



# Cedar City

10 North Main Street • Cedar City, UT 84720  
435-586-2950 • FAX 435-586-4362  
to [www.cedarcityut.gov](http://www.cedarcityut.gov)

**Mayor**  
Garth O. Green

**Council Members**  
Robert Cox  
W. Tyler Mellings  
R. Scott Phillips  
Ronald Riddle  
Carter Wilkey

**City Manager**  
Paul Bittmenn

**CITY COUNCIL WORK MEETING**  
**OCTOBER 8, 2025**  
**5:30 P.M.**

The City Council meeting will be held in the Council Chambers at the City Office, 10 North Main Street. The City Council Chambers may be an anchor location for participation by electronic means. The agenda will consist of the following items:

- I. Call to Order
- II. Agenda Order Approval
- III. Administration Agenda
  - Mayor and Council Business
    - Proclamation Declaring October 15<sup>th</sup> at White Cane Awareness Day. Mayor Green
  - Staff Comments
- IV. Public Agenda
  - Public Comments

Business Agenda

Public

1. Water issues in Old Sorrel Ranch. Kelsey & Shane Willson
2. Public hearing to consider an ordinance vacating a public utility easement located at approximately 1600 South and Hidden Canyon Road. Development Team / Randall McUne
3. Consider approving the SUU golf complex design contract. SUU / Element Design Collective / Randall McUne
4. Public hearing to consider a resolution amending a deferral (development) agreement further delaying the installation of public improvements for a property located at approximately 93 East 900 North. Jay Adams / Randall McUne
5. Consider granting a powerline easement on City property (Parcel # B-1407-0000-0000) for Rocky Mountain Power to provide power to the private property of Nathan Blocker. Jay Adams / Randall McUne
6. Consider a resolution rescinding a development agreement and addendum for a property located at 1157 (1221)South Main Street. VE Management / Randall McUne

Staff

7. Consider a wage approval for a new lateral police officer. Chief Darin Adams
8. Water well exploration locations. Mayor Green
9. Closed session – Reasonably Imminent Litigation

Dated this 6<sup>th</sup> day of October 2025.

*Renon Savage*

Renon Savage, MMC  
Cedar City Recorder

CERTIFICATE OF DELIVERY:

The undersigned duly appointed and acting recorder for the municipality of Cedar City, Utah, hereby certifies that a copy of the foregoing Notice of Agenda was delivered to the Daily News, and each member of the governing body this 6<sup>th</sup> day of October 2025.

  
\_\_\_\_\_  
Renon Savage, MMC  
Cedar City Recorder

Cedar City Corporation does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

If you are planning to attend this public meeting and, due to a disability, need assistance in accessing, understanding or participating in the meeting, please notify the city not later than the day before the meeting and we will try to provide whatever assistance may be required.

# Cedar City, Utah

## Proclamation

*Whereas*, the white cane, which every blind citizen of our state/city has the right to carry, demonstrates and symbolizes the ability to achieve a full and independent life and the capacity to work productively in competitive employment; and

*Whereas*, the white cane, by allowing every blind person to move freely and safely from place to place, makes it possible for the blind to fully participate in and contribute to our society and to live the lives they want; and

*Whereas*, every citizen should be aware that the law requires that motorists and cyclists exercise appropriate caution when approaching a blind person carrying a white cane; and

*Whereas*, Utah law also calls upon employers, both public and private, to be aware of and utilize the employment skills of our blind citizens by recognizing their worth as individuals and their productive capacities; and

*Whereas*, the State of Utah, through its public agencies and with the cooperative assistance of the National Federation of the Blind, Red Rocks Chapter can and should facilitate the expansion of employment opportunities for and greater acceptance of blind persons in the competitive labor market:

*Now, therefore*, I Mayor Garth O. Green, do hereby declare October 15, 2025, as WHITE CANE

AWARENESS DAY In Cedar City and do call upon our schools, colleges, and universities to offer full opportunities for training to blind persons; upon employers and the public to utilize the available skills of competent blind persons and to open new opportunities for the blind in our rapidly changing society; and upon all citizens to recognize the white cane as a tool of independence for blind pedestrians on our streets and highways.

**Signed on this, the 8<sup>th</sup> day of October.**  
In the year of our Lord 2025

Garth O. Green  
Mayor of Cedar City





3559 W. Sevy St. Cedar City, UT 84720							#	
Days in Billing Cycle	DESCRIPTION	PREV READ DATE	READ DATE	METER	PREV READING	PRESENT READING	TOTAL USAGE	Water \$
29	WA	12/4/23	1/3/24	13809994	15	21	6	\$23.00
34	WA	1/3/24	2/7/24	13809994	21	27	6	\$23.00
26	WA	2/7/24	3/5/24	13809994	27	32	5	\$22.00
28	WA	3/5/24	4/3/24	13809994	32	36	4	\$21.00
32	WA	4/3/24	5/6/24	13809994	36	41	5	\$22.00
30	WA	5/6/24	6/5/24	13809994	41	49	8	\$25.00
27	WA	6/5/24	7/3/24	13809994	49	57	8	\$25.00
33	WA	7/3/24	8/6/24	13809994	57	107	50	\$184.96 Put in Sprinkler System
28	WA	8/6/24	9/4/24	13809994	107	125	18	\$46.80
27	WA	9/4/24	10/2/24	13809994	125	142	17	\$44.62
32	WA	10/2/24	11/5/24	13809994	142	156	14	\$38.08
28	WA	11/5/24	12/4/24	13809994	156	159	3	\$20.00
29	WA	12/4/24	1/3/25	13809994	159	162	3	\$20.00
30	WA	1/3/25	2/5/25	13809994	162	167	5	\$22.00
26	WA	2/5/25	3/4/25	13809994	167	171	4	\$21.00
29	WA	3/4/25	4/3/25	13809994	171	175	4	\$21.00
33	WA	4/3/25	5/7/25	13809994	175	181	6	\$23.00
25	WA	5/7/25	6/2/25	13809994	181	192	11	\$31.54 Started Watering Yard
28	WA	6/2/25	7/1/25	13809994	192	201	9	\$27.52
36	WA	7/1/25	8/7/25	13809994	201	228	27	\$90.66
32	WA	8/7/25	9/9/25	13809994	228	251	23	\$70.42



Name	Email	Address	Phone Number	Billing Date/Usage/Amount
Marni Ruiz	hdhdm@gmail.com	3619 W Benson Way	6617131525	We just bought and are not fully moved in until the end of the year but have noticed a significant water pressure decrease. Especially the shower and bathroom faucets. To the point it is only a trickle.
Matt James	mateojames@hotmail.com	3576 w foundation trail	8016474294	7/31/24 23 \$57.13. 8/31/24 23 \$63.79. 9/31/24 21 \$55.37. 7/31/25 20 \$55.24 8/31/25 30 \$104.84
Cheyenne Rice	cheybulloch@gmail.com	334 S Cedar creek Dr cedar city, Utah 84720	435-592-0915	July 2024 5/73 28k Aug 2024 \$203.54k Sep 2024 \$232.90k July 2025 5/126 34k Aug 2025 \$214.50k
Bryan Meyn	bryanmeyn1@gmail.com	368 S Sherratt dr.	7023752653	7/31/24- 33 8/31/24- 42 9/30/24- 37 7/31/25- 22 8/31/25- 37
Ashley Young	ashley@need-deed.com	3529 W Sevy Street	7026003222	7/31/24: \$166.28 8/31/24: \$175.15 9/30/24: \$148.23 7/31/25: \$242.30 8/31/25: \$242.3
Heather & Mark Baumann	hfm16@aol.com	572 S Foundation Trl	702-379-2302	We're concerned about the air that's getting in the water. We haven't lived here long enough to comment on the increase in the water bill.
Elisha Richards	elishahillstead@gmail.com	559 S cedar creek drive	4353137609	7/31/24 - Total usage = 30; water charge = \$80.58 8/31/24 - Total usage = 35; water charge = \$114.31 9/30/24 - Total usage = 20; water charge = \$51.16 7/31/25 - Total usage = 29; water charge = \$100.78 8/31/25 - Total usage = 28; water charge = \$95.78
Sean Madill	seanmadill.sm@gmail.com	331 South Sherratt Dr.	4357081004	7/31/24 - 72.00 usage 5,000 8/31/24 - 211.41 usage 45,000 9/30/24 - 178.44 usage 38,000 7/31/24 - 102.72 usage 19,000 8/31/24 - 171.02 usage 33,000 9/30/25 - 105.24 usage 20,000
Jamie Johnson	jamied21.jg@gmail.com	3624 W Benson Way	435-592-9527	7/31/24 = \$119.23, water usage = 29 8/31/24 = \$212.83, water usage = 47 9/30/24 = \$170.44, water usage = 38 7/31/25 = \$262.10, water usage = 51 8/31/25 = \$351.06, water usage = 67
Suzie Palladino	suzie.palladino@frontmail.org	353 S. Cedar Creek Dr. Cedar City, UT 84720	760-680-1886	Seems to be about 20 more ccf (and \$130ish) each month this year than last year, even though I haven't changed anything. (hoping I got the unit right!)
Shaylynn Iversen	snn983@yahoo.com	330 S Sherratt Dr	801-505-8300	7/31/24-28-\$73.88 8/31/24-35-\$114.31 9/30/24-46-\$76.42 7/31/25-36-\$85.60 8/31/25-35-\$131.14

Jocelyn Brown	jocelynbrown719@gmail.com	3596 West Sevy Street	4355924188	7/31/24: total usage 30, cost \$80.58 8/31/24: total usage 35, cost \$114 9/30/24: total usage 29, cost \$90 7/31/25: total usage 27, cost \$90.66 8/31/25: total usage 38, cost \$147.82 9/30/2025: total usage 36, cost \$149.00
Darin	darin smith36@yahoo.com	2723 west 25 north	801 659 6287	All of this usage was on the same schedule and has been the same schedule for the entire duration of both summers.
Shane & Kelsey Willson	willson1km@gmail.com	3599 W Sevy St. Cedar City, UT 84720	5867381805	7/31/24 - 8/5/67 8/31/24 - 50/\$226.96 9/30/24 - 18/\$88.80 7/31/25 - 5/\$69.52 8/31/25 - 27/\$132.66 9/30/25 - 23/\$112.42
Robbie/Kellie Gurr	robbiegurr@gmail.com	365 S Sherratt Dr	435-421-9550/435-421-9810	7/31/24 \$109.18 usage 26 8/31/24 \$101.58 usage 22 9/30/24 \$84.44 usage 16 7/31/25 \$82.20 usage 18 8/31/25 \$189.82 usage 38 9/30/25 \$122.54 usage 25
Courtney Hinckley	CourtHinck23@outlook.com	378 S Cedar Creek Drive	9515146354	7/31/24 water usage: 13 bill amount: \$34.20 8/31/24 water usage: 17 bill amount \$44.62 9/30/24 water usage: 10 bill amount: \$29.36 7/31/25 water usage: 17 bill amount: \$47.68 8/31/25 water usage: 21 bill amount: \$60.30 9/30/25 water usage: 17 bill amount: \$47.68
Rebecca Richey	rebecca.stout.147@gmail.com	413 S Cedar Creek Dr. Cedar City, UT	4356500713	7/31/24: \$85.40 8/31/24: \$165.73 9/30/24: \$147.89 7/31/25: \$157.96 8/31/25: \$217.62 9/30/25: \$178.70
Jessica Hotteil	jesilyn2163@yahoo.com	3606 west foundation trail	3082300246	7/31/24: 204.78 8/31/24: 199.48 9/30/24: 125.96 7/31/25: 142.78 8/31/25: 202.52 9/30/25: 147.84
Brent Bishop	brentbishop@gmail.com	3598 W Benson Way, Cedar City, Utah 84720	9012860418	7/31/24: usage = 3, bill = \$20.00 8/31/24: 5, \$22.00 9/30/24: 36, \$119.02 7/31/25: 18, \$50.20 8/31/25: 24, \$75.48 9/30/25: 22, \$65.36

			7/31/24 - \$62*
			8/31/24 - \$64*
			9/30/24 - \$65.20*
			10/31/24 - \$66.26*
Jim & Christy Giles  woopdeedo@live.com	3629 W Sevy St, Cedar City, UT  8016021618		* without landscaping
			7/31/25 - \$193.28**
			8/31/25 - \$132.20**
			9/30/25 - \$101.33**
			** with landscaping
Linda Case	lscrub@aoi.com	480 S Cedar Creek Dr	951 207-5727
			Our water bill are consistent \$2.00 a month. Our problem is air in the lines/bubbles and no pressure in our kitchen sink...a mere drizzle.



CEDAR CITY COUNCIL

AGENDA ITEMS – 2

DECISION PAPER

TO: Mayor and City Council

FROM: City Attorney

DATE: October 6, 2025

SUBJECT: Request to vacate PUE near 1600 South Street, Hidden Canyon Road, and Grace Lane.

DISCUSSION:

Please find an ordinance vacating a public utility easement along interior/rear lot lines for Lots 914, 915, and 916 in Saddleback Ridge, Phase 9. Development Team is seeking to amend the original plat vacating these three lots, combining them into a remainder parcel to allow the construction of a church building on the combined larger lot, to be known as Lot 914-A. The easements within the interior of this new lot will not be needed by the City or local utilities and will make the use of the larger lot more difficult. I've included a map and other documentation detailing the changes.

The Planning Commission gave a positive recommendation for the requested PUE vacation.

Please note that we're waiting for a legal description of the easement to be vacated, and I will provide that to you once I've received it.

Please consider whether to pass this ordinance vacating this public utility easement.

**CEDAR CITY ORDINANCE NO. 1008-25**

**AN ORDINANCE VACATING INTERIOR PUBLIC UTILITY EASEMENT ON LOTS 914, 915, AND 916 OF SADDLEBACK RIDGE, PHASE 9.**

**WHEREAS**, when Saddleback Ridge Phase 9 was originally platted it included a rear lot public utility easement for lots 914, 915, and 916; and

**WHEREAS**, the developer now seeks to amend the final plat, eliminating lots 914, 915, and 916, in order to combine those lots into a larger lot to be known as Lot 914-A;

**WHEREAS**, after the amendment the public utility easement will cut through the middle of the new Lot 914-A, see exhibit #1 attached hereto and incorporated herein, and

**WHEREAS**, the development of the subdivision included construction of the public utilities in the road and the front of the lots, and

**WHEREAS**, no public utility provider has installed utilities in the PUE being vacated; and

**WHEREAS**, the Cedar City Planning Commission has given a positive recommendation to vacate the public utility easement; and

**WHEREAS**, the City Council after duly publishing and holding a public hearing to consider the proposal to vacate the public utility easement finds that the proposed amendment furthers the City's policy of establishing and maintaining sound, stable, and desirable development within the City, promoting more fully the objectives and purposes of the City's General Land Use Plan and Zoning ordinances, or correcting manifest errors; and

**NOW BE IT FURTHER ORDAINED** by the City Council of Cedar City, State of Utah, that the public utility easement running internal lot lines of Lots 914, 915, and 916 (through the middle of the intended Lot 914-A) of the Amended Final Plat of a Portion of Saddleback Ridge Ph. 9, and as depicted on the attached and incorporated exhibit #1 is hereby vacated.

This ordinance, Cedar City Ordinance No. 1008-25, shall become effective immediately upon publication as required by State Law.

**Council Vote:**

Phillips -  
Melling -  
Riddle -  
Cox -  
Wilkey -

Dated this \_\_\_\_\_ day of October 2025.

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GARTH O. GREEN, MAYOR

[SEAL]

ATTEST:

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RENON SAVAGE, RECORDER

## **Exhibit #1**

**VACATING INTERIOR PUBLIC UTILITY EASEMENT ON LOTS 914, 915, AND 916 OF  
SADDLEBACK RIDGE, PHASE 9**



Stephen: Not that it's in, it's the back of the vacant lot.

Randall: Okay. If there's anything to that level that could reach a nuisance, that's Code Enforcement of the Police Department.

Stephen: I've had them come out, and I've even talked to Garth Green. He advised me to get hold of somebody. That 10-foot section is owned by some five-county investments in Washington. They're not going to listen to an individual.

Randall: They might not. Like I said, Code Enforcement is our enforcement arm for that. They're the only ones that can follow through on the steps of our ordinance to enforce any of that.

Stephen: They have a gentleman from code enforcement come out.

Jett: They do have authority. If it's fire hazard, they do have authority too.

Randall: We have a second code enforcement officer now, so they can do a little bit more than that.

Speaker 13

Yeah, Vasquez, I believe.

Randall: We do have a bit more help there in the code enforcement department when before it was just him.

Stephen: The only guy that had come out and saw the property.

Randall: Yes, that's Frank Vasquez. We do have another new officer now that can help.

Stephen: Because I do park a motor home back there in my RV section and a boat. I've taken out all the weeds in my backyard, but it can jump from trees. I also need to get a little standard plumbing and ask them to remove it because it's a very high fire danger.

Randall: Understandable and like I said, from our end Code Enforcement is the only ability we have to do anything about it.

Stephen: Well would the Fire Department not come in and be also.

Randall: Fire Department can give their opinion, but the enforcement mechanism is through code enforcement.

Stephen: Okay, I would go through Officer Vasquez

Randall: Yes, or they might hand you over to the new Code Enforcer.

Stephen: I can send pictures off. Because like I said they're this high and the trees are bad because they've been dried out for such a prolonged period

Randall: Again, that's so you'd have to take that too.

Stephen: All right, thank you.

Webster: Thank you very much.

#### *Close Public Hearing*

Webster: Would anybody like to make a recommendation or have further questions? We need to table it until date certain, which should be October the 7<sup>th</sup>.

Jett: Why are we tabling it for what reason.

Webster: It did not have proper public noticing.

#### **Davis motions for Items 4 and 5 to be tabled until October 7<sup>th</sup>; Decker seconds; all in favor for a unanimous vote.**

#### **6. PUBLIC HEARING**

Vacating a Public Utility Easement  
(Recommendation)

Hidden Canyon Road &  
1600 South

Development Team/Brent  
Drew

**Brent Drew:** With Levitt Land and Development Team. What happened is when the church came in and purchased its initial property. They decided to put a larger church in that area. They purchased these three lots, two that hadn't been sold yet. They're incorporating that into their parking and into their design. We're coming forward just to ask to vacate that easement along the back and side of those three lots there. They'll be going into their property, no longer putting homes on them. There's nothing in the ground in that easement right now. They were just there. In case down the road somebody wants to put something in the back of the homes. So that's it.

Webster: Commission, any questions.

Decker: Sounds cut and dry to me.

*Open Public Hearing*

*Close Public Hearing*

Webster: Commission, anybody would like further comment or to make a recommendation.

**Jett motions for Positive Recommendation for Vacating a Public Utility Easement on Hidden Canyon Road and 1600 South; Hitz seconds; all in favor for a unanimous vote.**

## 7. PUBLIC HEARING

Development Agreement-Amendment 93 East 900 North  
(Recommendation)

Jay Smith / Jay Adams

**Jay Adams:** This is Tom Morito representing the project on 900 North and proposed 100 East. We had a deferral agreement for the building that we just put in. Adjacent to the proposed 100 East on the corner there right in here. What we're asking is a further deferral up to at least this line here they want to put another building in here. In discussion with the attorney and the mayor they agree with this. Because until that road's built and they're in progress to be built. There's no reason to make improvements currently.

Kent: This is a right-of-way that's dedicated but there's nothing there are no improvements built yet there. There's nothing, not even a dirt road across it or anything.

Randall: If the commission recalls, this is what, last year, with your positive recommendation, council's approval. They were allowed to move the line a bit. Again, mainly it was just because we weren't ready for the road to come in anyway. Are we now, Kent, for that road as our current goal next year?

Kent: Probably, yes.

Randall: Probably. I joked earlier that it might be next year for a while. We're going to keep hoping for next year. It's the same thing. Tomorrow is always coming, but it never gets here. Anyway, we're just trying to set and make sure we have still some triggers. I would like to note one thing. You'll hear my complaints all the time about these lovely deferral and development agreements because enforcement is difficult. Please note the council did a pretty good job on this one last time. We got a sidewalk we never had and a hydrant. I think you guys have been pretty good at working with us, discussing the water line that needs to go in as well. There is some give and take. This is not one of those where we're just giving. I would note that just for your purposes. Yes, and we discussed this earlier. Enforcement is always difficult the more we let them develop. That's my other side that always says, hey, how do we enforce this later? There was some discussion about requiring a bond. That is not required. It's not in the agreement to require any kind of bond, partly because we're just not sure of when. We're hoping it's soon enough.



