

**Citizens' Open Space Advisory
Committee (COSAC V)
Council Chambers
445 Marsac Ave.
September 26, 2017**



AGENDA

- I. MEETING CALLED TO ORDER - 8:30am
- II. ROLL CALL
- III. PUBLIC INPUT
- IV. REGULAR AGENDA
 - a. ADOPTION OF MINUTES: August 22nd Meeting
Minutes (Attachment I)
 - b. STAFF AND BOARD COMMUNICATIONS/DISCLOSURES
 - c. OLD BUSINESS
 - i. Bonanza Flat Technical Resource Meeting Update- verbal (20 min)
 - ii. Library Field Easement- written (40 min)
 - d. Open Meetings Act Training- verbal (30 min)
- V. ADJOURN

Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the Park City Sustainability Department at 435-615-5201 24 hours prior to the meeting.

Attachment I – Draft Minutes August 22, 2017



**Citizens' Open Space Advisory Committee (COSAC)
445 Marsac Avenue, Council Chambers
Park City, Utah
August 22, 2017**

I. Roll-Call

City Council & Staff:

- Heinrich Deters
- Logan Jones

Committee:

- Wendy Fisher
- Jan Wilking
- Charlie Sturgis
- Carolyn Murray
- Rhonda Sideris
- Jim Doilney (via phone)
- Brooke Hontz
- Steve Joyce
- Kathy Kahn
- Cheryl Fox
- Kate (Summit Land)
- Cara Goodman
- Rick Shan
- Bronson

Guests & Members of the Public:

- Ed Parigian

II. Public Input

(ED): Library Field – everyone excited about Library Field project.

(STEVE): 1500 people out on Library field watching the eclipse. ...great community event

III. Approval of Minutes of June 27, 2017 Meeting

- (WENDY): Flammulated owl needs to be spelled correctly.

This species is considered the greatest concern.

Also she thought we were going to council every six weeks but that wasn't reflected in the last minute's dates.

- (BRONSON) Change Bronson to roll call as Present

MOTION: (JAN) Approve minutes with the corrections noted

(BRONSON): seconded

Vote: unanimous approval

IV. **Staff & Board Communications**

There were no staff and board communications.

V. **Old Business**

a. Library Field:

- i. (HD) Background Mar. 16th meeting with council – put out RFP in July. Summit lands submitted (only entity that did).
- ii. (CHERYL) – easement to be in place Dec. 1st. wants to bring the meat of the easement to the committee in September meeting so that they can approve and they can finalize. Working on Baseline. Predicated on CC saying yes on the 31st of August.
 - o Money needs to be raised. (in September) For continued stewardship of the easement. Legal defense money – it goes into protect the land \$3000 (standard). We need to find people to donate – mailing address or placing things on doors?
- iii. (ED) – wants to do the Old town hoe down for a party to celebrate the easement. Could be a potential way to raise money?

b. Old Ranch Hills Update:

- i. (HD) Background: Bonanza flat cooperative land exchange with County – Quarry Mountain was shared by county and city. They transferred the quarry mountain parcels for the old ranch hills – deal was that the land had to hold a conservation easement. Summit land was only one to submit for the easement.

The intent for transfer was mainly for management efficiency.

VI. **New Business**

a. Bonanza Flat Planning:

- i. (HD) - July 13th – we went to CC to talk about the framework for planning. Asking CC how do you want to go about it? What's the time line? Wanted to make sure we set up coordination for stakeholders and public input. COSAC needs representatives at the Bonanza Flat Technical Advisory Committee, as adopted by Council. Staff is asking COSAC to vote later in the meeting per representatives.

