET ALONG THE ARC OF A 48.00-FOOT RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 152°06'04", SUBTENDED BY A CHORD THAT BEARS S. 07°45'03" E. A DISTANCE OF 93.17 FEET; THENCE S. 44°11'02" E. A DISTANCE OF 16.21 FEET; THENCE S. 20°33'08" W. A DISTANCE OF 46.91 FEET; THENCE S. 14°21'36" W. A DISTANCE OF 138.24 FEET; THENCE S. 21°15'13" W. A DISTANCE OF 82.70 FEET; THENCE S. 25°43'29" W. A DISTANCE OF 60.32 FEET; THENCE S. 23°30'21" W. A DISTANCE OF 47.17 FEET; THENCE S. 15°12'33" W. A DISTANCE OF 75.53 FEET; THENCE S. 09°58'35" E. A DISTANCE OF 113.39 FEET; THENCE S. 08°16'59" E. A DISTANCE OF 57.47 FEET; THENCE S. 00°30'36" E. A DISTANCE OF 57.47 FEET; THENCE S. 32°11'19" E. A DISTANCE OF 88.51 FEET; THENCE S. 20°30'14" E. A DISTANCE OF 65.03 FEET; THENCE S. 17°21'08" E. A DISTANCE OF 37.35 FEET; THENCE S. 09°57'06" E. A DISTANCE OF 85.33 FEET; THENCE S. 06°45'12" E. A DISTANCE OF 11.79 FEET; THENCE S. 38°24'42" E. A DISTANCE OF 82.06 FEET; THENCE S. 11°26'47" W. A DISTANCE OF 67.78 FEET TO THE REAL POINT OF BEGINNING, CONTAINING 24.70 ACRES OF LAND.

8970-102 sheet 2 of 6

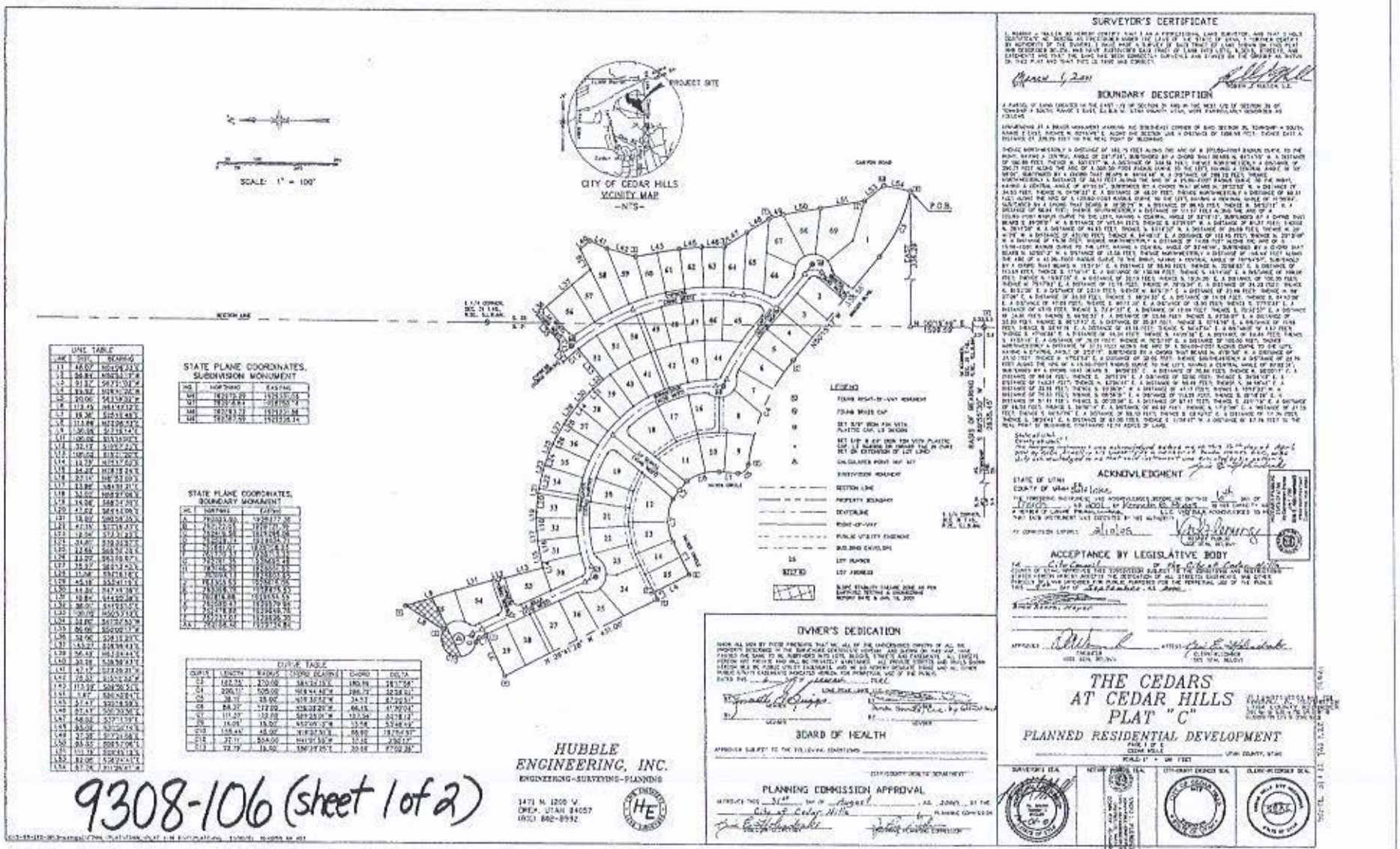
HUBBLE
ENGINEERING, INC.
ENGINEERING-SURVEYING-PLANNING

1473 N. 1200 W.
OREM, UTAH 84057
(801) 802-8992

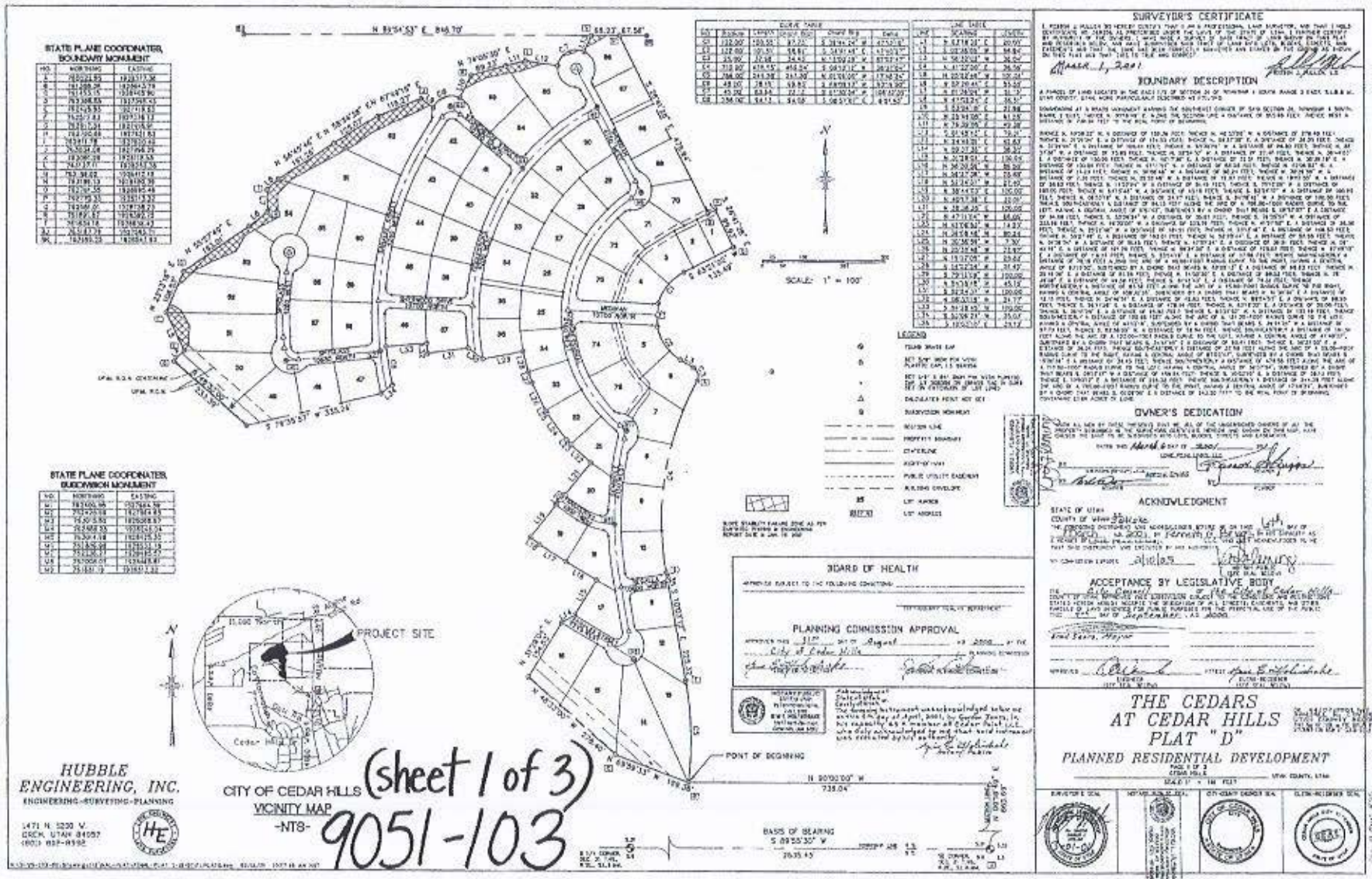
LAND SURVEYOR

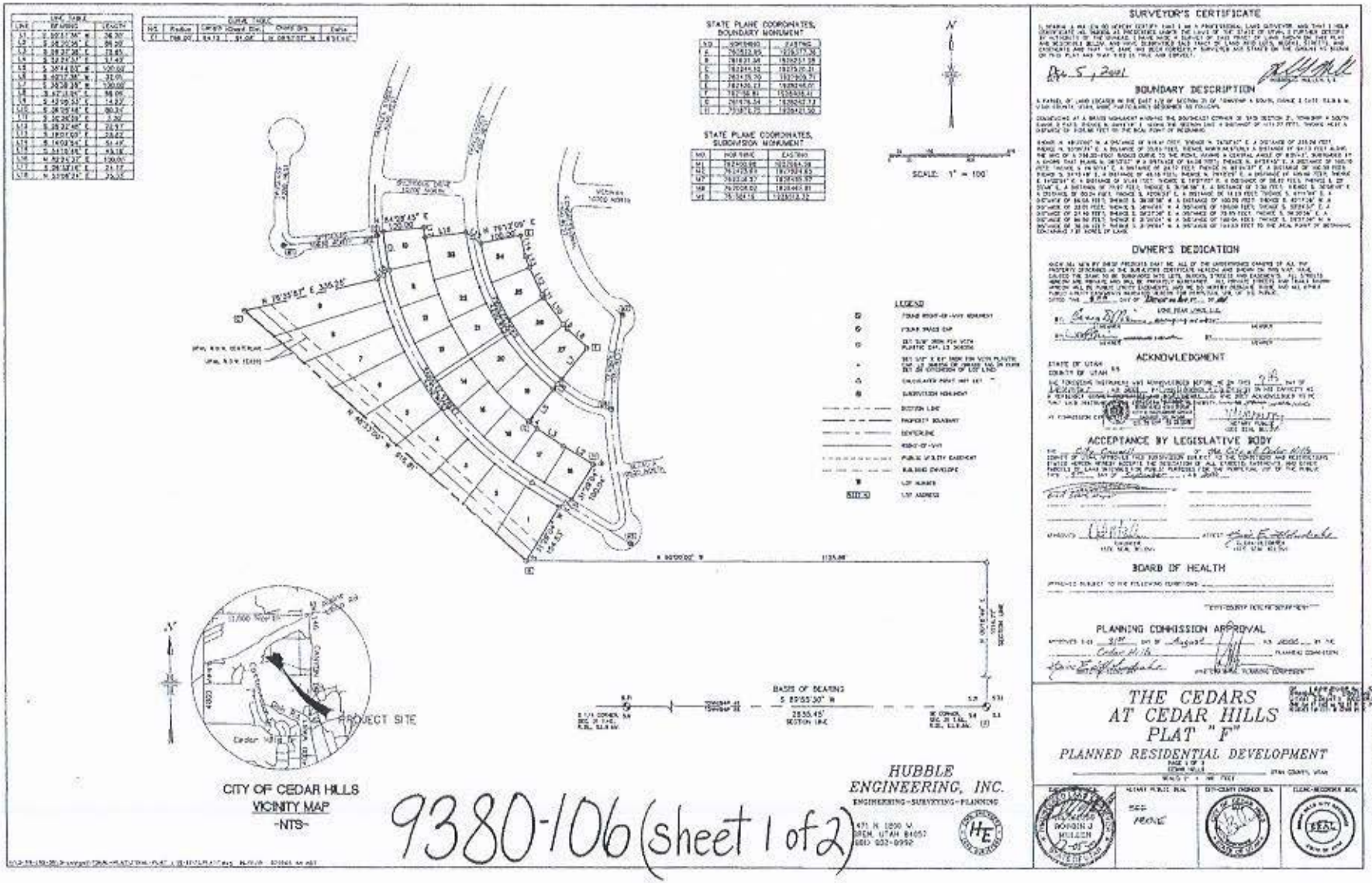
APPROVED THIS 23 DAY OF Feb. A.D. 2006

THE CEDARS
AT CEDAR HILLS
PLAT "B"
PLANNED RESIDENTIAL DEVELOPMENT
PAGE 3 OF 8



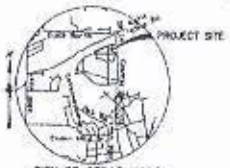
9308-106 (sheet 1 of 2)


STATE PLANE COORDINATES BOUNDARY MONUMENT
STATE PLANE COORDINATES SUBDIVISION MONUMENT
CURVE TABLE
LINE TABLE
SCALE: 1" = 100'
LEGEND
PROJECT SITE
POINT OF BEGINNING
BASIS OF BEARING
SURVEYOR'S CERTIFICATE
BOUNDARY DESCRIPTION
OWNER'S DEDICATION
ACKNOWLEDGMENT
ACCEPTANCE BY LEGISLATIVE BODY
BOARD OF HEALTH
PLANNING COMMISSION APPROVAL
HUBBLE ENGINEERING, INC.
ENGINEERING-SURVEYING-PLANNING
CITY OF CEDAR HILLS
VICINITY MAP
-NTS-
(sheet 1 of 3)
9051-103
THE CEDARS AT CEDAR HILLS PLAT "D"
PLANNED RESIDENTIAL DEVELOPMENT

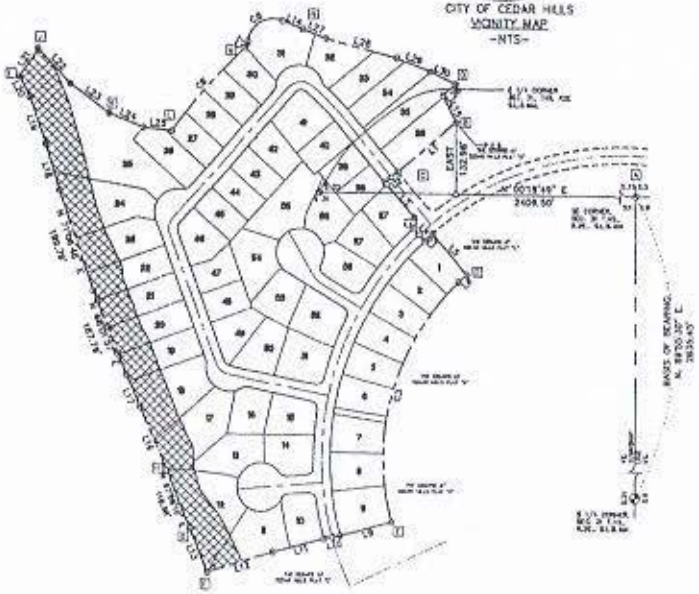

STATE PLANE COORDINATES, BOUNDARY MONUMENT
STATE PLANE COORDINATES, SUBDIVISION MONUMENT
SCALE: 1" = 100'
LEGEND
BASIS OF BEARING
S 89°53'30" W
2655.45'
SECTION LINE
PROJECT SITE
CITY OF CEDAR HILLS
VICINITY MAP
-NTS-
HUBBLE ENGINEERING, INC.
ENGINEERING - SURVEYING - PLANNING
SURVEYOR'S CERTIFICATE
BOUNDARY DESCRIPTION
OWNER'S DEDICATION
ACKNOWLEDGMENT
ACCEPTANCE BY LEGISLATIVE BODY
BOARD OF HEALTH
PLANNING COMMISSION APPROVAL
THE CEDARS
AT CEDAR HILLS
PLAT "F"
PLANNED RESIDENTIAL DEVELOPMENT
9380-106 (sheet 1 of 2)

SCALE 1" = 100'

SCALE 1" = 200'



CITY OF CEDAR HILLS
VICINITY MAP
-NTS-



LEGEND

- FOUND POINT-OF-WAY MONUMENT
- FOUND NAILS CAP
- SET IRON PIPE FOR WITH PLASTIC CAP, LS. NAMBA I TRONT TENNENT WILL BE SET WITH BRASS TAGS SET IN THE CURB ALONG THE EXTENSION OF THE PROPERTY LINE
- NAILS PLAC SET IN CURB ON PROJECTED PROPERTY LINE NOT ON PROPERTY CORNER
- CALCULATED POINT NOT SET
- SUBDIVISION MONUMENT
- SECTION LINE
- PROPERTY BOUNDARY
- CENTERLINE
- RIGHT-OF-WAY
- PUBLIC UTILITY EASEMENT
- 25 LOT NUMBER
- 5.13 LOT AREA(S)
- RECORD DATA
- SLOPE STABILITY FAILURE ZONE AS PER EARTHERE REPORT & ENGINEERING REPORT DATE 8 JAN. 19, 2004

ZONING: TOWNSITE RESIDENTIAL

STATE PLANE COORDINATES, BOUNDARY MONUMENT

NO.	NORTHING	EASTING
1	1[illegible]	1[illegible]
2	1[illegible]	1[illegible]
3	1[illegible]	1[illegible]
4	1[illegible]	1[illegible]
5	1[illegible]	1[illegible]
6	1[illegible]	1[illegible]
7	1[illegible]	1[illegible]
8	1[illegible]	1[illegible]
9	1[illegible]	1[illegible]
10	1[illegible]	1[illegible]
11	1[illegible]	1[illegible]
12	1[illegible]	1[illegible]
13	1[illegible]	1[illegible]
14	1[illegible]	1[illegible]

LINE TABLE

LINE	LENGTH	BEARING
L1	143.17	N 26°26'42" W
L2	53.00	N 26°02'23" W
L3	36.08	S 50°06'17" W
L4	53.00	S 47°52'37" W
L5	100.24	S 48°52'01" W
L6	21.47	N 41°12'17" W
L7	102.00	N 12°31'20" W
L8	53.13	N 19°07'35" W
L9	100.00	N 13°14'02" W
L10	130.83	N 17°19'14" W
L11	88.27	N 84°14'17" E
L12	41.24	S 2°28'55" W
L13	56.48	S 83°04'44" W
L14	130.85	S 88°15'31" E
L15	65.00	N 83°43'37" E
L16	88.27	N 2°28'55" E
L17	90.34	N 72°53'18" E
L18	65.55	N 88°14'17" E
L19	80.43	S 26°50'16" E
L20	80.50	S 47°19'37" W
L21	51.21	S 28°08'25" W
L22	50.85	S 20°17'21" W
L23	53.17	S 53°55'17" W
L24	32.27	N 28°08'43" W
L25	48.81	S 20°31'55" W
L26	136.34	S 15°37'38" W
L27	67.73	S 2°19'12" W
L28	80.33	S 20°45'20" W

CURVE TABLE

CURVE	RADIUS	LENGTH	CHORD DIST.	CHORD DIRC.	DELTA
C1	15.00	23.56	21.21	N 88°15'17" W	90°00'00"
C2	350.00	19.27	19.26	S 1°37'53" E	3°09'19"
C3	350.00	60.15	49.12	N 26°26'42" W	9°51'43"
C4	1050.00	210.83	210.50	S 48°52'32" E	11°30'32"
C5	15.00	23.63	21.21	S 43°07'28" E	90°16'26"
C6	48.00	38.85	36.54	S 50°54'20" E	46°36'42"

NOTE:
1. ALL ROADS CONTAINED WITHIN THIS PLAT ARE PRIVATE. CEDAR HILLS CITY IS NOT RESPONSIBLE FOR THE MAINTENANCE AND/OR FAILURE OF THE ROADWAY.
2. NO STRUCTURE TO BE BUILT WITHIN THE SLOPE STABILITY FAILURE ZONE.

11346 sheet 1 of 2

Northern ENGINEERING INC
ENGINEERING-LAND PLANNING
CONSTRUCTION MANAGEMENT
1040 E. 800 N.
OREM, UTAH 84097
(801) 802-9992

ACCEPTANCE BY LEGISLATIVE BODY

OWNER'S DEDICATION

BOARD OF HEALTH

SURVEYOR'S CERTIFICATE

BOUNDARY DESCRIPTION

ACKNOWLEDGMENT

STATE OF UTAH
COUNTY OF UTAH SS.