CEDAR CITY COUNCIL  
AGENDA ITEM - 3

**TO:** Mayor and City Council  
**FROM:** City Attorney  
**DATE:** October 6, 2025  
**SUBJECT:** Consider SUU golf complex design contract

**DISCUSSION:**

Back in 2021, the City and SUU signed a lease agreement allowing SUU to construct an “SUU Golf Center” on the City’s property near the Golf course. That contract required SUU to do all the work for fundraising and paying for the design and construction of the Center, but the City agreed to handle the facilitation of the design, bidding, construction, etc. of the project. SUU started the process of getting a design contract in place before realizing the City needed to approve the contract. Due to the amount of the contract, your approval is needed. I’ve attached the proposed contract with my few redlines that they’ve already approved by email (namely switching Cedar City for SUU, inserting Paul Bittmenn as primary contact and Jared Barnes and SUU Golf Coach Richard Church, and removing references to SUU contract provisions).

Please consider whether to approve the design contract for the SUU Golf Center.

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

## AIA® Document B101® - 2017

### Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the **25** day of **June** in the year **2025**  
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

« [Southern Utah University/Cedar City Corp](#) »  
« [351 W University Blvd, 10 North, Mailbox](#) »  
« [Cedar City, Ut 84720](#) »  
« »

and the Architect:  
(Name, legal status, address and other information)

« [ELEMENT DESIGN COLLECTIVE, LLC, a Utah limited liability company](#) »  
« [470 North 500 West](#) »  
« [Bountiful, Utah 84010](#) »  
« [801.698.6685](#) »

for the following Project:  
(Name, location and detailed description)

« [SUU Golf Facility](#) »  
« [200 E 900 N](#) »  
« [Cedar City, Ut 84721](#) »  
« »

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The Owner and Architect agree as follows.

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User Notes: [AIA UserNotes](#)

(1164066207)

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.  
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

« 9,000 SF Golf complex that includes a reception area »

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

« Project boundary as outlined in survey provided by owner »

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1\*

(Provide total and, if known, a line item breakdown.)

« »

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 [Design phase milestone dates, if any:]

Commented [1]: Is there a reason we don't have any milestone dates?

« [Schematic Design: 3 Weeks from signed contract](#)  
Design Development: 8 Weeks after signed contract  
Construction Documents: 13 weeks after signed contract  
»

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.2 Construction commencement date:

« [TBD](#) »

.3 Substantial Completion date or dates:

« [TBD](#) »

.4 Other milestone dates:

« »

**§ 1.1.5** The Owner intends the following procurement and delivery method for the Project:  
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

« [Design/Bid/Build](#) »

**§ 1.1.6** The Owner's anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

« »

**§ 1.1.6.1** If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

**§ 1.1.7** The Owner identifies the following representative in accordance with Section 5.3:  
(List name, address, and other contact information.)

« [Paul Bitmenn](#) »  
« [Cedar City Manager](#) »  
« [10 N Main](#) »  
« [Cedar City, UT 84720](#) »  
« [paulb@cedarcityut.gov](mailto:paulb@cedarcityut.gov) »  
« [\(435\) 586-2953](#) »

**§ 1.1.8** The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:  
(List name, address, and other contact information.)

« [Jared Barnes](#)  
[Cedar City City Division Head](#)  
[200 East 900 North](#)  
[Cedar City, UT 84721](#)  
[jarnes@cedarcityut.gov](mailto:jarnes@cedarcityut.gov)  
[\(435\) 586-2070](#) »

Richard Church  
SUU Director of Golf  
churchr@suu.edu  
(435) 586-7805

**§ 1.1.9** The Owner shall retain the following consultants and contractors:  
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

« »« »  
« »  
« »  
« »  
« »

.2 Civil Engineer:

« Go Civil »« »  
« Dallas Buckner »  
« 590 N. 800 W. »  
« Cedar City, Utah 84721 »  
« 435.586.9592 »  
dallas@gocivil.net

.3 Other, if any:

(List any other consultants and contractors retained by the Owner.)

« »

**§ 1.1.10** The Architect identifies the following representative in accordance with Section 2.3:  
(List name, address, and other contact information.)

« Jonathan Galbraith, AIA  
470 North 500 West  
Bountiful, Ut 84010  
801.698.6685  
jon@element-design.co  
»  
« »  
« »  
« »  
« »  
« »

**§ 1.1.11** The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:  
(List name, legal status, address, and other contact information.)

**§ 1.1.11.1** Consultants retained under Basic Services:

.1 Structural Engineer:

« Focus Engineering and Surveying, LLC, a Utah limited liability company  
Adam Eastman  
6949 South High Tech Drive Suite 200  
Midvale, Ut 84047  
801.352.0075

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Email: [acastman@focus-es.com](mailto:acastman@focus-es.com)

»»»  
»»»  
»»»  
»»»  
»»»

.2 Mechanical Engineer:

« [Brenkman & Co](#) »« »  
« [Henk Brenkman](#) »  
« [1170 Research Pkwy, Suite 112](#)  
[Logan, Ut 84341](#) »  
« [435.512.4529](#) »  
« [henk.brenkman@brenkmanandcompany.com](mailto:henk.brenkman@brenkmanandcompany.com) »

.3 Electrical Engineer:

« [Amp Electrical Engineering](#) »« »  
« [1699 S. Spring Creek Drive](#) »  
« [Lehi, Ut 84043](#) »  
« [80.420.2153](#) »  
« [andy@ampelectricalengineering.com](mailto:andy@ampelectricalengineering.com) »

§ 1.1.11.2 Consultants retained under Supplemental Services:

»»»

§ 1.1.12 Other Initial Information on which the Agreement is based:

»»»

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

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**§ 2.2** The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

**§ 2.3** The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

**§ 2.4** Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

**§ 2.5** The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

**§ 2.5.1** Commercial General Liability with policy limits of not less than « [Two Million Dollars](#) » (\$ « [2,000,000](#) » ) for each occurrence and « [Five Million Dollars](#) » (\$ « [5,000,000](#) » ) in the aggregate for bodily injury and property damage.

**§ 2.5.2** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than « [One Million Dollars](#) » (\$ « [1,000,000](#) » ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

**§ 2.5.3** The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

**§ 2.5.4** Workers' Compensation at statutory limits.

**§ 2.5.5** Employers' Liability with policy limits not less than « [One Million Dollars](#) » (\$ « [1,000,000](#) » ) each accident, « [One Million Dollars](#) » (\$ « [1,000,000](#) » ) each employee, and « [One Million Dollars](#) » (\$ « [1,000,000](#) » ) policy limit.

**§ 2.5.6** Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than « [Two Million Dollars](#) » (\$ « [2,000,000](#) » ) per claim and « [Five Million Dollars](#) » (\$ « [5,000,000](#) » ) in the aggregate.

**§ 2.5.7 Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

**§ 2.5.8** The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

**§ 3.1** The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

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**§ 3.1.1** The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

**§ 3.1.2** The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

**§ 3.1.3** As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

**§ 3.1.4** The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

**§ 3.1.5** The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

**§ 3.1.6** The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### **§ 3.2 Schematic Design Phase Services**

**§ 3.2.1** The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

**§ 3.2.2** The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

**§ 3.2.3** The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

**§ 3.2.4** Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

**§ 3.2.5** Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

**§ 3.2.5.1** The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

**§ 3.2.5.2** The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

**§ 3.2.6** The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

**§ 3.2.7** The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

### **§ 3.3 Design Development Phase Services**

**§ 3.3.1** Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

**§ 3.3.2** The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

**§ 3.3.3** The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

### **§ 3.4 Construction Documents Phase Services**

**§ 3.4.1** Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

**§ 3.4.2** The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

**§ 3.4.3** During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

**§ 3.4.4** The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

**§ 3.4.5** The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

### **§ 3.5 Procurement Phase Services**

#### **§ 3.5.1 General**

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive

bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

#### **§ 3.5.2 Competitive Bidding**

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

#### **§ 3.5.3 Negotiated Proposals**

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

#### **§ 3.6 Construction Phase Services**

##### **§ 3.6.1 General**

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

#### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal or signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

#### § 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

#### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

#### ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

##### § 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

*(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	Owner
§ 4.1.1.2 Multiple preliminary designs	Architect
§ 4.1.1.3 Measured drawings	Not Provided
§ 4.1.1.4 Existing facilities surveys	Not Provided
§ 4.1.1.5 Site evaluation and planning	Not Provided
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	Owner
§ 4.1.1.9 Landscape design	Owner (via Civil)
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	Not Provided
§ 4.1.1.14 Conformed documents for construction	Architect
§ 4.1.1.15 As-designed record drawings	Architect
§ 4.1.1.16 As-constructed record drawings	Not Provided
§ 4.1.1.17 Post-occupancy evaluation	Not Provided

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.18 Facility support services	<a href="#">Not Provided</a>
§ 4.1.1.19 Tenant-related services	<a href="#">Not Provided</a>
§ 4.1.1.20 Architect's coordination of the Owner's consultants	<a href="#">Architect (Civil)</a>
§ 4.1.1.21 Telecommunications/data design	<a href="#">Not Provided</a>
§ 4.1.1.22 Security evaluation and planning	<a href="#">Not Provided</a>
§ 4.1.1.23 Commissioning	<a href="#">Not Provided</a>
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	<a href="#">Not Provided</a>
§ 4.1.1.25 Fast-track design services	<a href="#">Not Provided</a>
§ 4.1.1.26 Multiple bid packages	<a href="#">Not Provided</a>
§ 4.1.1.27 Historic preservation	<a href="#">Not Provided</a>
§ 4.1.1.28 Furniture, furnishings, and equipment design	<a href="#">Not Provided</a>
§ 4.1.1.29 Other services provided by specialty Consultants	<a href="#">Not Provided</a>
§ 4.1.1.30 Other Supplemental Services	<a href="#">Not Provided</a>

#### § 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

*(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)*

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

*(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

#### § 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

**§ 4.2.2** To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

**§ 4.2.3** The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 « » ( « » ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 « » ( « » ) visits to the site by the Architect during construction
- .3 « » ( « » ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 « » ( « » ) inspections for any portion of the Work to determine final completion.

**§ 4.2.4** Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

**§ 4.2.5** If the services covered by this Agreement have not been completed within « » ( « » ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

**§ 5.1** Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

**§ 5.2** The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 5.3** The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

**§ 5.4** The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including invert and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 5.5** The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 5.6** The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

**§ 5.7** If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™—2017, Sustainable Projects Exhibit, attached to this Agreement.

**§ 5.8** The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

**§ 5.9** The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**§ 5.10** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

**§ 5.11** The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

**§ 5.12** The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance

of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

**§ 5.13** Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

**§ 5.14** The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

**§ 5.15** Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

#### ARTICLE 6 COST OF THE WORK

**§ 6.1** For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

**§ 6.2** The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

**§ 6.3** In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

**§ 6.4** If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

**§ 6.5** If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

**§ 6.6** If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,

.5 implement any other mutually acceptable alternative.

**§ 6.7** If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

**§ 7.1** The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

**§ 7.2** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

**§ 7.3** The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

**§ 7.3.1** In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

**§ 7.4** Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

**§ 7.5** Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

**§ 8.1.1** The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but

in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

**§ 8.1.2** To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

**§ 8.1.3** The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

## § 8.2 Mediation

**§ 8.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

**§ 8.2.2** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, agreed upon by which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute any other resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 8.2.3** The parties shall share the mediator's fee equally but responsible for their own respective filing fees equally. The mediation shall be held in Utah the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the Parties may file for Litigation in a court of competent jurisdiction, method of binding dispute resolution shall be the following:  
(Check the appropriate box.)

Arbitration pursuant to Section 8.2 of this Agreement

Litigation in a court of competent jurisdiction

Other: *Specify*

None

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

## § 8.3 Arbitration

**§ 8.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by

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User Notes: [AIA UserNotes](#)

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**Commented [CC2]:** There is still a statutory limitations period for written contracts of 6 years, professional negligence of 2 years, and the statute of repose is 9 years, so this does not really effect the rights of the parties.

**Commented [3]:** We can agree to actual damages, or insurance limits and agree to waive punitive damages.

**Commented [CC4R3]:** Jon,

I would agree to limit to insurance limits.

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the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

**§ 8.3.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

**§ 8.3.2** The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**§ 8.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### **§ 8.3.4 Consolidation or Joinder**

**§ 8.3.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 8.3.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in a filed law suit/arbitration, provided that the law allows for the party sought to be joined, consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 8.3.4.3** The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

**§ 8.4** The provisions of this Article 8 shall survive the termination of this Agreement.

### **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. Architect shall give Owner written notice of the breach and if not cured within thirty (30) days, then the Architect may terminate the Agreement, elects to In the event Architect suspends services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused to the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall remain per the contract, be equitably adjusted.

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**§ 9.2** If the Owner suspends the Project for reasons other than the fault of the Architect, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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**§ 9.3** If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

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**§ 9.4** Either party may terminate this Agreement only after giving the breaching party written notice and allowing thirty (30) days to cure. Only then, and upon not less than seven days' written notice should the other party ~~fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.~~

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**§ 9.5** The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

**§ 9.6** If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs directly attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

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**§ 9.7** In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

.1 Termination Fee:

« If the Owner terminates this Agreement for convenience, the Owner shall compensate the Architect for the portion of the design services performed up to the effective date of termination. Compensation shall be calculated based on the percentage of completion of each phase of the Architect's Basic and Additional Services  
»

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

« The licensing fee is the design fee amount as outlined Article 11 »

**§ 9.8** Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

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**§ 9.9** The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

**ARTICLE 10 MISCELLANEOUS PROVISIONS**

**§ 10.1** This Agreement shall be governed by the laws of the state of Utah where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

**§ 10.2** Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 10.3** The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

**§ 10.4** If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the

Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

**§ 10.5** Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

**§ 10.6** Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

**§ 10.7** The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

**§ 10.8 Subject to the Government Records Access Management Act.** If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1 or required by law. This Section 10.8 shall survive the termination of this Agreement.

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**§ 10.8.1** The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

**§ 10.9** The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

**§ 10.10 The SUU Government Entity Required Contract Provisions Attachment** found at <https://www.suu.edu/contracts/pdf/geo.pdf> are hereby agreed to and incorporated by reference.

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## ARTICLE 11 COMPENSATION

**§ 11.1** For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

**.1** Stipulated Sum  
(Insert amount)

« \$73,400 »

**.2** Percentage Basis  
(Insert percentage value)

« » (« ») % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other  
(Describe the method of compensation)

« »

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

«Supplemental Services will not be performed except upon prior written approval of Owner. A mutually agreeable fixed amount shall be determined prior to proceeding with any Supplemental Services. Subject to Owner's approval, authorization to proceed with Supplemental Services may be given prior to establishment of a fixed amount. In such an event, the general basis for determining Architect's compensation shall be based on the hourly rates for each category of employee as designated in Section 11.7, multiplied by the time spent performing the task. »

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation.)

«Additional Services will not be performed except upon prior written approval of Owner. A mutually agreeable fixed amount shall be determined prior to proceeding with any Additional Services. Subject to Owner's approval, authorization to proceed with Additional Services may be given prior to establishment of a fixed amount. In such an event, the general basis for determining Architect's compensation shall be based on the hourly rates for each category of employee as designated in Section 11.7, multiplied by the time spent performing the task. »

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus « » percent (« »%), or as follows:  
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

«Cost plus ten percent (10%)»

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design	«14,888»	percent (	«20»	%)
Phase Retainer	«9,986»	percent (	«14»	%)
Construction Documents at Design Development Phase	«43,534»	percent (	«59»	%)
Construction Documents Phase Permit Submit	«4,995»	percent (	«7»	%)
Procurement Phase				
Construction Phase				
Total Basic Compensation	«\$73,400»	one hundred percent (	100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

**§ 11.7** The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. (If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate (\$0.00)
Principal	\$325.00
Project Manager	\$250.00
Draftsman/Architectural Associate	\$200.00

**§ 11.8 Compensation for Reimbursable Expenses**

**§ 11.8.1** Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

**§ 11.8.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus « 10 » percent ( « 10 » %) of the expenses incurred.

**§ 11.9 Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

**§ 11.10 Payments to the Architect**

**§ 11.10.1 Initial Payments**

**§ 11.10.1.1** An initial payment of « Fourteen Thousand Eight Hundred Eighty Eight Dollars » (\$ « 14,888.00 ») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

**§ 11.10.1.2** If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of « » (\$ « ») shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

#### § 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid (Thirty) (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
*(Insert rate of monthly or annual interest agreed upon.)*

12 percent % 12% per annum prorated on a daily basis for each day after which payment is due.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

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§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:  
*(Include other terms and conditions applicable to this Agreement.)*

### ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below: Not Applicable  
*Insert the date of the E203-2013 incorporated into this agreement.*

- .3 Exhibits:  
*(Check the appropriate box for any exhibits incorporated into this Agreement.)*

[  ] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
Not Applicable*Insert the date of the E204-2017 incorporated into this agreement.*

[  ] Other Exhibits incorporated into this Agreement:  
*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)*

- .4 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

This Agreement entered into as of the day and year first written above.

**OWNER (Signature)**

  
By: Brad Kinross  
Its: title and name and title

**ARCHITECT (Signature)**

  
By: Jonathan Galbraith, AIA  
Its: Manager  
Utah License No.

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DR AF +

CEDAR CITY COUNCIL

AGENDA ITEMS – 4

TO: Mayor and City Council  
FROM: City Attorney  
DATE: October 6, 2025  
SUBJECT: Consider amended deferral agreement for a property located at 97 East and 900 North.

DISCUSSION:

Jay Smith, under various business names, owns multiple properties along the north side of 900 North from Main Street to the golf course. He obtained a deferral agreement from the Council in December of 2024 to allow construction of a couple of buildings without installing the public improvements along the dedicated, but unimproved 100 East. He now seeks to amend that agreement to allow the construction of an additional building and to move the property line further north than the original agreement allowed without triggering improvements.

The Planning Commission gave a positive recommendation to this agreement.

Please consider the resolution approving an amended deferral agreement.

**CEDAR CITY RESOLUTION NO. 25-1006**

**A RESOLUTION APPROVING AN AMENDED DEFERRAL AGREEMENT FOR IRA  
EXPRESS INC. FBO JAY SMITH FOR PROPERTY LOCATED AT  
APPROXIMATELY 93 EAST 900 SOUTH, CEDAR CITY UTAH.**

**WHEREAS**, the City Council hereby determines that it will be in the best interest of the City to allow use and development of the subject property in accordance with the Amended Deferral Agreement; and

**WHEREAS**, the Amended Deferral Agreement will allow the subject property to be developed pursuant the terms and conditions contained therein; and

**WHEREAS**, the Amended Deferral Agreement outlines each party's responsibilities; and

**WHEREAS**, attached hereto and incorporated herein as exhibit A is the Amended Deferral Agreement; and

**WHEREAS**, the Amended Deferral Agreement has been reviewed and received a positive recommendation from the City's Planning Commission.

**NOW THEREFORE** be it resolved by the City Council of Cedar City, Iron County, State of Utah, that the Amended Deferral Agreement provided in Exhibit A is approved by Cedar City.

**Council Vote:**

Phillips -

Melling -

Riddle -

Cox -

Wilkey -

This resolution shall take effect immediately upon passage.

Dated this \_\_\_\_ day of October 2025.

---

Garth O. Green, Mayor

[SEAL]  
ATTEST:

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Renon Savage, Recorder

## EXHIBIT A

Cedar City's Amended Deferral Agreement with IRA Express Inc. FBO Jay Smith

## AMENDED DEFERRAL AGREEMENT

**THIS AMENDED AGREEMENT**, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by and between IRA Express Inc./FBO Jay Smith, herein referred to as CITIZEN, and Cedar City Corporation, a municipal corporation organized and existing under the laws of the State of Utah, herein referred to as CITY. Collectively the CITIZEN and CITY may be referred to as the PARTIES.

### WITNESSETH:

**WHEREAS**, CITIZEN owns property located at 93 East 900 North in Cedar City, Utah (Iron County Parcel ID B-0001-0001-0003); said property being more particularly described as attached in Exhibit A.