- ii. WENDY – vegetative analysis – done and will be in report for Aug. 31st. UOL is diligently working to get the baseline data before winter and progress is on schedule.
 - iii. (HD) Survey will also be done and they will be the official maps. Concerns about exact map.
 - Jurisdictional meeting – Main concern was ensuring the watershed is protected.
 - iv. (WENDY) - Motorized vehicle use and dog poop are big problems but not saying that they are action pieces. Also invasive species is a problem. – The areas that are currently less impacted are in great condition.
 - v. (HD) – emergency access and wildfire were also brought up in meeting on jurisdictional. (specifically Guardsman Pass TH)
 - 1. Boundary survey is being done. SLC public utilities are very interested in the where the borders are.
 - vi. (WENDY) – we are working on the management plan for it. To come out in the spring.
- b. Vote for Members to represent COSAC on the Bonanza Flat Technical Resource Advisory Committee.
- i. (STEVE) – we need to select member and alternate need to be at the meeting for technical advisory.
 - ii. (BROOKE) – volunteer (is the first)
 - iii. (JIM) – Volunteer (alternate)

**Motion (who): Brooke and Jim to represent COSAC on the Committee.
Second (who)**

Vote: Unanimous Approval.

Discussion: (BRONSON) Question per Annexation of Bonanza Flat. It just makes sense to do it.

- iv. (HD) The City has no plans to annex the Bonanza Flat property.
- v. (STEVE) The current Planning Commission just discussed the Annexation Boundary changes and is only recommending 'Stoneridge'. There are concerns that the Clark Ranch property easement is yet to be granted.
- vi. (WENDY) – we have the Clark Ranch management plan. – Baseline done – we are at the place of waiting for the city.
- vii. (HD) Council direction to work with Wendy and get the Clark Ranch easement before Council soon.....current direction is Bonanza, Library Field, Clark Ranch, Old Ranch Hills. (Old Ranch Hills is likely closer to completion)
- viii. (HD) – annexation and bond issues/questions are the things that are being considered at the city currently.
- ix. (HD) – city moves slowly – we want to only have to draw new annexation boundary lines once if possible.

VII. **Adjourn 10:02am**

- i. (JAN): adjourn meeting
- ii. (CHARLIE): seconded
- iii. Unanimous.....Meeting adjourned



COSAC Staff Report

Subject: COSAC Monthly Meeting
Author: Heinrich Deters
Department: Sustainability
Date: August 22, 2017
Type of Item: COSAC

Staff Recommendation

COSAC should review the DRAFT Library Preservation easement and provide input. (Attachment II)

Background

On March 16, 2017, The Citizens Open Space Advisory Committee (COSAC) and the Recreation Advisory Board (RAB) presented a joint recommendation to place a preservation easement on the Library Field.

<u>Date</u>	<u>Item</u>
March 16, 201	Staff Report- Library Filed Preservation Project- Page 100
March 16, 2017	City Council Meeting Minutes- Library Field Preservation Project- Page 8

Analysis

On July 17th, City Council selected SLC to hold a Preservation Easement on Library Field. On September 5th, RAB reviewed a draft easement and provided input. Input from that meeting has been included in the current form.

Staff has circulated the draft easement to various city departments, so that they may review and provide comment. Edits have been included. Further, staff and SLC has met on site and reviewed parameters of the easement for a pending survey, so as to create a legal description for the easement boundary.

Staff anticipates returning to City Council for final approval of the easement on October 12th or 24th.

Attachment II- DRAFT Library Field Preservation Easement
WHEN RECORDED, RETURN TO:

Summit Land Conservancy
P.O. Box 1775
1650 Park Avenue, Suite 202
Park City, Utah 84060

Park City Municipal Corporation
Attn; Mark Harrington
PO Box 1480
445 Marsac Avenue
Park City, Utah 84060

PRESERVATION EASEMENT

THIS PRESERVATION EASEMENT ("Easement") is made this ____ day of _____, ("Effective Date") by and between Park City Municipal Corporation ("Owner"), and Summit Land Conservancy, a Utah nonprofit corporation ("Conservancy") (Owner and the Conservancy 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;
Exhibit B: PropertyMap;
Exhibit C: Permitted and Restricted Uses and Practices.

RECITALS

Owner owns approximately 2 acres of land at 1255 Park Avenue Park City (the "Property"). The Property is described in Exhibit A and shown for reference purposes on the Property Map attached as Exhibit B.

The Property has significant preservation values of great importance to the Owner, Conservancy, and the people of Park City, Summit County and the State of Utah. The preservation values intended to be preserved and protected for the public trust under this Easement include: (i) open space views providing visual relief within a built-up urban area (hereafter "Aesthetic Value") (ii) passive and unstructured public recreational access (hereafter "Recreational Value") and (iii) historic values, as the Property complements and enhances the historic public library building (hereafter "Historic Value"). More particularly:

Aesthetic Value: The Property is open space, visible from Park Avenue and other residential streets. It buffers densely built, multi-story housing and an area likely to be further developed.