PLANNING COMMISSION APPROVAL

THE CEDARS AT CEDAR HILLS PLAT "I"

PLANNED RESIDENTIAL DEVELOPMENT

PAGE 1 OF 2
CEDAR HILLS
UTAH COUNTY, UTAH
SCALE 1" = 100 FEET

ENT 26839:2006 PG 1 of 13
RANDALL A. COVINGTO
UTAH COUNTY RECORDE
2006 Mar 07 2:21 pm FEE 393.00 BY CS
RECORDED FOR MERIDIAN TITLE COMPANY
ELECTRONICALLY RECORDED

After Recordation, return to:

AMENDMENT TO CC&R'S AND HOME OWNER BYLAWS FOR PLATS B,C,D,F,I

The Cedars Home Owners Association
10732 Congressional
Cedar Hills, UT 84062

AMENDMENT TO THE CEDARS PLANNED UNIT DEVELOPMENT AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS & HOME OWNER BYLAWS

Pursuant to the provisions of Sections 6.06 and 17.02 of the CEDARS PLANNED UNIT DEVELOPMENT AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS & HOME OWNER BYLAWS, FOR THE CEDARS PLANNED UNIT DEVELOPMENT, PLATS B,C,D,F,I made on or about September 2004, by "Lone Peak Links, L.L.C.", and mailed to lot owners on or about that time, and hosted on the website of the current management company, Field Master Community Management, (the "Declaration"), the majority of Lot owners within The Cedars Planned Unit Development, Plats "B", "C", "D", "F", "I", "L", "M", "N", "O" (the "Owners"), hereby modify the Declaration, as follows:

1. **BACKGROUND.** At some time in 2004, Field Master Community Management, a community management company that manages the Cedars Homeowners Association, mailed a document titled THE CEDARS PLANNED UNIT DEVELOPMENT AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS & HOME OWNER BYLAWS to the Owners, on behalf of the Declarant. Questions surround the validity of this amended document. Because doubt exists as to its validity, the Owners hereby modify, repeal and amend this Declaration in the event that it is upheld as legally binding. Sections 6.06 and 17.02 of the "Declaration" permits the Owners by a vote of more than fifty percent (50%) of the total votes of the HOA to modify, repeal, or amend the Declaration. Given, therefore, the consensus of over fifty percent (50%) of the total votes of the HOA, the Owners modify, repeal, and amend the Declaration as provided herein.

2. **CONSIDERATION.** The Owners acknowledge the proffer and receipt of good and valuable consideration for this Amendment.

3. **MODIFICATION, REPEAL, and AMENDMENT.** The following sections of the Declaration are modified, repealed, and amended as follows:

   6.01 Breach of Violation of Covenant. In the event of a violation or breach or attempted violation or breach of any of these covenants, restrictions, limitations, conditions, or agreements, as they may be amended from time to time, by any person or concern claiming by virtue of any judicial proceedings, The Cedars HOA or the owner of any Lot in the Subdivision, jointly or severally, shall be authorized to take such legal or administrative action as it deems appropriate, consistent with the laws of the State of Utah, to enforce said Covenants, Conditions, and Restrictions. This authorization, however, shall not extend to any dispute concerning or challenge to a proper amendment of these Covenants, Conditions, and Restrictions.

   6.02 Recovery. In the event that The Cedars HOA, The Cedars Committee, or any property owners in the subdivision are successful in prosecuting any violation of these restrictive covenants, as they may be amended from time to time, such successful party may recover (in addition to any other damages) costs, and expenses of the litigation, including reasonable attorney's fees from the party found to be in violation thereof.

   13.02 Election and Service. Election of the members of the Committee shall be conducted at the annual meeting of the lot owners. Election shall be by majority vote cast by all owners or proxies in attendance at the meeting. The term of those members elected shall be for the remainder of the year in which they are elected and until the next annual meeting of the HOA. The number of the members of The Cedars Committee may be changed at any annual meeting. Any member of The Cedars Committee may resign from the Committee, at any time, upon written notice to the other members of The Cedars Committee.

13.04 Duties of the Cedars Committee. The rights, duties and functions of The Cedars Committee shall be exercised by Declarant until the date the Articles are filed with the State of Utah, after which the initial Cedars Committee, named in Section 13.08 below, shall serve until replaced by an amendment. The Cedars Committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided by this Declaration, the Articles and Bylaws, including, but not limited to, the following:

(1) To make and enforce all rules and regulations covering the operation and maintenance of the Subdivision.

(2) To maintain those common areas in the Subdivision listed below.
a. The common park
b. All private roads and appurtenant landscape areas.
c. The fifty foot buffer strip on the east side of Canyon Rd.

(3) To enforce the conditions, covenants, restrictions, and agreements set forth herein and as may be hereafter adopted by the HOA.

(4) To serve as the Architectural Review Committee and perform the duties and tasks delegated thereto at any time no ARC shall exist.

(5) To enter into contracts, deeds, leases and/or other written instructions or documents and to authorize the execution and delivery thereof by the appropriate officers.

(6) To assess and collect fees from its Members to cover the costs of the maintenance of the common areas of the Subdivision and administration of The Cedars HOA,

(7) To open bank accounts on behalf of The Cedars HOA and to designate the signatures thereof.

(8) To bring, prosecute and settle litigation for itself, The Cedars HOA, and the Subdivision.

(9) To own, purchase, or lease, hold and sell, or otherwise dispose of, on behalf of the Members or Owners, items of personal property necessary or convenient to the management of the business and affairs of The Cedars HOA or for the operation of the Subdivision, including, without limitation, furniture, furnishings, fixtures, maintenance equipment, appliances, and office supplies.

(10) To keep adequate books and records.

(11) To do all other acts necessary for the operation and maintenance of the Subdivision and the performance of its duties as agent for The Cedars HOA, including the maintenance and repair of any portion of the subdivision and common improvements therein as deemed necessary to protect or preserve the Subdivision.

13.13 Resignation or Removal. A member of The Cedars Committee may resign at any time by delivering a written resignation to either the president or The Cedars Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any member of The Cedars Committee may be removed at any time, for or without cause, by the affirmative vote of the Owners holding more than fifty (50%) of the total number of votes appurtenant to all Lots in the Development, at a special meeting of the members duly called for such purpose.

13.14 Vacancies. If vacancies shall occur in The Cedars Committee by reason of the death, resignation, or disqualification of a member of The Cedars Committee, or if the authorized number of The Cedars Committee shall be increased The Cedars Committee then in office shall continue to act, and such vacancies or newly created memberships shall be filled by a vote of The Cedars Committee then in office, though less than a quorum, in any way approved by such The Cedars Committee at the meeting. Any member of The Cedars Committee elected or appointed hereunder

to fill a vacancy shall serve for the unexpired term of his predecessor or for the term of the newly created Cedars Committee, as the case may be.

16.01 Architectural Review Committee. There is hereby established an Architectural Review Committee (ARC) for the Cedars. The ARC shall consist of five (5) members. The ARC shall have the duty and responsibility to carry out the tasks set forth under ARTICLE IV, and shall pass upon, approve or reject any plans or specifications for improvements to be made on lots in the Subdivision, and to enforce the conditions, covenants and restrictions set forth herein, and standards found in "The Cedars Design Standards", set forth herein or made an attachments hereto, so that all structures shall conform to the restrictions and general plans, of The Cedars HOA, and The Cedars Committee, for the improvement and development of the whole Subdivision. The ARC may act by any three (3) of its members, and the approval of any plans for the construction of homes or improvements to The Cedars and must have a stamp of approval and be signed by three (3) members of the ARC.

16.02 The members of the ARC shall be appointed by The Cedars Committee, in accordance with the provisions of ARTICLE XIV. Any member of the ARC may resign from the Committee, at any time, upon written notice to the other members of the ARC.

4. Effective immediately, the members (and offices) of the Cedars Committee shall be

President Jeffrey Welch 10732 Congressional Cedar Hills, UT 84062	Secretary TK Plant 10737 Congressional Cedar Hills, UT 84062	Member Lynn Spencer 10695 Spyglass Cedar Hills, UT 84062
Member Kelton Busby 10752 Shinnecock Cedar Hills, UT 84062	Member Lynette Schloer 3999 Centennial Cedar Hills, UT 84062	

until the soonest an election can be reasonably held, on which date a general election will be held for all five positions of The Cedars Committee. Election shall be by majority vote cast by all owners or proxies in attendance at the meeting. The term of those members elected shall be for the remainder of the year in which they are elected and until the next annual meeting of the HOA.

5. The Cedars Committee shall permit the Declarant to serve as three (3) of the five (5) Architectural Review Committee positions for 'Plat I' only contingent upon the Declarant:
   c. Executing, verifying and mailing this amendment to each Member of the HOA with a postmark of no later than October 7, 2005.
   d. Enforcing the Conditions, Covenants, and Restrictions, and the standards found in "The Cedars Design Standards", so that all structures in 'Plat I' shall conform to the restrictions and general plans of The Cedars HOA.

6. The Declarant's right to amend as described in Sections 6.05 and 17.02 of the Declaration shall be limited to 'Plat I'.

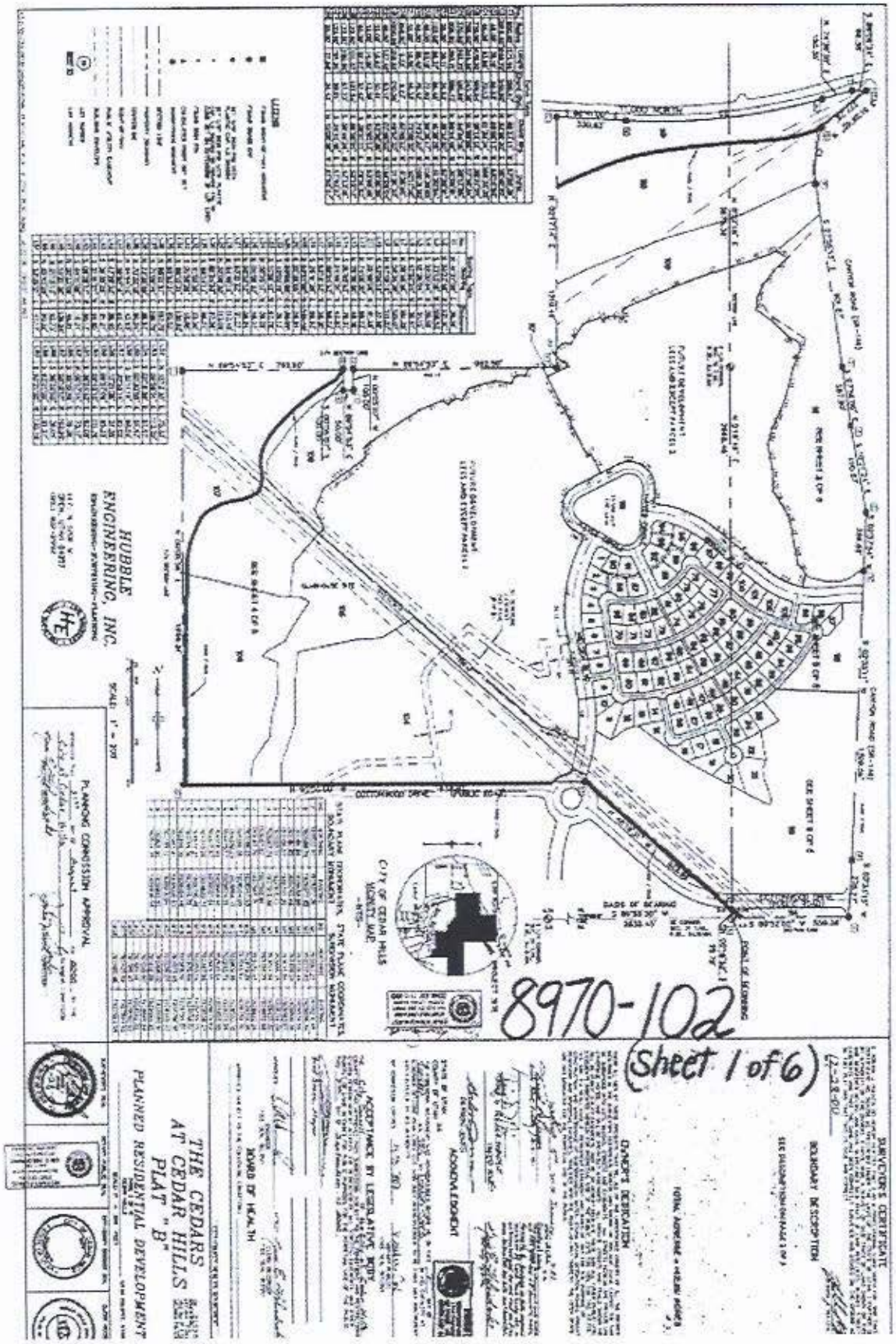
7. **SCOPE.** All provisions of the Declaration remain in effect except as modified, repealed, or amended by this instrument.

VOTING: Aye: 153 Nay: 6 Total Votes in the HOA: 284

Executed and Verified this 6 day of Oct, 2005.

By: CRAIG D. NIELSEN
President, Cedars
Homeowners Association

ENT 26839:2006 PG 4 of 13



ENT 26839:2006 PG 5 of 13

BOUNDARY DESCRIPTION

A PARCEL OF LAND LOCATED IN THE EAST 1/2 OF SECTION 31 AND IN THE WEST 1/2 OF SECTION 32 OF TOWNSHIP 4 SOUTH, RANGE 2 EAST, S.L.B.& M., UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS MONUMENT MARKING THE SOUTHEAST CORNER OF SAID SECTION 31, TOWNSHIP 4 SOUTH, RANGE 2 EAST, SAID POINT ALSO BEING THE REAL POINT OF BEGINNING.

THENCE N. [illegible] E. A DISTANCE OF [illegible] FEET; THENCE N. [illegible] W. A DISTANCE OF [illegible] FEET; THENCE WEST A DISTANCE OF [illegible] FEET; THENCE N. [illegible] E. A DISTANCE OF [illegible] FEET; THENCE N. [illegible] E. A DISTANCE OF [illegible] FEET; THENCE S. [illegible] E. A DISTANCE OF [illegible] FEET; THENCE N. [illegible] E. A DISTANCE OF [illegible] FEET; THENCE N. [illegible] W. A DISTANCE OF [illegible] FEET; THENCE N. [illegible] E. A DISTANCE OF [illegible] FEET; THENCE N. [illegible] E. A DISTANCE OF [illegible] FEET TO THE SOUTH SIDE OF AN U.D.O.T. RIGHT OF WAY; THENCE ALONG SAID R.O.W. THE FOLLOWING [illegible] COURSES: 1) S. [illegible] E. A DISTANCE OF [illegible] FEET; 2) THENCE NORTHEASTERLY A DISTANCE OF [illegible] FEET ALONG THE ARC OF A [illegible]-FOOT RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF [illegible], SUBTENDED BY A CHORD THAT BEARS N. [illegible] E. A DISTANCE OF [illegible] FEET; 3) THENCE N. [illegible] E. A DISTANCE OF [illegible] FEET; THENCE S. [illegible] E. A DISTANCE OF [illegible] FEET TO AN U.D.O.T. RIGHT-OF-WAY; THENCE ALONG SAID R.O.W. THE FOLLOWING [illegible] COURSES: 1) S. [illegible] W. A DISTANCE OF [illegible] FEET; 2) THENCE SOUTHWESTERLY A DISTANCE OF [illegible] FEET ALONG THE ARC OF A [illegible]-FOOT RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF [illegible], SUBTENDED BY A CHORD THAT BEARS S. [illegible] W. A DISTANCE OF [illegible] FEET; 3) THENCE S. [illegible] E. A DISTANCE OF [illegible] FEET TO A FOUND R.O.W. MONUMENT; 4) THENCE S. [illegible] E. A DISTANCE OF [illegible] FEET TO A FOUND R.O.W. MONUMENT; 5) THENCE S. [illegible] E. A DISTANCE OF [illegible] FEET TO A FOUND R.O.W. MONUMENT; 6) THENCE S. [illegible] W. A DISTANCE OF [illegible] FEET; 7) THENCE S. [illegible] W. A DISTANCE OF [illegible] FEET TO A FOUND R.O.W. MONUMENT; 8) THENCE S. [illegible] W. A DISTANCE OF [illegible] FEET; THENCE S. [illegible] W. A DISTANCE OF [illegible] FEET TO THE REAL POINT OF BEGINNING, CONTAINING [illegible] ACRES OF LAND.

LESS AND EXCEPTING THE FOLLOWING TWO (2) PARCELS:

PARCEL #1

A PARCEL OF LAND LOCATED IN THE EAST 1/2 OF SECTION 31 OF TOWNSHIP 4 SOUTH, RANGE 2 EAST, S.L.B.& M., UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS MONUMENT MARKING THE SOUTHEAST CORNER OF SAID SECTION 31, TOWNSHIP 4 SOUTH, RANGE 2 EAST; THENCE N. [illegible] E. ALONG THE SECTION LINE A DISTANCE OF [illegible] FEET; THENCE WEST A DISTANCE OF [illegible] FEET TO THE REAL POINT OF BEGINNING.

THENCE N. [illegible] W. A DISTANCE OF [illegible] FEET; THENCE N. [illegible] W. A DISTANCE OF [illegible] FEET; THENCE N. [illegible] E. A DISTANCE OF [illegible] FEET; THENCE N. [illegible] W. A DISTANCE OF [illegible] FEET; THENCE N. [illegible] E. A DISTANCE OF [illegible] FEET; THENCE N. [illegible] E. A DISTANCE OF [illegible] FEET; [illegible] THENCE NORTHEASTERLY A DISTANCE OF [illegible] FEET ALONG THE ARC OF A [illegible]-FOOT RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF [illegible], SUBTENDED BY A CHORD THAT BEARS N. [illegible] E. A DISTANCE OF [illegible] FEET; [illegible] THENCE SOUTHWESTERLY A DISTANCE OF [illegible] FEET ALONG THE ARC OF A [illegible]-FOOT RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF [illegible], SUBTENDED BY A CHORD THAT BEARS [illegible]; [illegible] THENCE SOUTHEASTERLY A DISTANCE OF [illegible] FEET ALONG THE ARC OF A [illegible]-FOOT RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF [illegible], SUBTENDED BY A CHORD THAT BEARS S. [illegible] E. A DISTANCE OF [illegible] FEET TO THE REAL POINT OF BEGINNING, CONTAINING 31.47 ACRES OF LAND.

PARCEL #2

A PARCEL OF LAND LOCATED IN THE EAST 1/2 OF SECTION 31 AND IN THE WEST 1/2 OF SECTION 32 OF TOWNSHIP 4 SOUTH, RANGE 2 EAST, S.L.B.& M., UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS MONUMENT MARKING THE SOUTHEAST CORNER OF SAID SECTION 31, TOWNSHIP 4 SOUTH, RANGE 2 EAST; THENCE N. [illegible] E. ALONG THE SECTION LINE A DISTANCE OF [illegible] FEET; THENCE EAST A DISTANCE OF [illegible] FEET TO THE REAL POINT OF BEGINNING.

THENCE NORTHWESTERLY A DISTANCE OF [illegible] FEET ALONG THE ARC OF A [illegible]-FOOT RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF [illegible], SUBTENDED BY A CHORD THAT BEARS N. [illegible] W. A DISTANCE OF [illegible] FEET; [illegible] THENCE NORTHWESTERLY A DISTANCE OF [illegible] FEET ALONG THE ARC OF A [illegible]-FOOT RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF [illegible], SUBTENDED BY A CHORD THAT BEARS N. [illegible] W. A DISTANCE OF [illegible] FEET; [illegible] THENCE S. [illegible] W. A DISTANCE OF [illegible] FEET TO THE REAL POINT OF BEGINNING, CONTAINING [illegible] ACRES OF LAND.