**WHEREAS**, said property, pursuant to Ordinance, will not meet certain prerequisites for development;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained here, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PARTIES agree as follows:

1. CITIZEN agrees to build full improvements on 100 East Street from 900 North to the point on 100 East in line with the proposed north property line of Parcel 1, as shown in the attached Exhibit B, approximately 250 feet, as required by Cedar City Ordinance at such time as any trigger event occurs, subject to the terms and conditions set forth herein.
2. CITIZEN acknowledges that by referring to the proposed boundary line adjustment in Exhibit B and the proposed building locations in Exhibit C, CITY has not accepted the proposed boundary line adjustment or building locations. CITIZEN must follow all required procedures to complete the proposed boundary line adjustment and building permit.
3. CITY agrees to waive certain requirements temporarily subject to the terms and conditions set forth herein.
4. CITIZEN acknowledges their obligation to install their portion of curb, gutter, sidewalk, street, street light, water, sewer, drainage and landscaping improvements at such time as any trigger event occurs in accordance with City ordinance. CITIZEN agrees to install, at their own expense, curb, gutter, sidewalk, street, street light, water, sewer, drainage and landscaping improvements fronting 93 East 900 North at such time as any trigger event occurs. Such improvements must be installed by CITIZEN within 30 days of any trigger event.
5. CITIZEN further agrees to pay for and install public improvements, including sidewalk, along the north side of 900 North from 100 East to Main Street, which includes frontage

along parcel # B-0001-0001-0000, by July 1, 2025, regardless of whether a trigger event has occurred.

6. **TRIGGER EVENTS.** The following events shall be considered trigger events.
  - a. When any portion of 100 East is improved north of 900 North and south or east of Knoll Street; or
  - b. When the City receives an application for subdivision, building permit, lot-line adjustment, or any other permit for any property currently abutting the 100 East dedicated right-of-way north of 900 North, including the property in this agreement, or currently possessing a private right of access to the 100 East dedicated right-of-way north of 900 North. This trigger excludes the proposed change in boundaries and the current building and proposed building shown in the attached updated Exhibit B.
7. CITY agrees to provide written notice to CITIZEN which will start the 30-day time period as stated under term 4. If CITIZEN does not improve said property with the improvements outlined under term 4, CITIZEN acknowledges and consents that CITY may elect to install the improvements and record a lien against said property to secure the repayment of the costs associated with the CITY installing the improvements.
8. As an alternative to CITIZEN installing the required improvements and if the CITY so chooses, CITIZEN may pay CITY for CITIZEN's share of the cost to install the improvements if the CITY initiates the project on 100 East. At such time as the CITY prepares to install the improvements on 100 East going north from 900 North Street towards Knoll Street, CITY shall notify CITIZEN regarding the costs associated with installing the improvements. If CITIZEN agrees to the costs in writing, then the CITY shall include CITIZEN's required portion of the work in the CITY's project. CITIZEN shall pay the CITY for CITIZEN's required portion of the work which includes the frontage of CITIZEN's properties, labeled as Parcel 1 and 3 in the updated Exhibit B, abutting 100 East north of 900 North, including properties currently officially owned under the business names of IRA EXPRESS INC/FBO, SMITH JAY IRA, and SES 167, LLC, up to the point described in Paragraph 1 above and all remaining improvements in the intersection of 100 East and 900 North.
9. This Amended Agreement shall be recorded in the office of the Iron County Recorder.
10. This Amended Agreement shall also be binding upon the respective heirs, legal representative, successors, and assigns to the PARTIES hereto.
11. This Amended Agreement shall also run with the title to the property and be binding on any successor in interest.

IN WITNESS WHEREOF, the PARTIES have executed this Amended Agreement as of the day and year set forth above:

**CITIZEN:**

**IRA Express Inc./FBO Jay Smith**

By: Jay N Smith

Signature: \_\_\_\_\_

Title: Owner \_\_\_\_\_

STATE OF UTAH )

:ss.

COUNTY OF IRON )

On this \_\_\_\_\_ day of \_\_\_\_\_ 2025, personally appeared before me Jay Smith who duly acknowledged to me that he signed the above and foregoing document.

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**NOTARY PUBLIC**

**CITY:**

---

**GARTH O. GREEN**  
**MAYOR**

[SEAL]

ATTEST:

---

**RENON SAVAGE**  
**CITY RECORDER**

STATE OF UTAH )

:ss.

COUNTY OF IRON )

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_ 2025, before me, the undersigned, a Notary Public, in and for the State of Utah, duly commissioned and sworn as such, personally appeared Garth O. Green, known to me to be the Mayor of Cedar City Corporation, and Renon Savage, known to me to be the City Recorder of Cedar City Corporation, and acknowledged to me that he the said Garth O. Green and she the said Renon Savage executed the foregoing instrument as a free and voluntary act and deed of said corporation, for the uses and purposes therein, and on oath state that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove written.

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NOTARY PUBLIC

**EXHIBIT A**

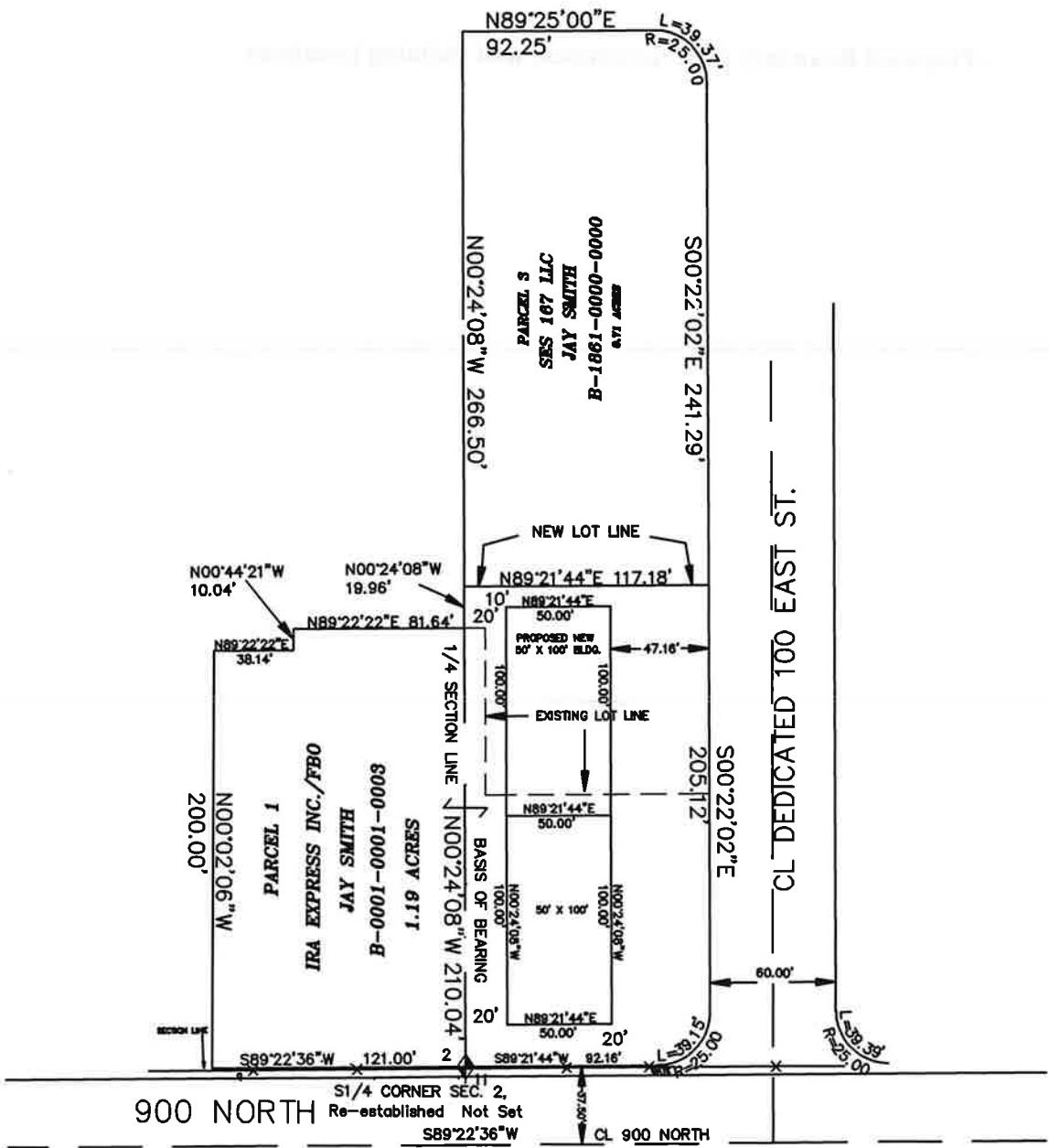
**- legal description -**

**REFER TO ATTACHED LEGAL DESCRIPTION**

## **EXHIBIT B**

**- Proposed Boundary Line Adjustment and Building Locations -**





## **SURVEYOR'S CERTIFICATE**

I, JAY S. ADAMS, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, AND THAT I HOLD CERTIFICATE NO. 167230, IN ACCORDANCE WITH TITLE 58, CHAPTER 22, PROFESSIONAL ENGINEERS AND LAND SURVEYORS LICENSING ACT. I FURTHER CERTIFY THAT I HAVE MADE A SURVEY OF THE HEREON DESCRIBED PROPERTY AND THAT THIS IS A TRUE AND CORRECT REPRESENTATION OF SAID SURVEY.



6/9/2025  
DATE

Jay S Adams  
JAY S. ADAMS

**Brent Drew:** With Levitt Land and Development Team. What happened is when the church came in and purchased its initial property. They decided to put a larger church in that area. They purchased these three lots, two that hadn't been sold yet. They're incorporating that into their parking and into their design. We're coming forward just to ask to vacate that easement along the back and side of those three lots there. They'll be going into their property, no longer putting homes on them. There's nothing in the ground in that easement right now. They were just there. In case down the road somebody wants to put something in the back of the homes. So that's it.

Webster: Commission, any questions.

Decker: Sounds cut and dry to me.

*Open Public Hearing*

*Close Public Hearing*

Webster: Commission, anybody would like further comment or to make a recommendation.

**Jett motions for Positive Recommendation for Vacating a Public Utility Easement on Hidden Canyon Road and 1600 South; Hitz seconds; all in favor for a unanimous vote.**

## 7. PUBLIC HEARING

Development Agreement-Amendment 93 East 900 North  
(Recommendation)

Jay Smith / Jay Adams

**Jay Adams:** This is Tom Morito representing the project on 900 North and proposed 100 East. We had a deferral agreement for the building that we just put in. Adjacent to the proposed 100 East on the corner there right in here. What we're asking is a further deferral up to at least this line here they want to put another building in here. In discussion with the attorney and the mayor they agree with this. Because until that road's built and they're in progress to be built. There's no reason to make improvements currently.

Kent: This is a right-of-way that's dedicated but there's nothing there are no improvements built yet there. There's nothing, not even a dirt road across it or anything.

Randall: If the commission recalls, this is what, last year, with your positive recommendation, council's approval. They were allowed to move the line a bit. Again, mainly it was just because we weren't ready for the road to come in anyway. Are we now, Kent, for that road as our current goal next year?

Kent: Probably, yes.

Randall: Probably. I joked earlier that it might be next year for a while. We're going to keep hoping for next year. It's the same thing. Tomorrow is always coming, but it never gets here. Anyway, we're just trying to set and make sure we have still some triggers. I would like to note one thing. You'll hear my complaints all the time about these lovely deferral and development agreements because enforcement is difficult. Please note the council did a pretty good job on this one last time. We got a sidewalk we never had and a hydrant. I think you guys have been pretty good at working with us, discussing the water line that needs to go in as well. There is some give and take. This is not one of those where we're just giving. I would note that just for your purposes. Yes, and we discussed this earlier. Enforcement is always difficult the more we let them develop. That's my other side that always says, hey, how do we enforce this later? There was some discussion about requiring a bond. That is not required. It's not in the agreement to require any kind of bond, partly because we're just not sure of when. We're hoping it's soon enough.

Because it's one of the mayor's projects to get 100 East in. It's the city trying to get our stuff done. It's almost more of a delay than anything they're doing.

Lunt: You stated you had a new building there. How do you get access to what you're proposing to do. **Tom Morito:** Right now, we have access coming in through right through here. There's a middle section. It goes to this building that's existing right now. This line's a little off. This lot line goes up here. There's an adjustment there. There's also an access right here coming up to it. That's how we've been going in and out. Because you kind of see how the dirt has been going around up there. That's what we've been doing. But right now, there's two accesses, one here and this one as well. The building existing is right there, which is not on this plan. The one we're proposing to put next to it is this, while we're waiting in the meantime for this road to go in. Anytime the road goes in, we're ready to go and do our part. We are just trying to defer our agreement here just a little bit until that road goes in until we figure out what's going on. Plus, there's going to be some utilities going there as well hate to put a road and you're going to tear up the utilities. I think they were saying the water line is going to come right through here and end up right in this area someplace. That's basically all we're doing is just trying to defer that again. The first deferment that we had was we agreed that we'd put the sidewalk in and fire hydrant which we did. There's not much more we can do on that side other than just we want to put that other building. Because it's in this space right now to tie them right together and we just want to leave it at that and that's all we're asking.

Decker: Okay, please point out slowly and show me where the existing building is and where you want to do it.

Tom: The existing building is right here.

Decker: Okay, I got processes this. Okay, that is the existing building and where do you want to put the new building.

Tom: Right next to it just added write to the end of it but.

Decker: There is no infrastructure to get there other than going through private property, correct.

Tom: It's through our own personal property.

Decker: Through your own personal property.

Tom: Yes, this is all of us write here. We own all of this up to there.

Decker: Oh, I see. Okay, that changes the story.

Tom: It's all considered as one area.

Decker: Okay, that clarifies that a lot. Thank you.

Tom: If you can bring up that other map up. It'll show both those buildings what we want to do so you understand. There's an existing one. Here's the one write next to it. It's the same building. There's connecting them. Right now, that other building you saw on the plan was here, another building there, and the other buildings are out here. This is all one ownership.

Decker: You have access to that through your own property.

Tom: One of the reasons we put the fire hydrant there was that it would apply for that whole property.

Decker: Okay. Thank you.

Webster: Any other questions?

### *Open Public Hearing*

**Robin Boykin:** I live on Fairway Drive, and we were just wondering. I heard someone mention next year you have plans to open that road through.

Jett: Yes, all the way all the way from up Fairway? Through Fairway thru next to the Correctional Youth Center, right on two Wedgewood.

Robin: Are you going to have a light? I live very close to where we're on the 17th hole so going affect us. Just wondering what your plans are. You have the budget for it, and it's going to go through next year. Kent: Our priority budget-wise with that 100 East project is from 900 North going south. We have right-of-way from the Forest Service to get through their property, get down there by that new school, and improve the road on down two where the paved road currently exists further south.

Robin: By Lins' Market.

Kent: Well, before we get there more by the Paiute Tribe's buildings. From the 900 North down two where the Paiute Tribe. That is our priority, and it's going to take up all the budget we have in this fiscal year to get that part done. The hope is that we will get additional funds to build, more of the roadway on up two Cedar Knolls, excuse me, two Knoll Street in the next fiscal year is my hope.

Robin: Thank you, and I have no objection to what they wanted to do.

**John Lovren:** I also live on Fairway Drive at the corner of Knoll Street. My only question is, when does that go through, are they going to make that a four-way stop? Because the traffic on that street coming down from where the apartments are is crazy. They come down that hill fast, and it's already hard to get out there. But if we have traffic coming in from the opposite end. That's going to create some traffic issues. My only concern is that they consider stop signs on all four corners when they put that through.

Webster: Kent, do you know how they're planning?

Kent: Yes, once we get it open and we see how much traffic uses that 100 east leg two go south. That will give us an opportunity to evaluate all those traffic volumes. See how traffic volumes compare to the warrants in the manual on uniform traffic control devices for the all-way stop. Look at sight distance and other issues that may also contribute to the need. We will look at that once it is open and we can have something to evaluate two no matter whether that is justified.

John: Also, the corner is down there where it turns and goes past the Ford dealership. I was told two years ago they were going to improve that corner. They came and put some drainage in, but the gravel still washes across the road every time it rains and creates problems. It's a very dangerous corner when there is snow on the road or ice. I don't know if that's still in the planning to fix that with more traffic coming out of that new road.

Kent: That's a good question. I don't know the answer to that.

John: Thank you.

### *Close Public Hearing*

Webster: I will bring it back to the commission. Anybody who would like to make a recommendation?

Amber: Before that, I guess I need a little bit of clarification. Are we deferring improvements on 900 North and 100 East, or just 100 East?

Randall: The drafting as it just says 100 East.

Amber: Okay. Thank you.

Decker: Is 900 North already approved? There's no curb gutter there or sidewalk or anything?

Randall: I thought they added the sidewalk.

Jett: Yes, at 900 there is. They put that in this last year.

Randall: Have we signed off, do we know, on that sidewalk. Because I've seen the work being done, they've put it in. Do you know, has engineering signed off on it? Have they given the final sign off.

Tom: I don't know if they've signed off on it, but we know they've been informed because when it wasn't done, every day it's not done yet, it's not done yet.

Randall: Yes, we harassed you.

Tom: That is correct you did harass us. We got it in.

Jay: There're only two items left on that project to be. UDOT was the one of them and Public Works was the other.

Randall: Okay. As you can see if you go out there, the sidewalk that's there along 900 North did not exist prior to their first agreement last year. I just don't know if it's been officially signed off by engineering. It sounds like maybe there's still something left to be signed off.

Tom: We were hoping to do that sidewalk once that road would go. We can make the curb and the approach and everything at the same time, but we stopped it right there at the curb where the curb radius is going to be.

Randall: That works.

Jett: To clarify, we're asking for a deferral until the road is basically done and then they will.

Tom: Put our part in.

Randall: This is an amendment to a deferral that was already given for that purpose. What we are changing is adding one more building and allowing that North property line of that East property. To be moved approximately 20 feet beyond what the original agreement allowed without triggering the 100 East improvements. That's the change. The initial deferral agreement's already in place. They've, I don't know if it's signed off, but they've done the sidewalk, installed it. It's just a question of one more building and moving that line 20 feet further north than we allowed, just changing the triggers. The deferral already exists.

Jett: We're not seeking to bond.

Randall: As it's drafted, there is no deferral. It's more of a prevention of the next thing. It comes with the standard risks we have with any deferral agreement that enforcement later is difficult. Our only enforcement's going to be the next thing they try to do, eventually. When we're ready to bring in 100 East, that's when we'll use it. The danger is the more they use the property, the less I have to enforce that later, just as is always the case.

Jett: Honor, to me, means everything. We need to go back and show honor instead of making the lawyers rich.

Randall: What's wrong with us lawyers being rich? I would note one thing for your purposes as we discussed this earlier today, some minor tweaks that I'd probably make to this agreement before it gets to council. In paragraph one, you can see a blank spot where it says approximately blank feet. We would be aiming, what did we decide, 250.

Jay: Yes correct, 250.

Randall: Then there's another part. In paragraph six, at the very end of it, it refers to exhibit B and exhibit C. B being essentially a legal description, or a map for the property boundary and C being a map showing the building location. Because that's how we did it in the first agreement. We had two separate maps. This one is a single map. I'll likely end up just combining those four grammatical reasons as two, one exhibit B covering both the line as well as the property, the building itself, but nothing substantive. That'd be it.

Webster: Any other questions or comments? Bring it back to the commission for a recommendation.

**Davis motions for a Positive Recommendation for an Amendment to the Deferral Agreement on our Development Agreement; Jett Seconds; all in favor for a unanimous vote.**

8. Easement Created on City Property      Approx. 780 East Hwy 14      Nathan Blocker / Jay Adams  
(Recommendation)

CEDAR CITY COUNCIL

AGENDA ITEM - 5

TO: Mayor and City Council  
FROM: City Attorney  
DATE: October 6, 2025  
SUBJECT: Power line Easement for Nathan Block across City property to access his property south of the walking bridge up SR-14 (parcel # B-1407-0000-0000).

**DISCUSSION:**

Nathan Blocker obtained an easement from the City earlier this year to allow him to continue accessing and using his well that was incorrectly placed approximately seven feet onto the City's property by a previous owner of the private property. Mr. Blocker now seeks a power line easement above ground across Coal Creek and the walking trail and then underground to his property.

Much as last time, although the Planning Commission gave a positive recommendation for this easement, they did not discuss the amount of appropriate compensation for the easement as no property valuation has been carried out. With some exceptions inapplicable here, State law generally requires "adequate consideration" for anything given by the City. More specifically courts have stated, "For any disposition of public money or property to pass legal muster, it must be shown that the public entity has received fair market value in exchange." We have followed this requirement in the past for private easements.

Mr. Blocker is hoping the City will do what it did for the last easement and not require an appraisal. Last time, we took the valuation of an unrelated property near Canyon View High School where the City acquired an easement for a walking trail and used the same square footage calculation of approximately 25.8265 cents per square foot of easement. Unfortunately, I run into a couple of problems with this method here. First, the City's property along Coal Creek is substantially different than property we're currently not using. Second, I do not know the square footage of the easement currently being requested. I encourage the Council to require Mr. Blocker to obtain an appraisal for the easement being sought to avoid City staff and officials trying to do an appraiser's job.

