

GRANT AGREEMENT

THIS AGREEMENT (the "**Agreement**") made and entered into this _____ day of November, 2018 (the "**Effective Date**") by and between SUMMIT COUNTY (the "**County**"), a body corporate and politic of the State of Utah, whose address is 60 N. Main Street, P.O. Box 128, Coalville, Utah 84017, SUMMIT LAND CONSERVANCY (the "**Conservancy**"), a Utah nonprofit corporation, whose address is P.O. Box 1775, Park City, Utah 84060, and the AFTON S. OSGUTHORPE SHELTERED TRUST, through its Trustees, STEPHEN A. OSGUTHORPE, JERRY S. OSGUTHORPE, SUE ANN LARSEN and KAREN BROWN ("**Osguthorpe**"), whose address is 1700 White Pine Canyon Rd., Park City, Utah 84060. The County, the Conservancy and Osguthorpe each is a "**Party**" and collectively they are referred to as the "**Parties**".

WITNESSETH:

WHEREAS, Osguthorpe is the owner of Tax Parcel Identification No. PP-89, consisting of approximately 158 acres (the "**Osguthorpe Farm**"); and,

WHEREAS, Osguthorpe seeks to preserve in perpetuity the Osguthorpe Farm for agricultural use through the conveyance of that certain open space conservation easement (the "**Conservation Easement**") to the Conservancy, substantially in the form attached hereto as **Exhibit "A"**; and,

WHEREAS, Osguthorpe and the Conservancy have entered into an agreement concerning the Conservancy's purchase of the Conservation Easement for agricultural open space on the entirety of the Osguthorpe Farm for \$14,375,000 (the "**Purchase Price**"), and the Conservancy and Osguthorpe intend to close the transaction on or before June 30, 2019 (the "**Closing**"); and,

WHEREAS, Osguthorpe has agreed to provide a \$3,450,000 donation of appraised Conservation Easement value; and,

WHEREAS, the Conservancy has secured a grant from the United States Department of Agriculture acting through its Natural Resources Conservation Service (the "**NRCS**") in the amount of \$8,800,000.00 toward the Purchase Price of the Conservation Easement upon condition that the Osguthorpe Farm is preserved so as to protect in perpetuity (a) its open space and scenic character, (b) its agricultural use, productivity, and future viability, and (c) its relatively natural wildlife habitat; and,

WHEREAS, the Conservancy has requested that the County participate in the purchase of the Conservation Easement; and,

WHEREAS, the purchase of the Conservation Easement on the Osguthorpe Farm contributes to the goals envisioned in Policy 2.34 of the Snyderville Basin General Plan; and,

WHEREAS, the County is interested in participating in the purchase of the Conservation Easement upon certain terms and conditions; and,

WHEREAS, the County finds that it is in its best interest to participate in the acquisition by the Conservancy of the Conservation Easement on the Osguthorpe Farm through a monetary grant to the Conservancy; and,

WHEREAS, the Parties have agreed to the following terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the promises and the mutual covenants contained in this Agreement, it is agreed as follows:

1. Conservancy and Osguthorpe Responsibilities.

- A. Conservancy shall use the “**Grant**” (as described below): (i) solely to acquire the Conservation Easement on the Osguthorpe Farm, and (ii) to ensure that the Osguthorpe Farm is used in perpetuity as agricultural open space.
- B. As a condition precedent to the award of the Grant, Osguthorpe shall enter into the Conservation Easement with the Conservancy, in a form and substance attached as Exhibit “A”, in order to adequately protect the Osguthorpe Farm and preserve it as agricultural open space. In particular, as a condition of the Grant:
 - i. Osguthorpe shall grant the Conservation Easement to the Conservancy for the perpetual preservation of the Osguthorpe Farm as agricultural open space. Said Conservation Easement shall be recorded in the Office of the Summit County Recorder.
 - ii. Osguthorpe shall extinguish all development rights from the Osguthorpe Farm in perpetuity with the exception of the reservation of the right to build one single-family home within a pre-determined three (3) acre building envelope, located on the southwest corner of the Osguthorpe Farm, where there already exist three outbuildings (the “**Building Envelope**”).
 - iii. Prior to Closing and the funding of the Grant, the County shall have the right to review the title to the Osguthorpe Farm as well as the Conservation Easement and any and all other pertinent documents.
 - iv. Insurance. Osguthorpe, at its own expense, shall maintain sufficient liability insurance against claims or lawsuits which result from the actions of

Osguthorpe or its employees, contractors or agents on the Osguthorpe Farm. The County is subject to the Governmental Immunity Act of Utah (the “**Governmental Immunity Act**” or “**Act**”), UCA §§ 63G-7-101 to 904. The Parties agree that the County shall only be liable within the parameters of the Governmental Immunity Act. Nothing contained in this Agreement shall be construed in any way, to modify the limits of liability set forth in that Act or the basis for liability as established in the Act.

v. Indemnification.

(a) Osguthorpe agrees to indemnify and hold the County harmless from any claim or damages for injuries, including costs and reasonable attorney fees, resulting from the use by Osguthorpe, its trustees, beneficiaries, agents, employees, members, officers, and invitees, of the Osguthorpe Farm or any actions of its contractors, employees or agents in installing any improvements thereon.

(b) Conservancy agrees to indemnify and hold the County harmless from any claim or damages for injuries, including costs and reasonable attorney fees, resulting from the use by the Conservancy, its agents, employees, members, officers, and invitees, of the Osguthorpe Farm or any actions of its contractors, employees or agents in installing any improvements thereon.

(c) The provisions of this Section 1.B.v shall survive the Closing.

vi. Condemnation or Sale. In the event that the Osguthorpe Farm, or any portion thereof, is condemned pursuant to Section 15 of the Conservation Easement or sold as a consequence of extinguishment pursuant to Section 14 of the Conservation Easement, the County shall be entitled to receive three and one half percent (3 1/2%) of the net proceeds of condemnation or sale of the Osguthorpe Farm, or any portion thereof.

C. At Closing, Osguthorpe shall quitclaim to the County any property that it might own on the south edge of the Osguthorpe Farm (i.e. from the existing wildlife fence at the southern end of the Osguthorpe Farm to and including Old Ranch Road). This would make the existing fence line the south boundary of the Osguthorpe Farm and the north boundary of the County’s Old Ranch Road right-of-way.

2. County's Responsibilities.

- A. Grant. Subject to the Conservancy's and Osguthorpes's timely performance of their obligations set forth in Section 1 above, and to the terms and conditions set forth in this Agreement, the County shall pay as a Grant to Conservancy Five Hundred Thousand and 00/100 Dollars (\$500,000.00) to be paid into escrow with a title company mutually acceptable to the Conservancy and the County at Closing.
- B. The County shall review and diligently exercise its rights concerning the title and Conservation Easement on the Osguthorpe Farm prior to Closing and Osguthorpe and the Conservancy shall promptly provide the County with such instruments, documents and other records reasonably required by the County concerning the title and the Conservation Easement.

3. Other Funding Partners. Osguthorpe and the Conservancy intend to seek funding for the Conservation Easement from sources that may include but not be limited to the United States Department of Agriculture, the United States Forest Service, the Utah Quality Growth Commission, the Utah Department of Wildlife Resources, non-profit organizations, foundations and individual donors. Alternate funding sources may require certain title encumbrances to the Osguthorpe Farm. Such encumbrances which are consistent with Section 1 are permitted with the consent of the County Manager.

4. Conservation Values. Title encumbrances for the Osguthorpe Farm may provide for the protection of other "**Conservation Values**" including but not limited to water quality, agricultural uses, aquatic and terrestrial wildlife habitat and scenic values.

5. Term. The term of this Agreement shall commence on the Effective Date and shall continue until December 31, 2019 (the "**Deadline**"). If the Conservancy has not closed on the purchase of the Conservation Easement from Osguthorpe prior to the Deadline, the County's obligation to provide the Grant towards the Purchase Price of the Conservation Easement shall terminate and be of no further force or effect.

6. Assignability. The rights and obligations of Osguthorpe and the Conservancy under this Agreement are not transferable or assignable in whole or in part without the written consent of the County.