HUBBLE ENGINEERING, [illegible]

[illegible]

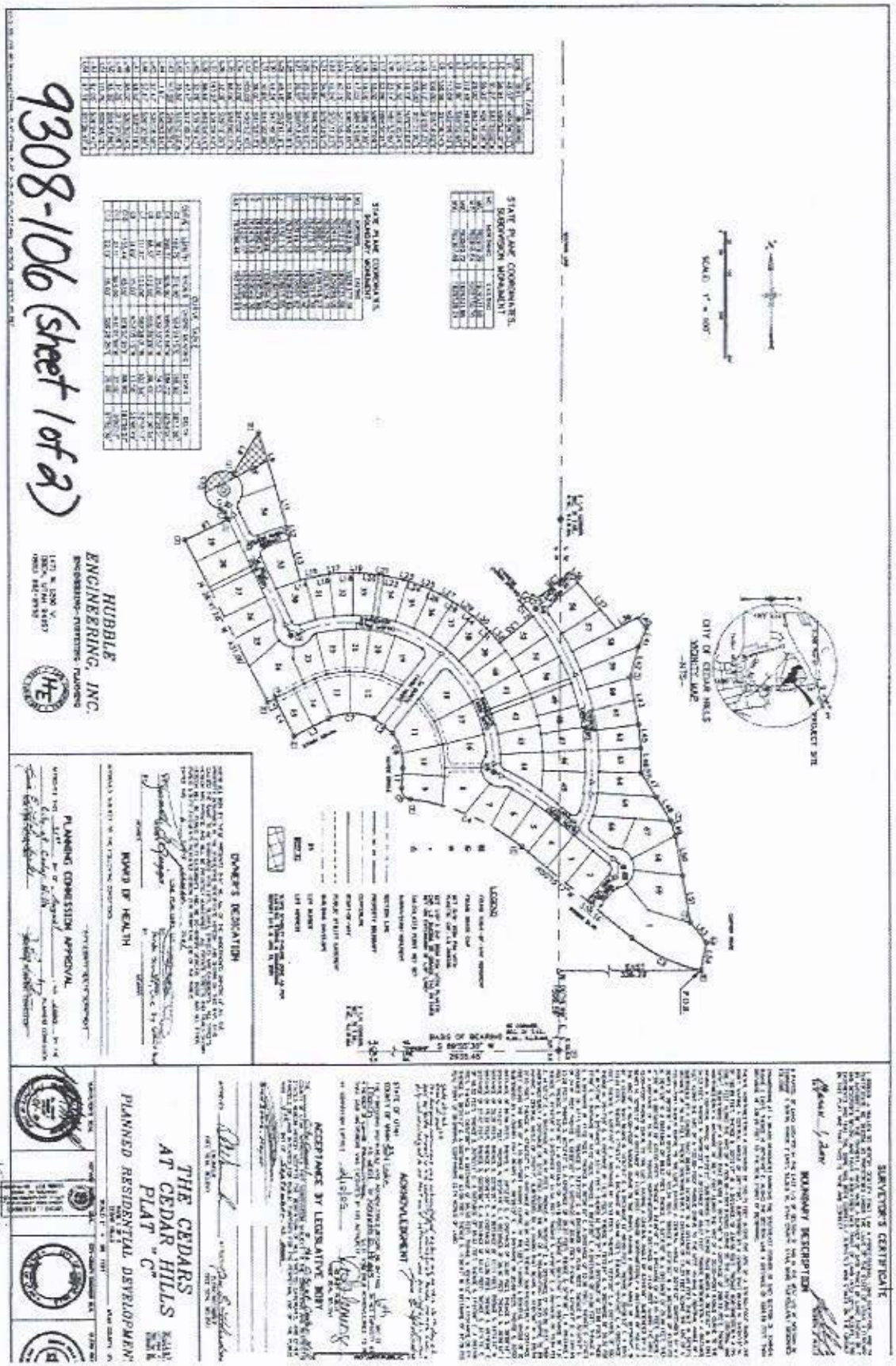
LAND SURVEYOR

APPROVED THIS 23 DAY OF FEB. [illegible]

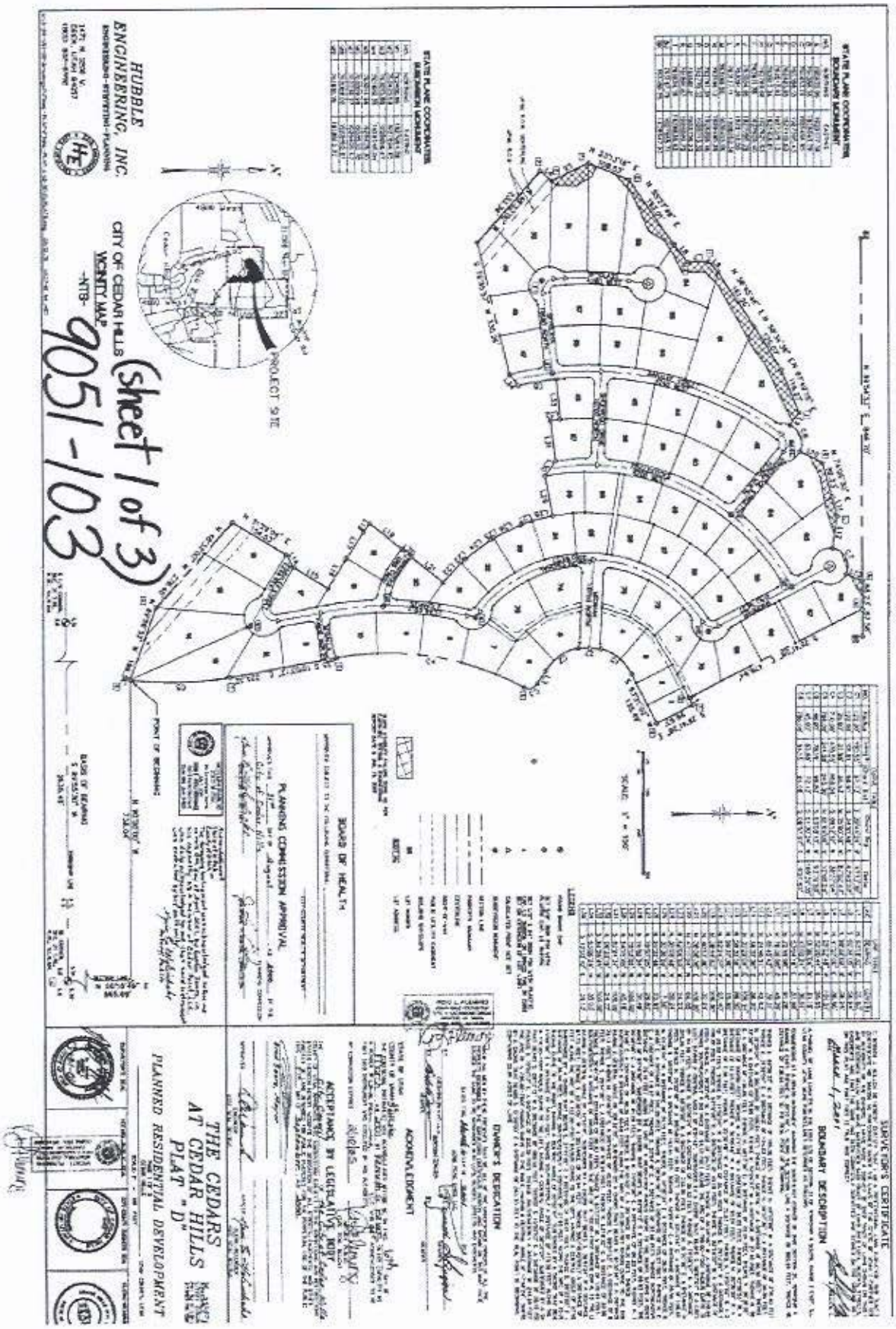
THE CEDARS AT CEDAR HILLS PLAT "B"

PLANNED RESIDENTIAL DEVELOP[illegible]