City Engineer Kent Fugal suggested at least looking at the possibility of establishing a public utility easement in this location. This could eliminate the need to come back to the Council for future utility easements for Mr. Blocker's property and could also eliminate the statutory requirement for compensation.

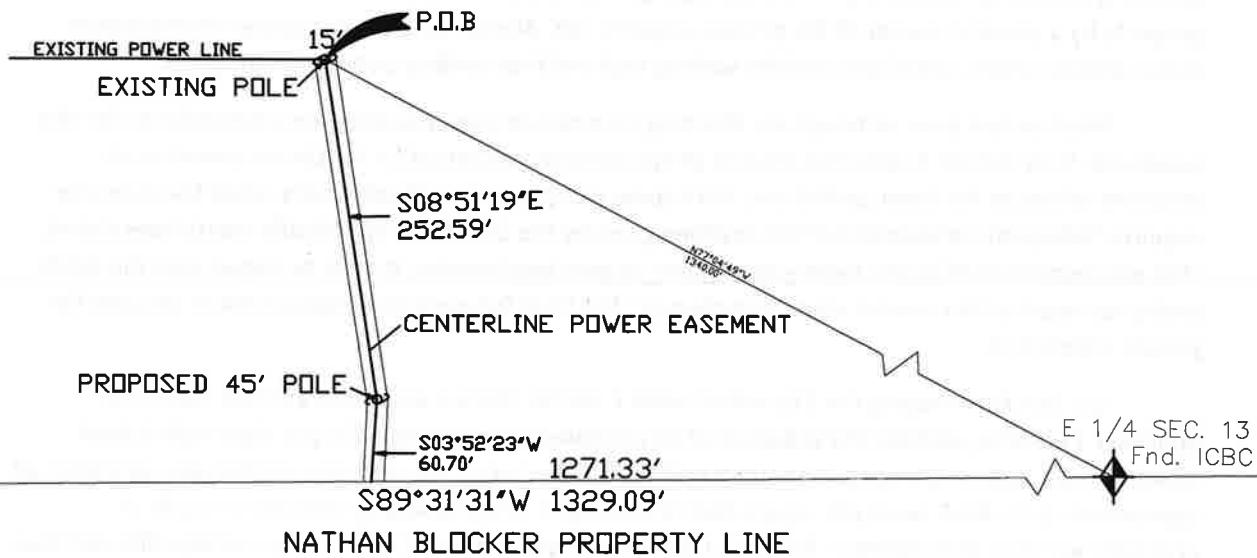
I've included in your packets all the documentation considered at the Planning Commission meeting. Please consider whether to approve the requested easement.

POWERLINE EASEMENT LEGAL DESCRIPTION

BEGINNING AT A POINT N77°04'49"W 1340.00 FEET FROM THE EAST 1/4 CORNER OF SECTION 13, T36S, R11W, SLB&M, SAID POINT ALSO BEING AN EXISTING POWER POLE. RUNNING THENCE ALONG THE CENTER LINE OF A 15 FOOT POWER EASEMENT THE FOLLOWING COURSES: S08°51'19"E 252.59 FEET; THENCE S03°52'23"W 60.70 FEET TO THE POINT OF ENDING. SAID POINT ALSO BEING ON THE NORTH LINE OF NATHAN BLOCKERS PROPERTY BEING S89°31'31"W 1271.33 FEET FROM SAID EAST 1/4 CORNER.



**CEDAR CITY CORP**



**NATHAN BLOCKER**

LEGEND

- ◆ SECTION CORNER
- FOUND MONUMENT
- ▣ SET REBAR & PLASTIC CAP L.S. NO. 167230

**POWER EASEMENT EXHIBIT A**

PREPARED BY:

JAY S. ADAMS  
PROF. LAND SURVEYOR  
UTAH LIC. NO. 167230

LANDOWNER NAME:

NATHAN BLOCKER

DATE: 7/28/2025

8-4-25  
DATE

CC# WO#

DRAWN BY: JSA

Jay S Adams  
JAY S. ADAMS

**ADAMS SURVEYING & ENGINEERING INC.**

1068 CEDAR KNOLLS  
CEDAR CITY, UTAH 84720  
Voice: (435) 586-0852

EMAIL: office@adamssurveying.com



# CEDAR CITY CORP

## POWERLINE EASEMENT LEGAL DESCRIPTION

BEGINNING AT A POINT N77°04'49"W 1340.00 FEET FROM THE EAST 1/4 CORNER OF SECTION 13, T36S, R11W, SLB&M. SAID POINT ALSO BEING AN EXISTING POWER POLE, RUNNING THENCE ALONG THE CENTER LINE OF A 15 FOOT POWER EASEMENT THE FOLLOWING COURSES: S08°51'19"E 252.59 FEET; THENCE S03°52'23"W 60.70 FEET TO THE POINT OF ENDING, SAID POINT ALSO BEING ON THE NORTH LINE OF NATHAN BLOCKERS PROPERTY BEING S89°31'31"W 1271.33 FEET FROM SAID EAST 1/4 CORNER.

## NATHAN BLOCKER

## POWERLINE EASEMENT LEGAL DESCRIPTIONS

PAD 1  
BEGINNING AT A POINT S89°31'31"W 1271.33 FEET FROM THE EAST 1/4 CORNER OF SECTION 13, T36S, R11W, SLB&M. RUNNING THENCE ALONG THE CENTER LINE OF AN EXISTING ACCESS ROAD THE FOLLOWING COURSES: S03°52'23"W 17.51 FEET; THENCE S51°14'40"E 47.37 FEET; THENCE S29°04'38"E 44.87 FEET; THENCE S10°27'00"E 57.41 FEET; THENCE S16°53'51"W 69.72 FEET; THENCE S33°51'56"W 72.67 FEET; THENCE S16°42'28"W 28.06 FEET; THENCE S05°24'44"E 139.16 FEET; THENCE S04°53'19"W 56.99 FEET; THENCE S18°33'05"W 55.99 FEET; THENCE S05°16'08"E 97.33 FEET; THENCE S22°38'39"W 111.44 FEET; THENCE S09°02'44"W 29.29 FEET; THENCE S12°18'29"E 87.94 FEET; THENCE S01°32'36"E 137.59 FEET; THENCE S19°40'21"W 30.03 FEET; THENCE S05°45'13"W 117.02 FEET TO THE POINT OF ENDING SAID POINT ALSO BEING N48°52'02"E 1752.08 FEET FROM THE POINT OF BEGINNING.

PAD 2  
BEGINNING AT A POINT S55°13'51"W 1565.67 FEET FROM THE EAST 1/4 CORNER OF SECTION 13, T36S, R11W, SLB&M. SAID POINT BEING AN INTERSECTION OF AN EXISTING ACCESS ROAD, RUNNING THENCE ALONG THE CENTER LINE OF SAID ACCESS ROAD THE FOLLOWING COURSES: N85°40'18"E 35.36 FEET; THENCE N4°18'11"E 24.19 FEET TO THE POINT OF ENDING SAID POINT ALSO BEING S55°45'40"W 1511.26 FEET FROM THE POINT OF BEGINNING.

PAD 3  
BEGINNING AT A POINT S51°36'53"W 1668.57 FEET FROM THE EAST 1/4 CORNER OF SECTION 13, T36S, R11W, SLB&M. SAID POINT BEING AN INTERSECTION OF AN EXISTING ACCESS ROAD, RUNNING THENCE ALONG THE CENTER LINE OF SAID ACCESS ROAD THE FOLLOWING COURSES: S55°36'06"E 53.90 FEET; THENCE S18°23'52"E 44.73 FEET; THENCE S43°19'16"E 6121 FEET TO THE POINT OF ENDING SAID POINT ALSO BEING S46°18'21"W 1669.81 FEET FROM THE POINT OF BEGINNING.

## SURVEYOR'S CERTIFICATE

I, JAY S. ADAMS, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, AND THAT I HOLD CERTIFICATE NO. 167230, IN ACCORDANCE WITH TITLE 58, CHAPTER 22, PROFESSIONAL ENGINEERS AND LAND SURVEYORS LICENSING ACT. I FURTHER CERTIFY THAT I HAVE MADE A SURVEY OF THE HEREIN DESCRIBED PROPERTY AND THAT THIS IS A TRUE AND CORRECT REPRESENTATION OF SAID SURVEY.



*Jay S. Adams*  
JAY S. ADAMS

8-4-25  
DATE

Tom: That is correct you did harass us. We got it in.

Jay: There're only two items left on that project to be. UDOT was the one of them and Public Works was the other.

Randall: Okay. As you can see if you go out there, the sidewalk that's there along 900 North did not exist prior to their first agreement last year. I just don't know if it's been officially signed off by engineering. It sounds like maybe there's still something left to be signed off.

Tom: We were hoping to do that sidewalk once that road would go. We can make the curb and the approach and everything at the same time, but we stopped it right there at the curb where the curb radius is going to be.

Randall: That works.

Jett: To clarify, we're asking for a deferral until the road is basically done and then they will.

Tom: Put our part in.

Randall: This is an amendment to a deferral that was already given for that purpose. What we are changing is adding one more building and allowing that North property line of that East property. To be moved approximately 20 feet beyond what the original agreement allowed without triggering the 100 East improvements. That's the change. The initial deferral agreement's already in place. They've, I don't know if it's signed off, but they've done the sidewalk, installed it. It's just a question of one more building and moving that line 20 feet further north than we allowed, just changing the triggers. The deferral already exists.

Jett: We're not seeking to bond.

Randall: As it's drafted, there is no deferral. It's more of a prevention of the next thing. It comes with the standard risks we have with any deferral agreement that enforcement later is difficult. Our only enforcement's going to be the next thing they try to do, eventually. When we're ready to bring in 100 East, that's when we'll use it. The danger is the more they use the property, the less I have to enforce that later, just as is always the case.

Jett: Honor, to me, means everything. We need to go back and show honor instead of making the lawyers rich.

Randall: What's wrong with us lawyers being rich? I would note one thing for your purposes as we discussed this earlier today, some minor tweaks that I'd probably make to this agreement before it gets to council. In paragraph one, you can see a blank spot where it says approximately blank feet. We would be aiming, what did we decide, 250.

Jay: Yes correct, 250.

Randall: Then there's another part. In paragraph six, at the very end of it, it refers to exhibit B and exhibit C. B being essentially a legal description, or a map for the property boundary and C being a map showing the building location. Because that's how we did it in the first agreement. We had two separate maps. This one is a single map. I'll likely end up just combining those four grammatical reasons as two, one exhibit B covering both the line as well as the property, the building itself, but nothing substantive. That'd be it.

Webster: Any other questions or comments? Bring it back to the commission for a recommendation.

**Davis motions for a Positive Recommendation for an Amendment to the Deferral Agreement on our Development Agreement; Jett Seconds; all in favor for a unanimous vote.**

8. Easement Created on City Property      Approx. 780 East Hwy 14      Nathan Blocker / Jay Adams  
(Recommendation)

Jay Adams: I am here with Nathan Blocker. He's purchased the property just on the other side of the creek and the walking trail where that canyon is. He wants to run a power line from over on just south side of the 14 there across the creek to a pole that shows right there. Then underground to his property. This is his property line here. Then he wants to run power to different places there for access, and to build a house, a couple houses in there.

Jett: How large is that piece that you acquired?

Nathan: Forty acres. Forty?

Jett: Is that the old Rock Pacific Power property.

Nathan: No.

Jay: Who did you buy it from.

Nathan: I bought it from Mitch.

Jett: Okay, you're up. Well, you've been carving that little hole out there.

Jay: We were here before to get an easement because the well was drilled.

Jett: I remember that now.

Nathan: I didn't drill well.

Davis: It was already there.

Webster: Discussion? Any discussion from the commission.

Jett: I have a question. How hard is the city going to bust your chops? For the Fire Department to get back there and curb and gutter and all the other rules that we have.

Nathan: That's a county. I am county.

Randall: This is one of those odd situations where our ownership of the property is the only thing we care about. We do not have any authority over this area.

Jett: How about the road going to it? It goes up to our water tank, and I'm not trying to stifle the thing. I've been watching these guys develop up there, and I'm going, how hard the city is, or be it this case, the county, going to bust their chops for width of roads and all that kind of stuff.

Randall: Again, this is out of us.

Kent: We don't know what the county requires.

Nathan: I'm not developing housing development or anything like that. It's just a residential house.

Jett: Well, this is a beautiful location and stunning location.

Kent: Mr. Chairman, could I say something on this one? We have had some of our staff meet out in the field with, Jay, you were out there, weren't you? Maybe both of you were. With the power company looking at what would need to be done. This proposal does not interfere with our path or anything there. We have no objection to this. This seems like a reasonable request.

Webster: Thanks, Kent. Any discussion from the commission.

Decker: If the City Engineer has no objections, I don't see a problem. It's not costing the city anything, correct.

Randall: Well, and again, the only question, and this is the same one we had last time when you came through before. The city is giving something of value. I get to always be the downer and say government. We're not allowed to simply give city property other than for very specific reasons for charitable organizations. We will need some type of estimate as to what the easement value is. Then to allow the city to accept something around that value. Otherwise, we violate state law.

Jay: It'll be a tradeoff for you to have power hooked onto that power line.

Randall: That may be exactly what the city goes for. What's the value of what we're trading? Last time, if you remember, we didn't have you go all the way through doing a full survey/appraisal. We had to try and find some type of equivalent. I don't know exactly how to do that here. Because last time. It was a nice, lovely, unusable cliff-like property almost. This one's running across a trail. That is one thing I'll just

have to note. You guys can go ahead and give a positive recommendation because obviously staff have no opposition to it. State law would prohibit us from granting without some fair payment for it. I ask you to find a way whether it's appraisal otherwise to determine what that might be.

Nathan: Can we just go off the square footage of the last appraisal?

Randall: That's why I say the difficulty on his last one we were all kind of looking at the location of it. It was mostly an unusable portion of city property. Now part of the easement is running across an used portion of our property.

Nathan: The last one we took a high value piece of property. We took that appraisal and we used that as a high value piece of property wear this was.

Randall: That's a possibility. The council was okay with that last time and that will be their call. If you guys can sit down and figure out exactly how that would be comparable if you think it is then great.

When you get to the council meeting. Be prepared for that. Preferably beforehand. If you can get that to me because then, I can make sure it gets into the council's packet when we send it a few days before the meeting. That is a statutory requirement. We're not allowed to go around it, otherwise the city just starts giving out property.

Davis: Yes, but we don't need to say that in the motion.

Randall: No, you can just say you're okay with a positive recommendation. I just wanted to make sure they're aware of it so it doesn't delay it when it gets to council.

#### **Davis motions for a Positive Recommendation for The Easement Created on City Property; Lunt seconds; all in favor for a unanimous vote.**

#### **CITY ITEMS**

##### **9. Discussion Item Only**

##### **Ordinance 26-III-21 Pertaining to Use Tables for Commercial Zones**

I think it iour job to clean things up. Don is going to explain.  
oPen to suggestions.

Don: I will try and be bretha zoing 11 this chart you see here commercial use highway simn 2 we had debt verses I m this are very important and where. As and example automobile were hou what is vision down commercial im stor we need thos uses best spot to put it. Of this in the gray what is moving a stwoerriage selfgar soemthines runinto gray that I defait ant we try and make inter place soon. If you come with use it is not he that wmya come hunder pages determine this close this use already premited in the zone. Imy thoughts maybe definably bit zide., what is that difference to see how tha what makes sense in this ares. That just make ssce that is the exercise it could comb through it put some though and come with the master pan . if you thoruhg broth eand fits inthis deisption as you lhad use caterogery goas and pas commercial theare not to get specific e forafit inthis zone should be your. I don't have power point as. Just to mae conditional permit use requieed it can be tough it allows mes dies a effects from that zone asfphat im not we don't' care im n allow with are set contions to neighterering properties wehen you go this ese infect inform of you is the difference hiway series read throughtaos traveling transit central as well as loocatl resenets. Deeop allowed hgwy series if you thngk that makes sience when. To make those des.

Good Excter with ose plans alittle and sped time with after this will exciteding to you if that word and come sechule a little itme and the end of the next meeting does that some okay with your guys. A little bit.

LUndt: Define those two mixed use Randall. CC neighbor mixed graosher corner commercial distris is



CEDAR CITY COUNCIL  
AGENDA ITEM - 6

**TO:** Mayor and City Council

**FROM:** City Attorney

**DATE:** October 6, 2025

**SUBJECT:** Consider a resolution rescinding a development agreement and later addendum for a property located at 1157 South Main Street

**DISCUSSION:**

On February 8, 2023, the Council approved a development agreement with VE Management and Cedar Hurricane, LLC, for approximately 17.5 acres of property (12 parcels) on south Main Street with the goal of guaranteeing continued allowance of short-term rentals for at least 20 years. On January 10, 2024, the Council approved an addendum to the original development agreement, addressing easements and upsizing. Between the original agreement and the addendum, VE Management became the sole owner of the property. Due to a change in how the property will develop, VE Management now seeks to rescind the original development agreement and the addendum. Staff have no objection to this request.

Three things to note. First, the address used at the time of the original agreement was “approximately 1221 South Main Street.” The current address being used is 1157 South Main. Both refer to the same properties.

Second, due to a minor publication issue, the Planning Commission could not vote on this issue during its September 17<sup>th</sup> meeting but will vote on October 7<sup>th</sup>. To avoid slowing down the project, we’ve placed the item on your October 8<sup>th</sup> agenda. We will update you on the Planning Commission’s vote at the Council meeting.

Third, the rescission is contingent upon the completion of the sale of the property by VE Management.

Please consider whether to approve the resolution and agreement rescinding the previously approved development agreement and addendum.

**CEDAR CITY RESOLUTION NO. 25-1008**

**A RESOLUTION APPROVING THE TERMINATION AND RELEASE OF  
DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT APPROXIMATELY  
1221 (1157) SOUTH MAIN STREET, CEDAR CITY UTAH.**

**WHEREAS**, the City Council hereby determines that it will be in the best interest of the City to terminate the previously approved development agreement and addendum; and

**WHEREAS**, the Development Agreement was initially approved by Council on February 8, 2023, and contractually allowed short-term rentals for a period of 20 years even if City ordinance was later modified to disallow the use; and

**WHEREAS**, the Addendum to the Development Agreement was approved by Council on January 10, 2024, and outlined each party's responsibilities related to easements and upsizing; and

**WHEREAS**, VE Management now seeks to sell the property and wishes to rescind the original Development Agreement and Addendum contingent upon the sale of that property; and

**WHEREAS**, attached hereto and incorporated herein as exhibit A is the Termination and Release of Development Agreement; and

**WHEREAS**, the Termination and Release of Development Agreement has been reviewed and received a positive recommendation from the City's Planning Commission.

**NOW THEREFORE** be it resolved by the City Council of Cedar City, Iron County, State of Utah, that the Termination and Release of Development Agreement provided in Exhibit A is approved by Cedar City, contingent upon (i) closing between VE Management and the Purchaser under the Purchase and Sale Agreement, dated June 4, 2025, between VE Management and Purchaser; and (ii) upon the Termination of Development Agreement being fully executed by all Parties and being recorded in the official records of the Iron County Recorder, State of Utah, against all the Property.

**Council Vote:**

Phillips -

Melling -

Riddle -

Cox -

Wilkey -

This resolution shall take effect immediately upon passage.

Dated this \_\_\_\_ day of October 2025.

---

Garth O. Green, Mayor

[SEAL]  
ATTEST:

---

Renon Savage, Recorder

# EXHIBIT A

Termination and Release of Development Agreement

WHEN RECORDED MAIL TO:

Smith's Food & Drug Centers, Inc.  
c/o The Kroger Co.  
1014 Vine Street  
Cincinnati, Ohio 45202-1100  
Attn: Smith's Real Estate Dept. (Smith's 242)

Parcel Nos.: B-1135-0120-0000, B-1135-0121-0000, B-1135-0122-0000; B-1135-0123-0000, B-1135-0124-0000;  
and B-1135-0125-0000

(space above for Recorder's use only)

**TERMINATION AND RELEASE OF  
DEVELOPMENT AGREEMENT**

THIS TERMINATION AND RELEASE OF DEVELOPMENT AGREEMENT (this "Termination") is entered into by IVINS RED CROSSINGS LLC, a Utah limited liability company ("Ivins"), CEDAR CREEK INVESTMENTS, LLC, a Utah limited liability company ("Cedar Creek") and CITY OF CEDAR CITY, a Utah municipal corporation ("City"), to be effective as set forth herein. Ivins, Cedar Creek, and City are at times collectively referred to herein as the "Parties."