Recreational Value: The Property is used as a recreational area for unstructured activities such as picnics, sledding and dog-exercise. The field is a gathering place for neighborhood residents, visitors, pre-schools and other community groups.

Historic Value: The Property is part of the Carl Winters historic building property. The building was built in 1928, restored in 1993, and has been renovated recently to maintain its historic quality and public benefit as a public library, theatre and meeting space.

The Aesthetic Value, Recreational Value and Historic Value are hereafter described as the “Preservation Values” and are further documented in the “Baseline Documentation Report”, a copy of which is on file at the offices of Owner and Conservancy.

The Easement is granted with the approval of the Citizens Open Space Advisory Committee (COSAC), appointed by the Park City Council to facilitate the acquisition and preservation of open space within the greater Park City area.

As fee owner of the Property, Owner owns the affirmative rights to identify, preserve, and protect forever the Preservation Values of the Property. Owner desires to grant a preservation easement to the Conservancy pursuant to the ‘Land Conservation Easement Act’ of Utah’s statutes, 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 Owner, the Conservancy, the people of Summit County, and the people of the State of Utah.

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), organized to protect and conserve natural areas and ecologically significant land for scientific, charitable, and educational purposes; and is a qualified “holder” of a preservation easement under the Utah ‘Land Conservation Easement Act’.

To accomplish the Preservation Purposes (defined below), Owner desires to convey (grant) to the Conservancy and the Conservancy desires to obtain from the Owner a preservation 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 Preservation Values.

PRESERVATION 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, Owner voluntarily grants and conveys to, and the Conservancy accepts, a perpetual Preservation easement in, on, over, and across the Property, 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 Owner and the Conservancy agree as follows:

PRESERVATION PURPOSES. The purpose of this Easement is to permanently protect (preserve) the library field from development, and to protect (preserve) its aesthetic, recreational and historic values. In achieving the above-named purposes (collectively the “Preservation Purposes”), it is the intent of this Easement to permit the continuation of such uses of the Property as may be conducted consistent with the Preservation Values protected herein.

BASELINE DOCUMENTATION REPORT. By its execution of this Easement, the Conservancy acknowledges that Owner’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 Preservation Values, the Report identifies public policy statements and/or other factual information supporting the significant public benefit of this Easement. Conservancy may use the Report in enforcing provisions of this Preservation Easement, but is not limited to the use of the Report to show change of conditions. The Report is incorporated into this Conservation Easement by reference. Owner and the Conservancy approve the Report, a copy of which is on file with the Owner and the original of which is on file with the Conservancy at their respective addresses for notices set forth below.

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

Preserve and Protect. The right to preserve, protect, identify, monitor, and enhance the Preservation 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 .

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 Owner, 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, to take photographs of the property and to determine whether the Owner’s activities are in compliance with the terms of this Easement, all upon reasonable prior notice to Owner and in a manner that does not unreasonably disturb the use of the Property by Owner 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 Preservation Values.

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 Preservation Values, and the Conservancy has the right to require the restoration of such areas or features of the Property that might be damaged by any breach or inconsistent use or activity.

USES OF THE PROPERTY. Except as prohibited or otherwise limited by this Easement, Owner reserves the right to use and enjoy the Property in any manner that is consistent with the Preservation Purposes and the preservation of the Preservation Values. Owner will not perform, nor allow others to perform, any act on or affecting the Property that is inconsistent with the Preservation 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 Preservation Purposes (including, without limitation, any activity or use that diminishes or impairs the Preservation 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 Preservation Purposes and are thus prohibited or restricted.

Comment [A1]: RMP and CenturyLink have easements across the property and will need access rights to their facilities.

Comment [A2]: Can we keep all of the parking area along the north edge out of the preservation easement? It looks like it touches and shortens the parking area.

APPROVAL REQUEST.

The Conservancy's Approval. Owner 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, Owner will send the Conservancy written notice of Owner'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 Owner's notice.