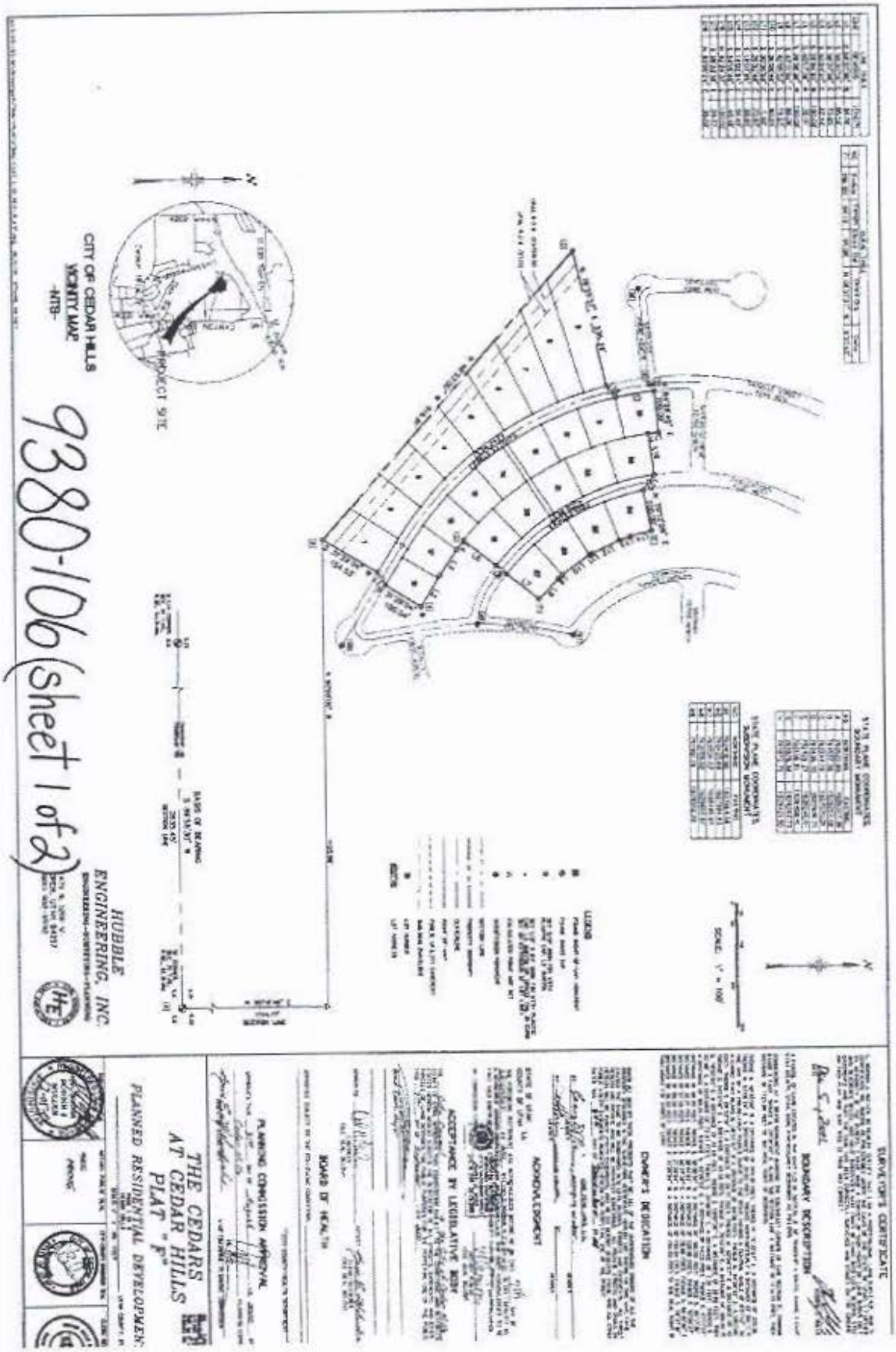
ENT 26839:2006 PG 6 of 13



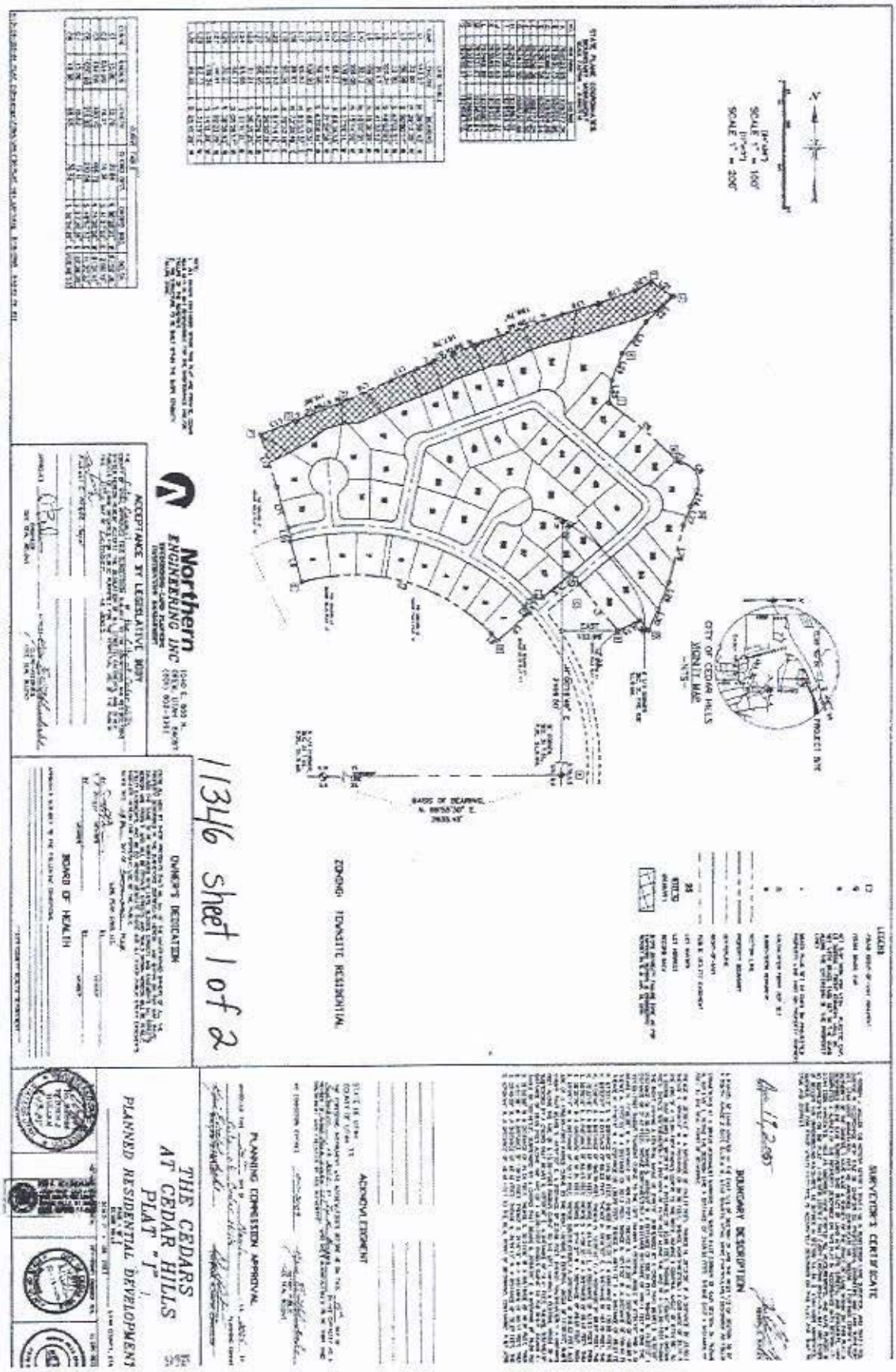
ENT 26839:2006 PG 7 of 13



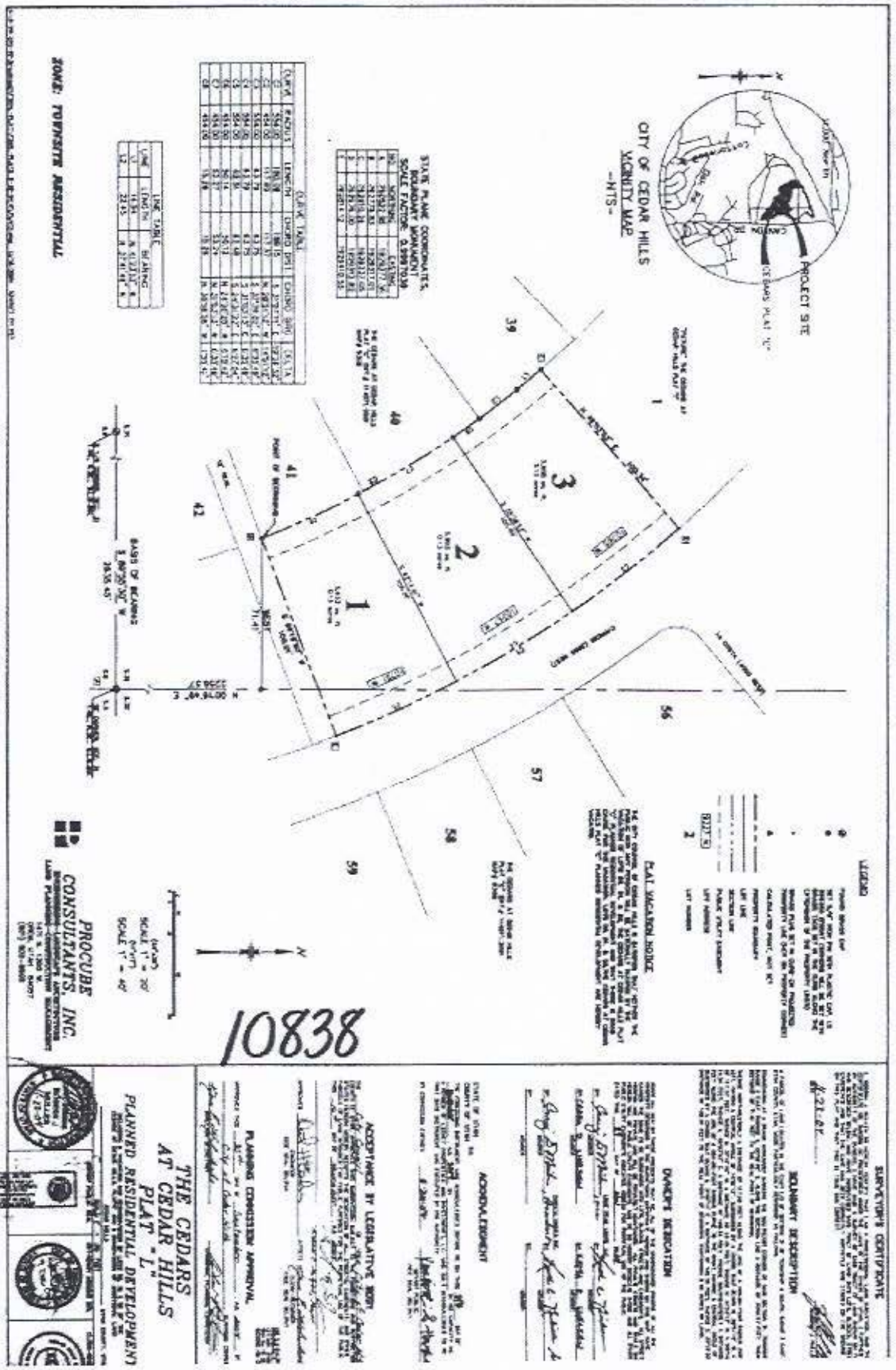
ENT 26839:2006 PG 8 of 13



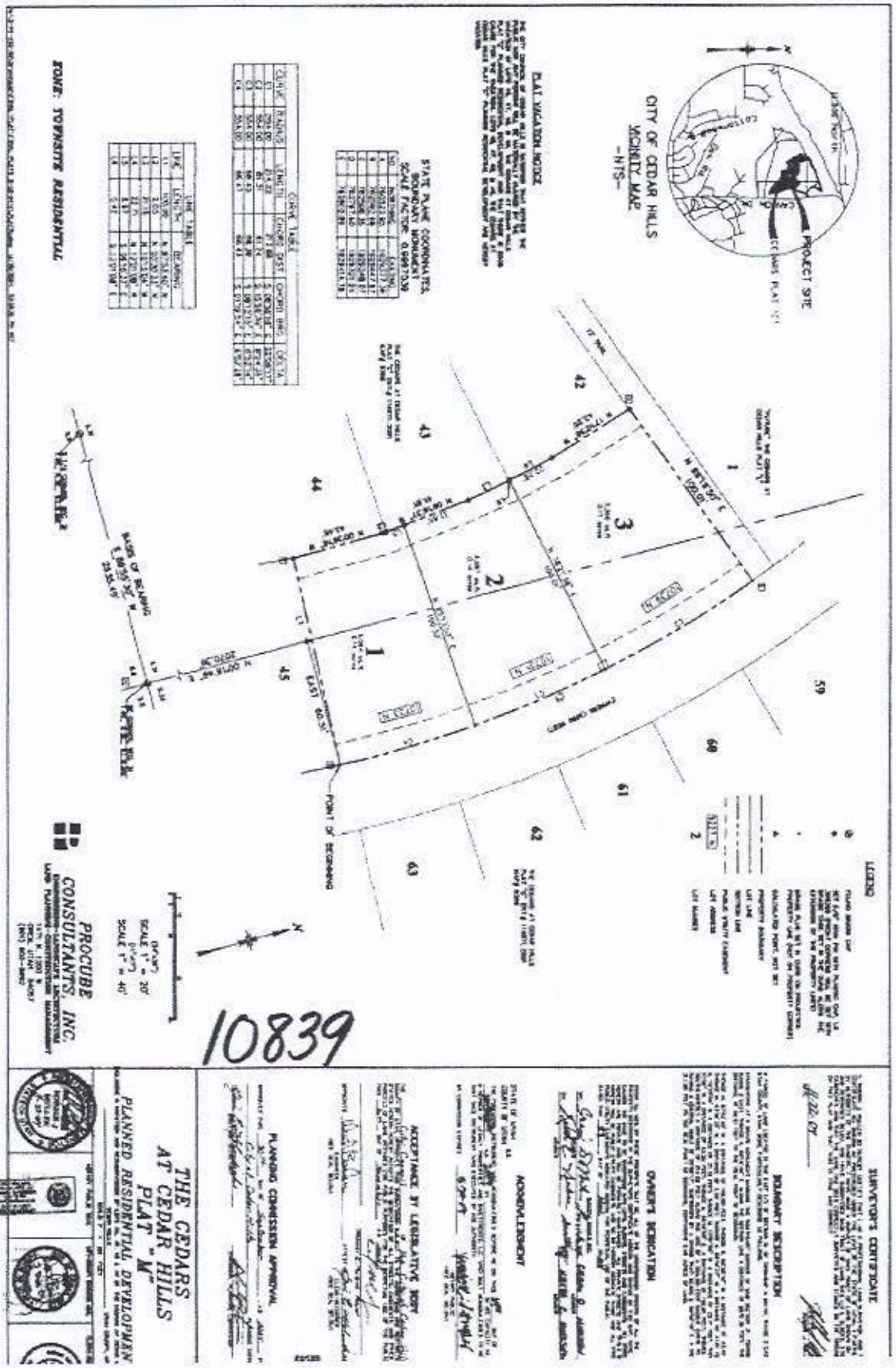
ENT 26839:2006 PG 9 of 13



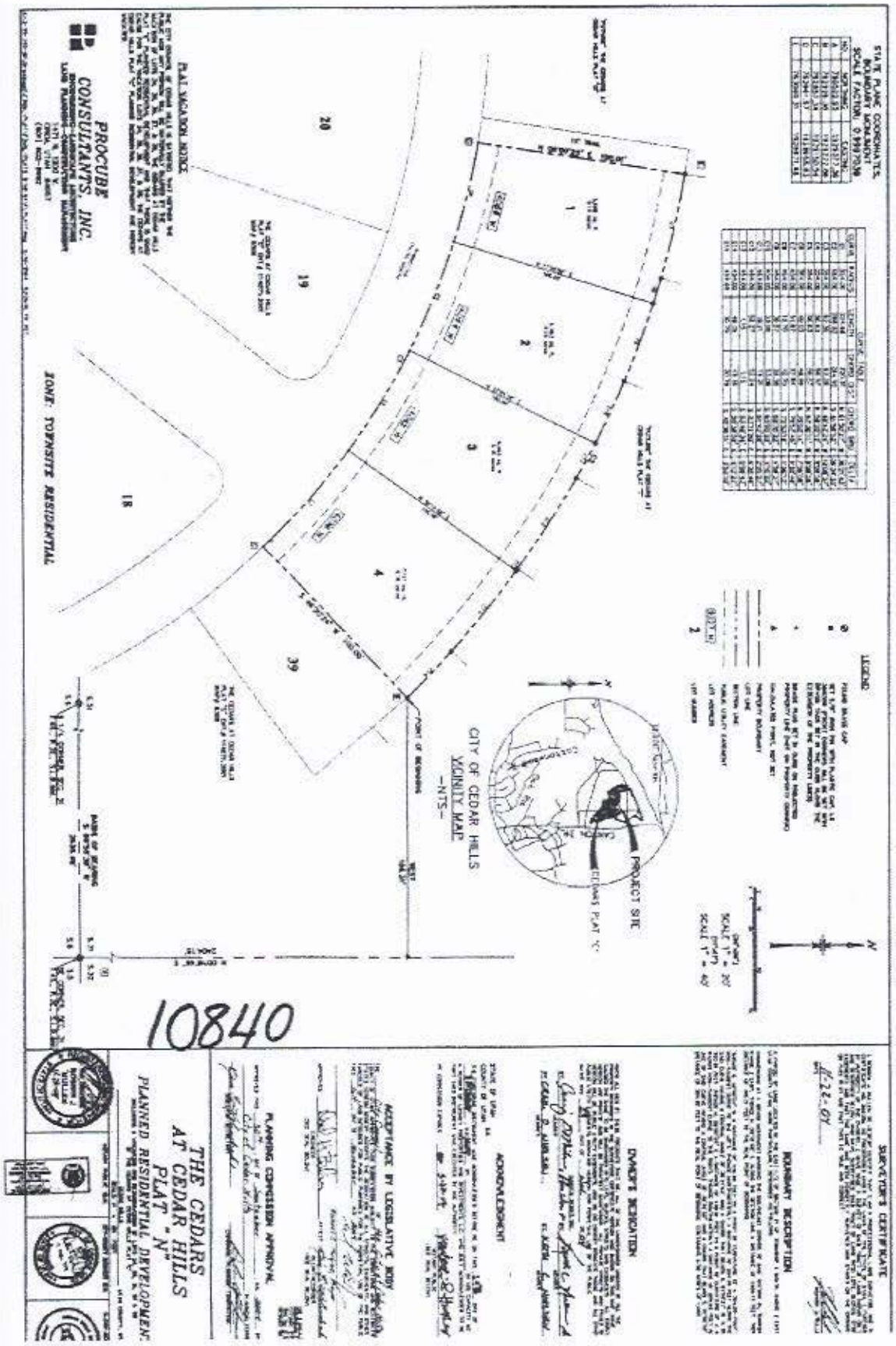
ENT 26839:2006 PG 10 of 13



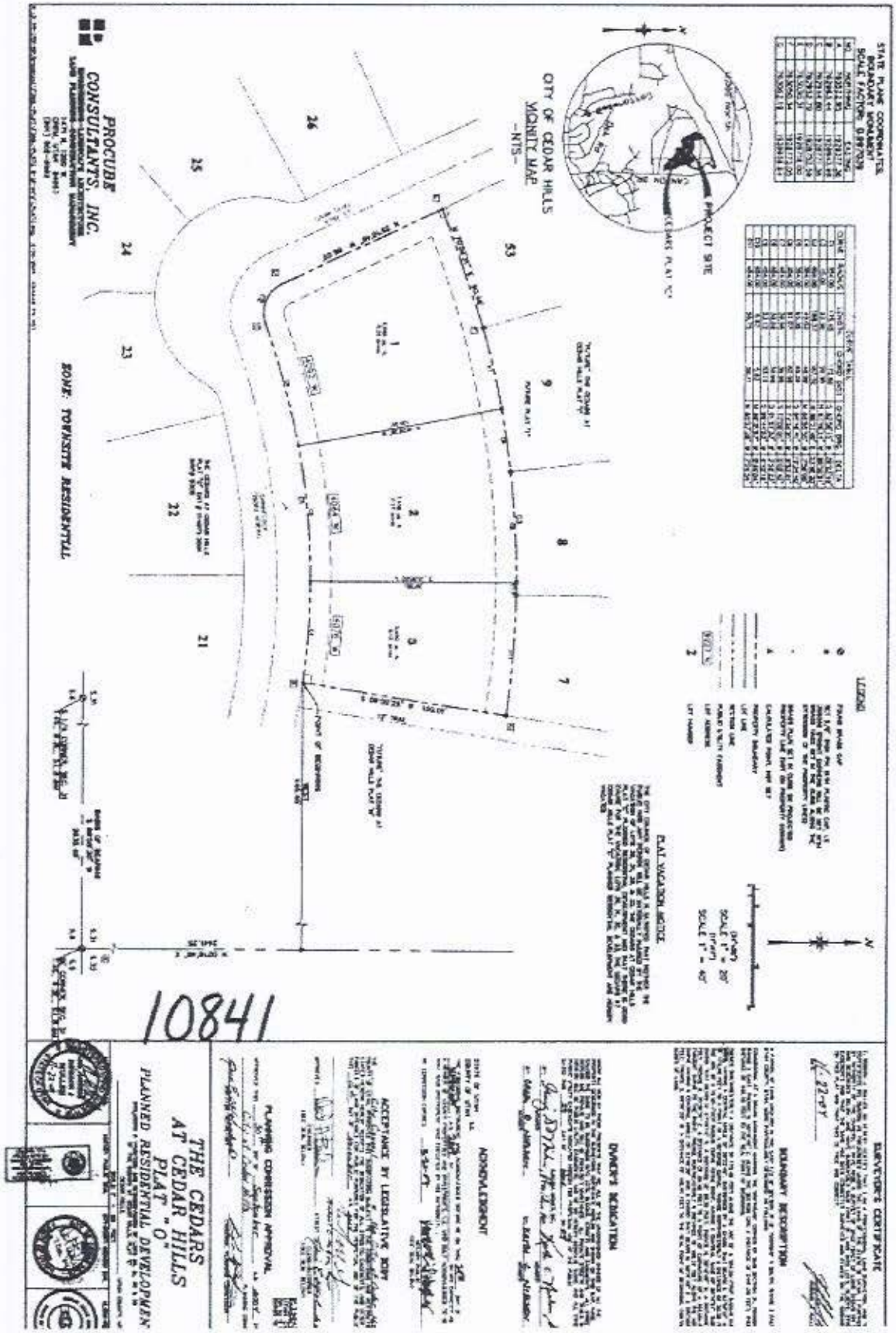
ENT 26839:2006 PG 11 of 13



ENT 26839:2006 PG 12 of 13



ENT 26839:2006 PG 13 of 13



OPEN SPACE CONSERVATION EASEMENT

LONE PEAK LINKS L.L.C., Owner of Real Property Situated And Located in Utah County, Utah, (Grantor) hereby convey, grant and release to THE CITY OF CEDAR HILLS, UTAH, a municipal corporation of the State of Utah, (Grantor and Holder), for the sum of ten dollars ($10) and other good and valuable consideration, an easement over, under and through the following described real property:

The Cedars Subdivision, Plat B, Lots 111, 110, 104, 105, 107, 113, 113

AND

The Cedars Subdivision, Plat H, Lot 206

The easement is granted pursuant to authorization of the "Utah Land Conversation Easement Act" (UCA 57-18-1 et. Seq.,) and subject to the terms and conditions set forth in **Attachment B.**

The easement herein granted is perpetual.

The Grantor covenants and warrants that they are lawfully seized of the premises and hereby conveys and warrants, against all claiming by through or under Grantor, to the City of Cedar Hills, Utah, the conservation easement upon the herein above described real property.

STATE OF UTAH)
: ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me the 22nd day of February, 2001, by Ken Briggs in his capacity as a manager of Lone Peak Links L.L.C.

NOTARY PUBLIC Gretchen F. Gordon
Residing at: 10046 N Sage Road West
Cedar Hills, Utah 84062

NOTARY PUBLIC
STATE OF UTAH
My Commission Expires
July 1, 2001
GRETCHEN F. GORDON
10046 N. Sage Road West
Cedar Hills, Utah 84062

Attachment B

Terms and Conditions

A. Purpose - The conservation easement is conveyed for the purpose of facilitating the preservation and maintenance of the land area predominantly in a natural, scenic and open condition and for the development of a golf course.

B. Future use - The real property included within the easement shall remain as open natural area, except as follows:

1. All development rights are removed from the site, except for the purpose of open space, recreational space and the construction of a golf course and related golf course facilities.

2. Installation of supplemental vegetative landscape material, together with any irrigation facilities required to provide water to the golf course.

3. Installation of new trails for pedestrians, and golf course use and the construction of such additional golf course related equipment including but not limited to; paving or surfacing of the trail, installation of trail head access facilities, restrooms and such other facilities as essential to the proper operation of the golf course.

4. Appurtenant easements and vehicular access routes necessary for construction and maintenance of the golf course and related facilities.

SUMMARY OF GOLF COURSE AND OPEN SPACE LOTS FOR THE CEDARS

GOLF COURSE LOTS
(EASEMENTS)

206-H
111-B
110-B
104-B
105-B
107-B
113-B
112-B

NON-BUILDABLE OPEN SPACE
(DEEDED TO THE CITY)

207-H
109-B
106-B
108-B
114-B
115-B
2-G
4-G

PARK AND TRAILS
(DEEDED TO THE CITY)

1-K
2-K
16-J

PUBLIC FACILITIES
(DEEDED TO THE CITY)

1-G
3-G

PRICING COMMITTEE OF
THE CITY OF CEDAR HILLS, UTAH COUNTY, UTAH

Master Resolution Authorizing the
Issuance and Sale of
$5,570,000
General Obligation Refunding Bonds
Series 2012

Adopted December 12, 2012

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS; AUTHORITY 4
1.1. Definitions 4
1.2. Authority for Master Resolution 6
ARTICLE II AUTHORIZATION, TERMS AND ISSUANCE OF BONDS 7
2.1. Authorization of Bonds, Principal Amount, Designation and Series. 7
2.2. Purpose 7
2.3. Bond Details 7
2.4. Denominations and Numbers 8
2.5. Paying Agent and Bond Registrar 8
2.6. Redemption 8
2.7. Notice of Redemption 10
2.8. Partially Redeemed Bonds 11
2.9. Book-Entry System 11
2.10. Sale of Bonds 14
2.11. Execution of Bonds 14
2.12. Delivery of Bonds; Application of Proceeds. 15
2.13. Further Authority. 16
2.14. Redemption of Refunded Bonds 16
ARTICLE III TRANSFER AND EXCHANGE OF BONDS; BOND REGISTRAR 17
3.1. Transfer of Bonds 17
3.2. Exchange of Bonds. 17
3.3. Bond Registration Books. 18
3.4. List of Registered Owners. 18
3.5. Duties of Bond Registrar. 18
ARTICLE IV COVENANTS AND UNDERTAKINGS 20
4.1. Covenants of Issuer. 20
4.2. Levy of Taxes. 20
4.3. Continuing Disclosure. 20
4.4 Bonds in Registered Form 21
4.5 Tax Covenants 21
4.6 Designation of Issue for Tax Purposes 21
4.7 Arbitrage Rebate 21
ARTICLE V FORM OF BONDS 22
5.1 Form of Bonds. 22
ARTICLE VI MISCELLANEOUS 31
6.1. Changes to Forms 31
6.2. Notice of Bonds to be Issued 31
6.3. Ratification 31
6.4. Severability 31
6.5. Conflict 31
6.6. Captions 31
6.7. Certification of Fulfillment of Conditions 31
6.8. Maintenance of Records; Copies 32

6.9. Effective Date 32

EXHIBIT "A" – BOND BID A-1
EXHIBIT "B" – CONTINUING DISCLOSURE UNDERTAKING B-1
EXHIBIT "C" – OFFICIAL STATEMENT.....C-1

* * * * * * * * *

WHEREAS, at a special bond election (the "Election") duly and lawfully called and held in the City of Cedar Hills, Utah County, Utah (the "Issuer") on June 28, 2005, the following proposition was submitted to a vote of the qualified registered electors of the Issuer:

BALLOT PROPOSITION

SHALL THE CITY COUNCIL OF THE CITY OF CEDAR HILLS, UTAH COUNTY, UTAH BE AUTHORIZED TO ISSUE GENERAL OBLIGATION BONDS IN THE AMOUNT NOT TO EXCEED SEVEN MILLION DOLLARS ($7,000,000) (THE "BONDS") FOR THE PURPOSE OF REFINANCING THE COSTS OF ACQUISITION AND CONSTRUCTION OF THE CEDAR HILLS GOLF COURSE AND RELATED IMPROVEMENTS ORIGINALLY FINANCED BY THE MUNICIPAL BUILDING AUTHORITY OF THE CITY OF CEDAR HILLS AND LEASED TO THE CITY AND FOR PAYMENT OF EXPENSES REASONABLY INCURRED IN CONNECTION WITH SAID REFINANCING AND THE AUTHORIZATION AND ISSUANCE OF THE BONDS; SAID BONDS TO HAVE A FINAL MATURITY DATE OF NOT TO EXCEED THIRTY (30) YEARS FROM ISSUANCE?

The balloting results on the above Proposition were as follows:

Total votes cast	2,289
Total persons challenged and issued provisional ballot	75
Total provisional ballots counted	50
Total persons challenged who did not vote	25
Total votes cast in favor of issuing $7,000,000 General Obligation Bonds	1,872
Total votes cast against issuing $7,000,000 General Obligation Bonds	417

WHEREAS, based upon the canvass of returns by the Council sitting as a Board of Canvassers, said Council declared the bond proposition set forth above for all of the above described projects and purposes to have carried; and

WHEREAS, the cost of acquisition and construction of the Cedar Hills golf course (the "Project") was originally financed with temporary financing through Lease Revenue Bonds issued by the Municipal Building Authority of Cedar Hills, Utah; and

WHEREAS, the Issuer retired and refunded, as a current refunding, the Lease Revenue Bonds by issuing its $6,250,000 General Obligation Refunding Bonds, Series 2005; and

WHEREAS, the Issuer desires to obtain a debt service savings by refunding the Refunded Bonds (as defined herein) through the issuance of its General Obligation Refunding Bonds, Series 2012; and

WHEREAS, on December 4, 2012, the City Council of the Issuer adopted an Authorizing Resolution wherein it appointed the Mayor, City Manager, and Finance Director as a Pricing Committee to authorize the final amount, interest rate, maturity, discount and other aspects of the Series 2012 Bonds; and

WHEREAS, electronic bids have been received for the purchase of $5,570,000 aggregate principal amount of the City of Cedar Hills, Utah County, Utah General Obligation Refunding Bonds, Series 2012; and

WHEREAS, the bid of RW Baird & Co, Inc. ("Underwriter") has been determined to be the best and most advantageous bid for the purchase of said Bonds, said bid being in full as attached hereto as Exhibit "A".

WHEREAS, in the opinion of the Pricing Committee, it is in the best interest of the Pricing Committee that said bid be accepted and sale of said Bonds to Underwriter be confirmed; and

WHEREAS, pursuant to the Election, and the provisions of the Utah Refunding Bond Act, Title 11, Chapter 27, Utah Code Annotated 1953, as amended (the "Act"), the Issuer has authority to issue, and desires to issue, its General Obligation Refunding Bonds, Series 2012, in the aggregate principal amount of $5,570,000 (the "Bonds") for the purpose of (i) advance refunding the Refunded Bonds (as defined herein), and (ii) paying costs and expenses reasonably incurred in connection with the authorization and issuance of the Bonds; and

WHEREAS, the Issuer authorized the issuance of the Bonds for the aforementioned purposes subject to certain parameters by its resolution adopted on May 15, 2012 (the "Parameters Resolution") and by its resolution adopted on December 4, 2012 appointing this Pricing Committee; and

WHEREAS, the Issuer has caused a Notice of Bonds to be Issued with respect to the Bonds to be published pursuant to the Act and the Parameters Resolution; and

WHEREAS, the Issuer does hereby find and determine it to be advisable and in the best interests of the Issuer and its inhabitants to issue Bonds for the purpose of providing funds which will be sufficient to refinance the Refunded Bonds, and to pay costs and expenses reasonably incurred in connection with the issuance of the Bonds:

NOW, THEREFORE, be it resolved by the Pricing Committee of the City of Cedar Hills, Utah County, Utah as follows:

Section A The bid of the Underwriter for the purchase of $5,570,000 City of Cedar Hills, Utah County, Utah General Obligation Refunding Bonds, Series 2012, which bid is set out in full in the preamble hereto, is hereby accepted, it being hereby found, determined and declared, after public advertisement for bids for the purchase of said Bonds, that said bid is the best and most advantageous bid received and that said Bonds, when issued at the interest rates stated in the bid, will bear interest at the lowest rate now obtainable.

Section B. Said Bonds shall be delivered to the Underwriter following the adoption of this final Master Resolution, pursuant to due payment therefor in accordance with the terms of sale.

ARTICLE I

DEFINITIONS; AUTHORITY

1.1. Definitions As used in this Master Resolution, unless the context shall otherwise require, the terms defined or described in the hereinafter defined Parameters Resolution shall have the same meanings when used in this Master Resolution, and the following terms shall have the following meanings:

"Act" means the Utah Refunding Bond Act, Title 11, Chapter 27, Utah Code Annotated 1953, as amended.

"Bond Fund" means the fund established under Section 4.2 hereof.

"Bondowner", "Owner" "Bondholder" "Holder" or "Registered Owner" means the registered owner of any Bond as shown on the registration books of the Issuer kept by the Bond Registrar.

"Bond Registrar" means each Person appointed by the Issuer as registrar and agent for the transfer, exchange and authentication of the Bonds pursuant to Section 2.5 hereof. The initial Bond Registrar is The Bank of New York Mellon Trust Company, N.A., Denver, Colorado, or its successors.

"Bonds" means the $5,570,000 General Obligation Refunding Bonds, Series 2012 , of the Issuer authorized by this Master Resolution.

"Business Day" means a legal business day on which banking business is transacted in the city in which the Paying Agent has its principal corporate trust office.

"City Recorder" means the City Recorder of the Issuer or any duly authorized deputy.

"Code" means the Internal Revenue Code of 1986, as amended.

"Continuing Disclosure Undertaking" means that certain Continuing Disclosure Undertaking executed by the Issuer and dated the date of issuance and delivery of the Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof, in substantially the form of Exhibit "B" hereto.

"Council" means the City Council of the Issuer.

"DTC" means The Depository Trust Company as securities depository for the Bonds, or its successors.

"Election" means the special bond election held in the Issuer on June 28, 2005.

"Government Obligations" means direct obligations of the United States of America, or other securities, the principal of and interest on which are unconditionally guaranteed by the United States of America.

"Issuer" means the City of Cedar Hills, Utah County, Utah or any successor.

"Master Resolution" means, collectively, this Resolution of the Issuer approved by the Pricing Committee as of December 12, 2012, as approved by an authorizing resolution of the City Council adopted on December 4, 2012, and the Parameters Resolution authorizing the issuance and sale of the Bonds.

"Mayor" means the Mayor of the Issuer or any Acting Mayor or Mayor Pro Tem.

"Official Notice of Bond Sale" means the Official Notice of Bond Sale of the Issuer with respect to the Bonds.

"Original Issue Date" means December 20, 2012, the date the Bonds are originally dated.

"Parameters Resolution" means that certain resolution adopted by the Issuer on May 15, 2012, authorizing the issuance and sale of the Bonds subject to certain parameters.

"Paying Agent" means each Person appointed by the Issuer as paying agent with respect to the Bonds pursuant to Section 2.5 hereof. The initial Paying Agent is The Bank of New York Mellon Trust Company, N.A., Denver, Colorado, or its successors or assigns.

"Person" means natural persons, firms, partnerships, associations, corporations, trusts, public bodies and other entities.

"Pricing Committee" means the committee consisting of the Mayor, City Manager, and Finance Director appointed pursuant to the Authorizing Resolution of the Issuer adopted on December 4, 2012.

"Project" means the acquisition and construction of the Cedar Hills golf course and related improvements.

"Record Date" means (a) with respect to each interest payment date, the fifteenth day immediately preceding such interest payment date, and (b) with respect to any redemption of any Bond, such Record Date as shall be specified by the Bond Registrar in the notice of redemption, provided that such Record Date shall be not less than 15 calendar days before the mailing of such notice of redemption.

"Refunded Bonds" means the outstanding General Obligation Refunding Bonds, Series 2005, maturing after February 1, 2016.

"Underwriter" means RW Baird & Co, Inc. and its successors or assigns.

Unless the context clearly indicates to the contrary, the terms "hereby," "hereof," "hereto," "herein," "hereunder," and any similar terms as used in this Master Resolution, refer to this Master Resolution in its entirety.

1.2. Authority for Master Resolution This Master Resolution is unanimously approved by the Pricing Committee appointed pursuant to the resolution of the City Council adopted on December 4, 2012 and pursuant to the Election and the Act.

ARTICLE II

AUTHORIZATION, TERMS AND ISSUANCE OF BONDS

2.1. Authorization of Bonds, Principal Amount, Designation and Series. In accordance with and subject to the terms, conditions and limitations established by the Act and in this Master Resolution, a series of General Obligation Refunding Bonds of the Issuer is hereby authorized to be issued in the aggregate principal amount of $5,570,000. Such series of bonds shall be designated "City of Cedar Hills, Utah County, Utah, General Obligation Refunding Bonds, Series 2012." The Bonds shall be issued in fully registered form only, without coupons, and initially in book-entry form.

The Bonds shall be general obligations of the Issuer for the payment of which the full faith, credit and taxing power of the Issuer are hereby pledged, and the Issuer hereby agrees and covenants that it will annually cause to be levied a tax sufficient to pay the principal of, premium, if any, and interest on the Bonds as they fall due and payable and also to constitute a sinking fund to pay the principal, premium, if any, and interest when due.

2.2. Purpose. The Bonds are hereby authorized to be issued for the purpose of (a) refunding the Refunded Bonds, and (b) paying issuance expenses incurred in connection with the issuance of the Bonds.