**R E C I T A L S**

A. Ivins owns real property bearing APNs: B-1135-0120-0000, B-1135-0121-0000, B-1135-0123-0000, B-1135-0124-0000, and B-1135-0125-0000 located in Iron County, Utah.

B. Cedar Creek owns real property located bearing APN B-1135-0122-0000 located in Iron County, Utah.

C. The foregoing six (6) identified tax parcels, all of which are more particularly described in **Exhibit A** attached hereto and made a part hereof by this reference, are collectively referred to as the "Property".

D. The Property is the only real property encumbered by that certain Development Agreement dated March 21, 2023, and recorded on March 27, 2023 in the Iron County Recorder's Office as Entry No. 00803422 in Book 1638, Page 928, as amended by that certain Addendum to Development Agreement recorded February 12, 2024 in the Iron County Recorder's Office as Entry No. 00814750 in Book 1667, Page 299 (collectively, "Development Agreement").

E. The Parties wish to terminate and release the Development Agreement in its entirety, which shall only be effective upon recording a fully executed copy of this Termination against the Property, identified in Exhibit A hereto, in the official records of the Iron County Recorder, State of Utah.

**T E R M I N A T I O N**

NOW, THEREFORE, the Parties declare as follows:

1. **Termination.** Ivins and Cedar Creek, as the owners of the Property, and the City hereby terminate and release the Development Agreement in its entirety, including, without limitation, all rights and obligations related thereto.

2. **Recordation.** This Termination will be recorded in the Iron County Recorder's Office.

3. **Incorporation of Recitals; Defined Terms.** The recitals as set forth above are deemed correct and are hereby incorporated herein.

4. **Effective Date.** This Termination shall only be effective upon the same being fully executed by all Parties and recorded in the official records of the Iron County Recorder, State of Utah, against all of the Property identified in Exhibit A.

5. **Counterparts.** This Termination may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Ivins, Cedar Creek, and City have executed this Termination and Release of Development Agreement as of the date below, to become effective upon the same being fully executed by all Parties and being recorded in the official records of the Iron County Recorder, State of Utah, against all the Property identified in Exhibit A.

IVINS:

IVINS RED CROSSINGS LLC,  
a Utah limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ 2025, personally appeared before me \_\_\_\_\_, known or satisfactorily proved to me to be the \_\_\_\_\_ of Ivins Red Crossings LLC, a Utah limited liability company, who acknowledged to me that he/she signed the foregoing instrument on behalf of said company.

---

## Notary Public

**CEDAR CREEK:**

CEDAR CREEK INVESTMENTS, LLC,  
a Utah limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_) :ss  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_ 2025, personally appeared before me \_\_\_\_\_, known or satisfactorily proved to me to be the \_\_\_\_\_ of Cedar Creek Investments, LLC, a Utah limited liability company, who acknowledged to me that he/she signed the foregoing instrument on behalf of said company.

---

Notary Public

**CITY:**

CITY OF CEDAR CITY,  
a Utah municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_) :ss  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_ 2025, personally appeared before me \_\_\_\_\_, known or satisfactorily proved to me to be the \_\_\_\_\_ of City of Cedar City, a Utah municipal corporation, who acknowledged to me that he/she signed the foregoing instrument for said corporation.

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

## EXHIBIT A

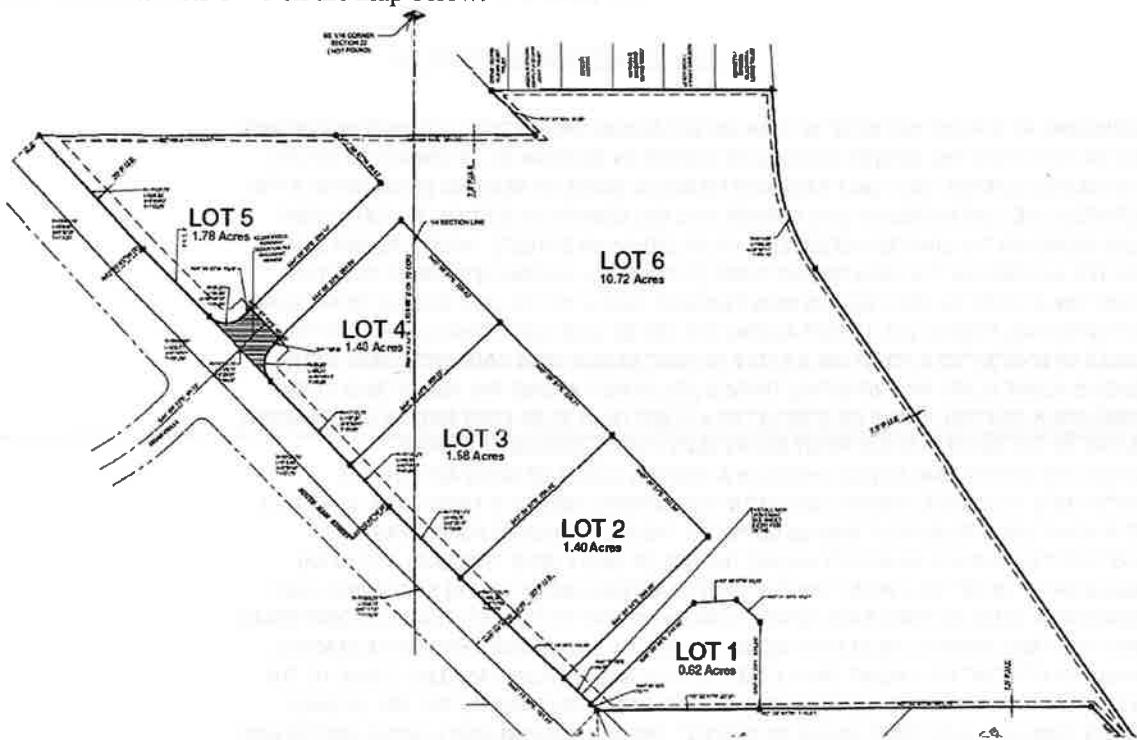
### (Legal Description of Property)

BEGINNING AT A POINT NO°30'47"W 1084.59 FEET ALONG THE SECTION LINE AND N89°09'34"E 201.94 FEET FROM THE CENTER SOUTH 1/16 CORNER OF SECTION 22, TOWNSHIP 36 SOUTH AND RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN (BASIS OF BEARING BEING NO°30'47"W BETWEEN THE CENTER SOUTH 1/16 CORNER AND THE CENTER OF SECTION 22); SAID POINT ALSO BEING ON THE LIMITED ACCESS LINE OF SR-130 (MAIN STREET); THENCE ALONG SAID LIMITED ACCESS LINE THE FOLLOWING THREE (3) COURSES; N44°08'59"E 190.61 FEET TO A POINT ON A 17137.73 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (RADIUS POINT BEARS N45°04'38"W); THENCE 231.17 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°46'22" TO A POINT ON A 17137.73 FOOT RADIUS NON-TANGENT CURVE WITH (RADIUS POINT BEARS N43°20'49"W); THENCE 251.23 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°50'24" TO A POINT ON A 35.00 FOOT RADIUS NONTANGENT CURVE TO THE RIGHT (RADIUS POINT BEARS S44°11'13"E); THENCE 55.04 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°05'40"; THENCE S44°05'33"E 16.05 FEET; THENCE N45°37'19"E 60.00 FEET; THENCE N 44°05'33"W 16.46 FEET TO A POINT ON A 35.00 FOOT RADIUS CURVE TO THE RIGHT (RADIUS POINT BEARS N45°54'27"E); THENCE 54.66 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 89°28'19" TO A POINT ON THE LIMITED ACCESS LINE OF SR-130 SAID POINT ALSO BEING ON A 17137.73 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (RADIUS POINT BEARS N44°37'14"W); THENCE 136.62 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°27'24" TO A POINT ON A 17137.73 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (RADIUS POINT BEARS N42°35'45"W); THENCE 224.52 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°45'02"; THENCE LEAVING SAID LIMITED ACCESS LINE S00°15'41"E 725.21 FEET; THENCE N45°37'19"E 91.90 FEET; THENCE S0°15'41"E 408.29 FEET; THENCE S85°35'19"W 108.84 FEET TO A POINT OF CURVATURE WITH A 311.69 FOOT RADIUS CURVE TO THE LEFT; THENCE 163.22 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 30°00'11"; THENCE S55°35'07"W 895.36 FEET; THENCE N45°36'02"E 147.22 FEET; THENCE NO°32'41"W 718.81 FEET TO THE POINT OF BEGINNING.  
CONTAINS: 17.50 ACRES

The owners of each respective portion of the above said Property are as follows:

APN:	Approximate Acreage	Owner
B-1135-0057-0000	11.93	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0065-0000	0.37	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0064-0000	1.13	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0058-0000	0.81	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0056-0000	0.37	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0053-0000	0.29	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0118-0000	0.52	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0117-0000	0.26	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0059-0000	0.37	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0059-0001	0.39	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0066-0000	0.56	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0119-0000	0.54	VE MANAGEMENT AND INVESTMENT CO., L.C.

Further shown as Lots 1 – 6 on the map below:



## DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into this 21 day of March, 2023, and relates to 17.5 acres of property located at approximately 1221 South Main Street, Cedar City, Utah, more particularly described in Exhibit "A" attached hereto (referred to as the "Property"). This Agreement is entered by and among the City of Cedar City, a Utah municipal corporation, hereafter referred to as "City" and VE MANAGEMENT AND INVESTMENT CO., L.C., a Utah limited liability company and CEDAR HURRICANE, LLC, a Utah limited liability company, who are the owners of the respective portions of the real property that constitutes the Property, including any applicable affiliate assignee(s), hereafter collectively referred to as "Owner". The City and Owner are sometimes referred to in this Agreement each, individually, as a "Party" and together, collectively, as the "Parties". Nothing contained in the Agreement shall create the relationship of any partnership, joint venture, or agency relationship between any of the respective Parties.

### RECITALS

A. Cedar City, acting pursuant to its authority under Utah Code § 10-9a-102(2), as amended, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has made certain determinations with respect to the Property and the proposed project to be developed on the same and in exercise of its legislative discretion, has elected to enter into this Agreement.

B. Owner is the owner of the Property located in Cedar City, Utah, and desires to have the Property developed and is willing to design and construct the project on the Property in a manner that is in harmony with and intended to promote the long range policies, goals, and objectives of Cedar City's general plan, zoning, and development regulations in order to receive the benefit of zoning designations under the terms of this Agreement as more fully set forth herein.

C. The proposed development of the project is arranged on 17.5 acres of property located in Iron County, located at or about 1221 South Main Street, Cedar City, Utah, with the legal description and respective portions and parcels that are separately owned by the Owners, which collectively constitute the entirety, being contained and set forth in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

D. Parties acknowledge that on December 7, 2022, the City Council approved all of the Property to be zoned as Central Commercial Zone ("CC") with the understanding that the Parties would enter this Agreement. It is anticipated that, subject to the terms of this Agreement, the Property and project thereon will be developed in a manner to accommodate multiple uses which constitute a unified mixed use project upon the Property. This Agreement is to regulate the intended land uses, and densities, upon the Property.

E. The Owner may complete development of the project on the Property in one or more phases pursuant to one or more complete development applications to the City for development of each or all respective portions of the Property.

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F. Owner and City desire to allow the Owner to make improvements to the Property and develop the project pursuant to City ordinance, policies, standards, and procedures.

G. The Cedar City Council has authorized the negotiation of and adoption of this development agreement which advances the policies, goals, and objectives of the Cedar City General Plan, and preserves and maintains the atmosphere desired by the citizens of the City. Moreover, the Owner has voluntarily agreed to the terms of this Agreement and hereby acknowledges the obligations to complete development of the project on the Property in a manner consistent with the terms of this Agreement and applicable law (as more particularly described in and subject to Article IV hereof).

H. Consistent with the foregoing authorization and the provisions of Utah State law, the City's governing body has authorized execution of this Agreement by Resolution 23-0208, a copy of which is attached to this Agreement as Exhibit "B".

#### **AGREEMENT**

**NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:**

**I. Recitals.**

The recitals set forth above are incorporated herein by this reference.

**II. Exhibits.**

The Exhibits and attachments are intended to be included as if in the body of this Agreement and regulated as such:

- Exhibit A - Legal Description of Property
- Exhibit B - Adopting Resolution
- Exhibit C – Preliminary Layout Plan

**III. Developer Obligations.**

A. **Completion of the Project.** Owner agrees to construct and complete the project on the Property in accordance with the Preliminary Layout Plan and dedicate to the City all roads and other applicable public infrastructure included within the Project, to the extent that such roads and other public infrastructure are to be operated by the City. On December 7, 2022, the Cedar City Council granted the requested zone change on respective portions of the Property.

B. **Project Density and Lot Arrangement.** The Parties acknowledge that the exact configuration of the final layout of the project on the Property may vary from that shown in the Preliminary Layout Plan due to the final road locations, market forces, and other factors that are unforeseeable. Owner may transfer the location of the retail, restaurant, single-family and/or multi-family dwelling unit vacation rental areas between and among the phases.

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#### **IV. Vested Rights and Reserved Legislative Powers.**

##### **A. Zoning; Vested Rights.**

(1) The City has zoned the Property Central Commercial Zone (“CC”) as shown on the City’s zoning map and the zoning for City accommodates and allows all development contemplated by City ordinance, City engineering standards, and this Agreement. To the maximum extent permissible under the laws of Utah and the United States and at equity, the Parties intend that this Agreement grants Owner all rights to develop the Property, including the project thereon, in fulfillment of this Agreement. The Parties specifically intend that this Agreement grant to Owner “vested rights” as that term is construed in Utah’s common law and pursuant to Utah Code § 10-9a-509. As of the date of this Agreement, City confirms that the uses, configurations, densities, and other development standards reflected in this Agreement are approved under, and consistent with, City’s existing laws, ordinances, rules, standards, policies, requirements, actions, Zoning Map, and General Plan (collectively, “City’s Existing Laws”) including, without limitation, allowing for up to 24 residential units per acre: (i) in conjunction with a commercial development where the residential use is located above the ground floor and, except for access to the residential units, said ground floor is devoted exclusively to a commercial use permitted in the zone, and/or; (ii) in conjunction with a unified mixed use project where any exclusively residential portion of the project (that part of the project that does not contain a commercial use or associated parking) comprises no more than fifty percent (50%) of all the Property. Residential Short-Term Rentals are permitted within and upon the Property and at the completion of all the development on the entire Property in accordance with the approved plans, Owner shall be entitled to have developed the maximum residential units as specified in and pursuant to this Agreement. This is subject to compliance with the terms and conditions of this Agreement and the City’s Existing Laws.

(2) Except to the extent provided otherwise in Section B below, the Owner’s rights under this Agreement and all applicable law existing as of the date of this Agreement (including without limitation the City’s Existing Laws) shall be deemed to be vested and may not be hereafter decreased or made less favorable to the Owner.

B. Reserved Legislative Powers. Owner acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of Owner with respect to use under the zoning designations of this Agreement based upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah, which the City’s land use authority finds, on the record, are necessary to prevent a physical harm to third parties, which harm did not exist at the time of the execution of this Agreement, and which harm, if not addressed, would jeopardize a compelling, countervailing public interest pursuant to Utah Code § 10-9a-509(1)(a)(ii), as

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proven by the City by clear and convincing evidence. Any such proposed change affecting the vested rights of the project and Property shall be of general application to all development activity in the City; and, unless in good faith the City declares an emergency, Owner shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the project and Property under the compelling, countervailing public interest exception to the vested rights doctrine.

C. Application under City's Future Laws. "Future Laws" means the ordinances, policies, standards, and procedures which may be in effect as of a particular time in the future when a development application is submitted for any respective portion(s) of the Property, and which may or may not be applicable to the development application depending upon the provisions of this Agreement. Without waiving any rights granted by this Agreement, Owner may at any time, choose to submit a development application for any portion of, or the entire project, on the Property under the City's Future Laws in effect at the time of the development application so long as Owner is not in current breach of this Agreement.

#### **V. Term.**

This Agreement shall be effective as of the date of execution, and upon recordation, shall run with the land and shall continue in full force and effect until all obligations hereunder have been fully performed and all rights hereunder fully exercised; provided, however, that unless the Parties mutually agree to extend the term, this Agreement shall not extend further than a period of twenty (20) years from its date of recordation in the official records of the Iron County Recorder's Office. For good cause, the City Council may grant an extension of the twenty (20) year term limit.

#### **VI. Certain Clarifying Provisions.**

A. Residential Short-Term Rentals are Permitted. Residential Short-Term Rentals (term of 30 days or less) are permitted within and upon the Property and such short-term rentals are compatible with and will not adversely impact any surrounding residential uses.

#### **VII. General Provisions.**

A. Notices. All notices, filings, consents, approvals, and other communication provided for herein or given in connection herewith shall be in writing and shall be sent registered or certified mail to:

If to City: Cedar City Corporation  
10 N. Main St.  
Cedar City, Utah 84720

If to Owner: VE MANAGEMENT AND INVESTMENT CO., L.C.  
c/o Skylar Stewart  
1240 EAST 100 SOUTH UNIT 12  
ST. GEORGE UT 84770

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AND

CEDAR HURRICANE, LLC  
c/o Don Webb  
204 PLAYA DELLA ROSITA STE 7  
WASHINGTON UT 84780

Any such change of address shall be given at least ten (10) days before the date on which the change is to become effective.

- B. Mailing Effective. Notices given by mail shall be deemed delivered upon two (2) business days after deposit with the U.S. Postal Service in the manner set forth above. Notices that are hand delivered or delivered by nationally recognized overnight courier shall be deemed delivered upon receipt.
- C. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach by the same of any other provision of this Agreement. Moreover, to be effective, any waiver pursuant to this Agreement or in connection with any provision or subject matter hereof must be made expressly in writing, signed by the Party to be bound, except to the extent otherwise expressly provided herein.
- D. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.
- E. Authority. The Parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. Owner represents and warrants that each party is fully formed and validly existing under the laws of the State of Utah, and that each party is duly qualified to do business in the State of Utah and each is in good standing under applicable state laws. The Owner and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the parties on whose behalf each individual is signing.
- F. Entire Agreement. This Agreement, including exhibits, constitutes the entire Agreement between the Parties.
- G. Amendment of this Agreement. This Agreement may be amended in whole or in part with respect to all or any portion of the Property by the mutual written consent of the Parties to this Agreement or by their successors in interest or assigns. Any such amendment of this Agreement shall be recorded in the official records of the Iron County Recorder's Office. The Parties agree to, in good faith, apply for, grant, and approve such amendments to this

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Agreement as may be necessary or reasonably required for future phases consistent with this Agreement and with the approval granted by the Cedar City Council.

- H. **Severability; Blue-Penciling.** If any of the provisions of this Agreement are declared void or unenforceable by a court of competent jurisdiction, such provision(s) shall be deemed severed and the remainder of this Agreement shall be given full force and effect without regard to such invalid provision(s), as applicable; provided that, to the extent allowed under the law, such invalid provision(s) shall be deemed modified to the extent necessary to render the same lawful and to best and most fully achieve the intent of the Parties as manifest in such provision(s) and this Agreement, and in such modified form such previously invalid provision(s) shall then be enforceable; provided further that, in any case, the fundamental purpose of this Agreement and the Owner's ability to complete the project on the Property shall not be defeated or materially and detrimentally impacted by any such severance, modification, or the application of this paragraph in any manner.
- I. **Governing Law.** The laws of the State of Utah shall govern the interpretation and enforcement of the Agreement. The Parties agree that the venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Iron County, Utah, and the Parties hereby waive any right to object to such venue.
- J. **Remedies.** If any party to this Agreement breaches any provision of this Agreement, the non-defaulting party shall be entitled to all remedies available at both law and in equity.
- K. **Cure.** Notwithstanding anything to the contrary herein, in the event of a default of the Agreement by any Party to this Agreement, the defaulting Party shall have thirty (30) calendar days after delivery of notice of such default to correct the same prior to the non-defaulting Party's seeking of any remedy provided for herein; provided, however, that in the case of any such default which cannot with diligence be cured within such thirty (30) calendar day period, if the defaulting Party shall commence curing the same within the thirty (30) calendar day period and prosecute the curing of same with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same, but in any event not to exceed (6) months; and provided further, however, no default by a subsequent owner of any portion of the Property shall constitute a default by the Owner for the portion of the Property then-owned by the Owner.
- L. **Attorney's Fee and Costs.** If any party brings legal action either because of a breach of the Agreement or to enforce a provision of the Agreement, the prevailing party shall be entitled to recovery and an award of reasonable attorney fees and court costs.
- M. **Binding Effect.** The benefits and burdens of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors in interest, and assigns. Specifically, the rights under this Agreement are appurtenant to the land and subject Property and constitute covenants running with the land

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that inures to the benefit of and is binding on the Parties and their respective, grantees, heirs, successors, and assigns. Ownership of any or all of the Property by the same person will not terminate this Agreement or affect or impair the validity or enforceability of this Agreement. This Agreement shall be recorded in the official records of the Iron County Recorder's Office, State of Utah. All the obligations, agreements, covenants, rights, and conditions of this Agreement shall automatically transfer upon transfer of title from the record owner(s) of all, or any portion of the subject Property, to the person(s) or entity(ies), including any owner(s) association(s), that control or become the owner(s) of record of such real property.