7. Waiver. No failure of the County to exercise any power given to it under this Agreement, or to insist upon strict compliance by Osguthorpe or the Conservancy with any obligation, responsibility, or condition under it, and no custom or practice of the Parties at variance with its terms shall constitute a waiver of the County's right to demand exact compliance with those terms upon any subsequent default.

8. Independent Contractor. In making and performing this Agreement, Osguthorpe and the Conservancy act and shall act at all times as independent contractors, and nothing contained in this Agreement shall be so construed or applied as to create or imply the relationship of partners, of agency, joint adventurers, or of employer and employee among the Parties hereto.

9. Public Funds and Public Monies.

A. Definitions: “Public funds” and “public monies” mean monies, funds, and accounts, regardless of the source from which they are derived, that are owned, held, or administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body. The terms also include monies, funds or accounts that have been transferred by any of the aforementioned public entities to a private contract provider for public programs or services. Said funds shall maintain the nature of “public funds” while in the Conservancy’s possession.

B. Conservancy’s Obligation: Conservancy, as recipient of “public funds” and “public monies” pursuant to this Agreement, expressly understands that it, its officers, and employees are obligated to receive, keep safe, transfer, disburse and use these “public funds” and “public monies” as authorized by law and this Agreement. Conservancy understands that it, its officers, and employees may be criminally liable under Utah Code Ann. § 76-8-402, for misuse of public funds or monies. Conservancy expressly understands that the County may monitor the expenditure of public funds by the Conservancy. Conservancy expressly understands that the County may withhold funds or require repayment of funds from the Conservancy for noncompliance, failure to comply with directives regarding the use of public funds, or for misuse of public funds or monies.

10. Political Activity Prohibited. None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

11. No Officer or Employee Interest. It is understood and agreed that no officer or employee of the County has or shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds resulting from the performance of this Agreement.

12. Ethical Standards. Osguthorpe and the Conservancy each represent that they have not: (a) provided an illegal gift to any of the County’s officers or employees, or former officers or employees, or to any relative or business entity of an officer or employee, or relative or business entity of a former officer or employee; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in State statute; or (d) knowingly influenced, and hereby promises that they will not knowingly influence, any of the

County's officers or employees or former officers or employees to breach any of the ethical standards set forth in State statute or Summit County ordinances.

13. Severability. The provisions of this Agreement are not severable, and should any provision hereof be deemed void, unenforceable or invalid, such provisions shall affect the remainder of this Agreement, and shall provide grounds for termination of the Agreement at the option of the Parties in the exclusive discretion of each of them.

14. Governing Law. This Agreement shall be interpreted according to the laws of the State of Utah.

15. Attorney's Fees and Costs. If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in connection with that action or proceeding.

16. Entire Agreement. The Parties agree that this Agreement constitutes the entire understanding and agreement between the Parties with regard to the subject matter hereof, and supersedes any previous agreement, representation, or understanding between the Parties relating to the subject matter hereof.

17. Subordination. The Parties agree that this Agreement is incorporated in and is subordinate to the Conservation Easement, and in the event of a conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Conservation Easement, the terms and conditions of the Conservation Easement shall control.

18. Counterparts. This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile shall be deemed an original signed copy of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

[signature pages to follow]

SUMMIT COUNTY

Acting through its County Council

Attest:

By: _____
Kim Carson
Chair

Kent Jones
County Clerk

Approved as to form:

David L. Thomas
Chief Civil Deputy

AFTON S. OSGUTHORPE SHELTERED TRUST

Acting through its Trustees,
STEPHEN A. OSGUTHORPE
JERRY S. OSGUTHORPE
KAREN BROWN
SUE ANN LARSEN

By: _____
Stephen A. Osguthorpe
Trustee

By: _____
Jerry S. Osguthorpe
Trustee

By: _____
Sue Ann Larsen
Trustee

By: _____
Karen Brown
Trustee

SUMMIT LAND CONSERVANCY

Cheryl Fox
Executive Director

EXHIBIT "A"
FORM OF CONSERVATION EASEMENT
[SEE ATTACHED]

WHEN RECORDED RETURN TO:
Summit Land Conservancy
P.O. Box 1775
1650 Park Avenue, Suite 200
Park City, Utah 84060

OSGUTHORPE 160 CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT DEED (“Easement” or “Conservation Easement”) is made this ____ day of _____, 2018 (“Effective Date”), by and between Stephen A. Osguthorpe, Jerry S. Osguthorpe, Sue Ann Larsen and Karen Brown, as Co-Trustees and Beneficiaries of the Afton S. Osguthorpe Sheltered Trust, whose address is 1700 White Pine Canyon Road, Park City 84060 (“Grantor”), and Summit Land Conservancy, a Utah nonprofit corporation (“Conservancy”), whose address is P.O. Box 1775, Park City, UT 84060 and with a right of enforcement to the United States of America (“United States”), acting by and through the United States Department of Agriculture, Natural Resources Conservation Service (“NRCS”), on behalf of the Commodity Credit Corporation, as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Protected Property, its value for resource preservation and as open space. Conservancy is referred to as “Conservancy.” The Conservancy shall have primary responsibility for management and enforcement of the terms of this Conservation Easement Deed, subject to the rights of the United States. Grantor, Conservancy and NRCS are referred to individually as a “Party” and collectively as the “Parties.”

The following Exhibits are attached to and are incorporated into this Easement by this reference:

- Exhibit A: Legal Description of the Property Including Water Rights;
- Exhibit B: Property Map;
- Exhibit C: Permitted and Restricted Uses and Practices;
- Exhibit C-1: Map and Legal Description of Building Envelope
- Exhibit D: Public Recreation and Winter Trail and Access Agreement
- Exhibit E: Signed “Acknowledgment of Property Condition.”

RECITALS

C. Grantor owns approximately 158 acres of land located on Old Ranch Road, Park City, Utah (collectively, the “Property”). The Property is described in Exhibit A and shown for reference purposes on the Property Map attached as Exhibit B.

D. This Conservation Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (“ACEP”) 16 U.S.C. § 3865a. *et seq.* and 7 CFR Part 1468 for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses of the Property.

E. The Property qualifies as land eligible for ACEP Program funding, pursuant to 16 U.S.C. § 3865a.(3), as the Conservancy offered to purchase an ALE on the Property, the Property has prime, unique or productive soil and the protection of the Property is consistent

with state and local policies consistent with the purposes of the ACEP Program. The Property is comprised of cropland and pastureland.

F. As fee owner of the Property, Grantor owns the affirmative rights to identify, preserve, and protect forever the Conservation Values (defined below) of the Property. Grantor desires to grant a conservation easement to the Conservancy pursuant to the 'Land Conservation Easement Act' of Utah's statutes, Utah Code Ann., Sections 57-18-1 to 57-18-7, which authorizes protection of natural, scenic, open space, aesthetic, historic, hydrologic, ecological, agricultural, and scientific values that are of great importance to Grantor, the Conservancy, the people of Summit County, and the people of the State of Utah, and in accordance with the federal tax code and Internal Revenue Service ("IRS") rules and regulations applicable to qualified conservation contributions.

G. The Conservation Values and purposes intended to be preserved and protected for the public benefit under this Easement (as defined in §1.170A-14(d)(1) of the IRS Regulations) include agricultural open space and scenic values. The Conservation Values are more fully described in the Baseline Documentation Report (Paragraph 2, below). In particular, the Property is:

Open Space Farmland. The Property is agricultural land and 100% of its soils are "soils of statewide importance" as determined by the NRCS and the Property is eligible for NRCS funding pursuant to Title 7 of the Code of Federal Regulations (CFR) §1491.4(g). The Property qualifies as open space that yields a significant public benefit pursuant to §1.170A-14(d)(iii) of the IRS Regulations because (i) it is used for the scenic enjoyment of the general public, and (ii) such use is supported by a clearly delineated government policy. In particular:

Scenic Enjoyment: The Property is visible from Old Ranch Road and from public recreational trails and viewpoints open to the public, such as Park City Mountain, Round Valley and Glenwild. The Property is highly visible from higher elevation neighborhoods in the Snyderville Basin. The Property offers relief from urban closeness, in a neighborhood that has transitioned from rural to residential use in recent years.