2.3. Bond Details. The Bonds shall mature on the dates and in the principal amounts, and shall bear interest (calculated on the basis of a year of 360 days comprised of twelve 30-day months) from the Original Issue Date with interest payable beginning February 1, 2013, and semiannually thereafter on February 1 and August 1 in each year and with principal payable on February 1, 2013, and on each February 1 thereafter, payable as follows:

Maturity February 1	Principal Amount	Interest Rate
2013	$65,000	2.000%
2014	50,000	2.000
2015	50,000	2.000
2016	55,000	2.000
2017	230,000	2.000
2018	230,000	2.000
2019	240,000	2.000
2020	240,000	2.000
2021	250,000	3.000
2022	250,000	3.000
2023	260,000	2.000
2024	270,000	2.000
2025	275,000	2.000
2026	280,000	2.000
2027	285,000	2.000

2029	$585,000	2.200%
2030	300,000	3.000
2031	315,000	3.000
2032	320,000	3.000
2035	1,020,000	3.000

Each Bond shall accrue interest from the interest payment date next preceding the date on which it is authenticated, unless (a) it is authenticated before the first interest payment date following the Original Issue Date, in which case interest shall accrue from the Original Issue Date, or (b) it is authenticated upon an interest payment date, in which case interest shall accrue from such interest payment date; provided that if at the time of authentication of any Bond interest is in default, interest shall accrue from the date to which interest has been paid. The Bonds shall bear interest on overdue principal at the aforesaid respective rates.

2.4. Denominations and Numbers. The Bonds shall be issued as fully registered bonds, without coupons, in the denomination of $5,000, or any integral multiple thereof. The Bonds shall be numbered with the letter prefix "R" and shall be numbered from one (1) consecutively upwards in order of issuance.

2.5. Paying Agent and Bond Registrar. The Issuer hereby appoints The Bank of New York Mellon Trust Company, N.A. to act as Paying Agent and Bond Registrar under the terms and conditions of this Master Resolution. The Issuer may remove any Paying Agent and any Bond Registrar, and appoint a successor or successors thereto. The Issuer shall submit to the Paying Agent or Bond Registrar, as the case may be, a notice of such removal at least 30 days prior to the effective date of such removal, and shall specify the date on which such removal shall take effect. Such removal shall take effect on the date that each successor Paying Agent and Bond Registrar shall signify its acceptance of the duties and obligations imposed upon it by the Master Resolution by executing and delivering to the Issuer a written acceptance thereof.

The principal of, premium, if any, and interest on the Bonds shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of public and private debts. Principal of and premium, if any, on the Bonds shall be payable when due to the Registered Owner of each Bond at the principal office of the Paying Agent. Payment of interest on each Bond shall be made by check or draft mailed to the Person which, as of the Record Date, is the Registered Owner of the Bond, at the address of such Registered Owner as it appears on the registration books of the Issuer kept by the Bond Registrar, or at such other address as is furnished to the Bond Registrar in writing by such Owner on or prior to the Record Date.

2.6. Redemption.

A. Optional Redemption. The Series 2012 Bonds maturing on or prior to February 1, 2023, are not subject to optional redemption prior to maturity. The Series

2012 Bonds maturing on or after February 1, 2024, are subject to redemption at the option of the Issuer on February 1, 2023, or on any date thereafter, in whole or in part, from such maturities or parts thereof as may be selected by the Issuer, at a redemption price equal to 100% of the principal amount of the Series 2012 Bonds to be redeemed, plus accrued interest thereon to the redemption date.

B. Mandatory Redemption. The Bonds are subject to mandatory redemption in whole or in part on any date if the Project or any portion thereof is sold or otherwise alienated by the Issuer or any other action occurs after the issue date to cause either the private business tests or the private loan financing test as defined by the Code to be met and the Bonds or any portion thereof may be deemed to be nonqualifying bonds and the Bonds may be so redeemed at a redemption price equal to 100% of the principal amount thereof and accrued interest to the redemption date upon not less than thirty (30) days' prior notice.

C. Mandatory Sinking Fund Redemption. The Series 2012 Bonds maturing on February 1, 2029, are subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof and accrued interest to the redemption date on the dates and in the principal amounts as follows:

Mandatory Sinking Fund Redemption Date	Principal Amount
February 1, 2028	$290,000
February 1, 2029†	295,000

† Final Maturity of Term Bond

Upon redemption of any Series 2012 Bonds maturing on February 1, 2029, other than by application of such Mandatory Sinking Fund Redemption, an amount equal to the principal amount so redeemed will be credited toward a part or all of any one or more of such Mandatory Sinking Fund Redemption amounts for the Series 2012 Bonds maturing on February 1, 2029, in such order as may be directed by the Issuer.

The Series 2012 Bonds maturing on February 1, 2035, are subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof and accrued interest to the redemption date on the dates and in the principal amounts as follows:

Mandatory Sinking Fund Redemption Date	Principal Amount
February 1, 2033	$330,000
February 1, 2034	340,000
February 1, 2035†	350,000

† Final Maturity of Term Bond

Upon redemption of any Series 2012 Bonds maturing on February 1, 2035, other than by application of such Mandatory Sinking Fund Redemption, an amount equal to the principal amount so redeemed will be credited toward a part or all of any one or more of such Mandatory Sinking Fund Redemption amounts for the Series 2012 Bonds maturing on February 1, 2035, in such order as may be directed by the Issuer.

If fewer than all of the Bonds of any maturity are called for redemption, the Bonds to be redeemed shall be selected by lot by the Bond Registrar in such manner as the Bond Registrar in its discretion may deem fair and appropriate, each $5,000 of principal amount to the Bonds being counted as one Bond for this purpose. If a portion of a Bond shall be called for redemption, a new Bond in principal amount equal to the unredeemed portion thereof shall be issued to the registered owner upon presentation and surrender thereof.

2.7. Notice of Redemption.

(a) In the event any Bonds are to be redeemed, the Issuer shall cause notice of such redemption to be given as provided in this Section 2.7. Notice of redemption shall be given by the Bond Registrar by registered or certified mail, postage prepaid, not less than thirty (30) nor more than forty-five (45) days prior to the redemption date, to each Registered Owner of the Bonds to be redeemed, at the address shown on the registration books of the Issuer maintained by the Bond Registrar on the Record Date specified in the notice of redemption, which Record Date shall be not less than fifteen (15) calendar days before the mailing of such notice, or at such other address as is furnished to the Bond Registrar in writing by such Registered Owner on or prior to such Record Date. Each notice of redemption shall state (i) the identification numbers, as established hereunder and the CUSIP numbers, if any, of the Bonds being redeemed, provided that any such notice shall state that no representation is made as to the correctness of CUSIP numbers either as printed on such Bonds or as contained in the notice of redemption and that reliance may be placed only on the identification numbers contained in the notice or printed on such Bonds; (ii) any other descriptive information needed to identify accurately the Bonds being redeemed, including, but not limited to, the original issuance date and maturity date of, and interest rate on, such Bonds; (iii) the Record Date; (iv) the redemption date; (v) the redemption price; (vi) the place of redemption; (vii) the total principal amount of Bonds to be redeemed; (viii) if less than all, the distinctive numbers of the Bonds or portions of Bonds to be redeemed and, if less than all of any Bond, the principal amount of each Bond that is to be redeemed; and (ix) that the interest on the Bonds or portion of Bonds in such notice designated for redemption shall cease to accrue from and after such redemption date and that on said date there will become due and payable on each of said Bonds or portions of Bonds the redemption price thereof and interest accrued thereon to the redemption date. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Registered Owner receives such notice. Failure to give such notice or any defect therein with respect to any Bond shall

not affect the validity of the proceedings for redemption with respect to any other Bond.

(b) In addition to the foregoing notice, further notice of redemption shall be given by the Bond Registrar, at least two (2) business days in advance of the mailed notice to Registered Owners of Bonds to be redeemed, by registered or certified mail or overnight delivery service to the Underwriter and to the Municipal Securities Rulemaking Board ("MSRB"). Such further notice shall contain the information required in the immediately preceding paragraph. Failure to give all or any portion of such further notice shall not in any manner defeat the effectiveness of a call for redemption.

Each notice may further state that such redemption shall be conditional upon the receipt by the Paying Agent, on or prior to the date fixed for such redemption, of moneys sufficient to pay the principal of, premium, if any, and interest on such Bonds to be redeemed and that if such moneys shall not have been so received said notice shall be of no force and effect and the Issuer shall not be required to redeem such Bonds. If such condition is included in the notice of redemption and if sufficient moneys have not been deposited on the date fixed for redemption, then a notice stating sufficient moneys were not deposited and that no redemption occurred on that date shall be sent within a reasonable time thereafter, in like manner, to the registered owners of each Bond which was sent the notice of redemption.

If notice of redemption shall have been given as described above and the foregoing condition, if any, shall have been met, the Bonds or portions thereof specified in said notice shall become due and payable at the applicable redemption price on the redemption date therein designated, and if, on the redemption date, moneys for the payment of the redemption price of all the Bonds to be redeemed, together with interest to the redemption date, shall be available for such payment on said date, then from and after the redemption date interest on such Bonds shall cease to accrue and become payable.

2.8. Partially Redeemed Bonds. In case any Bond shall be redeemed in part only, upon the presentation of such Bond for such partial redemption, the Issuer shall execute and the Bond Registrar shall authenticate and shall deliver or cause to be delivered to or upon the written order of the Registered Owner thereof, at the expense of the Issuer, a Bond or Bonds of the same series, interest rate and maturity, in aggregate principal amount equal to the unredeemed portion of such registered Bond. A portion of any Bond of a denomination of more than $5,000 to be redeemed will be in the principal amount of $5,000 or an integral multiple thereof and in selecting portions of such Bonds for redemption, each such Bond shall be treated as representing that number of Bonds of $5,000 denomination which is obtained by dividing the principal amount of such Bonds by $5,000.

2.9. Book-Entry System.

(a) Except as provided in paragraphs (b) and (c) of this Section 2.9, the registered holder of all Bonds shall be, and the Bonds shall be registered in the name of Cede & Co. ("Cede"), as nominee of The Depository Trust Company, New York, New York (together with any substitute securities depository appointed pursuant to paragraph (b)(ii) of this Section 2.9, "DTC"). Payment of interest for any Bond, as applicable, shall be made in accordance with the provisions of this Resolution to the account of Cede on the interest payment date for the Bonds at the address indicated for Cede in the registration books of the Bond Registrar.

(b) The Bonds shall be initially issued in the form of a separate single fully registered Bond in the amount of each separate stated maturity of the Bonds. Upon initial issuance, the ownership of each such Bond shall be registered in the registration books of the Issuer kept by the Bond Registrar, in the name of Cede, as nominee of DTC. With respect to Bonds so registered in the name of Cede, the Issuer, the Bond Registrar and any Paying Agent shall have no responsibility or obligation to any DTC participant or to any beneficial owner of any of such Bonds. Without limiting the immediately preceding sentence, the Issuer, the Bond Registrar and any Paying Agent shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede or any DTC participant with respect to any beneficial ownership interest in the Bonds, (ii) the delivery to any DTC participant, beneficial owner or other person, other than DTC, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC participant, beneficial owner or other person, other than DTC, of any amount with respect to the principal or Redemption Price of, or interest on, any of the Bonds. The Issuer, the Bond Registrar and any Paying Agent may treat DTC as, and deem DTC to be, the absolute owner of each Bond for all purposes whatsoever, including (but not limited to) (1) payment of the principal or Redemption Price of, and interest on, each such Bond, (2) giving notices of redemption and other matters with respect to such Bonds and (3) registering transfers with respect to such Bonds. So long as the Bonds are registered in the name of CEDE & Co., the Paying Agent shall pay the principal or Redemption Price of, and interest on, all Bonds only to or upon the order of DTC, and all such payments shall be valid and effective to satisfy fully and discharge the Issuer's obligations with respect to such principal or Redemption Price, and interest, to the extent of the sum or sums so paid. Except as provided in paragraph b(i) of this Section 2.9, no person other than DTC shall receive a Bond evidencing the obligation of the Issuer to make payments of principal or Redemption Price of, and interest on, any such Bond pursuant to this Resolution. Upon delivery by DTC to the Bond Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede, and subject to the transfer provisions of this Resolution, the word "Cede" in this Resolution shall refer to such new nominee of DTC.

Except as provided in paragraph (iii) of this Section 2.9, and notwithstanding any other provisions of this Resolution, the Bonds may be transferred, in whole but not in part, only to a nominee of DTC, or by a nominee

of DTC to DTC or a nominee of DTC, or by DTC or a nominee of DTC to any successor securities depository or any nominee thereof.

(i) DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the Issuer, the Bond Registrar, and the Paying Agent, which notice shall certify that DTC has discharged its responsibilities with respect to the Bonds under applicable law.

(ii) The Issuer, in its sole discretion and without the consent of any other person, may, by notice to the Bond Registrar, terminate the services of DTC with respect to the Bonds if the Issuer determines that the continuation of the system of book-entry-only transfers through DTC is not in the best interests of the beneficial owners of the Bonds or the Issuer; and the Issuer shall, by notice to the Bond Registrar, terminate the services of DTC with respect to the Bonds upon receipt by the Issuer, the Bond Registrar, and the Paying Agent of written notice from DTC to the effect that DTC has received written notice from DTC participants having interests, as shown in the records of DTC, in an aggregate principal amount of not less than fifty percent (50%) of the aggregate principal amount of the then outstanding Bonds to the effect that: (1) DTC is unable to discharge its responsibilities with respect to the Bonds; or (2) a continuation of the requirement that all of the outstanding Bonds be registered in the registration books kept by the Bond Registrar in the name of Cede, as nominee of DTC, is not in the best interests of the beneficial owners of the Bonds.

(iii) Upon the termination of the services of DTC with respect to the Bonds pursuant to subsection (c)(ii)(2) hereof, or upon the discontinuance or termination of the services of DTC with respect to the Bonds pursuant to subsection (c)(i) or subsection (c)(ii)(1) hereof the Issuer may within 90 days thereafter appoint a substitute securities depository which, in the opinion of the Issuer, is willing and able to undertake the functions of DTC hereunder upon reasonable and customary terms. If no such successor can be found within such period, the Bonds shall no longer be restricted to being registered in the registration books kept by the Bond Registrar in the name of Cede, as nominee of DTC. In such event, the Issuer shall execute and the Bond Registrar shall authenticate Bond certificates as requested by DTC of like principal amount, maturity and Series, in authorized denominations to the identifiable beneficial owners in replacement of such beneficial owners' beneficial interest in the Bonds.

(iv) Notwithstanding any other provision of this Resolution to the contrary, so long as any Bond is registered in the name of Cede, as nominee of DTC, all payments with respect to the principal or Redemption Price of, and interest on, such Bond and all notices with respect to such

Bond shall be made and given, respectively, to DTC as provided in the representation letter of the Issuer and the Bond Registrar addressed to DTC with respect to the Bonds.

(v) In connection with any notice or other communication to be provided to Holders of Bonds registered in the name of Cede pursuant to this Resolution by the Issuer or the Bond Registrar with respect to any consent or other action to be taken by such Holders, the Issuer shall establish a record date for such consent or other action by such Holders and give DTC notice of such record date not less than fifteen (15) days in advance of such record date to the extent possible.

2.10. Sale of Bonds.

(a) The Bonds are hereby sold to the Underwriter for their principal amount of $5,570,000, plus a net reoffering premium of $179,473.95, less an Underwriter's discount of $117,462.92, for a net purchase price of $5,632,011.03 (the "Net Purchase Price"), plus accrued interest, if any, on the Bonds from the Original Issue Date to the date of delivery of and payment for the Bonds, on the terms and conditions set forth in the Underwriter's bid to purchase the Bonds upon the basis of the representations therein set forth.

(b) The final form of Official Statement of the Issuer in substantially the form attached hereto as Exhibit "C", with such changes, insertions and revisions as the Mayor shall approve, is hereby authorized and the Mayor shall execute and deliver such final Official Statement to the Underwriter for distribution to prospective purchasers of the Bonds and other interested persons. The approval of the Mayor of any such changes, omissions, insertions and revisions shall be conclusively established by said Mayor's execution of the final Official Statement. The Issuer has previously deemed, and does hereby deem final the Preliminary Official Statement within the meaning and for the purposes of Paragraph (b)(1) of Rule 15c2-12 of the Securities and Exchange Commission, subject to completion thereof with the information established at the time of the sale of the Bonds.

2.11. Execution of Bonds. The Bonds shall be executed on behalf of the Issuer by the Mayor and attested by the City Recorder (the signatures of said Mayor and City Recorder being either manual and/or by facsimile) and the corporate seal of the Issuer or a facsimile thereof shall be impressed or imprinted thereon. The use of such facsimile signatures of said Mayor and City Recorder and such facsimile of the seal of the Issuer on the Bonds are hereby authorized, approved and adopted by the Issuer as the authorized and authentic execution, attestation and sealing of the Bonds by said officials. The Bonds shall then be delivered to the Bond Registrar for manual authentication by it. The Certificate of Authentication shall be substantially in the form provided in Section 5.1 hereof. Only such of the Bonds as shall bear thereon a Certificate of Authentication, manually executed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this Master Resolution, and such certificate of the Bond

Registrar shall be conclusive evidence that the Bonds so certified have been duly registered and delivered under, and are entitled to the benefits of this Master Resolution and that the Holder thereof is entitled to the benefits of this Master Resolution. The Certificate of Authentication of the Bond Registrar on any Bond shall be deemed to have been executed by it if (a) such Bond is signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication on all of the Bonds issued hereunder or that all of the Bonds hereunder be certified as registered by the same Bond Registrar, and (b) the date of authentication of the Bond is inserted in the place provided therefore on the Certificate of Authentication.

The Mayor and City Recorder of the Issuer are authorized to execute, attest and seal from time to time, in the manner described above, Bonds (the "Exchange Bonds") to be issued and delivered for the purpose of effecting transfers and exchanges of Bonds pursuant to Article III hereof. At the time of the execution, attestation and sealing of the Exchange Bonds by the Issuer, the payee, principal amount, CUSIP number, if any, maturity and interest rate shall be in blank. Upon any transfer or exchange of Bonds pursuant to Article III hereof, the Bond Registrar shall cause to be inserted in appropriate Exchange Bonds the appropriate payee, principal amount, CUSIP number, if any, maturity and interest rate. The Bond Registrar is hereby authorized and directed to hold the Exchange Bonds, and to complete, certify as to registration and authenticate (if applicable) and deliver the Exchange Bonds, for the purpose of effecting transfers and exchanges of Bonds; provided that any Exchange Bonds registered, authenticated (if applicable) and delivered by the Bond Registrar shall bear the same series, maturity and interest rate as Bonds delivered to the Bond Registrar for exchange or transfer, and shall bear the name of such payee as the Bondholder requesting an exchange or transfer shall designate; and provided further that upon the delivery of any Exchange Bonds by the Bond Registrar a like principal amount of Bonds submitted for transfer or exchange, and of like series and having like maturities and interest rates, shall be canceled. The execution, attestation and sealing by the Issuer and delivery to the Bond Registrar of any Exchange Bond shall constitute full and due authorization of such Bond containing such payee, principal amount, CUSIP number, if any, maturity and interest rate as the Bond Registrar shall cause to be inserted, and the Bond Registrar shall thereby be authorized to authenticate and deliver such Exchange Bond in accordance with the provisions hereof.

In case any officer whose signature or a facsimile of whose signature shall appear on any Bond (including any Exchange Bond) shall cease to be such officer before the issuance or delivery of such Bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until such issuance or delivery, respectively.

2.12. Delivery of Bonds; Application of Proceeds. The Bonds shall be delivered to the Underwriter at such time and place as provided in the Official Notice of Bond Sale. The City Recorder of the Issuer is hereby instructed to make delivery of the Bonds to the Underwriter and to receive payment therefore in accordance with the terms of the Official Notice of Bond Sale.

2.13. Further Authority. The Mayor, the City Recorder, the City Manager and the Finance Director of the Issuer and other officers and officials of the Issuer, as may be required, are hereby authorized and directed to execute all such certificates, documents and other instruments as may be necessary or advisable to provide for the issuance, sale, registration and delivery of the Bonds.

2.14. Redemption of Refunded Bonds. The Issuer authorizes the redemption of the Series 2005 Bonds maturing after February 1, 2016, and directs its officers to take all actions needful and helpful to call redeem such bonds and ratifies all actions taken to call and redeem such bonds.

ARTICLE III

TRANSFER AND EXCHANGE OF BONDS; BOND REGISTRAR

3.1. Transfer of Bonds.

(a) Any Bond, may, in accordance with its terms, be transferred, upon the registration books kept by the Bond Registrar pursuant to Section 3.3 hereof, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer in a form approved by the Bond Registrar, duly executed. No transfer shall be effective until entered on the registration books kept by the Bond Registrar. The Issuer, the Bond Registrar and the Paying Agent may treat and consider the person in whose name each Bond is registered in the registration books kept by the Bond Registrar as the holder and absolute owner thereof for the purpose of receiving payment of, or on account of, the principal or redemption price thereof and interest due thereon and for all other purposes whatsoever.

(b) Whenever any Bond or Bonds shall be surrendered for transfer, the Bond Registrar shall authenticate and deliver a new fully registered Bond or Bonds (which may be an Exchange Bond or Bonds pursuant to Section 2.11 hereof) of the same series, designation, maturity and interest rate and of authorized denominations duly executed by the Issuer, for a like aggregate principal amount. The Bond Registrar shall require the payment by the Bondholder requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer. With respect to each Bond, no such transfer shall be required to be made (i) with respect to any interest payment date after the Record Date to and including such interest payment date or (ii) with respect to any redemption of any Bond, after such Record Date as shall be specified by the Bond Registrar in the notice of redemption, provided that such Record Date shall not be less than 15 calendar days before the mailing of such notice of redemption.