- N. Further Assurances. Each Party shall promptly do and perform, or cause to be done and performed, in good faith, all such further acts and things, including without limitation executing and delivering all such other agreements, certificates, instruments and/or documents, as the other Party may reasonably request in order to effectuate, give full effect to, and/or evidence the rights of the Parties under the provisions of this Agreement and the consummation of the transactions contemplated hereby.
- O. Assignment. The rights of each Owner under this Agreement may be transferred or assigned, in whole or in part, without further approval of the City.
- P. Force Majeure. In the event the performance of any obligation to be performed hereunder by any Party is delayed for causes that are beyond the reasonable control of the Party responsible for such performance, which shall include, without limitation, Acts of God, acts of civil disobedience, strikes, labor disputes, or similar causes, the time for such performance shall be extended by the amount of time of such delay.
- Q. Third Parties. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.
- R. No Joint Venture or Agency Created. Nothing contained in the Agreement shall create the relationship of any partnership, joint venture, or agency relationship between the Parties. No Party to this Agreement has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party to this Agreement.

[Signatures on following pages]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above:

**OWNER:**

VE MANAGEMENT AND INVESTMENT CO., L.C.

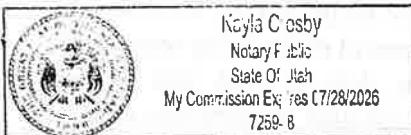
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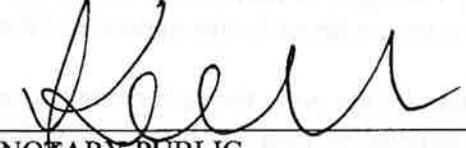
Printed Name: Eric J. Wilson

Its: Authorized Representative

STATE OF UTAH )  
:ss.  
COUNTY OF WASHINGTON )

On this 21<sup>st</sup> day of March 2023, personally appeared before me  
Eric J. Wilson who duly acknowledged to me that he signed the above and foregoing  
document.



  
NOTARY PUBLIC

**OWNER:**

CEDAR HURRICANE, LLC

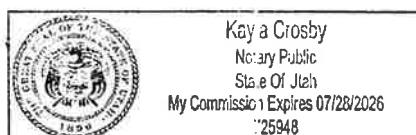
By: 

Printed Name: Eric J. Wilson

Its: Authorized Representative

STATE OF UTAH )  
:ss.  
COUNTY OF WASHINGTON )

On this 21<sup>st</sup> day of March 2023, personally appeared before me  
Eric J. Wilson who duly acknowledged to me that he signed the above and foregoing  
document.



  
NOTARY PUBLIC

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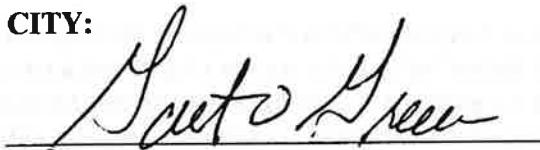
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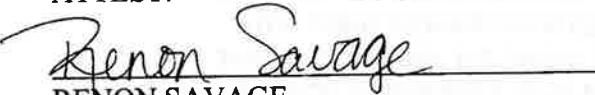
[SEAL]

ATTEST:



CITY:

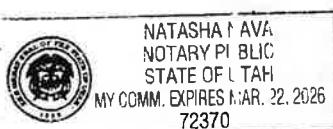
  
GARTH O. GREEN  
MAYOR

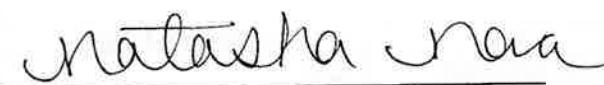
  
RENON SAVAGE  
CITY RECORDER

STATE OF UTAH )  
:ss.  
COUNTY OF IRON )

This is to certify that on the 20 day of MARCH 2023, before me, the undersigned, a Notary Public, in and for the State of Utah, duly commissioned and sworn as such, personally appeared Garth O. Green, known to me to be the Mayor of Cedar City Corporation, and Renon Savage, known to me to be the City Recorder of Cedar City Corporation, and acknowledged to me that she the said Garth O. Green and she the said Renon Savage executed the foregoing instrument as a free and voluntary act and deed of said corporation, for the uses and purposes therein, and on oath state that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove written.



  
NOTARY PUBLIC

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## Exhibit A

### - Legal Description -

BEGINNING AT A POINT N0°30'47"W 1084.59 FEET ALONG THE SECTION LINE AND N89°09'34"E 201.94 FEET FROM THE CENTER SOUTH 1/16 CORNER OF SECTION 22, TOWNSHIP 36 SOUTH AND RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN (BASIS OF BEARING BEING N0°30'47"W BETWEEN THE CENTER SOUTH 1/16 CORNER AND THE CENTER OF SECTION 22); SAID POINT ALSO BEING ON THE LIMITED ACCESS LINE OF SR-130 (MAIN STREET); THENCE ALONG SAID LIMITED ACCESS LINE THE FOLLOWING THREE (3) COURSES; N44°08'59"E 190.61 FEET TO A POINT ON A 17137.73 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (RADIUS POINT BEARS N45°04'38"W); THENCE 231.17 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°46'22" TO A POINT ON A 17137.73 FOOT RADIUS NON-TANGENT CURVE WITH (RADIUS POINT BEARS N43°20'49"W); THENCE 251.23 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°50'24" TO A POINT ON A 35.00 FOOT RADIUS NONTANGENT CURVE TO THE RIGHT (RADIUS POINT BEARS S44°11'13"E); THENCE 55.04 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°05'40"; THENCE S44°05'33"E 16.05 FEET; THENCE N45°37'19"E 60.00 FEET; THENCE N 44°05'33"W 16.46 FEET TO A POINT ON A 35.00 FOOT RADIUS CURVE TO THE RIGHT (RADIUS POINT BEARS N45°54'27"E); THENCE 54.66 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 89°28'19" TO A POINT ON THE LIMITED ACCESS LINE OF SR-130 SAID POINT ALSO BEING ON A 17137.73 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (RADIUS POINT BEARS N44°37'14"W); THENCE 136.62 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°27'24" TO A POINT ON A 17137.73 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (RADIUS POINT BEARS N42°35'45"W); THENCE 224.52 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°45'02"; THENCE LEAVING SAID LIMITED ACCESS LINE S00°15'41"E 725.21 FEET; THENCE N45°37'19"E 91.90 FEET; THENCE S0°15'41"E 408.29 FEET; THENCE S85°35'19"W 108.84 FEET TO A POINT OF CURVATURE WITH A 311.69 FOOT RADIUS CURVE TO THE LEFT; THENCE 163.22 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 30°00'11"; THENCE S55°35'07"W 895.36 FEET; THENCE N45°36'02"E 147.22 FEET; THENCE N0°32'41"W 718.81 FEET TO THE POINT OF BEGINNING.

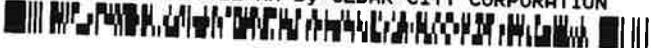
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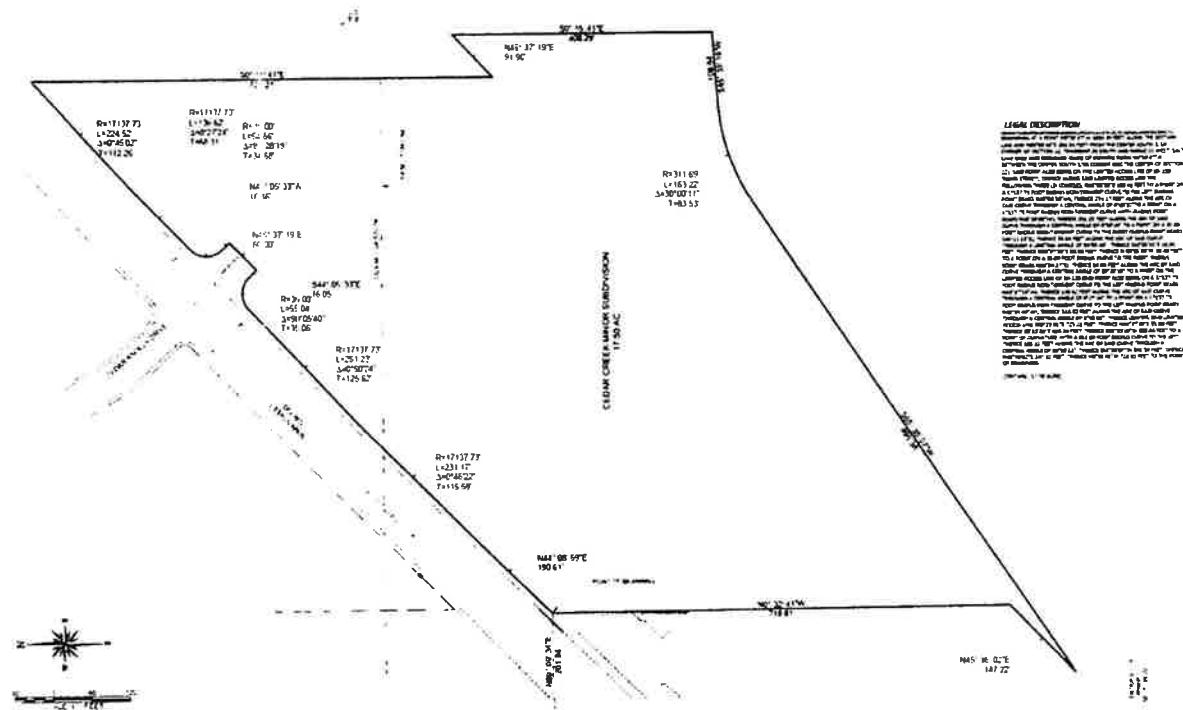
The owners of each respective portion of the above said Property are as follows:

APN:	Approximate Acreage	Owner
B-1135-0057-0000	11.93	CEDAR HURRICANE, LLC
B-1135-0065-0000	0.37	CEDAR HURRICANE, LLC
B-1135-0064-0000	1.13	CEDAR HURRICANE, LLC
B-1135-0058-0000	0.81	CEDAR HURRICANE, LLC
B-1135-0056-0000	0.37	CEDAR HURRICANE, LLC
B-1135-0053-0000	0.29	CEDAR HURRICANE, LLC
B-1135-0118-0000	0.52	CEDAR HURRICANE, LLC
B-1135-0117-0000	0.26	CEDAR HURRICANE, LLC
B-1135-0059-0000	0.37	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0059-0001	0.39	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0066-0000	0.56	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0119-0000	0.54	VE MANAGEMENT AND INVESTMENT CO., L.C.

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## Exhibit B

- Adopting Resolution -

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**CEDAR CITY RESOLUTION NO. 23-0208**

**A RESOLUTION APPROVING THE DEVELOPMENT AGREEMENT WITH VE  
MANAGEMENT FOR APPROXIMATELY 17.5 ACRES OF PROPERTY LOCATED AT  
APPROXIMATELY 1221 SOUTH MAIN STREET WITHIN CEDAR CITY**

**WHEREAS**, the City Council hereby determines that it will be in the best interest of the City to allow development of 17.5 acres of property located at 1221 South Main Street in accordance with the Development Agreement; and

**WHEREAS**, the Development Agreement will allow the subject property to be developed in accordance with City's existing laws, ordinances, rules, standards, policies, requirements, actions, zoning map, and general plan; and

**WHEREAS**, the Development Agreement will permit residential short-terms rentals (term of 30 days or less) on the subject property for twenty (20) years from the date of the Development Agreement's recordation in the Iron County Recorder's Office.

**WHEREAS**, the Development Agreement outlines the responsibilities for each party; and

**WHEREAS**, attached hereto and incorporated herein as exhibit A is the Development Agreement; and

**WHEREAS**, the Development Agreement has been reviewed and received a positive recommendation from the City's Planning Commission.

**NOW THEREFORE** be it resolved by the City Council of Cedar City, Iron County, State of Utah, that the Development Agreement provided in Exhibit A is approved by Cedar City.

**Council Vote:**

Hartley - Aye

Isom - Aye

Phillips - Absent

Melling - Aye

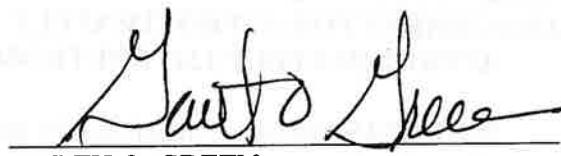
Riddle - Aye

This resolution shall take effect immediately upon passage.

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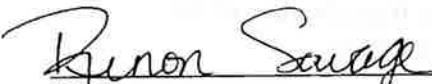
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Dated this 14 day of February, 2023.



Garth O. Green  
GARTH O. GREEN  
MAYOR

[SEAL]  
ATTEST:



Renon Savage  
RENON SAVAGE

RECORDER

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## EXHIBIT A

## Cedar City's Development Agreement with VE Management for property located at 1221 South Main Street

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## DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into this 21 day of March, 2023, and relates to 17.5 acres of property located at approximately 1221 South Main Street, Cedar City, Utah, more particularly described in Exhibit "A" attached hereto (referred to as the "Property"). This Agreement is entered by and among the City of Cedar City, a Utah municipal corporation, hereafter referred to as "City" and VE MANAGEMENT AND INVESTMENT CO., L.C., a Utah limited liability company and CEDAR HURRICANE, LLC, a Utah limited liability company, who are the owners of the respective portions of the real property that constitutes the Property, including any applicable affiliate assignee(s), hereafter collectively referred to as "Owner". The City and Owner are sometimes referred to in this Agreement each, individually, as a "Party" and together, collectively, as the "Parties". Nothing contained in the Agreement shall create the relationship of any partnership, joint venture, or agency relationship between any of the respective Parties.

### RECITALS

A. Cedar City, acting pursuant to its authority under Utah Code § 10-9a-102(2), as amended, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has made certain determinations with respect to the Property and the proposed project to be developed on the same and in exercise of its legislative discretion, has elected to enter into this Agreement.

B. Owner is the owner of the Property located in Cedar City, Utah, and desires to have the Property developed and is willing to design and construct the project on the Property in a manner that is in harmony with and intended to promote the long range policies, goals, and objectives of Cedar City's general plan, zoning, and development regulations in order to receive the benefit of zoning designations under the terms of this Agreement as more fully set forth herein.

C. The proposed development of the project is arranged on 17.5 acres of property located in Iron County, located at or about 1221 South Main Street, Cedar City, Utah, with the legal description and respective portions and parcels that are separately owned by the Owners, which collectively constitute the entirety, being contained and set forth in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

D. Parties acknowledge that on December 7, 2022, the City Council approved all of the Property to be zoned as Central Commercial Zone ("CC") with the understanding that the Parties would enter this Agreement. It is anticipated that, subject to the terms of this Agreement, the Property and project thereon will be developed in a manner to accommodate multiple uses which constitute a unified mixed use project upon the Property. This Agreement is to regulate the intended land uses, and densities, upon the Property.

E. The Owner may complete development of the project on the Property in one or more phases pursuant to one or more complete development applications to the City for development of each or all respective portions of the Property.

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F. Owner and City desire to allow the Owner to make improvements to the Property and develop the project pursuant to City ordinance, policies, standards, and procedures.

G. The Cedar City Council has authorized the negotiation of and adoption of this development agreement which advances the policies, goals, and objectives of the Cedar City General Plan, and preserves and maintains the atmosphere desired by the citizens of the City. Moreover, the Owner has voluntarily agreed to the terms of this Agreement and hereby acknowledges the obligations to complete development of the project on the Property in a manner consistent with the terms of this Agreement and applicable law (as more particularly described in and subject to Article IV hereof).

H. Consistent with the foregoing authorization and the provisions of Utah State law, the City's governing body has authorized execution of this Agreement by Resolution 23-0208, a copy of which is attached to this Agreement as Exhibit "B".

### AGREEMENT

**NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:**

#### I. Recitals.

The recitals set forth above are incorporated herein by this reference.

#### II. Exhibits.

The Exhibits and attachments are intended to be included as if in the body of this Agreement and regulated as such:

- Exhibit A - Legal Description of Property
- Exhibit B - Adopting Resolution
- Exhibit C – Preliminary Layout Plan

#### III. Developer Obligations.

- A. Completion of the Project. Owner agrees to construct and complete the project on the Property in accordance with the Preliminary Layout Plan and dedicate to the City all roads and other applicable public infrastructure included within the Project, to the extent that such roads and other public infrastructure are to be operated by the City. On December 7, 2022, the Cedar City Council granted the requested zone change on respective portions of the Property.
- B. Project Density and Lot Arrangement. The Parties acknowledge that the exact configuration of the final layout of the project on the Property may vary from that shown in the Preliminary Layout Plan due to the final road locations, market forces, and other factors that are unforeseeable. Owner may transfer the location of the retail, restaurant, single-family and/or multi-family dwelling unit ~~vacation rental areas between and among the phases.~~

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#### **IV. Vested Rights and Reserved Legislative Powers.**

##### **A. Zoning; Vested Rights.**

(1) The City has zoned the Property Central Commercial Zone ("CC") as shown on the City's zoning map and the zoning for City accommodates and allows all development contemplated by City ordinance, City engineering standards, and this Agreement. To the maximum extent permissible under the laws of Utah and the United States and at equity, the Parties intend that this Agreement grants Owner all rights to develop the Property, including the project thereon, in fulfillment of this Agreement. The Parties specifically intend that this Agreement grant to Owner "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code § 10-9a-509. As of the date of this Agreement, City confirms that the uses, configurations, densities, and other development standards reflected in this Agreement are approved under, and consistent with, City's existing laws, ordinances, rules, standards, policies, requirements, actions, Zoning Map, and General Plan (collectively, "City's Existing Laws") including, without limitation, allowing for up to 24 residential units per acre: (i) in conjunction with a commercial development where the residential use is located above the ground floor and, except for access to the residential units, said ground floor is devoted exclusively to a commercial use permitted in the zone, and/or; (ii) in conjunction with a unified mixed use project where any exclusively residential portion of the project (that part of the project that does not contain a commercial use or associated parking) comprises no more than fifty percent (50%) of all the Property. Residential Short-Term Rentals are permitted within and upon the Property and at the completion of all the development on the entire Property in accordance with the approved plans, Owner shall be entitled to have developed the maximum residential units as specified in and pursuant to this Agreement. This is subject to compliance with the terms and conditions of this Agreement and the City's Existing Laws.

(2) Except to the extent provided otherwise in Section B below, the Owner's rights under this Agreement and all applicable law existing as of the date of this Agreement (including without limitation the City's Existing Laws) shall be deemed to be vested and may not be hereafter decreased or made less favorable to the Owner.

**B. Reserved Legislative Powers.** Owner acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of Owner with respect to use under the zoning designations of this Agreement based upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah, which the City's land use authority finds, on the record, are necessary to prevent a physical harm to third parties, which harm did not exist at the time of the execution of this Agreement, and which harm, if not addressed, would jeopardize a compelling, countervailing interest of the public (as defined in Utah Code § 63-2-101), as

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proven by the City by clear and convincing evidence. Any such proposed change affecting the vested rights of the project and Property shall be of general application to all development activity in the City; and, unless in good faith the City declares an emergency, Owner shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the project and Property under the compelling, countervailing public interest exception to the vested rights doctrine.

C. Application under City's Future Laws. "Future Laws" means the ordinances, policies, standards, and procedures which may be in effect as of a particular time in the future when a development application is submitted for any respective portion(s) of the Property, and which may or may not be applicable to the development application depending upon the provisions of this Agreement. Without waiving any rights granted by this Agreement, Owner may at any time, choose to submit a development application for any portion of, or the entire project, on the Property under the City's Future Laws in effect at the time of the development application so long as Owner is not in current breach of this Agreement.