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 Owner of its disapproval or approval or Owner'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. Approval to proceed with, 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.

ENFORCEMENT AND REMEDIES.

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 Owner of such violation who will, 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 Owner 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. Owner 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, 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.

Owner 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 Owner for any use of or activities upon the Property which are a violation of this Easement and which 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 to enforce against Owner unless Owner 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.

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 Owner 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.

Costs of Enforcement. Owner will reimburse the Conservancy for all reasonable expenses incurred by the Conservancy in enforcing the terms of this

Easement, 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 Owner if Owner is deemed to be responsible for damage to the Property.

Emergency Enforcement. If the Conservancy, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Preservation Values or to prevent breach or extinguishment of this Easement, the Conservancy may pursue its remedies under this Easement without prior notice to Owner and without waiting for the cure period to expire.

The Conservancy's Discretion. Enforcement of the terms and provisions of this Easement will be at the sole discretion of the Conservancy, and 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. Owner waives the defenses of prescription, laches and the running of any applicable statute of limitations.

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.

Acts Beyond the Owner's Control. Nothing contained in this Easement will be construed to entitle the Conservancy to bring any action against Owner for, or to require the Conservancy or Owner to actively restore destruction of or damage to the Preservation Values resulting from, any injury to or change in the Property resulting from causes beyond Owner's control, including fire, flood, storm, earth movement, and other natural disasters or from any prudent action taken by Owner 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 Owner of the obligation to clean-up garbage or materials dumped on the Property by third parties and the obligation to prevent third party violations of this Easement, or to otherwise maintain the Property in a condition consistent with the purposes of this Easement.

REPRESENTATIONS AND WARRANTIES.

Hazardous Materials. To the best of Owner's knowledge, Owner represents and warrants that the Property (including, without limitation, soil,

groundwater, and surface water) is free of any conditions that individually or in the aggregate: (i) constitute a present or potential threat to human health, safety, welfare, or the environment; or (ii) violate any Environmental Law (defined below). Owner represents and warrants that there are no underground tanks located on the Property. Owner represents and warrants that Owner will comply with all Environmental Laws in using the Property and that Owner will keep the Property free of any material environmental defect, including, without limitation, contamination from Hazardous Materials (defined below). **Do we have a phase I EA**

Comment [A3]: The water system is on the corner of 13th and Norfolk. This is newer and should not have any contaminated bedding. The RMP and CenturyLink easements should have been built with clean material. You probably need to double check on these utilities though since in the past contaminated soils were used for bedding.

State of Title. Owner represents and warrants that Owner has good and marketable title to the Property, subject only to any liens encumbrances and defects described in the title commitment obtained by Conservancy prior to execution of this Easement. To the best of Owner's knowledge, there are no easements, leases or other agreements with third-parties, that might cause extinguishment of this Easement, or that would materially impair the Preservation Purposes.

Compliance with Laws. Owner 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.

No Litigation. Owner 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 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.

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 Owner represent and warrant that the execution of this Easement has been duly authorized by Owner.

COSTS, LEGAL REQUIREMENTS, AND LIABILITIES. Owner will be responsible for and will bear all costs and liabilities of any kind related to the 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 Owner, the public, or any third parties from risks relating to conditions on the Property. Owner agrees to pay before delinquency any and all real property taxes and assessments levied on the Property and agrees that the Owner 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 Owner. Owner will be solely responsible for any costs related to the maintenance of general liability insurance covering Owner's acts on the Property. Owner remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use by Owner 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 Owner, the obligations of each and all of them under this Easement will be joint and several.

INSURANCE REQUIREMENT. Owner shall maintain general public liability insurance for personal injury or death and property damage occurring upon or about the Property, in an amount consistent with industry standards. Owner shall include the Conservancy as an additional insured, and shall provide Conservancy with a certificate of insurance coverage.

RUNNING WITH THE LAND. This Easement burdens and runs with the Property in perpetuity. Every provision of this Easement that applies to Owner 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 interest may appear.