(c) The Issuer shall not be required to register the transfer of or exchange any Bond selected for redemption in whole or in part, except the unredeemed portion of Bonds being redeemed in part. Upon surrender of any Bond redeemed in part only, the Issuer shall execute and the Bond Registrar shall authenticate and deliver to the Bondholder, at the expense of the Issuer, a new Bond or Bonds (which may be an Exchange Bond or Bonds pursuant to Section 2.8 hereof) of the same series, designation, maturity and interest rate and of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bond surrendered.

3.2. Exchange of Bonds. Bonds may be exchanged at the principal corporate trust office of the Bond Registrar for a like aggregate principal amount of fully registered

Bonds (which may be an Exchange Bond or Bonds pursuant to Section 2.8 hereof) of the same series, designation, maturity and interest rate of other authorized denominations. The Bond Registrar shall require the payment by the Registered Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange. With respect to each Bond, no such exchange shall be required to be made (i) after the Record Date with respect to any interest payment date to and including such interest payment date, or (ii) with respect to any redemption of any Bond, after such Record Date as shall be specified by the Bond Registrar in the notice of redemption, provided that such Record Date shall not be less than 15 calendar days before the mailing of such notice of redemption.

3.3. Bond Registration Books. This Master Resolution shall constitute a system of registration within the meaning and for all purposes of the Registered Public Obligations Act, Title 15, Chapter 7, Utah Code Annotated 1953, as amended. The Bond Registrar shall keep or cause to be kept, at its principal office, sufficient books for the registration and transfer of the Bonds, which shall at all times be open to inspection by the Issuer, and upon presentation for such purpose, the Bond Registrar shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, Bonds as herein provided.

3.4. List of Registered Owners. The Bond Registrar shall maintain a list of the names and addresses of the Owners of all Bonds and upon any transfer shall add the name and address of the new Registered Owner and eliminate the name and address of the transferor Registered Owner.

3.5. Duties of Bond Registrar. The obligations and duties of the Bond Registrar hereunder include the following:

(a) to act as bond registrar, authenticating agent, paying agent, and transfer agent as provided herein;

(b) to pay costs of issuance in accordance with a certificate to be signed be the Mayor or his designee;

(c) to maintain a list of Registered Owners as set forth herein and to furnish such list to the Issuer upon request, but otherwise to keep such list confidential;

(d) to give notice of redemption of Bonds as provided herein;

(e) to cancel and/or destroy Bonds which have been paid at maturity or upon earlier redemption or submitted for exchange or transfer;

(f) to furnish the Issuer at least annually a certificate with respect to Bonds canceled and/or destroyed; and

(g) to furnish the Issuer at least annually an audit confirmation of Bonds paid, Bonds outstanding and payments made with respect to interest on the Bonds.

ARTICLE IV

COVENANTS AND UNDERTAKINGS

4.1. Covenants of Issuer. All covenants, statements, representations and agreements contained in the Bonds, and all recitals and representations in this Master Resolution are hereby considered and understood and it is hereby resolved that all said covenants, statements, representations and agreements of the Council, are the covenants, statements, representations and agreements of the Issuer.

4.2. Levy of Taxes. The Issuer covenants and agrees to establish a Bond Fund to pay the interest falling due on the Bonds as the same becomes due and also to provide for the payment of the principal of the Bonds at maturity or by prior redemption. There shall be levied on all taxable property in the Issuer in addition to all other taxes, a direct annual tax sufficient to pay the interest on the Bonds and to pay and retire the Bonds. Said taxes shall be deposited in the Bond Fund and applied solely for the purpose of the payment of said interest and principal on the Bonds, respectively, and for no other purpose whatsoever until the indebtedness so contracted under this Master Resolution, principal and interest, shall have been fully paid, satisfied and discharged, but nothing herein contained shall be so construed as to prevent the Issuer from applying any other funds that may be in the Issuer's treasury and available for that purpose to the payment of said interest and principal as the same respectively mature, and the levy or levies herein provided for may thereupon to that extent be diminished, and the sums herein provided for to meet the interest on the Bonds and to discharge the principal thereof when due, are hereby appropriated for that purpose and the required amount for each year shall be included by the Issuer in its annual budget and its statement and estimate as certified to the Auditor of Utah County, Utah in each year. Principal or interest falling due at any time when there shall not be available from the proceeds of said levies money sufficient for the payment thereof shall, to the extent of such deficiency, be paid from other funds of the Issuer available for such purpose, and such other funds reimbursed when the proceeds of said levies become available. The Issuer shall transfer from the Bond Fund to the Paying Agent at least one day prior to the principal and/or interest payment date on the Bonds, sufficient moneys to pay all principal, premium, if any, and interest falling due on said payment or redemption date. Moneys remaining on deposit immediately after each such payment date, including any investment earnings thereon earned during the period of such deposit, shall be immediately withdrawn from the Bond Fund by the Issuer and commingled with the general funds of the Issuer. The Issuer has established the Bond Fund primarily to achieve a proper matching of revenues and debt service on the Bonds. The Bond Fund shall be depleted at least once each year by the Issuer except for a reasonable carryover amount not to exceed the greater of one year's earnings on the Bond Fund or one-twelfth of the annual debt service on the Bonds.

4.3. Continuing Disclosure. The Issuer hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Undertaking, a copy of which is attached hereto as Exhibit "B". In the event the Issuer fails to comply with the Continuing Disclosure Undertaking, any Bondholder may take the remedial actions set forth therein.

4.4. Bonds in Registered Form. The Issuer recognizes that Section 149 of the Code requires the Bonds to be issued and to remain in fully registered form in order that interest thereon shall be exempt from federal income taxation under laws in force at the time the Bonds are delivered. In this connection, the Issuer agrees that it will not take any action to permit the Bonds to be issued in, or converted into, bearer or coupon form.

4.5. Tax Covenants. The Issuer further covenants and agrees to and for the benefit of the Bondholders that the Issuer (1) will not take any action that would cause interest on the Bonds to become subject to federal income taxation, (ii) will not omit to take or cause to be taken, in timely manner, any action, which omission would cause the interest on the Bonds to become subject to federal income taxation, and (iii) will, to the extent possible, comply with any other requirements of federal tax law applicable to the Bonds in order to preserve the exemption from federal income taxation of interest on the Bonds. Pursuant to this covenant, the Issuer obligates itself to comply throughout the term of the Bonds with the requirements of Section 148 of the Code and the regulations proposed or promulgated thereunder, as the same presently exist, or may from time to time hereafter be amended, supplemented or revised. The Issuer further represents and covenants that no bonds or other evidences of indebtedness of the Issuer payable from substantially the same source of revenue as the Bonds have been or will be issued, sold or delivered within a period beginning 15 days prior to the sale of the Bonds and ending 15 days following the delivery of the Bonds.

4.6. Designation of Issue for Tax Purposes. In accordance with Section 265 of the Code, the Issuer hereby designates the Bonds as an issue qualifying for the exception for certain qualified tax-exempt obligations to the rule denying banks and other financial institutions 100% of the deduction for interest expenses which is allocable to tax-exempt interest. The Issuer reasonably anticipates that the total amount of qualified tax-exempt obligations [other than private activity bonds, as defined in Section 141 of the Code (a qualified 501(c)(3) bond, as defined in Section 145 of the Code, not being treated as a private activity bond for this purpose)] which will be issued by the Issuer and by any aggregated issuer (an issuer and all subordinate issuers being treated as a single issuer) during the current calendar year will not exceed $10,000,000. The total amount of obligations designated by the Issuer and all aggregated issuers for the current calendar year does not exceed $10,000,000.

4.7. Arbitrage Rebate. The Issuer hereby covenants to fully comply with the provisions of Section 148(f) of the Code and to pay the United States the amounts required thereunder.

ARTICLE V

FORM OF BONDS

5.1 Form of Bonds. Each Bond shall be in substantially the following form, with such insertions or variations as to any redemption or amortization provisions and such other insertions or omissions, endorsements and variations as may be required:

[FORM OF BOND]

Registered Registered

UNITED STATES OF AMERICA
STATE OF UTAH
CITY OF CEDAR HILLS
UTAH COUNTY
GENERAL OBLIGATION REFUNDING BONDS
SERIES 2012

Number R-_____ $_____

THIS BOND HAS BEEN DESIGNATED BY THE ISSUER FOR PURPOSES OF THE EXCEPTION CONTAINED IN SECTION 265(b)(3) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, RELATING TO THE DEDUCTIBILITY OF A FINANCIAL INSTITUTION'S INTEREST EXPENSE ALLOCABLE TO TAX-EXEMPT INTEREST.

INTEREST RATE	MATURITY DATE	ORIGINAL ISSUE DATE _____ 0, 2012	CUSIP

Registered Owner: _____

Principal Amount: _____ DOLLARS

The City of Cedar Hills, Utah County, Utah (the "Issuer"), a duly organized and existing political subdivision of the State of Utah, acknowledges itself indebted and for value received hereby promises to pay to the Registered Owner identified above, or registered assigns, on the Maturity Date identified above, upon presentation and surrender hereof, the Principal Amount identified above, and to pay the Registered Owner hereof interest on the balance of said Principal Amount from time to time remaining unpaid at the interest rate per annum identified above (calculated on the basis of a year of 360 days comprised of twelve 30-day months) (the "Interest Rate"), which interest shall be payable on February 1, 2013, and thereafter in each year on the 1st day of February and August, until payment in full of the Principal Amount, except as the provisions set forth in the hereinafter mentioned Master Resolution with respect to redemption prior to maturity may become applicable hereto.

Interest on this Bond shall accrue from the February 1 or August 1 (each an "Interest Payment Date") next preceding the date on which it is authenticated, unless (a) it is authenticated before the first Interest Payment Date following the Original Issue Date identified above, in which case interest shall accrue from the Original Issue Date, or (b) it is authenticated on an Interest Payment Date, in which case interest shall accrue from such Interest Payment Date; provided, however, that if interest on this Bond shall be in default, interest on the Bonds issued in exchange for Bonds surrendered for transfer or exchange shall be payable from the date to which interest has been paid in full on the Bonds surrendered. This Bond shall bear interest on overdue principal at the Interest Rate. Principal and interest on this Bond are payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Principal of this Bond shall be payable upon surrender of this Bond at the office of The Bank of New York Mellon Trust Company, N.A., as Paying Agent, and payment of the semiannual interest hereon shall be made by check or draft mailed to the person who is the Registered Owner of record hereof as of the fifteenth day immediately preceding each Interest Payment Date (the "Record Date") at the address of such Registered Owner as it appears on the registration books kept by the hereinafter defined Bond Registrar, or at such other address as is furnished in writing by such Registered Owner to the Bond Registrar as provided in the hereinafter defined Master Resolution.

This Bond is one of the General Obligation Refunding Bonds, Series 2012 of the Issuer (the "Bonds") limited to the aggregate principal amount of $5,570,000, issued pursuant to (i) authorization given by the majority of the qualified registered electors of the Issuer voting at a special bond election held in the Issuer on June 28, 2005; (ii) the Utah Refunding Bond Act, Title 11, Chapter 27, Utah Code Annotated 1953, as amended (the "Act"), and (iii) resolutions of the Issuer adopted on May 15, 2012, and December 4, 2012 authorizing a Master Resolution to be approved by a pricing committee consisting of the Mayor, City Manager, and Finance Director, which Master Resolution was approved on December 12, 2012 (collectively, the "Master Resolution"). The purpose of the Bonds is to (a) advance refund the Issuer's outstanding General Obligation Refunding Bonds, Series 2005 maturing after February 1, 2016, and (b) pay issuance expenses incurred in connection with the issuance of the Bonds.

The Bank of New York Mellon Trust Company, N.A. is the initial bond registrar and paying agent with respect to the Bonds. Said bond registrar and paying agent, together with any successor bond registrar or paying agent, respectively, is referred to herein as the "Bond Registrar" and the "Paying Agent."

The Issuer covenants and is by law required to levy annually a sufficient tax to constitute a Bond Fund to pay the interest on this Bond as it falls due and also to provide for the payment of the principal thereof as the same falls due; provided, however, that the Issuer may apply other funds available to the Issuer to the payment of said principal and interest in which case the levy herein described may to that extent be diminished.

This Bond is transferable, as provided in the Master Resolution, only upon the books of the Issuer kept for that purpose at the principal office of the Bond Registrar, by

the Registered Owner hereof in person or by his attorney duly authorized in writing, upon surrender hereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the Registered Owner or such duly authorized attorney, and thereupon the Issuer shall issue in the name of the transferee a new registered Bond or Bonds of authorized denominations of the same aggregate principal amount, series, designation, maturity and interest rate as the surrendered Bond, all as provided in the Master Resolution and upon the payment of the charges therein prescribed. No transfer of this Bond shall be effective until entered on the registration books kept by the Bond Registrar. The Issuer, the Bond Registrar and the Paying Agent may treat and consider the person in whose name this Bond is registered on the registration books kept by the Bond Registrar as the holder and absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes whatsoever, and neither the Issuer, nor the Bond Registrar nor the Paying Agent shall be affected by any notice to the contrary.

The Issuer is not required to transfer or exchange any Bond (i) after the Record Date with respect to any Interest Payment Date to and including such Interest Payment Date, and (ii) with respect to any redemption of any Bond, after such Record Date as shall be specified by the Bond Registrar in the notice of redemption, provided that such Record Date shall not be less than 15 calendar days before the mailing of such notice of redemption.

The Bonds are issuable solely in the form of fully registered Bonds without coupons in the denomination of $5,000 or any integral multiple thereof.

Optional Redemption. The Bonds maturing on or prior to February 1, 2023, are not subject to optional redemption prior to maturity. The Bonds maturing on or after February 1, 2024, are subject to redemption at the option of the Issuer on February 1, 2023, or on any date thereafter, in whole or in part, from such maturities or parts thereof as may be selected by the Issuer, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed, plus accrued interest thereon to the redemption date.

Mandatory Redemption. The Bonds are subject to mandatory redemption in whole or in part on any date if the Project or any portion thereof is sold or otherwise alienated by the Issuer or any other action occurs after the issue date to cause either the private business tests or the private loan financing test as defined by the Code to be met and the Bonds or any portion thereof may be deemed to be nonqualifying bonds and the Bonds my be so redeemed at a redemption price equal to 100% of the principal amount thereof and accrued interest to the redemption date upon not less than thirty (30) days' prior notice.

Mandatory Sinking Fund Redemption. The Bonds maturing on February 1, 2029, are subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof and accrued interest to the redemption date on the dates and in the principal amounts as follows:

Mandatory Sinking Fund Redemption Date	Principal Amount
February 1, 2028	$290,000
February 1, 2029†	295,000

† Final Maturity of Term Bond

Upon redemption of any Bonds maturing on February 1, 2029, other than by application of such Mandatory Sinking Fund Redemption, an amount equal to the principal amount so redeemed will be credited toward a part or all of any one or more of such Mandatory Sinking Fund Redemption amounts for the Bonds maturing on February 1, 2029, in such order as may be directed by the Issuer.

The Bonds maturing on February 1, 2035, are subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof and accrued interest to the redemption date on the dates and in the principal amounts as follows:

Mandatory Sinking Fund Redemption Date	Principal Amount
February 1, 2033	$330,000
February 1, 2034	340,000
February 1, 2035†	350,000

† Final Maturity of Term Bond

Upon redemption of any Bonds maturing on February 1, 2035, other than by application of such Mandatory Sinking Fund Redemption, an amount equal to the principal amount so redeemed will be credited toward a part or all of any one or more of such Mandatory Sinking Fund Redemption amounts for the Bonds maturing on February 1, 2035, in such order as may be directed by the Issuer.

If fewer than all the Bonds of any maturity are to be redeemed, the particular Bonds or portions of Bonds to be redeemed shall be selected at random by the Bond Registrar in such manner as the Bond Registrar in its discretion may deem fair and appropriate. In case any Bond shall be redeemed in part only, upon the presentation of such Bond for such partial redemption, the Issuer shall execute and the Bond Registrar shall authenticate and shall deliver or cause to be delivered to or upon the written order of the Registered Owner thereof, at the expense of the Issuer, a Bond or Bonds of the same series, interest rate and maturity, in aggregate principal amount equal to the unredeemed portion of such registered Bond. A portion of any Bond of a denomination of more than $5,000 to be redeemed will be in the principal amount of $5,000 or an integral multiple thereof and in selecting portions of such Bonds for redemption, each such Bond shall be treated as representing that number of Bonds of $5,000 denomination which is obtained by dividing the principal amount of such Bonds by $5,000.

Any redemption of Bonds under the preceding paragraph shall be made as provided in the Resolution upon not less than thirty (30) nor more than forty-five (45) days' notice by mailing a copy of the redemption notice by registered or certified mail, postage prepaid, to the Registered Owners thereof at the address shown on the bond registration books of the Issuer kept by the Bond Registrar on such Record Date for such redemption as is specified on such notice, which Record Date shall be not less than fifteen (15) calendar days before the mailing of such notice, or at such other address as is furnished to the Bond Registrar in writing on or prior to such Record Date.

Except as otherwise provided herein and unless the context clearly indicates otherwise, words and phrases used herein shall have the same meanings as such words and phrases in the Master Resolution.

This Bond and the issue of Bonds of which it is a part are issued in conformity with and after full compliance with the Constitution of the State of Utah and pursuant to the provisions of the Act and all other laws applicable thereto. It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of Utah and by the Act and the Master Resolution to exist, to have happened or to have been performed precedent to or in connection with the issuance of this Bond exist, have happened and have been performed and that the issue of Bonds, together with all other indebtedness of the Issuer, is within every debt and other limit prescribed by said Constitution and statutes, and that the full faith and credit of the Issuer are hereby irrevocably pledged to the punctual payment of the principal of and interest on this Bond, according to its terms.

This Bond shall not be valid until the Certificate of Authentication hereon shall have been manually signed by the Bond Registrar.

IN WITNESS WHEREOF, THE CITY COUNCIL OF THE CITY OF CEDAR HILLS, UTAH COUNTY, UTAH, has caused this Bond to be signed in its name and on its behalf by its Mayor and attested by its City Recorder (the signatures of said Mayor and City Recorder being by facsimile or manual signature), and has caused the facsimile of its corporate seal to be printed hereon, and said officials by the execution hereof do adopt as and for their own proper signatures their facsimile signatures, if any, appearing on each of the Bonds.

(Do Not Sign)
Mayor

ATTEST:

(Do Not Sign)
City Recorder

(SEAL)

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within mentioned Master Resolution and is one of the $5,570,000 General Obligation Refunding Bonds, Series 2012 of the City of Cedar Hills, Utah County, Utah.

The Bank of New York Mellon Trust
Company, N.A., as Bond Registrar

_____

Date of Authentication: _____, 2012

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM	-	as tenants in common
TEN ENT	-	as tenants by the entireties
JT TEN	-	as joint tenants with right of survivorship and not as tenants in common
UNIF GIFT MIN ACT	-	_____ Custodian _____ (Cust) (Minor) under Uniform Gifts to Minors Act _____ (State)

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

Insert Social Security or Other
Identifying Number of Assignee

(Please Print or Typewrite Name and Address of Assignee)

the within Bond and hereby irrevocably constitutes and appoints

attorney to register the transfer of said Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____ Signature: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

SIGNATURE GUARANTEED:

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15.

ARTICLE VI

MISCELLANEOUS

6.1. Changes to Forms The forms of Bonds and Official Statement authorized and approved hereby are authorized and approved with such additions, modifications, deletions and changes thereto as may be deemed necessary or appropriate and approved by the Mayor and/or City Recorder, whose execution or approval thereof on behalf of the Issuer shall conclusively establish such necessity, appropriateness and approval with respect to all such additions, modifications, deletions and changes incorporated therein.

6.2. Notice of Bonds to be Issued In accordance with the provisions of Section 11-27-4 of the Act, the City Recorder of the Issuer has caused a "Notice of Bonds to be Issued" to be published one time in the Daily Herald, a newspaper having general circulation in the Issuer, and has caused a copy of this Master Resolution to be kept on file in the office of said City Recorder for public examination during regular business hours at least thirty (30) days from and after the date hereof. The notice is hereby reaffirmed and approved.

6.3. Ratification All proceedings, resolutions and actions of the Issuer and its officers taken in connection with the sale and issuance of the Bonds are hereby ratified, confirmed and approved, including but without limitation, the preparation and distribution of the Preliminary Official Statement, which the Issuer had prior to such use and distribution deemed, and does hereby deem, final for purposes of Paragraph (b)(1) of Rule 15c2-12 of the Securities and Exchange Council, subject to completion thereof with the information established at the time of the sale of the Bonds on the date thereof.

6.4. Severability It is hereby declared that all parts of this Master Resolution are severable, and if any section, paragraph, clause or provision of this Master Resolution shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining provisions of this Master Resolution.

6.5. Conflict All resolutions, orders and regulations or parts thereof heretofore adopted or passed which are in conflict with any of the provisions of this Master Resolution are, to the extent of such conflict, hereby repealed. This repealer shall not be construed so as to revive any resolution, order, regulation or part thereof heretofore repealed.

6.6. Captions The headings herein are for convenience of reference only and in no way define, limit or describe the scope or intent of any provisions or sections of this Master Resolution.

6.7. Certification of Fulfillment of Conditions The Council hereby finds and certifies that all conditions precedent to the issuance of the Bonds have been satisfied and fulfilled.

6.8. Maintenance of Records; Copies A copy of this Resolution and every amendatory or supplemental resolution or other official action relating to the Bonds shall be kept on file with the City Recorder at the City Offices in the Issuer where the same shall be made available for inspection by any Registered Owner of the Bonds, or his, its or their agents for so long as any of the Bonds remain outstanding and unpaid. Upon payment of the reasonable cost for preparing the same, a certified copy of this Resolution, or any amendatory or supplemental resolution, will be furnished to any Registered Owner of the Bonds.