Snyderville Basin General Plan: Preservation of the Property for conservation purposes is consistent with the *Snyderville Basin General Plan* (adopted June 17, 2015), that recognizes the open, equestrian and agricultural way of life and the importance of preserving and enhancing natural resources in the Old Ranch Road neighborhood

Relatively Natural Habitat: Preservation of the Property meets conservation purposes pursuant to §1.170A-14(d)(ii) of the IRS Regulations as the Property provides habitat for terrestrial wildlife (small game) and migratory birds.

Public Recreation: Preservation of the Property meets conservation purposes pursuant to §1.170A-14(d)(i), as the Property is open to the public for winter outdoor recreation by nordic skiers.

The values described in this Recital are referred to in this instrument as the “Conservation Values.”

H. As of the Effective Date, the Conservancy is a nonprofit corporation, incorporated under the laws of Utah as a tax-exempt public charity described in Sections 501(c)(3) and 509(a)(1) of the IRS Code (defined below); is organized to protect and conserve natural areas and ecologically significant land for scientific, charitable, and educational purposes; is a “qualified organization” as defined in § 1.170(A-14(c)(1) of the IRS Regulations (defined below), and therefore qualified to acquire and hold conservation easements (“Qualified Organization”); and is a qualified “holder” of a conservation easement under the Utah ‘Land Conservation Easement Act’ statute. U.C.A. § 57-18-1, et seq.

I. To accomplish the Conservation Purposes (defined below), Grantor desires to convey to the Conservancy and the Conservancy desires to obtain from the Grantor a conservation easement that restricts the uses of the Property and that grants certain rights to the Conservancy in order to preserve, protect, identify, monitor, enhance, and restore in perpetuity the Conservation Values.

J. The rights granted to the Conservancy under this Easement have been donated in part by the undersigned Grantor, and this Easement is intended to qualify as a charitable donation of a partial interest in real estate (as defined under § 170(f)(3)(B)(iii) of the IRS Code) to a Qualified Organization.

CONSERVATION EASEMENT TERMS

IN CONSIDERATION of the recitals set forth above, the mutual covenants, terms, conditions, and restrictions contained in this Easement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and pursuant to the Utah state law, in particular, the ‘Land Conservation Easement Act’ of Utah’s statutes, Utah Code Ann., Sections 57-18-1 to 57-18-7, Grantor voluntarily grants and conveys to, and the Conservancy accepts, a perpetual conservation easement in, on, over, and across the Property, together with a third party right of enforcement to the United States, subject to the terms and conditions set forth in this Easement, restricting forever the uses that may be made of the Property and granting the Conservancy certain rights in the Property; and Grantor and the Conservancy agree as follows:

1. CONSERVATION PURPOSES. The purposes of this Easement are to preserve and protect in perpetuity and, in the event of their degradation or destruction, to assure the restoration of, the Conservation Values of the Property. In particular, the purpose of this Easement is to protect the Property’s open space and scenic character, its agricultural use, productivity and future viability, its winter public recreational use and its relatively natural wildlife habitat. In achieving the above-named purposes (collectively the “Conservation Purposes”), it is the intent of this Easement to permit such uses of the Property as may be conducted consistent with the Conservation Values protected herein.

2. BASELINE DOCUMENTATION REPORT. By its execution of this Easement, the Conservancy acknowledges that Grantor’s present uses of the Property are compatible with the purposes of this Easement. In order to evidence the present condition of the Property

(including both natural and man-made features) and to facilitate future monitoring and enforcement of this Easement, the Parties acknowledge that a Baseline Documentation Report (the “Report”) has been prepared, which provides a collection of baseline data on the Property and its natural resources and an assessment of the consistent uses. The Parties agree that the Report contains an accurate representation of the biological and physical condition of the Property as of the Effective Date and of the historical uses of the Property, including historical water uses. In addition to the public benefits described as the Conservation Values, the Report identifies public policy statements and/or other factual information supporting the significant public benefit of this Easement. Grantor and the Conservancy approve the Report, a copy of which is on file with the Grantor and the original of which is on file with the Conservancy at their respective addresses for notices set forth below.

3. THE CONSERVANCY’S RIGHTS. In order to accomplish the Conservation Purposes, the rights and interests that are granted and conveyed to the Conservancy by this Easement consist of the following:

A. Preserve and Protect. The right to preserve, protect, identify, monitor, and enhance the Conservation Values in perpetuity, and, in the event of their degradation or destruction, the right to require the restoration of such areas or features of the Property that are damaged by any inconsistent activity or use.

B. Entry and Access Rights. The Conservancy is, by this Easement, granted rights of access, whether by public ways or otherwise and including, but not limited to, any access easements appurtenant to the Property or held by Grantor, to enter upon the Property in order to monitor compliance with and otherwise enforce the terms of this Easement, to study and make scientific observations of the Property and of natural elements and ecosystems and other features of the Property, and to determine whether the Grantor’s activities are in compliance with the terms of this Easement, all upon reasonable prior notice to Grantor and in a manner that does not unreasonably disturb the use of the Property by Grantor consistent with this Easement. The Conservancy has the right of immediate entry to the Property if, in its sole judgment, such entry is necessary to investigate, prevent, terminate, or mitigate a violation of this Easement, or to preserve and protect the Conservation Values. Notwithstanding the Conservancy’s right to access the Property, Conservancy shall not be permitted to access or enter any dwellings on the Property without the express consent of the Grantor.

C. Enforcement. The Conservancy has the right to prevent or enjoin any activity on or use of the Property that constitutes a breach of this Easement or is inconsistent with the preservation of the Conservation Values, and the Conservancy has the right to require the Grantor to restore such areas or features of the Property that Grantor has damaged by such breach or inconsistent use or activity.

4. USES OF THE PROPERTY. Except as prohibited or otherwise limited by this Easement, Grantor reserves the right to use and enjoy the Property in any manner that is consistent with the Conservation Purposes and the preservation of the Conservation Values. Grantor will not perform, or allow others to perform, any act on or affecting the Property that is inconsistent with the Conservation Purposes. The uses set forth in Exhibit C, though not an

exhaustive list of consistent uses and practices, are consistent with this Easement and will not be precluded, prevented, or limited, except as specifically set forth in Exhibit C. Any activity on or use of the Property that is inconsistent with the Conservation Purposes (including, without limitation, any activity or use that diminishes or impairs the Conservation Values) is prohibited. Though not an exhaustive list of prohibited and restricted uses, Exhibit C also describes such uses or activities that are inconsistent with the Conservation Purposes and are thus prohibited or restricted.

5. APPROVAL REQUEST.

A. The Conservancy's Approval. Grantor will not undertake or permit any activity requiring prior approval by the Conservancy without first having notified and received approval from the Conservancy as provided herein. Prior to the commencement of any activity for which this Easement requires prior written approval by the Conservancy, Grantor will send the Conservancy written notice of Grantor's intention to undertake such activity. The notice will inform the Conservancy of all aspects of the proposed activity, including location, design, materials or equipment to be used, dates and duration, and all other relevant information. If in the Conservancy's judgment additional information is required to adequately review the proposal, the Conservancy will send written notice requesting such additional information within 15 days of receipt of Grantor's notice.

B. The Conservancy's Decision. No later than 45 days from the Conservancy's receipt of information adequate to review the proposal, the Conservancy will notify Grantor of its disapproval or approval of Grantor's proposal, or that the Conservancy may approve the proposal with certain specified modifications. The Conservancy's decision must be based upon the Conservancy's assessment of the proposed activity in relation to its consistency or inconsistency with the terms of this Easement. Conservancy's approval or failure to object to any proposed use or activity will not constitute consent to any subsequent use or activity of the same or any different nature.