#### **V. Term.**

This Agreement shall be effective as of the date of execution, and upon recordation, shall run with the land and shall continue in full force and effect until all obligations hereunder have been fully performed and all rights hereunder fully exercised; provided, however, that unless the Parties mutually agree to extend the term, this Agreement shall not extend further than a period of twenty (20) years from its date of recordation in the official records of the Iron County Recorder's Office. For good cause, the City Council may grant an extension of the twenty (20) year term limit.

#### **VI. Certain Clarifying Provisions.**

A. Residential Short-Term Rentals are Permitted. Residential Short-Term Rentals (term of 30 days or less) are permitted within and upon the Property and such short-term rentals are compatible with and will not adversely impact any surrounding residential uses.

#### **VII. General Provisions.**

A. Notices. All notices, filings, consents, approvals, and other communication provided for herein or given in connection herewith shall be in writing and shall be sent registered or certified mail to:

If to City: Cedar City Corporation  
10 N. Main St.  
Cedar City, Utah 84720

If to Owner: VE MANAGEMENT AND INVESTMENT CO., L.C.  
c/o Skylar Stewart  
1240 EAST 100 SOUTH UNIT 12  
ST. GEORGE UT 84770

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AND

CEDAR HURRICANE, LLC  
c/o Don Webb  
204 PLAYA DELLA ROSITA STE 7  
WASHINGTON UT 84780

Any such change of address shall be given at least ten (10) days before the date on which the change is to become effective.

- B. Mailing Effective. Notices given by mail shall be deemed delivered upon two (2) business days after deposit with the U.S. Postal Service in the manner set forth above. Notices that are hand delivered or delivered by nationally recognized overnight courier shall be deemed delivered upon receipt.
- C. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach by the same of any other provision of this Agreement. Moreover, to be effective, any waiver pursuant to this Agreement or in connection with any provision or subject matter hereof must be made expressly in writing, signed by the Party to be bound, except to the extent otherwise expressly provided herein.
- D. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.
- E. Authority. The Parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. Owner represents and warrants that each party is fully formed and validly existing under the laws of the State of Utah, and that each party is duly qualified to do business in the State of Utah and each is in good standing under applicable state laws. The Owner and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the parties on whose behalf each individual is signing.
- F. Entire Agreement. This Agreement, including exhibits, constitutes the entire Agreement between the Parties.
- G. Amendment of this Agreement. This Agreement may be amended in whole or in part with respect to all or any portion of the Property by the mutual written consent of the Parties to this Agreement or by their successors in interest or assigns. Any such amendment of this Agreement shall be recorded in the official records of the Iron County Recorder's Office. The Parties agree to, in good faith, grant and approve such amendments to this

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Agreement as may be necessary or reasonably required for future phases consistent with this Agreement and with the approval granted by the Cedar City Council.

H. Severability; Blue-Penciling. If any of the provisions of this Agreement are declared void or unenforceable by a court of competent jurisdiction, such provision(s) shall be deemed severed and the remainder of this Agreement shall be given full force and effect without regard to such invalid provision(s), as applicable; provided that, to the extent allowed under the law, such invalid provision(s) shall be deemed modified to the extent necessary to render the same lawful and to best and most fully achieve the intent of the Parties as manifest in such provision(s) and this Agreement, and in such modified form such previously invalid provision(s) shall then be enforceable; provided further that, in any case, the fundamental purpose of this Agreement and the Owner's ability to complete the project on the Property shall not be defeated or materially and detrimentally impacted by any such severance, modification, or the application of this paragraph in any manner.

I. Governing Law. The laws of the State of Utah shall govern the interpretation and enforcement of the Agreement. The Parties agree that the venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Iron County, Utah, and the Parties hereby waive any right to object to such venue.

J. Remedies. If any party to this Agreement breaches any provision of this Agreement, the non-defaulting party shall be entitled to all remedies available at both law and in equity.

K. Cure. Notwithstanding anything to the contrary herein, in the event of a default of the Agreement by any Party to this Agreement, the defaulting Party shall have thirty (30) calendar days after delivery of notice of such default to correct the same prior to the non-defaulting Party's seeking of any remedy provided for herein; provided, however, that in the case of any such default which cannot with diligence be cured within such thirty (30) calendar day period, if the defaulting Party shall commence curing the same within the thirty (30) calendar day period and prosecute the curing of same with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same, but in any event not to exceed (6) months; and provided further, however, no default by a subsequent owner of any portion of the Property shall constitute a default by the Owner for the portion of the Property then-owned by the Owner.

L. Attorney's Fee and Costs. If any party brings legal action either because of a breach of the Agreement or to enforce a provision of the Agreement, the prevailing party shall be entitled to recovery and an award of reasonable attorney fees and court costs.

M. Binding Effect. The benefits and burdens of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors in interest, and assigns. Specifically, the rights under this Agreement are appurtenant to the land and constitute covenants running with the land

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that inures to the benefit of and is binding on the Parties and their respective, grantees, heirs, successors, and assigns. Ownership of any or all of the Property by the same person will not terminate this Agreement or affect or impair the validity or enforceability of this Agreement. This Agreement shall be recorded in the official records of the Iron County Recorder's Office, State of Utah. All the obligations, agreements, covenants, rights, and conditions of this Agreement shall automatically transfer upon transfer of title from the record owner(s) of all, or any portion of the subject Property, to the person(s) or entity(ies), including any owner(s) association(s), that control or become the owner(s) of record of such real property.

- N. **Further Assurances.** Each Party shall promptly do and perform, or cause to be done and performed, in good faith, all such further acts and things, including without limitation executing and delivering all such other agreements, certificates, instruments and/or documents, as the other Party may reasonably request in order to effectuate, give full effect to, and/or evidence the rights of the Parties under the provisions of this Agreement and the consummation of the transactions contemplated hereby.
- O. **Assignment.** The rights of each Owner under this Agreement may be transferred or assigned, in whole or in part, without further approval of the City.
- P. **Force Majeure.** In the event the performance of any obligation to be performed hereunder by any Party is delayed for causes that are beyond the reasonable control of the Party responsible for such performance, which shall include, without limitation, Acts of God, acts of civil disobedience, strikes, labor disputes, or similar causes, the time for such performance shall be extended by the amount of time of such delay.
- Q. **Third Parties.** There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.
- R. **No Joint Venture or Agency Created.** Nothing contained in the Agreement shall create the relationship of any partnership, joint venture, or agency relationship between the Parties. No Party to this Agreement has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party to this Agreement.

[Signatures on following pages]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above:

**OWNER:**

## VE MANAGEMENT AND INVESTMENT CO., L.C.

By:

Printed Name: Eric J. Wilson

Its: Authorized Representative

STATE OF UTAH )  
:ss.  
COUNTY OF WASHINGTON )

On this 21<sup>st</sup> day of March 2023, personally appeared before me  
Eric J. Wilson who duly acknowledged to me that he signed the above and foregoing  
document. 1 1



NOTARY PUBLIC

**OWNER:**

## CEDAR HURRICANE, LLC

By: Eric J. Wilson  
Printed Name: Eric J. Wilson  
Its: Authorized Representative

STATE OF UTAH )  
:ss.  
COUNTY OF WASHINGTON )

On this 21<sup>st</sup> day of March 2023, personally appeared before me  
Eric J. Wilson who duly acknowledged to me that he signed the above and foregoing  
document.



NOTARY PUBLIC

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[SEAL]  
ATTEST:



CITY:

Garth O. Green  
GARTH O. GREEN  
MAYOR

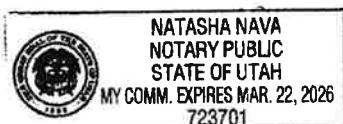
Renon Savage

RENON SAVAGE  
CITY RECORDER

STATE OF UTAH )  
:ss.  
COUNTY OF IRON )

This is to certify that on the 20 day of MARCH 2023, before me, the undersigned, a Notary Public, in and for the State of Utah, duly commissioned and sworn as such, personally appeared Garth O. Green, known to me to be the Mayor of Cedar City Corporation, and Renon Savage, known to me to be the City Recorder of Cedar City Corporation, and acknowledged to me that she the said Garth O. Green and she the said Renon Savage executed the foregoing instrument as a free and voluntary act and deed of said corporation, for the uses and purposes therein, and on oath state that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove written.



Natasha Nava  
NOTARY PUBLIC

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## Exhibit A

### - Legal Description -

BEGINNING AT A POINT NO°30'47"W 1084.59 FEET ALONG THE SECTION LINE AND N89°09'34"E 201.94 FEET FROM THE CENTER SOUTH 1/16 CORNER OF SECTION 22, TOWNSHIP 36 SOUTH AND RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN (BASIS OF BEARING BEING NO°30'47"W BETWEEN THE CENTER SOUTH 1/16 CORNER AND THE CENTER OF SECTION 22); SAID POINT ALSO BEING ON THE LIMITED ACCESS LINE OF SR-130 (MAIN STREET); THENCE ALONG SAID LIMITED ACCESS LINE THE FOLLOWING THREE (3) COURSES; N44°08'59"E 190.61 FEET TO A POINT ON A 17137.73 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (RADIUS POINT BEARS N45°04'38"W); THENCE 231.17 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°46'22" TO A POINT ON A 17137.73 FOOT RADIUS NON-TANGENT CURVE WITH (RADIUS POINT BEARS N43°20'49"W); THENCE 251.23 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°50'24" TO A POINT ON A 35.00 FOOT RADIUS NONTANGENT CURVE TO THE RIGHT (RADIUS POINT BEARS S44°11'13"E); THENCE 55.04 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°05'40"; THENCE S44°05'33"E 16.05 FEET; THENCE N45°37'19"E 60.00 FEET; THENCE N 44°05'33"W 16.46 FEET TO A POINT ON A 35.00 FOOT RADIUS CURVE TO THE RIGHT (RADIUS POINT BEARS N45°54'27"E); THENCE 54.66 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 89°28'19" TO A POINT ON THE LIMITED ACCESS LINE OF SR-130 SAID POINT ALSO BEING ON A 17137.73 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (RADIUS POINT BEARS N44°37'14"W); THENCE 136.62 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°27'24" TO A POINT ON A 17137.73 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (RADIUS POINT BEARS N42°35'45"W); THENCE 224.52 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°45'02"; THENCE LEAVING SAID LIMITED ACCESS LINE S00°15'41"E 725.21 FEET; THENCE N45°37'19"E 91.90 FEET; THENCE S0°15'41"E 408.29 FEET; THENCE S85°35'19"W 108.84 FEET TO A POINT OF CURVATURE WITH A 311.69 FOOT RADIUS CURVE TO THE LEFT; THENCE 163.22 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 30°00'11"; THENCE S55°35'07"W 895.36 FEET; THENCE N45°36'02"E 147.22 FEET; THENCE NO°32'41"W 718.81 FEET TO THE POINT OF BEGINNING.

CONTAINS: 17.50 ACRES

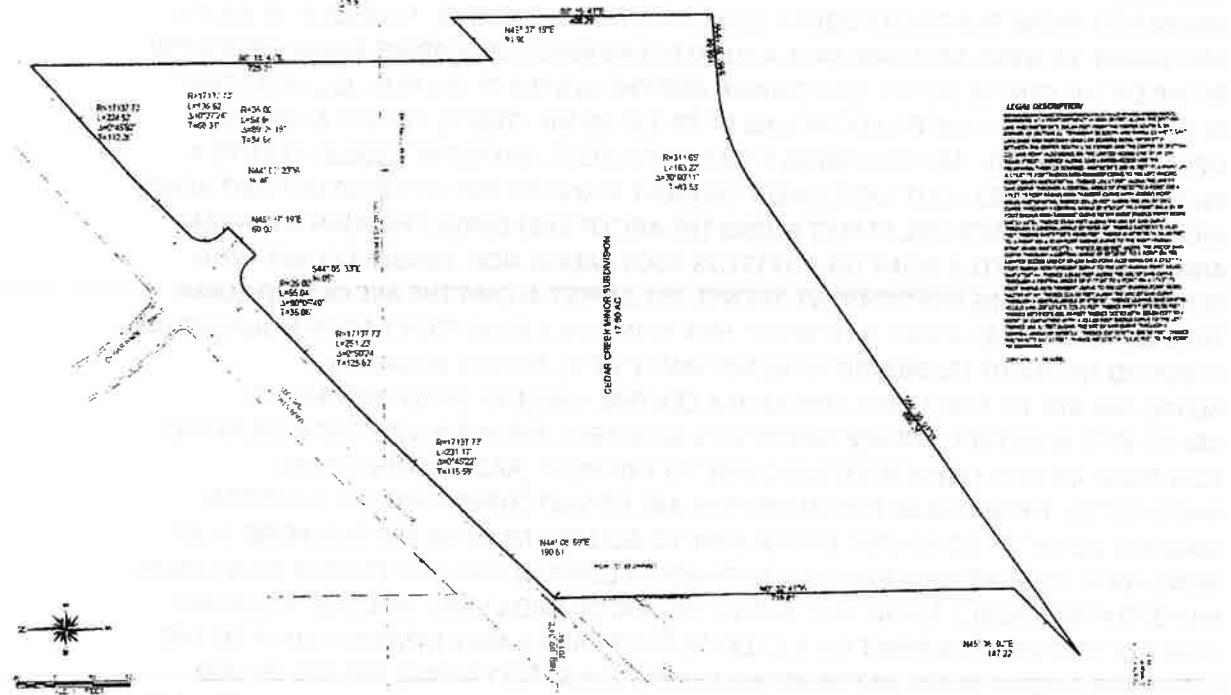
The owners of each respective portion of the above said Property are as follows:

APN:	Approximate Acreage	Owner
B-1135-0057-0000	11.93	CEDAR HURRICANE, LLC
B-1135-0065-0000	0.37	CEDAR HURRICANE, LLC
B-1135-0064-0000	1.13	CEDAR HURRICANE, LLC
B-1135-0058-0000	0.81	CEDAR HURRICANE, LLC
B-1135-0056-0000	0.37	CEDAR HURRICANE, LLC
B-1135-0053-0000	0.29	CEDAR HURRICANE, LLC
B-1135-0118-0000	0.52	CEDAR HURRICANE, LLC
B-1135-0117-0000	0.26	CEDAR HURRICANE, LLC
B-1135-0059-0000	0.37	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0059-0001	0.39	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0066-0000	0.56	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0119-0000	0.54	VE MANAGEMENT AND INVESTMENT CO., L.C.

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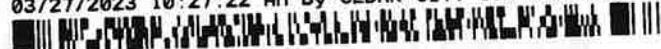
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## **Exhibit B**

### **- Adopting Resolution -**

WHEREAS, the City of Cedar City, Utah, is a municipal corporation, organized and existing under the laws of the State of Utah;

WHEREAS, the City Council of the City of Cedar City, Utah, has determined that it is in the best interest of the City to adopt the following resolution;

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WHEREAS, the City Council of the City of Cedar City, Utah, has determined that it is in the best interest of the City to adopt the following resolution;

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**CEDAR CITY RESOLUTION NO. 23-0208**

**A RESOLUTION APPROVING THE DEVELOPMENT AGREEMENT WITH VE  
MANAGEMENT FOR APPROXIMATELY 17.5 ACRES OF PROPERTY LOCATED AT  
APPROXIMATELY 1221 SOUTH MAIN STREET WITHIN CEDAR CITY**

**WHEREAS**, the City Council hereby determines that it will be in the best interest of the City to allow development of 17.5 acres of property located at 1221 South Main Street in accordance with the Development Agreement; and

**WHEREAS**, the Development Agreement will allow the subject property to be developed in accordance with City's existing laws, ordinances, rules, standards, policies, requirements, actions, zoning map, and general plan; and

**WHEREAS**, the Development Agreement will permit residential short-terms rentals (term of 30 days or less) on the subject property for twenty (20) years from the date of the Development Agreement's recordation in the Iron County Recorder's Office.

**WHEREAS**, the Development Agreement outlines the responsibilities for each party; and

**WHEREAS**, attached hereto and incorporated herein as exhibit A is the Development Agreement; and

**WHEREAS**, the Development Agreement has been reviewed and received a positive recommendation from the City's Planning Commission.

**NOW THEREFORE** be it resolved by the City Council of Cedar City, Iron County, State of Utah, that the Development Agreement provided in Exhibit A is approved by Cedar City.

**Council Vote:**

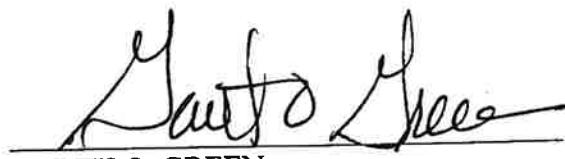
Hartley - Aye  
Isom - Aye  
Phillips - Absent  
Melling - Aye  
Riddle - Aye

This resolution shall take effect immediately upon passage.

**00803422**

B: 1638 P: 955 Fee \$0.00  
Carri R. Jeffries, Iron County Recorder Page 28 of 32  
03/27/2023 10:27:22 AM By CEDAR CITY CORPORATION

Dated this 14 day of February, 2023.



GARTH O. GREEN  
MAYOR

[SEAL]  
ATTEST:



RENON SAVAGE

RECORDER

00803422

B: 1638 P: 956 Fee \$0.00  
Carri R. Jeffries, Iron County Recorder Page 29 of 32  
03/27/2023 10:27:22 AM By CEDAR CITY CORPORATION



# EXHIBIT A

Cedar City's Development Agreement with VE Management  
for property located at 1221 South Main Street

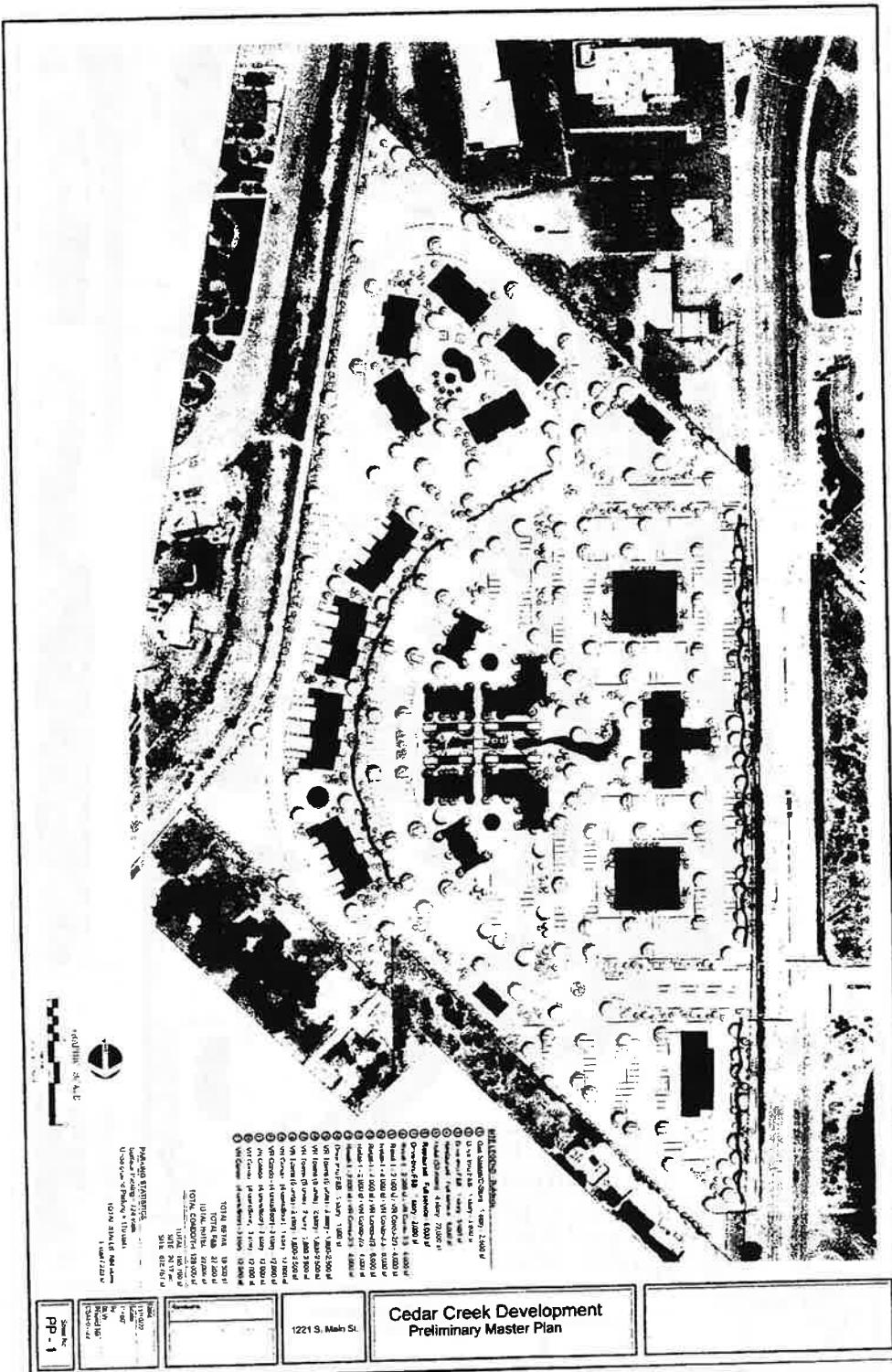
**00803422**

B: 1638 P: 957 Fee \$0.00  
Carri R. Jeffries, Iron County Recorder Page 30 of 32  
03/27/2023 10:27:22 AM By CEDAR CITY CORPORATION