6.9. Effective Date This Master Resolution shall take effect immediately upon its approval and adoption by the Pricing Committee.

ADOPTED AND APPROVED this December 12, 2012.

CITY OF CEDAR HILLS PRICING COMMITTEE

Mayor

City Manager

Finance Director

ATTEST:

City Recorder

(SEAL)

EXHIBIT "A"

BOND BID

Upcoming Calendar | Overview | Result | Excel

Robert W. Baird & Co., Inc. - Red Bank , NJ's Bid

PARITY

Cedar Hills
$5,650,000 General Obligation Refunding Bonds, Series 2012

For the aggregate principal amount of $5,650,000.00, we will pay you $5,714,686.15, plus accrued interest from the date of issue to the date of delivery. The Bonds are to bear interest at the following rate(s):

Maturity Date	Amount $	Coupon %	Yield %	Dollar Price
02/01/2013	60M	2.0000	0.4000	100.181
02/01/2014	70M	2.0000	0.5000	101.663
02/01/2015	70M	2.0000	0.5500	103.042
02/01/2016	70M	2.0000	0.6500	104.154
02/01/2017	245M	2.0000	0.8000	104.846
02/01/2018	245M	2.0000	1.0000	104.972
02/01/2019	250M	2.0000	1.2000	104.701
02/01/2020	250M	2.0000	1.3000	104.741
02/01/2021	255M	3.0000	1.4000	112.230
02/01/2022	255M	3.0000	1.6000	111.827
02/01/2023	260M	2.0000	1.7500	102.307
02/01/2024	270M	2.0000	1.8500	101.377
02/01/2025	275M	2.0000	2.0000	100.000
02/01/2026	280M	2.0000	2.0500	99.426
02/01/2027	285M	2.0000	2.1000	98.783
02/01/2028				
02/01/2029	585M	2.2000	2.3000	98.658
02/01/2030	305M	3.0000	2.3500	105.819
02/01/2031	310M	3.0000	2.4500	104.899
02/01/2032	315M	3.0000	2.5500	103.987
02/01/2033				
02/01/2034				
02/01/2035	995M	3.0000	2.7000	102.637

Total Interest Cost:	$1,922,665.89
Premium:	$64,686.15
Net Interest Cost:	$1,857,979.74
TIC:	2.470759

Time Last Bid Received On:12/12/2012 9:19:32 MST

This proposal is made subject to all of the terms and conditions of the Official Bid Form, the Official Notice of Sale, and the Preliminary Official Statement, all of which are made a part hereof.

Bidder: Robert W. Baird & Co., Inc., Red Bank , NJ
Contact: charles ~~messare~~ gdorza
Title: ~~director~~ VP

Telephone: 732-576-4410
Fax: 732-576-4420

Issuer Name: City of Cedar Hills

Company Name: Robert W. Baird & Co, Inc.

Accepted By: [signature]

Accepted By: [signature]

Date: 12/18/12

Date: 12-18-12

© 1981-2002 i-Deal LLC, All rights reserved, Trademarks

12:13:28 p.m. MDST Upcoming Calendar | Overview | Compare | Summary

Bid Results

Cedar Hills
$5,650,000 General Obligation Refunding Bonds, Series 2012

The following bids were submitted using ***PARITY***® and displayed ranked by lowest TIC.
Click on the name of each bidder to see the respective bids.

Bid Award*	Bidder Name	TIC
☑ Reoffering	Robert W. Baird & Co., Inc.	2.470759

*Awarding the Bonds to a specific bidder will provide you with the Reoffering Prices and Yields.

© 1981-2002 i-Deal LLC, All rights reserved. Trademarks

Upcoming Calendar | Overview | Result | Excel

Robert W. Baird & Co., Inc. - Red Bank , NJ's Bid

PARITY

Cedar Hills

$5,650,000 General Obligation Refunding Bonds, Series 2012

For the aggregate principal amount of $5,650,000.00, we will pay you $5,714,686.15, plus accrued interest from the date of issue to the date of delivery. The Bonds are to bear interest at the following rate(s):

Maturity Date	Amount $	Coupon %	Yield %	Dollar Price
02/01/2013	60M	2.0000	0.4000	100.181
02/01/2014	70M	2.0000	0.5000	101.663
02/01/2015	70M	2.0000	0.5500	103.042
02/01/2016	70M	2.0000	0.6500	104.154
02/01/2017	245M	2.0000	0.8000	104.846
02/01/2018	245M	2.0000	1.0000	104.972
02/01/2019	250M	2.0000	1.2000	104.701
02/01/2020	250M	2.0000	1.3000	104.741
02/01/2021	255M	3.0000	1.4000	112.230
02/01/2022	255M	3.0000	1.6000	111.827
02/01/2023	260M	2.0000	1.7500	102.307
02/01/2024	270M	2.0000	1.8500	101.377
02/01/2025	275M	2.0000	2.0000	100.000
02/01/2026	280M	2.0000	2.0500	99.426
02/01/2027	285M	2.0000	2.1000	98.783
02/01/2028				
02/01/2029	585M	2.2000	2.3000	98.658
02/01/2030	305M	3.0000	2.3500	105.819
02/01/2031	310M	3.0000	2.4500	104.899
02/01/2032	315M	3.0000	2.5500	103.987
02/01/2033				
02/01/2034				
02/01/2035	995M	3.0000	2.7000	102.637

Total Interest Cost:	$1,922,665.89
Premium:	$64,686.15
Net Interest Cost:	$1,857,979.74
TIC:	2.470759

Time Last Bid Received On:12/12/2012 9:19:32 MST

This proposal is made subject to all of the terms and conditions of the Official Bid Form, the Official Notice of Sale, and the Preliminary Official Statement, all of which are made a part hereof.

Bidder: Robert W. Baird & Co., Inc., Red Bank , NJ
Contact: charles ~~rasocro~~ golo/ 2a
Title: ~~director~~ VP

Telephone:732-576-4410
Fax: 732-576-4420

Issuer Name: City of Cedar Hills

Company Name: Robert W. Baird & Co. Inc.

Accepted By:

Accepted By:

Date: 12.18.12

Date: 12.18.12

© 1981-2002 i-Deal LLC. All rights reserved, Trademarks

Appendix 16 Committee Meeting Agendas

CEDAR HILLS GOLF COURSE FINANCE COMMITTEE MEETING

Thursday, August 6, 2015 8:00 p.m.

Community Recreation Center

10640 N Clubhouse Drive, Cedar Hills, Utah PLEASE NOTE CHANGE OF VENUE

Notice is hereby given that a Golf Course Finance Committee Meeting will be held on **Thursday, August 6, 2015, at 8:00 p.m.**, at the Community Recreation Center, 10640 N Clubhouse Drive, Cedar Hills, Utah. This is a public meeting and anyone is invited to attend. The topic of discussion will be related to:

1. **Call to Order, Welcome, and Introductions**
2. Discussion on Purpose of the Committee
3. Review of Golf Course Financial Data

4. Discussion/Review of Golf Course

Options ADJOURNMENT
5. Closing Remarks and Adjourn

Dated this 3rd day of August, 2015 /s/ Colleen A. Mulvey, City Recorder

- In accordance with the Americans with Disabilities Act, the City of Cedar Hills will make reasonable accommodations to participate in the meeting. Requests for assistance can be made by contacting the City Recorder at 801-785-9668 at least 48 hours in advance of the meeting to be held.
- The order of agenda items may change to accommodate the needs of the committee, the staff, and the public.
- This meeting may be held electronically via telephone to permit one or more of the council/committee members to participate.

Appendix 16 Committee Meeting Agendas

CEDAR HILLS GOLF COURSE
FINANCE COMMITTEE MEETING
Thursday, August 13, 2015 8:00 p.m.

Community Recreation Center

10640 N Clubhouse Drive, Cedar Hills, Utah

Notice is hereby given that a Golf Course Finance Committee Meeting will be held on **Thursday, August 13, 2015, at 8:00 p.m.,** at the Community Recreation Center, 10640 N Clubhouse Drive, Cedar Hills, Utah. This is a public meeting and anyone is invited to attend. The topic of discussion will be related to:

1. **Call to Order, Welcome, and Introductions**
2. Public Comment: Time has been set aside for the public to express their ideas, concerns and comments (comments limited to 3 minutes per person with a total of 20 minutes for this item)
3. Review of Easements and Restrictions

4. Discussion/Review of Legal Issues, New Development vs Golf Course, Committee Assignments and Timeline Goals

ADJOURNMENT

5. Closing Remarks and Adjourn

Dated this 12th day of August, 2015 /s/ Colleen A. Mulvey, City Recorder

- In accordance with the Americans with Disabilities Act, the City of Cedar Hills will make reasonable accommodations to participate in the meeting. Requests for assistance can be made by contacting the City Recorder at 801-785-9668 at least 48 hours in advance of the meeting to be held.
- The order of agenda items may change to accommodate the needs of the committee, the staff, and the public.
- This meeting may be held electronically via telephone to permit one or more of the council/committee members to participate.

Appendix 16 Committee Meeting Agendas

CEDAR HILLS GOLF COURSE
FINANCE COMMITTEE MEETING
Thursday, August 20, 2015 8:00 p.m.

Community Recreation Center

10640 N Clubhouse Drive, Cedar Hills, Utah

Notice is hereby given that a Golf Course Finance Committee Meeting will be held on **Thursday, August 20, 2015, at 8:00 p.m.**, at the Community Recreation Center, 10640 N Clubhouse Drive, Cedar Hills, Utah. This is a public meeting and anyone is invited to attend. The topic of discussion will be related to:

1. **Call to Order, Welcome, and Introductions**
2. Public Comment: Time has been set aside for the public to express their ideas, concerns and comments (comments limited to 3 minutes per person with a total of 20 minutes for this item)
3. Review of Easements and Restrictions

4. Discussion/Review of Legal

Findings ADJOURNMENT
5. Closing Remarks and Adjourn

Dated this 18th day of August, 2015 /s/ Colleen A. Mulvey, City Recorder

- In accordance with the Americans with Disabilities Act, the City of Cedar Hills will make reasonable accommodations to participate in the meeting. Requests for assistance can be made by contacting the City Recorder at 801-785-9668 at least 48 hours in advance of the meeting to be held.
- The order of agenda items may change to accommodate the needs of the committee, the staff, and the public.
- This meeting may be held electronically via telephone to permit one or more of the council/committee members to participate.

Appendix 16 Committee Meeting Agendas

CEDAR HILLS GOLF COURSE
FINANCE COMMITTEE MEETING
Wednesday, August 26, 2015 8:00 p.m.

Community Recreation Center

10640 N Clubhouse Drive, Cedar Hills, Utah

Notice is hereby given that a Golf Course Finance Committee Meeting will be held on **Wednesday, August 26, 2015, at 8:00 p.m.**, at the Community Recreation Center, 10640 N Clubhouse Drive, Cedar Hills, Utah. This is a public meeting and anyone is invited to attend. The topic of discussion will be related to:

1. **Call to Order, Welcome, and Introductions**
2. Public Comment: Time has been set aside for the public to express their ideas, concerns and comments (comments limited to 3 minutes per person with a total of 20 minutes for this item)
3. Review of Easements and Restrictions

4. Discussion and Recommendations to the City

Council ADJOURNMENT
5. Closing Remarks and Adjourn

Dated this 24th day of August, 2015 /s/ Colleen A. Mulvey, City Recorder

- In accordance with the Americans with Disabilities Act, the City of Cedar Hills will make reasonable accommodations to participate in the meeting. Requests for assistance can be made by contacting the City Recorder at 801-785-9668 at least 48 hours in advance of the meeting to be held.
- The order of agenda items may change to accommodate the needs of the committee, the staff, and the public.
- This meeting may be held electronically via telephone to permit one or more of the council/committee members to participate.

Appendix 16 Committee Meeting Agendas

CEDAR HILLS GOLF COURSE
FINANCE COMMITTEE MEETING
Thursday, September 10, 2015 8:00 p.m.

Community Recreation Center

10640 N Clubhouse Drive, Cedar Hills, Utah

Notice is hereby given that a Golf Course Finance Committee Meeting will be held on **Thursday, September 10, 2015, at 8:00 p.m.**, at the Community Recreation Center, 10640 N Clubhouse Drive, Cedar Hills, Utah. This is a public meeting and anyone is invited to attend. The topic of discussion will be related to:

1. **Call to Order, Welcome, and Introductions**
2. Public Comment: Time has been set aside for the public to express their ideas, concerns and comments (comments limited to 3 minutes per person with a total of 20 minutes for this item)
3. Review of Easements and Restrictions, and Legal Questions

4. Discussion on Questions for FAQ

Document ADJOURNMENT
5. Closing Remarks and Adjourn

Dated this 8th day of September, 2015 /s/ Colleen A. Mulvey, City Recorder

- In accordance with the Americans with Disabilities Act, the City of Cedar Hills will make reasonable accommodations to participate in the meeting. Requests for assistance can be made by contacting the City Recorder at 801-785-9668 at least 48 hours in advance of the meeting to be held.
- The order of agenda items may change to accommodate the needs of the committee, the staff, and the public.
- This meeting may be held electronically via telephone to permit one or more of the council/committee members to participate.

Appendix 16 Committee Meeting Agendas

CEDAR HILLS GOLF COURSE
FINANCE COMMITTEE MEETING

Thursday, September 24, 2015 7:00 p.m.

Community Recreation Center

10640 N Clubhouse Drive, Cedar Hills, Utah

Closed Session, Pursuant to Utah State Code 52-4-204 & 52-4-205 (1)(c) to discuss pending or reasonably imminent litigation.

* * * CLOSED SESSION * * *

Appendix 16 Committee Meeting Agendas

CEDAR HILLS GOLF COURSE
FINANCE COMMITTEE MEETING
Thursday, September 24, 2015 8:00 p.m.

Community Recreation Center

10640 N Clubhouse Drive, Cedar Hills, Utah

Notice is hereby given that a Golf Course Finance Committee Meeting will be held on **Thursday, September 24, 2015, at 8:00 p.m.**, at the Community Recreation Center, 10640 N Clubhouse Drive, Cedar Hills, Utah. This is a public meeting and anyone is invited to attend. The topic of discussion will be related to:

1. **Call to Order, Welcome, and Introductions**
2. Discussion on Legal Issues and Preparation of FAQ Document
3. Public Comment: Time has been set aside for the public to express their ideas, concerns and comments (comments limited to 3 minutes per person with a total of 20 minutes for this item)

4. Discussion/Review Schedule for Plan B

Presentation ADJOURNMENT
5. Closing Remarks and Adjourn

Dated this 18th day of September, 2015 /s/ Colleen A. Mulvey, City Recorder

- In accordance with the Americans with Disabilities Act, the City of Cedar Hills will make reasonable accommodations to participate in the meeting. Requests for assistance can be made by contacting the City Recorder at 801-785-9668 at least 48 hours in advance of the meeting to be held.
- The order of agenda items may change to accommodate the needs of the committee, the staff, and the public.
- This meeting may be held electronically via telephone to permit one or more of the council/committee members to participate.

CEDAR HILLS GOLF COURSE
FINANCE COMMITTEE MEETING
Tuesday, October 13, 2015 9:00 p.m.
Community Recreation Center
10640 N Clubhouse Drive, Cedar Hills, Utah

Notice is hereby given that a Golf Course Finance Committee Meeting will be held on **Tuesday, October 13, 2015, at 9:00 p.m.**, at the Community Recreation Center, 10640 N Clubhouse Drive, Cedar Hills, Utah. This is a public meeting and anyone is invited to attend. The topic of discussion will be related to:

1. Call to Order, Welcome, and Introductions

2. Public Comment: Time has been set aside for the public to express their ideas, concerns and comments (comments limited to 3 minutes per person with a total of 20 minutes for this item)

3. Review/Discussion of Final Document

4. Conclusions and Recommendations to the City Council

5. Conclusions Document – Release Date

6. Discussion on Future Meeting Schedule

ADJOURNMENT
7. Closing Remarks and Adjourn

Dated this 9th day of October, 2015 /s/ Colleen A. Mulvey, City Recorder

Golf Course Option "A" Pros and Cons

Proposal

1) Keep running the golf course.
2) Continue to look for ways to decrease the subsidies from residents
4) Continue to have resident taxes subsidize the bond debt and the golf course.

Pros

1) There is less effort and less short term trauma to the city
2) Those that have bought homes in the Cedars will not have unexpected changes to the area surrounding their homes.
3) Those that enjoy having a golf course in Cedar Hills will continue to enjoy the golf course

Cons

1) The debate and anger over the golf course would not likely go away for many years to come and the residents will continue to subsidize the course
2) The city would continue to be short on park space for their recreational programs
3) The bond payment will continue on our property taxes until approximately 2030
4) With the subsidy and bond payment, the residents appetite for other city amenities will not be high. I.e. restricts other improvements to the city.

Proposal

1) Issue RFP (Request For a Proposal) for selling 30 acres east of Canyon Road.
2) Issue RFP (Request For a Proposal) for selling 60 acres in Highland City.
3) Continue golf course operations until legitimate offers are received for both properties that will pay off the bond.
4) Sell the two plots and pay off the bond simultaneously.
5) Continue to irrigate and maintain remaining holes.
6) Either bond for $4,000,000 (worst case) or use the funds that would have been spent on the golf course to enhance the remaining "parks" until satisfactory.
8) Allow residents who border the golf course the option to buy additional land into the golf course area at the lowest legal price up to 1/5 acre.
9) Zone sellable land in Cedar Hills (holes 13,14, and 15) for larger lots to satisfy green space requirements.
10) Separate from the curent decision would be a future decision about whether to convert hole 10 into a cemetery.

Pros

1) Approximately $4,300,000 in savings over the next 20 years even if we bonded for the money to improve the parks
2) Rather than a golf course that residents have to pay for there would be parks that the residents can use for free.
3) The debate over the golf course would end bringing more peace to the city.
4) With $4,000,000 of planned improvements on the land, there could be additional features added such as playgrounds, pavilions, soccer fields, etc.
5) There would be enough soccer field space that our city wouldn't have to go to other cities to host soccer games.
6) The city could consider other features that it wanted to add to our city budget without taxes becoming out of line with other cities.
7) Separate from the curent decision would be a future proposal about whether to convert hole 10 into a cemetery.
8) We would not make any changes if we didn't get proposals that were high enough to pay off the bond. If we did get them We would have options. If we didn't get these proposals, the argument would be put to bed.

Cons

1) The debate over the future of the golf course could temporarily intensify.
2) The Harvey park in the South end of the city would be smaller in exchange for larger park areas in the North areas of the city.
3) There would be more land developed on the East side of Canyon road in additional to planned St. Andrew's Estates. (20 acres less green space in city)
4) Although there is no obligation of the city to subisidize the golf course indefinitely, the city could have to defend itself against potential litigants
5) The notoriety of having a beautiful golf course would not be there for Cedar Hills.

Summary Comparison of Option "A" and Option "B"

	Costs For Option "A"	Costs For Option "B"	Option "B" Savings	Cumulative Savings
2016	$ (821,270.00)	$ (441,270.00)	$ 380,000.00	$ 380,000.00
2017	$ (574,416.00)	$ 755,584.00	$ 1,330,000.00	$ 1,710,000.00
2018	$ (546,239.00)	$ (335,288.00)	$ 210,951.00	$ 1,920,951.00
2019	$ (558,609.00)	$ (410,288.00)	$ 148,321.00	$ 2,069,272.00
2020	$ (581,353.00)	$ (410,288.00)	$ 171,065.00	$ 2,240,337.00
2021	$ (584,693.00)	$ (410,288.00)	$ 174,405.00	$ 2,414,742.00
2022	$ (577,420.00)	$ (410,288.00)	$ 167,132.00	$ 2,581,874.00
2023	$ (579,920.00)	$ (410,288.00)	$ 169,632.00	$ 2,751,506.00
2024	$ (584,720.00)	$ (410,288.00)	$ 174,432.00	$ 2,925,938.00
2025	$ (584,320.00)	$ (410,288.00)	$ 174,032.00	$ 3,099,970.00
2026	$ (583,820.00)	$ (410,288.00)	$ 173,532.00	$ 3,273,502.00
2027	$ (583,220.00)	$ (410,288.00)	$ 172,932.00	$ 3,446,434.00
2028	$ (582,520.00)	$ (410,288.00)	$ 172,232.00	$ 3,618,666.00
2029	$ (581,140.00)	$ (410,288.00)	$ 170,852.00	$ 3,789,518.00
2030	$ (579,650.00)	$ (410,288.00)	$ 169,362.00	$ 3,958,880.00
2031	$ (585,650.00)	$ (410,288.00)	$ 175,362.00	$ 4,134,242.00
2032	$ (581,200.00)	$ (410,288.00)	$ 170,912.00	$ 4,305,154.00
2033	$ (581,600.00)	$ (410,288.00)	$ 171,312.00	$ 4,476,466.00
2034	$ (581,700.00)	$ (410,288.00)	$ 171,412.00	$ 4,647,878.00
2035	$ (581,500.00)	$ (997,491.22)	$ (415,991.22)	$ 4,231,886.78
	$ (11,814,960.00)	$ (7,583,073.22)	$ 4,231,886.78	
	See Page 4	See Page 5		

Option "A" Costs (Assuming we keep and continue to subsidize the golf course)

	Bond		Subsidy		Capital		Other Adjust		Golf Course Cash
2016	$ 361,270	A	$ 160,000	A	$ 350,000	A	$ (50,000)	D	$ 821,270
2017	$ 363,520	A	$ 170,896	A	$ 100,000	A	$ (60,000)	D	$ 574,416
2018	$ 358,920	A	$ 182,319	A	$ 75,000	A	$ (70,000)	D	$ 546,239
2019	$ 364,320	A	$ 194,289	A	$ 80,000	A	$ (80,000)	D	$ 558,609
2020	$ 359,520	A	$ 206,833	A	$ 95,000	A	$ (80,000)	D	$ 581,353
2021	$ 364,720	A	$ 219,973	A	$ 80,000	A	$ (80,000)	D	$ 584,693
2022	$ 356,420		$ 215,000		$ 86,000	C	$ (80,000)	D	$ 577,420
2023	$ 358,920		$ 215,000		$ 86,000	C	$ (80,000)	D	$ 579,920
2024	$ 363,720		$ 215,000		$ 86,000	C	$ (80,000)	D	$ 584,720
2025	$ 363,320		$ 215,000		$ 86,000	C	$ (80,000)	D	$ 584,320
2026	$ 362,820		$ 215,000		$ 86,000	C	$ (80,000)	D	$ 583,820
2027	$ 362,220		$ 215,000		$ 86,000	C	$ (80,000)	D	$ 583,220
2028	$ 361,520		$ 215,000		$ 86,000	C	$ (80,000)	D	$ 582,520
2029	$ 360,140		$ 215,000		$ 86,000	C	$ (80,000)	D	$ 581,140
2030	$ 358,650		$ 215,000		$ 86,000	C	$ (80,000)	D	$ 579,650
2031	$ 364,650		$ 215,000		$ 86,000	C	$ (80,000)	D	$ 585,650
2032	$ 360,200		$ 215,000		$ 86,000	C	$ (80,000)	D	$ 581,200
2033	$ 360,600		$ 215,000		$ 86,000	C	$ (80,000)	D	$ 581,600
2034	$ 360,700		$ 215,000		$ 86,000	C	$ (80,000)	D	$ 581,700
2035	$ 360,500		$ 215,000		$ 86,000	C	$ (80,000)	D	$ 581,500
	$ 7,226,650		$ 4,144,310		$ 1,984,000		$ (1,540,000)		$ 11,814,960
			B						

A Estimated by city financial director

B Calculated as the difference between the golf course cash requirements

C Fiscal year 2022 and thereafter are calculated as the average of the previous 5 years (2017 to 2021)

D Other considerations such as an approximate $30,000 credit each year for road funds that is based on losses.
Also, to make sure that we don't double count costs of capital the depreciation of the capital is removed in this column.