6. ENFORCEMENT AND REMEDIES.

A. Notice of Violation; Corrective Action. If the Conservancy becomes aware that a violation of the terms of this Easement has occurred or is threatened to occur, the Conservancy will give written notice to Grantor of such violation, and Grantor shall, in the case of an existing violation, promptly cure the violation by (a) ceasing the same and (b) restoring the Property to the condition before such violation, or in the case of a threatened violation, refrain from the activity that would result in the violation. If Grantor fails to cure the violation within thirty (30) days after receipt of notice from the Conservancy, or under circumstances where the violation cannot reasonably be cured within a thirty (30)-day period, fails to begin curing such violation within the thirty (30)-day period or fails to continue diligently to cure such violation until finally cured, the Conservancy will have all remedies available at law or in equity to enforce the terms of this Easement, including, without limitation, the right to seek a temporary or permanent injunction with respect to such activity, to cause the restoration of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity (regardless of whether the costs of restoration exceed the value of the Property), and to otherwise pursue all available legal remedies, including, but

not limited to, monetary damages arising from the violation. The Conservancy's rights under this Paragraph apply equally to actual or threatened violations of the terms of this Easement. Grantor agrees that the Conservancy's remedies at law for any violation of the terms of this Easement are inadequate and that Conservancy is entitled to the injunctive relief described in this Paragraph, both prohibitive and mandatory, in addition to such other relief to which the Conservancy may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Furthermore, the provisions of the 'Land Conservation Easement Act' of Utah's statutes, Utah Code Ann. Sections 57-18-1 to 57-18-7, are incorporated into this Easement by this reference, and this Easement includes all of the rights and remedies set forth therein.

(i) Grantor is responsible for the acts and omissions of persons acting on its behalf, at its direction or with its permission, and the Conservancy has the right to enforce this Easement against Grantor for any use of or activities upon the Property that are a violation of this Easement and that result from such acts or omissions. However, as to the acts or omissions of third parties other than the those described in the preceding sentence, the Conservancy does not have a right of enforcement against Grantor unless Grantor is complicit in said acts or omissions, fails to cooperate with the Conservancy in all respects to halt or abate the event or circumstance of non-compliance with this Easement terms resulting from such acts or omissions, or fails to report such acts or omissions to the Conservancy promptly upon learning of them.

(ii) The Conservancy has the right, but not the obligation, to pursue all legal and equitable remedies provided under this Paragraph against any third party responsible for any activity or use of the Property that is a violation of this Easement and Grantor will, at the Conservancy's option, assign its right of action against such third party to the Conservancy, join the Conservancy in any suit or action against such third party, or appoint the Conservancy its attorney in fact for the purpose of pursuing an enforcement suit or action against such third party.

B. Costs of Enforcement. Grantor will reimburse the Conservancy for all reasonable expenses incurred by the Conservancy in enforcing the terms of this Easement against Grantor, or with respect to actions by third parties for whom Grantor is responsible, as set forth in subparagraph (i) above, including, without limitation, reasonable attorneys' fees and any costs of restoration necessary to cure the violation. In any action, suit or other proceeding undertaken to enforce the provisions of this Easement, the prevailing Party will be entitled to recover from the non-prevailing Party all reasonable costs and expenses, including attorneys' fees, and if such prevailing Party recovers judgment in any action or proceeding, such costs and expenses will be included as part of the judgment. In addition, any costs of restoration will be borne by the Grantor if Grantor is determined to be responsible for damage to the Property.

C. Emergency Enforcement. If the Conservancy, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values or to prevent breach or extinguishment of this Easement,

the Conservancy may pursue its remedies under this Easement without prior notice to Grantor and without waiting for the cure period to expire.

D. Waiver of Right to Enforce. The failure of the Conservancy to discover a violation or to take action under this Easement will not be deemed or construed to be a waiver of the Conservancy's rights under this Easement with respect to such violation in the event of any subsequent breach. In no event will any delay or omission by the Conservancy in exercising any right or remedy constitute an impairment of or a waiver of such right or remedy. Grantor waives the defenses of prescription, laches and the running of any applicable statute of limitations.

E. Remedies Cumulative. No single or partial exercise of any right, power or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder and all remedies under this Easement may be exercised concurrently, independently or successively from time to time. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies which may be available at law or equity.

F. Acts Beyond the Grantor's Control. Nothing contained in this Easement will be construed to entitle the Conservancy to bring any action against Grantor for, or to require the Conservancy or Grantor to actively restore destruction of or damage to the Conservation Values resulting from, any injury to or change in the Property resulting from causes beyond Grantor's control, including fire, flood, storm, earth movement, and other natural disasters or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. This paragraph will not be construed to relieve the Grantor of the obligation to clean-up garbage or materials dumped on the Property by third parties and the obligation to take action to prevent third party violations of this Easement, or to otherwise maintain the Property in a condition consistent with the purposes of this Easement.

7. REPRESENTATIONS AND WARRANTIES.

A. State of Title. Grantor represents and warrants that Grantor has good and marketable title to the Property (including all appurtenances, including, without limitation, all minerals and mineral rights (subject to federal or state mineral reservations of record)), free and clear of any liens or encumbrances that might cause extinguishment of this Easement, or that would materially impair the Conservation Purposes.

B. Compliance with Laws. Grantor has not received notice of and has no knowledge of any material violation of any federal, state, county, or other governmental or quasi-governmental statute, ordinance, rule, regulation, law, or administrative or judicial order with respect to the Property.

C. No Litigation. Grantor represents and warrants that there is no action, suit, or proceeding that is pending or threatened against the Property or any portion thereof relating to or arising out of the Grantor's ownership or use of the Property, or any portion

thereof, in any court or before or by any federal, state, county, or municipal department, commission, board, bureau, agency, or other governmental instrumentality.

D. Disclosure of Easement Information. Conservancy has informed Grantor of the types and legal effects of conservation easements and has advised Grantor to obtain independent legal advice as required by Section 57-18-4 of the Land Conservation Easement Act.

E. Authority To Execute Easement. The person or persons executing this Easement on behalf of the Conservancy represent and warrant that the execution of this Easement has been duly authorized by the Conservancy. The person or persons executing this Easement on behalf of Grantor represent and warrant that the execution of this Easement has been duly authorized by Grantor.

8. COSTS, LEGAL REQUIREMENTS, AND LIABILITIES. Grantor will be responsible for and will bear all costs and liabilities of any kind related to the Grantor's ownership, operation, upkeep, and maintenance of the Property and agrees that the Conservancy will have no duty or responsibility for the operation or maintenance of the Property, the monitoring of hazardous conditions on the Property, or the protection of Grantor, the public, or any third parties from risks relating to conditions on the Property. Grantor agrees to pay before delinquency any and all real property taxes and assessments levied on the Property and agrees that the Grantor will keep the Conservancy's interest in the Property free of any liens, including those arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantor will be solely responsible for any costs related to the maintenance of general liability insurance covering Grantor's acts on the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use by Grantor on the Property and permitted by this Easement, and any activity or use will be undertaken in accordance with all applicable federal, state, and local laws, rules, regulations, and requirements. If more than one person or entity constitutes Grantor, the obligations of each and all of them under this Easement will be joint and several.

9. RUNNING WITH THE LAND. This Easement burdens and runs with the Property in perpetuity. Every provision of this Easement that applies to Grantor or the Conservancy also applies forever to and burdens or benefits, as applicable, their respective agents, heirs, devisees, administrators, employees, personal representatives, lessees, and assigns, and all other successors as their interests may appear.

10. NATURAL RESOURCES CONSERVATION SERVICE PROVISIONS

A. Agricultural Land Easement Plan. As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Property are subject to an ALE Plan, as approved by the NRCS, to promote the long-term viability of the land to meet ALE purposes. The ALE Plan must also be approved by the Grantor and the Conservancy. Grantor agrees the use of the property will be subject to the ALE Plan on the Property.

The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the Conservation Purposes of this Easement. The Conservancy and Grantor agree to

update the ALE Plan in the event the agricultural uses of the Property change. A copy of the current ALE Plan is kept on file with the Conservancy.

The Conservancy must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NRCS may notify the Conservancy. NRCS will give the Conservancy and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Conservancy fails to enforce the terms of the Easement, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.

B. United States Right of Enforcement. Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the Easement are not enforced by the holder of the Easement. The Secretary of the United States Department of Agriculture (the "Secretary") or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Conservancy, or its successors or assigns, fails to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Conservancy, including, but not limited to attorney's fees and expenses related to Conservancy's violations or failure to enforce the easement against the Grantor up to the amount of the United States contribution to the purchase of the Easement.