## **Exhibit C**

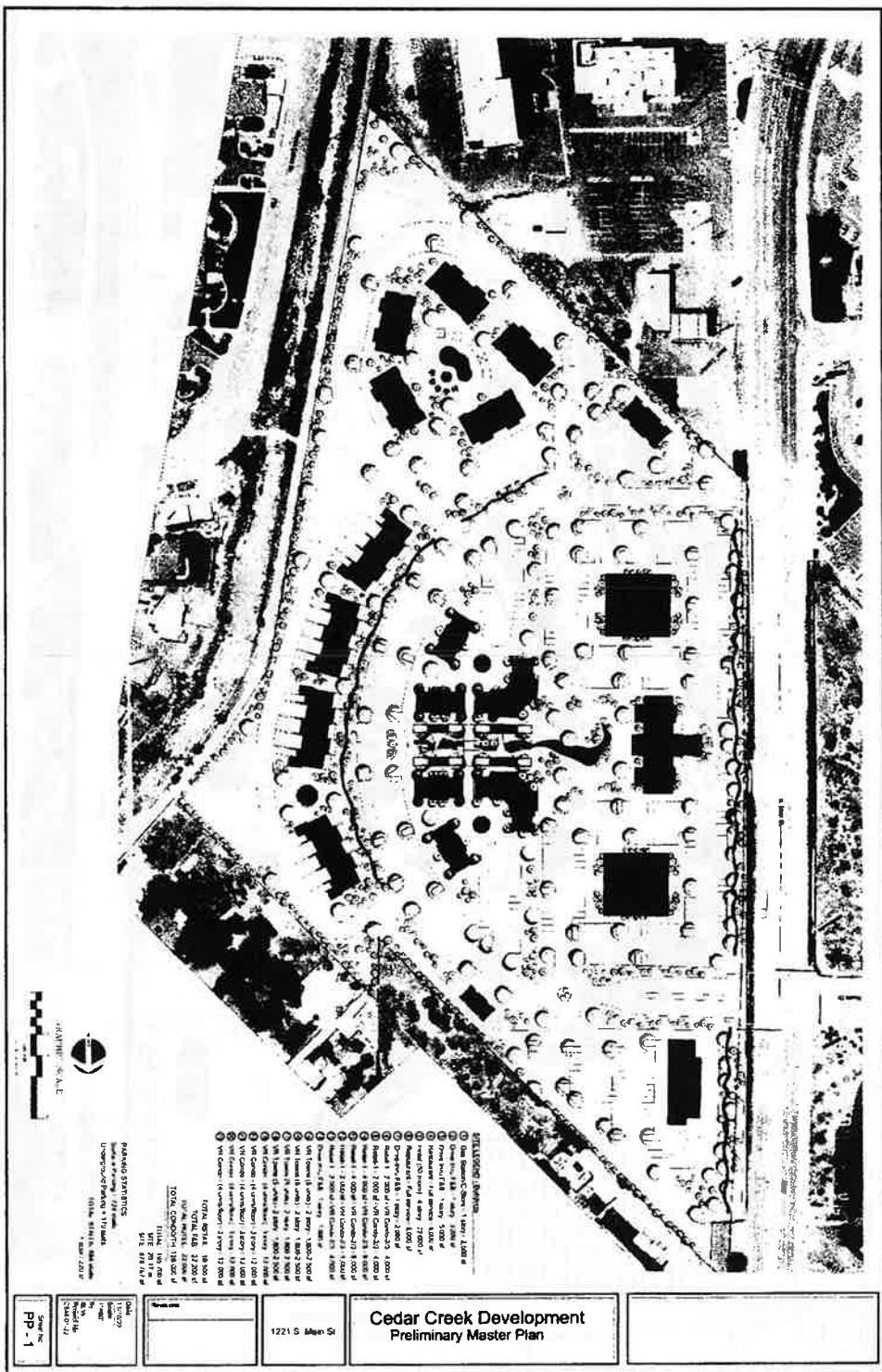
## - Preliminary Layout Plan -



00803422

B: 1638 P: 958 Fee \$0.00  
Carri R. Jeffries, Iron County Recorder Page 31 of 32  
03/27/2023 10:27:22 AM By CEDAR CITY CORPORATION

**Exhibit C**  
- Preliminary Layout Plan -



**00803422**

B: 1638 P: 959 Fee \$0.00

Carri R. Jeffries, Iron County Recorder Page 32 of 32

03/27/2023 10:27:22 AM By CEDAR CITY CORPORATION

**00814750**

B: 1667 P: 299 Fee \$0.00  
 Carri R. Jeffries, Iron County Recorder Page 1 of 4  
 02/12/2024 03:27:10 PM By CEDAR CITY CORPORATION



Recorded at the request of:  
 City of Cedar City, a Utah municipal corporation  
 10 N Main Street  
 Cedar City, UT 84720

Record against the property described in Exhibit A

### **ADDENDUM TO DEVELOPMENT AGREEMENT**

This Addendum to Development Agreement (“Addendum”) is an addendum to the Development Agreement recorded as Entry No. 00803422 on March 27, 2023, in the official records of the Iron County Recorder, State of Utah (the “Development Agreement”), which was entered into by and among the City<sup>1</sup> and Owner. The City and Owner are sometimes referred to in this Addendum each, individually, as a “Party” and together, collectively, as the “Parties”. Nothing contained in the Addendum shall create the relationship of any partnership, joint venture, or agency relationship between any of the respective Parties.

Construction and work on the project and Property has commenced and an application for a detailed minor lot subdivision of a portion of the Property, referred to as the Cedar Creek Minor Lot Subdivision, has been submitted for recordation from the City. Additionally, ownership of the Property has changed and all the Property is now owned by VE MANAGEMENT AND INVESTMENT CO., L.C., a Utah limited liability company (“VE Management” or “Owner”).

A. **Relocation of City-interest Easements.** The City hereby acknowledges and agrees that any public utilities and/or drainage within the Property, including any easements, express, implied or otherwise, to which the City has any interest or potential to claim interest, related thereto and which exist in locations not specifically identified in an approved lot subdivision or official recorded plat as easement areas for the same may be relocated to the 30' P.U.E. area, or other easement areas identified in the approved lot subdivision or official recorded plat(s) for the respective real property that is part of the Property. Upon relocation of said utilities and/or drainage within the Property, all such related easements, if any, including any contrary provision in any previously recorded survey, instrument, or plat of the Property, or portion thereof, that is not identified by the approved lot subdivision or official recorded plat(s) shall be substituted, superseded and replaced in their entirety by the easements expressly identified in the approved lot subdivision or official recorded plat(s) for such property. The City hereby further agrees that as to any utility or drainage easement to which the City has any interest or potential to claim interest related to the Property that is not expressly identified by an approved lot subdivision or official plat(s) recorded after the date of this Addendum, the City shall not seek to have any such utility or drainage easements, including any rights, claims, or interests therein or thereto, if any, enforced through judicial proceedings or otherwise. Unless otherwise agreed upon by the Parties in writing, the costs to relocate any such utilities and/or drainage shall be paid by the Owner. The Parties acknowledge that neither Party can or will force private entities to agree to the movement of any easements, express, implied or otherwise, or to waive the private entities’ rights, if any. However, the City agrees to allow and not prevent the movement of any such private utility easements to the 30' P.U.E. area if said utility can be placed within the P.U.E. safely. Owner acknowledges that it will have the responsibility to obtain agreement from any utilities to move said private utility easements, if any, prior to moving the utility.

<sup>1</sup> Capitalized terms in this Addendum shall have the same meaning and definition as used in the Development Agreement unless otherwise expressly defined in this Addendum.

B. **Upgrades/Upsizing.** As used herein, "Public Improvements" means any public or quasi-public infrastructure or amenities, including without limitation, roads, utilities or the like of any kind (including but not limited to water, sewer, drainage, power, etc.), monument signage, traffic facilities (e.g. signalized intersections, etc.) greenspace and/or open space, public easement areas, or the like, or anything in connection therewith. The Parties hereby acknowledge and agree that in the event the City requires any upgrades, upsizing, increase, or other enhancement of any kind, whether in quantity, quality, extent or nature of any Public Improvements or any aspect thereof ("Upsizing") relative to the minimum Public Improvements (or level thereof) initially required under the City's Existing Laws (as applicable, the "Base Level Public Improvements"), the City shall be fully responsible for and promptly pay all costs and expenses of such Upsizing within 45 days of the City receiving a request for the same from the Owner. In order to request reimbursement, the Owner must first completely install all such improvements to the reasonable satisfaction and acceptance by the City. For purposes of example only, in the event the standard width of sidewalks under the City's Existing Laws were 4-feetwide based on the zoning of the Property, and the Owner was required to install 6-feet-wide sidewalks in the Property pursuant to the request or approval of the City, the City would pay all costs of such Upsizing work. As to any Upsizing, the Owner shall not be required to pay or file any type of bond for construction of the same.

C. **Assignment.** The Parties acknowledge that all the Property is now owned by VE MANAGEMENT AND INVESTMENT CO., L.C., a Utah limited liability company ("VE Management") and VE Management is the successor and assign of all rights of the prior owner pursuant to the Development Agreement. All references to "Owner" under the Development Agreement shall now mean and only refer to VE Management.

D. **Integration.** This Addendum is and shall be considered to be an addendum and part of the Development Agreement entered between the Parties. To the extent this Addendum modifies or conflicts with any other provision of the Development Agreement, the terms of this Addendum shall control. All other terms of the Development Agreement not modified or supplemented by this Addendum shall remain the same. Additionally, this Addendum shall be recorded against the Property identified in Exhibit A hereto in the official records of the Iron County Recorder's Office, State of Utah.

IN WITNESS WHEREOF, the Parties have executed this Addendum as of the day and year set forth herein:

**OWNER:**

VE MANAGEMENT AND INVESTMENT CO., L.C.

By: Eric J. Wilson  
Its: Authorized Representative

**00814750**

B: 1667 P: 300 Fee \$0.00  
Carri R. Jeffries, Iron County Recorder Page 2 of 4  
02/12/2024 03:27:10 PM By CEDAR CITY CORPORATION



STATE OF UTAH

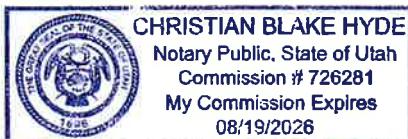
)

:ss.

COUNTY OF WASHINGTON

)

On this 22nd day of November 2023, personally appeared before me Christian Hyde who duly acknowledged to me that he signed the above and foregoing document.



Christian Hyde  
NOTARY PUBLIC  
Page 2 of 4  
November 22nd, 2023

[SEAL]  
ATTEST:



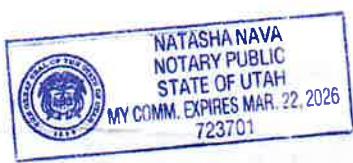
CITY:

  
GARTH O. GREEN  
MAYOR

Renon Savage  
RENON SAVAGE  
CITY RECORDER  
STATE OF UTAH )  
:ss.  
COUNTY OF IRON )

This is to certify that on the 7 day of February <sup>24</sup> 2023, before me, the undersigned, a Notary Public, in and for the State of Utah, duly commissioned and sworn as such, personally appeared Garth O. Green, known to me to be the Mayor of Cedar City Corporation, and Renon Savage, known to me to be the City Recorder of Cedar City Corporation, and acknowledged to me that she the said Garth O. Green and she the said Renon Savage executed the foregoing instrument as a free and voluntary act and deed of said corporation, for the uses and purposes therein, and on oath state that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove written.



Natasha Nava  
NOTARY PUBLIC

**00814750**  
B: 1667 P: 301 Fee \$0.00  
Carri R. Jeffries, Iron County Recorder Page 3 of 4  
02/12/2024 03:27:10 PM By CEDAR CITY CORPORATION  


## Exhibit A

### - Legal Description -

BEGINNING AT A POINT NO°30'47"W 1084.59 FEET ALONG THE SECTION LINE AND N89°09'34"E 201.94 FEET FROM THE CENTER SOUTH 1/16 CORNER OF SECTION 22, TOWNSHIP 36 SOUTH AND RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN (BASIS OF BEARING BEING NO°30'47"W BETWEEN THE CENTER SOUTH 1/16 CORNER AND THE CENTER OF SECTION 22); SAID POINT ALSO BEING ON THE LIMITED ACCESS LINE OF SR-130 (MAIN STREET); THENCE ALONG SAID LIMITED ACCESS LINE THE FOLLOWING THREE (3) COURSES; N44°08'59"E 190.61 FEET TO A POINT ON A 17137.73 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (RADIUS POINT BEARS N45°04'38"W); THENCE 231.17 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°46'22" TO A POINT ON A 17137.73 FOOT RADIUS NON-TANGENT CURVE WITH (RADIUS POINT BEARS N43°20'49"W); THENCE 251.23 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°50'24" TO A POINT ON A 35.00 FOOT RADIUS NONTANGENT CURVE TO THE RIGHT (RADIUS POINT BEARS S44°11'13"E); THENCE 55.04 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°05'40"; THENCE S44°05'33"E 16.05 FEET; THENCE N45°37'19"E 60.00 FEET; THENCE N 44°05'33"W 16.46 FEET TO A POINT ON A 35.00 FOOT RADIUS CURVE TO THE RIGHT (RADIUS POINT BEARS N45°54'27"E); THENCE 54.66 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 89°28'19" TO A POINT ON THE LIMITED ACCESS LINE OF SR-130 SAID POINT ALSO BEING ON A 17137.73 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (RADIUS POINT BEARS N44°37'14"W); THENCE 136.62 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°27'24" TO A POINT ON A 17137.73 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (RADIUS POINT BEARS N42°35'45"W); THENCE 224.52 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°45'02"; THENCE LEAVING SAID LIMITED ACCESS LINE S00°15'41"E 725.21 FEET; THENCE N45°37'19"E 91.90 FEET; THENCE S0°15'41"E 408.29 FEET; THENCE S85°35'19"W 108.84 FEET TO A POINT OF CURVATURE WITH A 311.69 FOOT RADIUS CURVE TO THE LEFT; THENCE 163.22 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 30°00'11"; THENCE S55°35'07"W 895.36 FEET; THENCE N45°36'02"E 147.22 FEET; THENCE N0°32'41"W 718.81 FEET TO THE POINT OF BEGINNING.

CONTAINS: 17.50 ACRES

The owners of each respective portion of the above said Property are as follows:

<b>APN:</b>	<b>Approximate Acreage</b>	<b>Owner</b>
B-1135-0057-0000	11.93	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0065-0000	0.37	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0064-0000	1.13	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0058-0000	0.81	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0056-0000	0.37	VE MANAGEMENT AND INVESTMENT CO., L.C.
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B-1135-0059-0001	0.39	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0066-0000	0.56	VE MANAGEMENT AND INVESTMENT CO., L.C.
B-1135-0119-0000	0.54	VE MANAGEMENT AND INVESTMENT CO., L.C.

**00814750**

B: 1667 P: 302 Fee \$0.00  
Carri R. Jeffries, Iron County Recorder, Page 4 of 4  
02/12/2024 03:27:10 PM By CEDAR CITY CORPORATION

Recorded at the request of:  
City of Cedar City, a Utah municipal corporation  
10 N Main Street  
Cedar City, UT 84720

00814750

B: 1667 P: 299 Fee \$0.00  
Carri R. Jeffries, Iron County Recorder Page 1 of 4  
02/12/2024 03:27:10 PM By CEDAR CITY CORPORATION

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IN WITNESS WHEREOF, the Parties have executed this Addendum as of the day and year set forth herein:

**OWNER:**

VE MANAGEMENT AND INVESTMENT CO., L.C.

By: *Eric J. Wilson*  
Its: Authorized Representative

STATE OF UTAH

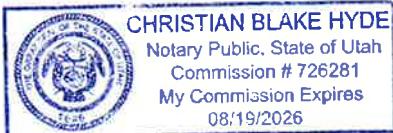
)

:ss.

COUNTY OF WASHINGTON

)

On this 22nd day of November 2023, personally appeared before me Christian Hyde who duly acknowledged to me that he signed the above and foregoing document.



00814750  
B: 1667 P: 300 Fee \$0.00  
Carri R. Jeffries, Iron County Recorder Page 2 of 4  
02/12/2024 03:27:10 PM By CEDAR CITY CORPORATION

NOTARY PUBLIC

Page 2 of 4

November 22nd, 2023

[SEAL]  
ATTEST:



CITY:

  
GARTH O. GREEN  
MAYOR

Renon Savage  
RENON SAVAGE  
CITY RECORDER

STATE OF UTAH )

:ss.

COUNTY OF IRON )

24

This is to certify that on the 7 day of February 2023, before me, the undersigned, a Notary Public, in and for the State of Utah, duly commissioned and sworn as such, personally appeared Garth O. Green, known to me to be the Mayor of Cedar City Corporation, and Renon Savage, known to me to be the City Recorder of Cedar City Corporation, and acknowledged to me that she the said Garth O. Green and she the said Renon Savage executed the foregoing instrument as a free and voluntary act and deed of said corporation, for the uses and purposes therein, and on oath state that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove written.

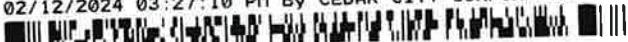


Natasha Nava

NOTARY PUBLIC

**00814750**

B: 1667 P: 301 Fee \$0.00  
Carri R. Jeffries Iron County Recorder Page 3 of 4  
02/12/2024 03:27:10 PM By CEDAR CITY CORPORATION



## Exhibit A

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CONTAINS: 17.50 ACRES

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**00814750**

B: 1667 P: 302 Fee \$0.00  
Carri R. Jeffries, Iron County Recorder Page 4 of 4  
02/12/2024 03:27:10 PM By CEDAR CITY CORPORATION



**CEDAR CITY COUNCIL  
AGENDA ITEM 7**

**DECISION PAPER**

**TO:** Mayor and City Council

**FROM:** Darin Adams

**DATE:** 1 October 2025

**SUBJECT:** Lateral Hire of an Officer

**PROBLEM:** The problem is that we need to obtain approval to hire a lateral officer at the proposed wage.

**RECOMMENDATION:** Since July 2016, we have hired lateral officers. Hiring officers with previous experience adds immense value to the department and the city. The cost to hire and train a lateral officer is much less than a new officer with no experience. Additionally, it lessens potential liability with an officer who has experience.

Since 2016 we have hired 26 lateral officers with experience. This experience includes previous law enforcement street experience; corrections experience or a combination of both.

Section 7.8.1 of the city's compensation policy states, "*New Employees shall be assigned the minimum salary of their range for their position. Unless otherwise approved herein. The City Manager and the Mayor may approve appointment higher within the range if: (1) an employee cannot be recruited for the position at the minimum range; (2) the qualifications of the individual selected exceed the minimum requirements and the individual can be expected to perform at a higher level.*"

Since September of last year, we have hired 12 officers, 6 of which were experienced lateral officers. In each case I communicated with Human Resources, who then communicated with the City Manager and the Mayor. In all 6 cases, the Mayor gave approval for the proposed wage based on previous experience.

The individual I am requesting to hire has a total of 7.5 years of experience. He completed 6 weeks of SFO (Special Function Officer) training, 5 additional weeks of BCO (Basic Corrections Officer) training, and 10 weeks of LEO (Law Enforcement Officer) training. He then spent 4.5 years as an officer in the Utah State Prison at Gunnison, 1.5 years as a deputy in the Iron County Jail, and 1 year, 8 months as a patrol deputy with the Iron County Sheriff's Office.

The base salary, in this case for a Patrol Officer II, is currently \$57,124.70 or \$27.4637 hourly. Since the city policy grants an annual merit increase each year, budget and revenue dependent, of 2.5%, I give 2.5% / year of experience. The number that produces is then compared with existing employees to ensure internal equity and fairness. The initial number is then adjusted higher or lower to ensure equity balances with experience and qualifications. In this case the proposed salary is \$65,177.84 or \$31.3355 hourly.