SUBSEQUENT TRANSFERS AND SUBORDINATION. Owner may transfer the Property in its entirety, but not in any portion less than its entirety. Owner agrees that the terms, conditions, restrictions, and purposes of this Easement or reference thereto will be inserted by Owner in any subsequent deed or other legal instrument by which Owner divests either the fee simple title or a possessory interest (including, but not limited to, any leases) of the Property; and Owner 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 Owner 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 Owner, by acceptance of a deed, lease, or other document purporting to convey an interest in all or any portion of 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.

INDEMNIFICATION.

A. Cross Indemnification. Notwithstanding any other provision of this Agreement to the contrary, the Parties indemnify, defend, and hold harmless each other, including, without limitation, each Party's 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 use of or activities on the Property by the Party.

Owner Indemnification. Owner indemnifies, defends, and holds harmless the Conservancy and its Indemnified Parties for 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, any claims pertaining to the Owner's title to the Property or representations and warranties made in this Easement, and any injury to or the death of any person, or damage to any property resulting from any act, omission, condition, or any matter related to or occurring on or about the Property except the extent of the gross negligence or intentional torts of the Indemnified Parties.

Limitations on Indemnifications. Pursuant to the provisions of this Paragraph, the Conservancy is not indemnifying the Owner 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 Easement or with respect to the condition of the Property. The limitation in this subparagraph does not absolve the Conservancy of any liabilities it might otherwise have, independently of this Easement, for wrongfully and directly, without the participation or consent of the Owner, causing any dangerous condition to come into existence on the Property. No provision of this Easement shall waive any defense or limitation of the Government Immunity Act of Utah (Utah Code Ann. §63G-7-101, et seq.)

13. CHANGE OF CONDITIONS. In granting this Easement, Owner 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 Owner and the Conservancy that any such changes will not be deemed circumstances justifying the extinguishment of this Easement. In addition, the inability of Owner, or Owner's 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.

EXTINGUISHMENT. If subsequent, unexpected circumstances arise in future that render the purposes of this Easement impossible to accomplish, this Easement can be released, terminated, or otherwise extinguished, whether in whole or in part, only (a) in a judicial proceeding 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 Preservation purposes. Each Party will promptly notify the other when it first learns of such circumstances. In accordance with IRS Regulations, the amount of the proceeds to which the Conservancy will be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, will be determined, unless otherwise provided by law at the time, in accordance with Paragraph 16 below. The Conservancy will use all such proceeds in a manner consistent with the Conservancy's mission and conservation purposes.

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, Owner 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 and Owner's interests as of the Effective Date as set forth in the section below, it being expressly agreed that this Easement constitutes a compensable property right. All expenses incurred by Owner and the Conservancy in such action will be paid out of the recovered proceeds.

PROPERTY INTEREST VALUATION. This Easement constitutes a real property interest immediately vested in the Conservancy, which the Parties stipulate to have a fair market value equal to ____ of the full fair market value of the Property as of the Effective Date. For the

purpose of this Easement, the ratio of the value of this Easement to the unencumbered value of the Property will remain constant.

AMENDMENT. If circumstances arise under which an amendment to or modification of this Easement might be appropriate, the Conservancy and Owner 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 Preservation Values of the Property and the Preservation 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. Nothing in this Paragraph will require either Party to agree to any amendment or to consult or negotiate regarding any amendment.

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

NOTICE.

Notice for Entry. Where notice to Owner of the Conservancy's entry upon the Property is required under this Easement, the Conservancy will notify any of the persons constituting Owner or their authorized agents by telephone or in person or by written notice in the manner described in Paragraph 17(B) prior to such entry.

Written Notices. 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 or e-mail with the original deposited with the United States Post office, postage prepaid; 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 Conservancy:	Summit Land Conservancy P.O. Box 1775 1650 Park Avenue, Suite 200 Park City, Utah 84060 Attention: Executive Director
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To Owner:

Park City Municipal Corporation
PO Box 1480
Park City, Utah 84060
Attention: Open Space and Trails Manager

Either Party may, from time to time, by written notice to the other, 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.

INTERPRETATION.

Intent. It is the intent of this Easement to protect the Preservation 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 Preservation Values and Preservation 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 Preservation provisions will apply.

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

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.

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 “owner” 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 Owner’s ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

Merger. In the event that the Conservancy takes legal title to Owner’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) of the United States Internal Revenue Code (1986), as amended, which organization has among its purposes the conservation and preservation of land and water areas.