The Conservancy will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Conservancy and Grantor are in compliance with the Easement and ALE Plan. If the annual monitoring report is insufficient or not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE, the ALE Plan, and the United States Cooperative Agreement with the Conservancy, the United States will have reasonable access to the Property with advance notice to Conservancy and Grantor or Grantor's representative.

In the event of an emergency, the United States may enter the Property to prevent, terminate, or mitigate a potential unaddressed violation of these restrictions and will give notice to Conservancy and Grantor or Grantor's representative at the earliest practicable time.

C. General Disclaimer and Grantor Warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Conservancy's or Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations of any Federal, State, or local laws, including all Environmental Laws, including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits,

proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Property.

Grantor must indemnify and hold harmless United States, their employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Agricultural Land Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

D. Environmental Warranty. Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

Furthermore, Grantor warrants the information disclosed to Conservancy and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor shall hold harmless and indemnify the Conservancy and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by the Conservancy or the United States to Grantor with respect to the Property or any restoration activities carried out by the Conservancy at the Property; provided, however, that the Conservancy will be responsible for any Hazardous Materials contributed after this date to the Property by Conservancy.

"Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection

and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

11. SUBSEQUENT TRANSFERS AND SUBORDINATION. Grantor may transfer the Property in its entirety, but not in any portion less than its entirety. Grantor agrees that the terms, conditions, restrictions, and purposes of this Easement or reference thereto will be inserted by Grantor in any subsequent deed or other legal instrument by which Grantor divests either the fee simple title or a possessory interest (including, but not limited to, any leases) of the Property; and Grantor further agrees to notify the Conservancy of any pending transfer (including, without limitation, leases) at least forty five (45) days in advance of the transfer. The failure of the Grantor to comply with this paragraph will not impair the validity of this Easement or limit its enforceability in any way. Any successor in interest of the Grantor, by acceptance of a deed, lease, or other document purporting to convey an interest in the Property, will be deemed to have consented to, reaffirmed, and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Easement. Notwithstanding, if the Easement is extinguished pursuant to judicial proceedings and in accordance with paragraph 14 of this Easement, the Grantor and any successor in interest of the Grantor shall not be bound by the terms and conditions of this paragraph 11.

12. INDEMNIFICATION.

A. Cross Indemnification. Notwithstanding any other provision of this Agreement to the contrary, the Parties, excluding the United States, shall indemnify, defend, and hold harmless each other, including, without limitation, each Party’s managers, members, directors, officers, employees, agents, contractors, and their successors and assigns (collectively, the “Indemnified Parties”), from and against any costs, liabilities, penalties, damages, claims, or expenses (including reasonable attorneys’ fees) and litigation costs that the Indemnified Parties may suffer or incur as a result of, or arising out of:

1. Use of or activities on the Property by the Party;
2. The inaccuracy of any representation or warranty made in this Agreement by the Party;
3. Any material breach of this Agreement by the Party;
4. Injury to or the death of any person, or damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, unless due solely to the actions of any of the Indemnified Parties; and
5. Approvals for activities requested of a Party whether given or withheld under this Agreement, except as the result of the gross negligence or intentional misconduct of the Party from whom approval was sought.

B. Grantor Indemnification. Grantor indemnifies, defends, and holds harmless the Conservancy and its Indemnified Parties for:

1. Any claim, liability, damage, or expense suffered or incurred by or threatened against the Conservancy by a third party and related to any approvals requested by Grantor, whether given or withheld by the Conservancy, unless due solely to the Conservancy's gross negligence or intentional misconduct; and
2. Any real property taxes, insurance, utilities, or assessments that are levied against the Property, including those for which exemption cannot be obtained, or any other costs of maintaining the Property.

C. Limitations on Indemnifications. Pursuant to the provisions of this paragraph 12, the Conservancy is not indemnifying the Grantor against, and is not liable or responsible for, injuries or damage to persons or property in connection with the Conservancy's administration or enforcement of this Agreement or with respect to the condition of the Property. The limitation in this sub-paragraph (C) does not absolve the Conservancy of any liabilities it might otherwise have, independently of this Agreement, for wrongfully and directly, without the participation or consent of the Grantor, causing any dangerous condition to come into existence on the Property.

13. CHANGE OF CONDITIONS. In granting this Easement, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses and that neighboring properties may be used entirely for such prohibited uses in the future. It is the intent of Grantor and the Conservancy that any such changes will not be deemed circumstances justifying the extinguishment of this Easement. In addition, the inability of Grantor, or Grantor's heirs, successors or assigns, to conduct or implement any or all of the uses permitted under this Easement, or the unprofitability of doing so, will not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

14. EXTINGUISHMENT. This Easement can be released, terminated or otherwise extinguished, whether in whole or in part, only (a) by judicial proceedings in a court of competent jurisdiction and (b) upon a finding by the court that a subsequent unexpected change in conditions has made impossible or impractical the continued use of the property for conservation purposes. Each Party will promptly notify the other when it first learns of such circumstances. The amount of the proceeds to which the Conservancy and the United States will be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, will be determined in accordance with paragraph 16 below. The Conservancy will use all such proceeds in a manner consistent with the conservation purposes for the Grantor's charitable donation of the Easement. Due to the Federal interest in this Easement, the United States must consent to any extinguishment. In the event of extinguishment of the Easement pursuant to this paragraph, the Property shall not be subject to any of the terms, conditions or restrictions of the Easement.

15. CONDEMNATION. If all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Easement, Grantor and the Conservancy will join in appropriate actions at the time of such taking

to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds will be divided in accordance with the proportionate value of the Conservancy's, the United States' and Grantor's interests as of the Effective Date as set forth in Paragraph 16 below, it being expressly agreed that this Easement constitutes a compensable property right. All expenses incurred by Grantor and the Conservancy in such action will be paid out of the recovered proceeds.

16. PROPERTY INTEREST VALUATION.

A. Internal Revenue Code. For the purposes of Grantor's claim of a federal income tax deduction under IRC Section 170(h) and associated IRS Regulations, the fair market value of the Easement at the time of condemnation, termination or extinguishment shall be determined by multiplying (i) the fair market value of the Property unencumbered by the Easement at the time of termination (minus any increase in value after the date of this grant attributable to improvements) by (ii) the ratio of the value of the Easement at the time of this grant to the value of the Property without deduction for the value of the Easement at the time of the grant. The ratio referred to in the preceding sentence shall be established by a qualified appraisal for federal income, gift and estate tax deduction purpose, pursuant to IRS Regulation §1.170A-13 and §1.170A-14(h), and the ratio shall remain constant.

Pursuant to IRS Regulation §1.170A-14(g)(6)(ii), after termination of this Easement, in whole or in part, on a subsequent sale, exchange or involuntary conversion of the Property, Conservancy must be entitled to a portion of the proceeds that is at least equal to the proportionate value of the Easement as established by this paragraph A. All of Conservancy's proceeds, as determined above must be used by the Conservancy in a manner consistent with the conservation purposes of the original contribution. The Conservancy and the United States make no representation as to the tax consequences of the transaction contemplated by this Easement. Grantor will obtain independent tax counsel and be solely responsible for compliance requirements of the Internal Revenue Code.

B. ALE Requirements. The interests and rights under this Easement may only be extinguished or terminated with written approval of the Conservancy and the United States, as specified in this Easement. Due to the Federal interest in the Easement, the United States must review and approve any proposed extinguishment, termination or condemnation action that may affect its Federal interest in the Property.

With respect to a proposed extinguishment, termination or condemnation action, the Conservancy, Landowner and the United States stipulate that the fair market value of the Easement is ninety percent (90%) of the fair market value of the Property unencumbered by this Easement (hereafter the "Proportionate Share"). The Proportionate Share shall remain constant over time.

If this Conservation Easement is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse the Conservancy and the United States of America an amount equal to the Proportionate Share of the fair market value of the Property unencumbered by this Easement. The fair market value of the Property will be determined at the time all or a part of this Easement is terminated, extinguished, or condemned by an

appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Conservancy and the United States.