Option "B" Costs (Assuming we sell the golf course property in Highland and East of Canyon Road)

	Option B Costs		Other Items		Total Cost
2016	$ (821,270.00)	A	$ 380,000.00	I	$ (441,270.00)
2017	$ (574,416.00)	A	$ 1,330,000.00	H	$ 755,584.00
2018	$ (219,000.00)	A	$ (116,288.00)	C	$ (335,288.00)
2019	$ (294,000.00)	B	$ (116,288.00)	C	$ (410,288.00)
2020	$ (294,000.00)	B	$ (116,288.00)	C	$ (410,288.00)
2021	$ (294,000.00)	B	$ (116,288.00)	C	$ (410,288.00)
2022	$ (294,000.00)	B	$ (116,288.00)	C	$ (410,288.00)
2023	$ (294,000.00)	B	$ (116,288.00)	C	$ (410,288.00)
2024	$ (294,000.00)	B	$ (116,288.00)	C	$ (410,288.00)
2025	$ (294,000.00)	B	$ (116,288.00)	C	$ (410,288.00)
2026	$ (294,000.00)	B	$ (116,288.00)	C	$ (410,288.00)
2027	$ (294,000.00)		$ (116,288.00)	C	$ (410,288.00)
2028	$ (294,000.00)		$ (116,288.00)	C	$ (410,288.00)
2029	$ (294,000.00)		$ (116,288.00)	C	$ (410,288.00)
2030	$ (294,000.00)		$ (116,288.00)	C	$ (410,288.00)
2031	$ (294,000.00)		$ (116,288.00)	C	$ (410,288.00)
2032	$ (294,000.00)		$ (116,288.00)	C	$ (410,288.00)
2033	$ (294,000.00)		$ (116,288.00)	C	$ (410,288.00)
2034	$ (294,000.00)		$ (116,288.00)	C	$ (410,288.00)
2035	$ (881,203.22)		$ (116,288.00)	C	$ (997,491.22)
	$ (7,199,889.22)		$ (383,184.00)		$ (7,583,073.22)

Costs & Revenue Associated With Discontinuing Golf Course

Sale of 30 Acres East of Canyon Road	$ 3,300,000.00	D
Sale of 60 Acres in Highland City	$ 3,400,000.00	E
Legal and Consulting Fees	$ (250,000.00)	F
Pay Down of golf course debt (2017)	$ (5,120,000.00)	G
	$ 1,330,000.00	H

A Same as option "A" prior to making any changes. The sale of the land would happen prior to 6/30/2017 so FY 2018 would be the beginning of the new cost structure

B Spend $400,000 per year on improvements to the remaining areas until they are satisfactory (Total $3,120,000-See Page 10)

C Estimated cost to maintain additional park space each year. See

D Estimated revenue on sale of holes 13, 14, and 15 based on $110,000 Per Acre with 30 acres. This price has been discussed with potential buyers and developers and has been verified as reasonable.

E Estimated revenue on sale of holes 1-9 in Highland City based on $50,000 Per Acre with 68 acres. This price has been discussed with potential buyers and developers and has been verified as reasonable.

F The city may have some negotiations and/or legal defense costs relating to this plan. However, the city is under no obligation to any group To subisidize the golf course indefinitely. The city has had a 10-year good faith effort to make it profitable. These costs are unknown at this time.

F There would be costs that would need to be incurred by the city in order to verify the land value for the sellable land

G Assuming the sale happened in 2017 the balance would be $5,120,000 which would come due upon a sale of any of the golf course property. (see page 8)

H Total net amount of revenues from sale of golf course and costs associated with the changes.

I Money saved by not building a golf maintenance shed. $380,000 per current city council bids.

Current Bond Amortization Schedule

Bond Amount	$5,570,000
Bi-annual payment	Based on Schedule
Interest Compounding	Each six month period
Loan Date	12/20/2012
Final Payment Date	2/1/2035
Net Interest Cost	2.48131%

Date	Effective Int.	Interest	Principal	Payment	Balance	
12/20/2012					$ 5,570,000	
2/1/2013		$ 15,616	$ 65,000	$ 80,616	$ 5,505,000	A
8/1/2013	2.4672%	$ 67,910		$ 67,910	$ 5,505,000	A
2/1/2014	2.4672%	$ 67,910	$ 50,000	$ 117,910	$ 5,455,000	A
8/1/2014	2.4715%	$ 67,410		$ 67,410	$ 5,455,000	A
2/1/2015	2.4715%	$ 67,410	$ 50,000	$ 117,410	$ 5,405,000	A
8/1/2015	2.4759%	$ 66,910		$ 66,910	$ 5,405,000	A
2/1/2016	2.4759%	$ 66,910	$ 55,000	$ 121,910	$ 5,350,000	A
8/1/2016	2.4807%	$ 66,360		$ 66,360	$ 5,350,000	
2/1/2017	2.4807%	$ 66,360	$ 230,000	$ 296,360	$ 5,120,000	
8/1/2017	2.5023%	$ 64,060		$ 64,060	$ 5,120,000	
2/1/2018	2.5023%	$ 64,060	$ 230,000	$ 294,060	$ 4,890,000	
8/1/2018	2.5260%	$ 61,760		$ 61,760	$ 4,890,000	
2/1/2019	2.5260%	$ 61,760	$ 240,000	$ 301,760	$ 4,650,000	
8/1/2019	2.5531%	$ 59,360		$ 59,360	$ 4,650,000	
2/1/2020	2.5531%	$ 59,360	$ 240,000	$ 299,360	$ 4,410,000	
8/1/2020	2.5832%	$ 56,960		$ 56,960	$ 4,410,000	
2/1/2021	2.5832%	$ 56,960	$ 250,000	$ 306,960	$ 4,160,000	
8/1/2021	2.5582%	$ 53,210		$ 53,210	$ 4,160,000	
2/1/2022	2.5582%	$ 53,210	$ 250,000	$ 303,210	$ 3,910,000	
8/2/2022	2.5299%	$ 49,460		$ 49,460	$ 3,910,000	
2/2/2023	2.5299%	$ 49,460	$ 260,000	$ 309,460	$ 3,650,000	
8/2/2023	2.5677%	$ 46,860		$ 46,860	$ 3,650,000	
2/2/2024	2.5677%	$ 46,860	$ 270,000	$ 316,860	$ 3,380,000	
8/1/2024	2.6130%	$ 44,160		$ 44,160	$ 3,380,000	
2/1/2025	2.6130%	$ 44,160	$ 275,000	$ 319,160	$ 3,105,000	
8/1/2025	2.6673%	$ 41,410		$ 41,410	$ 3,105,000	
2/1/2026	2.6673%	$ 41,410	$ 280,000	$ 321,410	$ 2,825,000	
8/1/2026	2.7335%	$ 38,610		$ 38,610	$ 2,825,000	
2/1/2027	2.7335%	$ 38,610	$ 285,000	$ 323,610	$ 2,540,000	
8/1/2027	2.8157%	$ 35,760		$ 35,760	$ 2,540,000	
2/1/2028	2.8157%	$ 35,760	$ 290,000	$ 325,760	$ 2,250,000	
8/1/2028	2.8951%	$ 32,570		$ 32,570	$ 2,250,000	
2/1/2029	2.8951%	$ 32,570	$ 295,000	$ 327,570	$ 1,955,000	
8/1/2029	3.0000%	$ 29,325		$ 29,325	$ 1,955,000	
2/1/2030	3.0000%	$ 29,325	$ 300,000	$ 329,325	$ 1,655,000	
8/1/2030	3.0000%	$ 24,825		$ 24,825	$ 1,655,000	
2/1/2031	3.0000%	$ 24,825	$ 315,000	$ 339,825	$ 1,340,000	
8/1/2031	3.0000%	$ 20,100		$ 20,100	$ 1,340,000	
2/1/2032	3.0000%	$ 20,100	$ 320,000	$ 340,100	$ 1,020,000	
8/1/2032	3.0000%	$ 15,300		$ 15,300	$ 1,020,000	
2/1/2033	3.0000%	$ 15,300	$ 330,000	$ 345,300	$ 690,000	
8/1/2033	3.0000%	$ 10,350		$ 10,350	$ 690,000	
2/1/2034	3.0000%	$ 10,350	$ 340,000	$ 350,350	$ 350,000	
8/1/2034	3.0000%	$ 5,250		$ 5,250	$ 350,000	
2/1/2035	3.0000%	$ 5,250	$ 350,000	$ 355,250	$ -	

A-Until the end of 2016 there are still remaining payments from the previous bond that was refinanced with this bond.

Bond Amortization Schedule Assuming Cost to Create Parks of $4,000,000

Bond Amount	$4,000,000
Annual Total payment	$294,000
Interest Payment	Based on Interest on remaining debt
Interest Compounding	Each six month period
Loan Date	8/1/2017
Final Payment Date	2/1/2037
Net Interest Cost	4.00000%

Date	Effective Int.	Interest	Principal	Payment	Balance
8/1/2017					$ 4,000,000
2/1/2018	4.0000%	$ 80,000	$ 139,000	$ 219,000	$ 3,861,000
8/1/2018	4.0000%	$ 77,220		$ 77,220	$ 3,861,000
2/1/2019	4.0000%	$ 77,220	$ 139,560	$ 216,780	$ 3,721,440
8/1/2019	4.0000%	$ 74,429		$ 74,429	$ 3,721,440
2/1/2020	4.0000%	$ 74,429	$ 145,142	$ 219,571	$ 3,576,298
8/1/2020	4.0000%	$ 71,526		$ 71,526	$ 3,576,298
2/1/2021	4.0000%	$ 71,526	$ 150,948	$ 222,474	$ 3,425,350
8/1/2021	4.0000%	$ 68,507		$ 68,507	$ 3,425,350
2/1/2022	4.0000%	$ 68,507	$ 156,986	$ 225,493	$ 3,268,363
8/2/2022	4.0000%	$ 65,367		$ 65,367	$ 3,268,363
2/2/2023	4.0000%	$ 65,367	$ 163,265	$ 228,633	$ 3,105,098
8/2/2023	4.0000%	$ 62,102		$ 62,102	$ 3,105,098
2/2/2024	4.0000%	$ 62,102	$ 169,796	$ 231,898	$ 2,935,302
8/1/2024	4.0000%	$ 58,706		$ 58,706	$ 2,935,302
2/1/2025	4.0000%	$ 58,706	$ 176,588	$ 235,294	$ 2,758,714
8/1/2025	4.0000%	$ 55,174		$ 55,174	$ 2,758,714
2/1/2026	4.0000%	$ 55,174	$ 183,651	$ 238,826	$ 2,575,063
8/1/2026	4.0000%	$ 51,501		$ 51,501	$ 2,575,063
2/1/2027	4.0000%	$ 51,501	$ 190,997	$ 242,499	$ 2,384,065
8/1/2027	4.0000%	$ 47,681		$ 47,681	$ 2,384,065
2/1/2028	4.0000%	$ 47,681	$ 198,637	$ 246,319	$ 2,185,428
8/1/2028	4.0000%	$ 43,709		$ 43,709	$ 2,185,428
2/1/2029	4.0000%	$ 43,709	$ 206,583	$ 250,291	$ 1,978,845
8/1/2029	4.0000%	$ 39,577		$ 39,577	$ 1,978,845
2/1/2030	4.0000%	$ 39,577	$ 214,846	$ 254,423	$ 1,763,999
8/1/2030	4.0000%	$ 35,280		$ 35,280	$ 1,763,999
2/1/2031	4.0000%	$ 35,280	$ 223,440	$ 258,720	$ 1,540,559
8/1/2031	4.0000%	$ 30,811		$ 30,811	$ 1,540,559
2/1/2032	4.0000%	$ 30,811	$ 232,378	$ 263,189	$ 1,308,181
8/1/2032	4.0000%	$ 26,164		$ 26,164	$ 1,308,181
2/1/2033	4.0000%	$ 26,164	$ 241,673	$ 267,836	$ 1,066,508
8/1/2033	4.0000%	$ 21,330		$ 21,330	$ 1,066,508
2/1/2034	4.0000%	$ 21,330	$ 251,340	$ 272,670	$ 815,168
8/1/2034	4.0000%	$ 16,303		$ 16,303	$ 815,168
2/1/2035	4.0000%	$ 16,303	$ 261,393	$ 277,697	$ 553,775
8/1/2035	4.0000%	$ 11,076		$ 11,076	$ 553,775
2/1/2036	4.0000%	$ 11,076	$ 271,849	$ 282,924	$ 281,926
8/1/2036	4.0000%	$ 5,639		$ 5,639	$ 281,926
2/1/2037	4.0000%	$ 5,639	$ 281,926	$ 287,565	$ -

Bond Amount	$5,570,000
Bi-annual payment	Based on Schedule
Interest Compounding	Each six month period
Loan Date	12/20/2012
Final Payment Date	2/1/2035
Net Interest Cost	2.48131%

Date	Effective Int.	Interest	Principal	Payment	Balance	
12/20/2012					$ 5,570,000	
2/1/2013		$ 15,616	$ 65,000	$ 80,616	$ 5,505,000	A
8/1/2013	2.4672%	$ 67,910		$ 67,910	$ 5,505,000	A
2/1/2014	2.4672%	$ 67,910	$ 50,000	$ 117,910	$ 5,455,000	A
8/1/2014	2.4715%	$ 67,410		$ 67,410	$ 5,455,000	A
2/1/2015	2.4715%	$ 67,410	$ 50,000	$ 117,410	$ 5,405,000	A
8/1/2015	2.4759%	$ 66,910		$ 66,910	$ 5,405,000	A
2/1/2016	2.4759%	$ 66,910	$ 55,000	$ 121,910	$ 5,350,000	A
8/1/2016	2.4807%	$ 66,360		$ 66,360	$ 5,350,000	
2/1/2017	2.4807%	$ 66,360	$ 230,000	$ 296,360	$ 5,120,000	Pay off bond with proceed from land sales

A-Until the end of 2016 there are still remaining payments from the previous bond that was refinanced with this bond.

Golf Course Area

Golf Parcel #s	Acreage	
36:903:0107	13.24	East part of holes 1-8
36:903:0105	6.25	Clubhouse part of the tee box area and trail down to tee boxes
36:903:0111	12.73	Holes 11 and 12
36:905:0206	29.75	Holes 13, 14, 15
36:903:0110	10.89	Hole 10
11:055:0312	10.06	Hole 9
36:903:0112	2.23	1/2 of hole 16
36:903:0113	18.37	Hole 17 and 1/2 of hole 16
36:903:0143	17.4	Hole 18 and driving range
11:055:0321	44.8	West part of holes 1-8
Golf Total	165.72	

Area By Hole	Hole Long Yardage	Total Acres (est.)	Irrigated (Est.)	
Hole #1	382	8.1	2.72	Located in Highland
Hole #2	370	7.9	3.49	Located in Highland
Hole #3	188	4.0	0.79	Located in Highland
Hole #4	454	9.7	3.49	Located in Highland
Hole #5	221	4.7	0.91	Located in Highland
Hole #6	494	10.5	3.49	Located in Highland
Hole #7	433	9.2	3.49	Located in Highland
Hole #8	183	3.9	0.69	Located in Highland
Hole #9	428	10.1	3.63	Located in Highland
Hole #10	526	10.9	5.37	*
Hole #11	137	3.2	0.46	*
Hole #12	411	9.5	3.76	*
Hole #13	366	11.3	2.76	East of Canyon Road
Hole #14	332	10.2	1.55	East of Canyon Road
Hole #15	268	8.3	1.80	East of Canyon Road
Hole #16	363	8.2	2.77	*
Hole #17	403	12.4	3.59	*
Hole #18	417	8.7	2.33	*
Driving Range		14.95	7	*
		165.7	54.10	

*-Plan "B" areas to maintain as parks 25.28

Per City Finance Director Yearly Maintenance Costs $4,600 Per Acre
Increased park maintenance costs $ 116,288

Improvement Costs Per Park Area

Page 10

	Low	Medium	High	
Restroom	$ 75,000	$ 85,000	$ 95,000	A
Parking Lot	$ 250,000	$ 300,000	$ 350,000	
Playground	$ 50,000	$ 70,000	$ 100,000	
Pavillion	$ 20,000	$ 30,000	$ 40,000	
Regrade/Change Irrigation	$ 20,000	$ 100,000	$ 200,000	
Other	$ 200,000	$ 400,000	$ 630,000	
	$ 615,000	$ 985,000	$ 1,415,000	

Park on Holes 11 and 12	$ 985,000	
Park on Holes 16 and 17	$ 985,000	
Park on Hole 18 and Range	$ 1,415,000	
Hole 10 Development	$ 615,000	B
	$ 4,000,000	

General Note>The city has received a quote for Bayhill Park construction. Using these prices as a benchmark, the costs to build similar amenities has been estimated. Bayhill Park is considered "Low" cost on the above schedule. The assumption is that we would want larger and more amenities for these larger parks.

A-As the restroom was already built in the Bayhill park area there is no benchmark costs from the Bayhill park proposal. Through discussions with staff, the cost of the restroom at Mesquite Park was verified as approximately $75,000.

B-Because hole 10 does not border homes, the residents may want other types of facilities here such as cemetery in which case we would not pay for things such as a pavillion and playground, etc.

Conceptual Cost Estimate - Bayhill Park
BC&A Concept (C)

Project: Bayhill Park Date: 8/17/2015

Owner: City of Cedar Hills Prepared by: JKT - Bowen Collins & Associates

Item	Quantity	Units	Unit Cost	Cost
Parking Lot				
Mobilization	1.00	LS	$ 25,000.00	$ 25,000
Engineering Design	1.00	LS	$ 3,934.00	$ 75,000
Quality Control	1.00	LS	$ 4,000.00	$ 4,000
Construction Surveying	1.00	LS	$ 3,500.00	$ 3,500
Clearing and Grubbing and Trail Removal	1.00	LS	$ 10,000.00	$ 10,000
Parking Lot Asphalt (4")	10,000.00	SF	$ 2.50	$ 25,000
Untreated Base Course (8")	290.00	CY	$ 35.00	$ 10,150
Pavement Marking Tape	450.00	LF	$ 2.00	$ 900
Curb and Gutter	675.00	LF	$ 25.00	$ 16,875
5' Sidewalk	500.00	LF	$ 25.00	$ 12,500
ADA Pedestrian Access Ramp	1.00	EA	$ 2,250.00	$ 2,250
Trail - 12' Wide (3" Asphalt over 6" UTBC)	320.00	LF	$ 45.00	$ 14,400
Concrete Driveway Flared, 7-inch Thick	30.00	SY	$ 50.00	$ 1,500
Fill parking	6,000.00	CY	$ 16.00	$ 25,001
Fine Grading	30,000.00	SF	$ 0.10	$ 3,000
Sewer and Storm Drain Improvements	1.00	LS	$ 10,000.00	$ 10,000
Landscape and Irrigation	15,000.00	SF	$ 2.50	$ 37,500
1" Water Service Connection	1.00	EA	$ 3,500.00	$ 3,500
Bollards for MWDSLS Access	3.00	EA	$ 200.00	$ 600
Retaining Walls	700.00	SF	$ 50.00	$ 35,000
Handrail Along Top of Wall	270.00	LF	$ 25.00	$ 6,750
Subtotal				**$ 322,426**
Playground, Play Area and Pavilion				
Landscape and Irrigation	20,000.00	SF	$ 2.50	$ 50,000
Playground (2-5 yrs) and Swing Set	1.00	EA	$ 20,000.00	$ 20,000
Pavilion	1.00	LS	$ 20,000.00	$ 20,000
Pavilion Pad	8.00	CY	$ 300.00	$ 2,400
Bark for Playground Fall Surface	50.00	CY	$ 115.00	$ 5,750
Benches	2.00	EA	$ 500.00	$ 1,000
Bathroom Finish	1.00	LS	$ 7,500.00	$ 7,500
Drinking Fountain	1.00	EA	$ 1,000.00	$ 1,000
Subtotal				**$ 107,650**