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

Definitions.

The term “IRS Code” means the Internal Revenue Code of 1986, as amended through the applicable date of reference.

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.

The terms “Owner” and the “Conservancy”, and any pronouns used in place thereof, mean and include, respectively, Owner and Owner’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.

The term “Hazardous Materials” includes, without limitation, any of the following wastes, materials, chemicals, or other substances (whether in the form of liquids, solids, or gases, and whether or not airborne) which are ignitable, reactive, corrosive, toxic, or radioactive, or which are deemed to be pollutants, contaminants, or hazardous or toxic substances under or pursuant to, or which are to any extent regulated by or under or form the basis of liability under any statute, regulation, rule, ordinance, order, or requirement concerning such wastes, materials, chemicals, or other substances (in each case, an “Environmental Law”), including, but not limited to, petroleum-based products and any material containing or producing any polychlorinated biphenyl, dioxin, or asbestos, as well as any biocide, herbicide, insecticide, or other agrichemical, at any level that may (a) constitute a present or potential threat to human health, safety, welfare, or the environment, (b) exceed any applicable or relevant and appropriate cleanup standard, or (c) cause any person to incur any investigation, removal, remediation, maintenance, abatement, or other cleanup expense; it being understood that such Environmental Laws include, but are not limited to Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Section 9601 et seq.); the Hazardous Materials Transportation Act (49 USC Sections 6901 et seq.);

similar Utah state environmental laws; and any rule, regulation, or other promulgation adopted under any of the foregoing laws.

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.

RESTRICTIONS ON TRANSFER. Other than in the context of an extinguishment that complies with section ____ of this Easement or a condemnation that complies with section ____, this Easement may be transferred by Conservancy, only 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 Owner 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.

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

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.

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.

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

24. ENTIRE AGREEMENT. This Easement, including the Exhibits attached hereto, sets forth the entire agreement and understanding of the Parties with respect to the transactions contemplated by this Easement and supersedes all prior arrangements, promises, communications, representations, warranties and understandings, whether oral or written, by any

Party or any officer, employee, representative or agent of any Party with respect to the transactions contemplated by this Easement.

OWNER AND THE CONSERVANCY have executed this Preservation Easement as of the Effective Date.

OWNER:

Park City Municipal Corporation

CONSERVANCY:

Summit Land Conservancy, a Utah nonprofit corporation

By: _____
_____, Mayor

By: _____
Cheryl Fox, Executive Director

STATE OF UTAH)
 : ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of _____. 2017, by _____, the Mayor of Park City Municipal Corporation.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

STATE OF UTAH)
 : ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by Cheryl Fox, the Executive Director of Summit Land Conservancy, a Utah nonprofit corporation.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

**EXHIBIT A
TO
PRESERVATION EASEMENT**

LEGAL DESCRIPTION OF THE PROPERTY

(metes and bounds legal description to be included after receipt of survey)

Part of tax parcel #CWSS-A-X

**EXHIBIT B
TO
PRESERVATION EASEMENT**

PROPERTY MAP

**EXHIBIT C
TO
PRESERVATION EASEMENT**

PERMITTED AND RESTRICTED USES AND PRACTICES

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 Preservation 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 Preservation Values or that otherwise violates this Easement.