The allocation of the Proportionate Share between the Conservancy and the United States will be as follows: (a) to the Grantee or its designee, fifty percent (50%) of the Proportionate Share; and (b) to the United States of America fifty percent (50%) of the Proportionate Share. Until such time as the Conservancy and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Conservancy and the United States each have a lien against the Property for the amount of the Proportionate Share due each of them. The Conservancy or its designee must use its allocation of the Proportionate Share in a manner consistent with the Conservation Purposes of the Easement. If proceeds from termination, extinguishment, or condemnation are paid directly to Conservancy, the Conservancy must reimburse the United States for the amount of the Proportionate Share due to the United States.

C. Summit County Requirements. Pursuant to the grant agreement by and between the Conservancy and Summit County and the Snyderville Basin Special Recreation District (hereafter the "County Parties"), the County Parties shall be entitled to receive six percent (6%) of that portion of the net proceeds of condemnation or sale of the Property, or any portion thereof, that the Conservancy is entitled to under the terms of this provision, such percentage being equal to the proportionate value of the grant funds paid by the County Parties to the Easement purchase price and in exchange for Grantor's grant of the Public Recreation Winter Trail and Access Agreement to the County Parties.

17. AMENDMENT. If circumstances arise under which an amendment to or modification of this Easement might be appropriate, the Conservancy and Grantor may by mutual written agreement jointly amend this Easement, provided that no amendment will be made that will adversely affect the qualification of this Easement or the status of the Conservancy as a qualified holder under any applicable laws, including the IRS Code or Utah statute. Any such amendment will: be at the discretion of the Conservancy; will be consistent with the preservation of the Conservation Values of the Property and the Conservation Purposes of this Easement; will not affect its perpetual duration or its qualification under any laws; will not permit any private inurement or impermissible private benefit to any person or entity, in accordance with rules and regulations governing charitable organizations qualified under Section 501(c)(3) of the IRS Code; will have a positive or not less than neutral conservation outcome; and will be consistent with the Conservancy's internal policies and procedures regarding easement amendments as may be in effect at the time of the amendment proposal. Any such amendment will be recorded in the land records of Summit County, Utah. The Easement may be amended only if, in the sole and exclusive judgment of the Conservancy and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this Easement and complies with all applicable laws and regulations. The Conservancy must provide timely written notice to the Chief of NRCS of any proposed amendment(s). Prior to the signing and recordation of the amended Easement, such amendment(s) must be mutually agreed upon by the Grantor, Conservancy and United States, by and through the Chief of the NRCS. Any purported amendment that is recorded without the prior approval of the United States will be considered

null and void. Nothing in this Paragraph will require either Party to agree to any amendment or to consult or negotiate regarding any amendment.

18. INTERACTION WITH STATE LAW. The provisions of the above paragraphs addressing EXTINGUISHMENT, CONDEMNATION, and AMENDMENT shall apply notwithstanding any provisions addressing such actions under Utah law.

19. WRITTEN NOTICE. Any written notice called for in this Easement will be delivered: (i) in person; (ii) by certified mail, return receipt requested, postage prepaid; (iii) by facsimile with the original deposited with the United States Post office, postage prepaid on the same date as sent by facsimile; or (iv) by next-business-day delivery through a reputable overnight courier that guarantees next-business-day delivery and provides a receipt. Notices must be addressed as follows:

To the Conservancy: Summit Land Conservancy
P.O. Box 1775
1650 Park Avenue, Suite 200
Park City, Utah 84046
Attention: Cheryl Fox, Executive Director

To Grantor: Stephen Osguthorpe
1700 White Pine Canyon Road
Park City, Utah 84060

To NRCS: NRCS State Conservationist
125 S. State Street, Room 4010
Salt Lake City, UT 84138

Any Party may, from time to time, by written notice to the other Parties, designate a different address that will be substituted for the relevant address or addresses set forth above. Notice is deemed to be given upon receipt.

20. INTERPRETATION.

A. Intent. It is the intent of this Easement to protect the Conservation Values in perpetuity by prohibiting and restricting specific uses of the Property, notwithstanding economic or other hardship or changes in circumstances or conditions. If any provision in this Easement is found to be ambiguous, an interpretation consistent with protection of the Conservation Values and Conservation Purposes is favored, regardless of any general rule of construction. In the event of any conflict between the provisions of this Easement and the provisions of any use and zoning restrictions of the State of Utah, the county in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive conservation provisions will apply.

B. Governing Law. This Easement will be interpreted in accordance with the laws of the State of Utah and the United States.

C. Captions. The captions have been inserted solely for convenience of reference and are not part of this Easement and will have no effect upon construction or interpretation.

D. No Hazardous Materials Liability. Notwithstanding any other provision of this Easement to the contrary, nothing in this Easement will be construed such that it creates in or gives to the Conservancy: (a) the obligations or liabilities of an “Grantor” or “operator” as those words are defined and used in Environmental Laws (defined below), including, without limitation, (b) the obligations or liabilities of a person described in 42 USC Section 9607(a)(3); (c) the obligations of a responsible person under any applicable Environmental Law; (d) any obligation to investigate or remediate any Hazardous Materials associated with the Property; or (e) any control over Grantor’s ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

E. Merger. In the event that the Conservancy takes legal title to Grantor’s interest in the Property, the Conservancy must commit the monitoring and enforcement of this Easement to another Qualified Organization within the meaning of section 107(h)(3) IRS Code which organization has among its purposes the conservation and preservation of land and water areas.

F. Construction. The Parties acknowledge and agree that (a) each Party is of equal bargaining strength; (b) each Party has actively participated in the drafting, preparation and negotiation of this Easement; (c) each Party has consulted with its own independent counsel, and such other professional advisors as it has deemed appropriate, relating to any and all matters contemplated under this Easement; (d) each Party and its counsel and advisors have reviewed this Easement; (e) each Party has agreed to enter into this Easement following such review and the rendering of such advice; and (f) any rule of construction to the effect that ambiguities are to be resolved against the drafting Party do not apply in the interpretation of this Easement, or any portions hereof, or any amendments hereto

G. One Parcel. Even if the Property consists of more than one parcel for real estate tax or any other purpose of if it may have been acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply for the Property as a whole.

H. Definitions.

- i. The term “IRS Code” means the Internal Revenue Code of 1986, as amended through the applicable date of reference.
- ii. The term “Development Rights” means and includes any and all legal rights under federal, state, and/or local laws, ordinances, rules or regulations now in effect or enacted after this date to develop and build structures, expressed as the maximum number of dwelling units per acre for residential parcels or square feet of gross floor area for nonresidential parcels, that could be permitted under applicable zoning and subdivision rules and regulations.

- iii. The terms “Grantor” and the “Conservancy”, and any pronouns used in place thereof, mean and include, respectively, Grantor and Grantor’s personal representatives, heirs, devisees, personal representatives, and assigns, and all other successors as their interest may appear and the Conservancy and its successors and assigns.
- iv. All references to the “IRS Regulations” means the Internal Revenue Service Treasury Regulations, 26 C.F.R. Ch. 1, §1.170A-14 as amended through the applicable date of reference.

21. RESTRICTIONS ON TRANSFER. Other than in the context of an extinguishment that complies with paragraph 14 of this Easement or a condemnation that complies with paragraph 15, this Easement may be transferred by Conservancy, only with the consent of NRCS. The Easement shall only be transferred if (i) as a condition of the transfer, Conservancy requires that the purpose of this Easement continues to be carried out; (ii) the transferee, at the time of transfer, qualifies under section 170(h) of the Code and section 57-18-3 of Utah’s statutes as an eligible donee to receive this Easement directly; and (iii) the transferee has the commitment and resources to enforce, and agrees to enforce this Easement. Conservancy agrees to provide written notice to Grantor at least sixty (60) days prior to any intended transfer of this Easement. Any subsequent transfer of this Easement shall also be subject to the provisions of this paragraph. Any attempted transfer by Conservancy of all or a portion of this Easement contrary to the terms hereof shall be invalid but shall not operate to extinguish this Easement.

22. SEVERABILITY AND ENFORCEABILITY. The terms and purposes of this Easement are intended to be perpetual. If any provision herein shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party under this Easement will not be materially and adversely affected thereby, (a) such holding or action will be strictly construed; (b) such provision will be fully severable; (c) this Easement will be construed and enforced as if such provision had never comprised a part hereof; (d) the remaining provisions of this Easement will remain in full force and effect and will not be affected by the invalid or unenforceable provision or by its severance from this Easement; and (e) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Easement a legal, valid and enforceable provision as similar in terms to such illegal, invalid and unenforceable provision as may be possible

23. EXHIBITS. Each exhibit referred to in, and attached to, this Easement is an integral part of this Easement and is incorporated in this Easement by this reference.

24. COUNTERPARTS. This Easement may be executed in one or more counterparts, all of which taken together will be considered one and the same agreement and each of which will be deemed an original. This Easement shall become effective when each Party has received a counterpart signature page signed by all of the other Parties.

25. RECORDING. The Conservancy is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement, and Grantor agrees to execute any such instruments upon reasonable request.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

STATE OF _____)

: ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 201_, by _____, an individual.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

**EXHIBIT A
TO
CONSERVATION EASEMENT**

LEGAL DESCRIPTION OF PARCEL INCLUDING WATER RIGHTS

**EXHIBIT B
TO
CONSERVATION EASEMENT**

PROPERTY MAP

**EXHIBIT C
TO
CONSERVATION EASEMENT**

PERMITTED AND RESTRICTED USES AND PRACTICES

Any activities inconsistent with the purposes of the Easement are prohibited. The Property shall not be used for residential or commercial purposes except as permitted in this Exhibit C. Industrial uses are not permitted. The uses set forth in this Exhibit C detail specific activities that are permitted or prohibited under this Easement. The uses set forth in this Exhibit C are also intended to provide guidance in determining the consistency of other activities with the Conservation Purposes. Notwithstanding the uses set forth in this Exhibit C and, notwithstanding any provision of this Easement to the contrary, in no event will any of the permitted uses of the Property (whether set forth in this Exhibit C or elsewhere in this Easement) be conducted in a manner or to an extent that diminishes or impairs the Conservation Values or that otherwise violates this Easement.

1) **AGRICULTURE**. Owner retains the right to use the Property for private and commercial agricultural purposes as described herein, and to permit others to use the Property for such purposes. The production, processing, and marketing of agricultural crops and livestock is allowed provided it is conducted in a manner consistent with the long term viability of the Property, ALE Plan and ALE purposes and do not violate Federal laws, including Federal drug laws. No uses will be allowed that decrease the Easement’s protection for the agricultural use and future viability, and related Conservation Values. As used herein, “agricultural crops” shall mean the production, processing, and storage of crops. For purposes hereof, crops include, but are not limited to: (a) crops currently on the Property including grass; (b) field crops, including corn, wheat, oats, rye, barley, hay, potatoes, cotton, tobacco, herbs and dry beans; (c) vegetables, including lettuce, herbs, flowers, tomatoes, snap beans, cabbage, carrots, beets, onions, mushrooms, and soybeans; (e) horticultural specialties that do not remove or harm the soils. As used herein, “livestock” shall mean horses, cattle, sheep, buffalo, elk, llamas, alpacas and other farm animals (not to include exotic animals). Livestock may be fed on the property as is customary in other small farm operations in Summit County. Feedlots are prohibited. “Feedlot” means a permanently constructed confined area or facility for purposes of engaging in the business of the reception and feeding of livestock for hire and within which the land is not grazed or cropped annually. Other permitted agricultural uses include, without limitation, aquaculture for the farming of native fish species and bee-keeping for the production of honey. Other commercial and industrial uses not prohibited by this easement are (i) agricultural production and related uses conducted as described in the ALE Plan required by paragraph 10 of this Easement; (ii) the sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that the Conservancy approves in writing as being consistent with the Conservation Purposes; (iii) temporary or seasonal outdoor activities or events that do not harm the agricultural use and future viability, and related Conservation Values; (iv) commercial enterprises related to agriculture or forestry including but not limited to agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and small-scale farm wineries; (v) small-scale commercial enterprises compatible with agriculture or forestry including but not limited to cafes, shops, and studios for arts and crafts;

2) AGRICULTURAL LAND EASEMENT PLAN. The provisions of this Exhibit and the Easement will not be interpreted to restrict the types of agricultural operation that can function on the Property, so long as the operations are consistent with the Agricultural Land Easement Plan described in section 10 of the Easement.

3) FERTILIZERS, PESTICIDES, HERBICIDES, AND OTHER BIOCIDES. The Grantor intends to avoid the introduction of any harmful or potentially harmful substance to the soil, water or air of the Property. Because the property is in the East Canyon Creek watershed, use of fertilizers, pesticides, herbicides and other biocides shall be limited. Organic and sustainable methods of fertilization, weed and pest control are preferred throughout the Property and Grantor shall use best practices for weed management. Use of fertilizers is permitted in compliance with all applicable laws, rules, regulations and manufacturer's label instructions. Herbicides may be used on the Property only for the control of non-native noxious weeds, native invasive weeds that interfere with the agricultural uses of the Property, and other invasive exotic plant species and conducted in compliance with all applicable laws, rules, regulations and manufacturer's label instructions. Use of herbicides for any other purpose must be approved the Conservancy. Use of pesticides and biocides is prohibited unless approved by the Conservancy. Aerial spraying of any chemicals is prohibited. Use of biological weed and insect control agents may be permitted, subject to prior approval by the Conservancy.

4) WATER RIGHTS. The Property receives water for irrigation and stockwatering purposes from the water rights described in the Baseline Document Report, and Grantor shall continue to make available water adequate to maintain the Property's agricultural use. In the event of a conveyance of the Property to a third-party, Grantor shall sell, lease, or otherwise make available the Water Right identified as #35-9785 for agricultural use on the Property. Grantor shall not transfer, encumber, sell, lease or otherwise sever the availability of water from the Property nor change the historic nature or use or place of use by change application, without the consent of the Conservancy. Grantor shall not abandon or allow the abandonment of, by action or inaction of water rights used for agricultural use on the Property without the consent of the Conservancy and if necessary, the Conservancy may take any reasonable action necessary to prevent abandonment of water rights.

5) WATER RESOURCES. Surface and sub-surface water resources and facilities including ditches, drainage improvements, springs, pipes, ponds and troughs may be maintained and improved, but new water resources and facilities may be constructed only upon prior written approval of the Conservancy, which will not be unreasonably withheld.

6) AGRICULTURAL STRUCTURES & IMPROVEMENTS. All new structures and improvements must be located within the Building Envelope (approximately 3 acres) as shown on the map and survey attached hereto as Exhibit C-1. Grantor may construct one single-family dwelling, in addition to the existing storage shed, historic barn and pump-house within the Building Envelope. Buildings and amenities ancillary to said dwelling (garages, sports courts, etc.), or buildings and other structures and improvements to be used primarily for agricultural purposes (as defined by the terms of this Easement) may be built within the Building Envelope, provided the total floor area of such new buildings and structures does not exceed the following impervious surface limitation. Impervious surfaces on the Property shall not exceed two percent (2%) of the total acreage of the Property, excluding NRCS-approved conservation practices.

Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Property; including, but not limited to, residential buildings, agricultural buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with superior rights to those rights conveyed to Conservancy by this Easement. Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under paragraph 17 of this Exhibit C, that neither individually or collectively have an adverse impact on the agricultural use and future viability and related Conservation Values of the Protected Property, may be built outside of the Building Envelope with prior written approval of the Conservancy provided the utilities or agricultural structures are consistent with the ALE Plan.

7) FENCING. Fences may be maintained and replaced and new fences installed if they are necessary for agricultural operations on the Property or to mark boundaries of the Property.

8) ROADS. New roads may be constructed if they are within impervious surface limits, approved in advance by Conservancy, and necessary to carry out agricultural operations or other allowed uses on the Property. Maintenance of existing roads as documented in the Baseline Documentation Report is allowed, however existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Conservancy, and necessary to carry out the agricultural uses or other allowed uses on the Property.

9) RECREATIONAL USES. Grantor may conduct recreational and educational activities that are both non-developed and non-consumptive if they do not negatively affect the soils and agricultural operations and are consistent with the Conservation Purposes and Conservation Values including, but not limited, bird watching, hiking, horseback and riding. Natural-surface trails for non-motorized recreational uses may be developed.

10) WINTER RECREATIONAL USES. Grantor reserves the right to allow for public use of the Property in the winter months when there is sufficient natural snow fall and cold enough temperatures to maintain human-powered nordic skate-skiing. The use of motorized machines to groom a track for human-powered skiing and the pre-season work to rake rocks is permitted. Winter trails groomed trails shall be developed, maintained and regulated by the Snyderville Basin Recreation District, their designee or assign.

11) HABITAT RESTORATION ACTIVITIES. Activities to restore or enhance native plant communities or terrestrial and aquatic wildlife habitat are permitted, provided such activities are consistent with the ALE Plan or other stewardship plans that exist from time to time.

12) SIGNS AND BILLBOARDS. Billboards are prohibited on the Property. Grantor and the Conservancy have the right to place a limited number of signs, of a maximum total square footage not to exceed 50 square feet with no single sign to exceed 16 square feet. Such signs may be placed on the Property for the following purposes:

- a. To indicate that the Property is conserved with a “Conservation Easement” held by the Conservancy; and

- b. To state rules and regulations, safety, or hazardous conditions found on the Property; and
- c. To advertise the Property for sale; and
- d. To advertise the temporary or seasonal sale of agricultural goods or services derived from the Property, such as hay and produce; and
- e. For such other purposes as the Conservancy, in its discretion, approves.

13) FIRE SUPPRESSION. Grantor may remove brush and vegetation necessary to minimize the risk of wildfire on the Property. Potential means to reduce or remove high risk fuel loads include, but are not be limited to: mechanized methods; biological controls, including short-duration grazing; slash, stack and burn; and controlled burns. If Grantor determines that an area exceeding five (5) acres must be cleared to reduce the risk of fire, it will notify the Conservancy of such action immediately following such clearing.

14) COMMERCIAL RECREATION. Grantor may use the Property for otherwise lawful non-developed and non-consumptive recreational uses that do not conflict with the Conservation Values and are consistent with the Conservation Purposes. Such permitted commercial uses include but are not limited to guided bird watching/wildlife tours, cross-country skiing and/or hiking.

15) SUBDIVISION. Separate conveyance of a portion of the Property or division or subdivision of the Property is prohibited, except where State or local laws or regulations explicitly require subdivision to construct residences for employees working on the Property. Grantor must provide written notice and evidence of such requirements to Conservancy and the Chief of the NRCS or his or her authorized designee (“Chief of NRCS”) prior to division of the Property.

16) COMMERCIAL OR INDUSTRIAL USES. The establishment of any commercial or industrial uses on the Property, other than the permitted agricultural uses described in this Exhibit C is prohibited. Examples of prohibited commercial or industrial uses include, but are not limited to: (a) the establishment or maintenance of any mineral extraction activities, as further described below, or; (b) the establishment of any apartment buildings. Upon prior written request from the Grantor, the Conservancy may permit certain other activities which may be interpreted as commercial, but which are determined by the Conservancy, in its sole discretion, to be consistent with the agricultural use and viability, the Conservation Purposes of this Easement and which do not have an adverse impact on the Conservation Values.

17) ON-FARM ENERGY PRODUCTION. Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Property. Renewable energy sources on the Property must be built and maintained within impervious surface limits, with minimal impact on the Conservation Values and consistent with the Conservation Purposes.

18) USE OR TRANSFER OF DEVELOPMENT RIGHTS. Except as specifically permitted by this Exhibit C, the exercise of any Development Rights associated with the Property is prohibited, including, without limitation, the construction or placement of any residential or other buildings, roads or vehicle trails, golf courses, camping accommodations,, mobile homes, house-trailers, permanent tent facilities, Quonset huts or similar structures, underground tanks, or

billboards, signs, or other advertising, and/or other structures or improvements, street lights, utility structures or lines, overhead power transmission lines, sewer systems or lines. Except as allowed under this Exhibit C, all Development Rights that are now or hereafter allocated to, implied, reserved, or inherent in the Property are terminated and extinguished and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described or to any other property adjacent or otherwise nor used for the purpose of calculating permissible lot yield of the Property or any other property.

19) OIL, GAS OR MINERAL EXPLORATION AND EXTRACTION. Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of the Easement or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method from the Property is prohibited. If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and their interests have not been subordinated to this Easement, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph.

20) NO HAZARDOUS MATERIALS. Use, dumping, storage, or other disposal of non-compostable refuse, trash, sewer sludge, unsightly or toxic materials, or Hazardous Materials is prohibited, except that fertilizers and herbicides permitted under Exhibit C may be used and stored on the Property, provided that all such use and storage is in compliance with applicable health, safety, and Environmental Laws and regulations and further provided that all such use and storage does not diminish or impair the Conservation Values.

21) FOREST MANAGEMENT AND TIMBER HARVEST. Forest management and timber harvesting is allowed, provided it is carried out to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils and terrain of the Property. In addition, if the Property contains 40 contiguous acres of forest or 20 percent of the Property is forestland then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, in consultation with the Conservancy. A forest management plan will not be required for the following allowed non-commercial activities: (a) cutting of trees for the construction of permitted roads, utilities, buildings and structures; (b) cutting of trees for trail clearing; (c) cutting of trees for domestic use as firewood or other domestic uses by Grantor; (d) removal of trees posing an imminent hazard to the health or safety of persons or livestock; (e) cutting of trees for fire suppression purposes or for fire-prevention or (f) removal of invasive species.

22) DUMPING, WASTE, VEHICLES, EQUIPMENT AND STORAGE. Accumulation or dumping of trash, refuse, sewage, junk or toxic materials is not allowed on the Property. This restriction will not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products, or agricultural byproducts on the Property.

23) OFF ROAD VEHICLE USE. Use of off road vehicles as reasonably necessary for uses permitted by this Exhibit C are permitted. Occasional recreational use of off-road vehicles is permitted, but the creation of a dirt-bike or moto-cross track is prohibited.

25) SURFACE ALTERATION. Except as otherwise provided herein, grading, blasting, filling, sod farming, earth removal or any other activities that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands on the Property is prohibited, except as follows: (a) dam and spring construction in accordance with an ALE Plan to create ponds and springs for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation, (b) erosion and sediment control pursuant to an erosion and sediment control plan approved by the Conservancy; (c) as required in the construction of agricultural buildings, or structures, roads and utilities approved by the Conservancy; (d) agricultural activities conducted in accordance with the ALE Plan.

26) UTILITIES. Granting or installation of new utility corridors serving land other than the Property is prohibited. Utilities to serve approved buildings or structures, including on-farm energy structures allowed under paragraph 17 of this Exhibit and agricultural structures that neither individually nor collectively have an impact on agricultural use and future viability and Conservation Values of the Property, with the prior approval of the Conservancy, provided the utilities or agricultural structures are consistent with the ALE Plan..

27) GRANTING OF EASEMENTS FOR UTILITIES AND ROADS. The granting or modification of easements for utilities and roads is prohibited when the utility or road will harm the protection of grazing uses, grassland conservation value, and other Conservation Values as determined by the Conservancy in consultation with the Chief of the NRCS.

28) WINTER SKI ACCESS. Owner may grant the right of public access for the purpose of nordic skiing (classic and skate) and snowshoeing pursuant to the terms of the draft Public Recreation and Winter Trail and Access Agreement attached as Exhibit D.

31) INCONSISTENT OR ADVERSE ACTIONS. Any action or practice that is inconsistent with the Conservation Purposes or that diminishes the Conservation Values is strictly prohibited.

**EXHIBIT D
TO
CONSERVATION EASEMENT**

PUBLIC RECREATION WINTER TRAIL AND ACCESS AGREEMENT

**EXHIBIT E
TO
CONSERVATION EASEMENT**

ACKNOWLEDGMENT OF PROPERTY CONDITION

In compliance with Section 1:170A-14(g)(5) of the federal tax regulations, the undersigned accepts and acknowledges that the Osguthorpe 160 Conservation Easement Baseline Documentation Report is an accurate representation of the property at the time the Conservation Easement was transferred to the Conservancy.

_____ Date _____

_____ Date _____

Summit Land Conservancy:

_____ Date _____
Cheryl Fox, Executive Director