1. **RECREATIONAL USES.** The Property shall be maintained for informal, non-motorized recreational uses consistent with an undeveloped park and unstructured play area. Recreational uses include but are not limited to picnics, frisbee games, ball games, walking, sledding, snowman building, athletic training, children’s play, dog exercise, and occasional uses to complement programs and events held by or in accordance with the library.
2. **MANAGEMENT AND REGULATION.** Owner shall maintain and enforce rules and regulations for use of the Property and may make changes from time-to-time, without prior notice to or consent of the Conservancy. Proposals pertaining to permitted or prohibited recreational uses may be considered by the Recreation Advisory Board (RAB), without notice to or consultation with the Conservancy.
3. **BUILDINGS AND STRUCTURES.** Buildings and structures such as restrooms, pagodas, pavilions, tennis courts, skateboard parks, swimming pools and other major park amenities are prohibited. Residential and commercial buildings are prohibited. Permanent jungle-gyms, swing-sets, slides and other play equipment is prohibited. Moveable play equipment for temporary and personal use is permitted.
4. **FENCES.** Fences are not permitted, other than temporary fences in connection with special events or occasional program use otherwise permitted pursuant to this Exhibit C, or to temporarily fence-off areas for repair, maintenance or public safety purposes.
5. **ROADS, SIDEWALKS AND TRAILS.** Roads, sidewalks and/or trails are not permitted on the Property.
6. **LANDSCAPING.** Landscaping shall be designed and maintained to accommodate unstructured recreational uses and maintain the open, field-like quality of the Property and unobstructed viewshed, particularly from the library parking lot across to Norfolk Avenue. Trees, garden beds, boulders, planters or similar landscaping shall be located near the perimeter of the Property, in a manner that minimizes the visual impact to the view across the field. Trees shall not be planted along the west perimeter (adjacent to Norfolk Avenue) and no additional trees shall be planted adjacent to the parking lot on the east boundary.
7. **MINOR PARK AMENITIES.** Amenities that are fixtures including, but not limited to, benches, picnic tables and immovable trash cans shall be installed only upon prior notice and written approval of the Conservancy, not to be unreasonably withheld. Amenities shall be located at the perimeter of the Property and in a manner that does not unduly restrict the open, unobstructed view across the field. Proposals for the installation of said amenities shall be considered pursuant to policies and procedures established by the Owner from time-to-time. Proposals considered by the Recreational Advisory Board (RAB) shall be reviewed

Comment [A4]: CLINT: It’s my understanding there will be no restrictions when it comes to maintenance. Parks staff will be allowed to aerate, mow, perform irrigation repair and maintenance, prune trees, and replace any dead trees.

Comment [A5]: CLINT: we would like to install 1 large tree on the north-west side of the field as a focal point and to complete Maria’s original planting design.

Comment [A6]: CLINT: Maria would like to remove the plastic chairs that residents have put on the field and replace them with 4 permanent benches. The style of the benches can be coordinated with you and Kate and we would like to install them on the north side of the field close to the existing trees as there seems to be a certain need.

by the Conservancy prior to any recommendation from RAB to City Council, and RAB's recommendation will include the Conservancy's input as to whether the proposed minor park amenity is consistent with the terms of this Preservation Easement.

8. SPECIAL EVENTS. Special events permitted by Park City Municipal's special event application and review process are permitted.
9. PERMANENT SIGNS. Billboards are prohibited on the Property. Owner and the Conservancy have the right to place a limited number of signs at the perimeter of the Property, of a maximum total square footage not to exceed 40 square feet with no single sign to exceed 3 square feet. Such signs may be placed on the Property for the following purposes:
 - a. To indicate that the Property is conserved with a "Preservation Easement" held by the Conservancy; and
 - b. To state rules and regulations, safety, or hazardous conditions found on the Property;
 - c. To regulate the use of parking spaces on parking lots and streets adjacent to the Property.
10. PARKING AND MOTORIZED VEHICLE USE. Motorized vehicles are not permitted on the property other than for emergency services, for landscaping and Property maintenance, for the maintenance of utilities, for the installation of amenities or pursuant to a use consistent with a special event described in this Exhibit.
11. ADA ACCESS. The terms of this Easement shall not prevent the Owner from allowing the use of electric wheelchairs on the Property, or other power-driven mobility devices pursuant to Owner's obligations under the American's With Disabilities Act of 1990, or other laws and regulations pertaining to the rights of persons with disabilities.
12. SUBDIVISION. The legal or de facto division, subdivision, or partitioning of the Property is prohibited. The terms and conditions of this Easement will apply to the Property as a whole, and the Property will not be sold, transferred, or otherwise conveyed except as a whole, intact, single piece of real estate; it being expressly agreed that neither the Owner nor the Owner's personal representative, heirs, successors, or assigns will sell, transfer, or otherwise convey any portion of the Property that constitutes less than the entire Property. The existence of any separate legal parcels, if any, as of the Effective Date will not be interpreted to permit any use or activity on an individual legal parcel that would not have been permitted on such individual legal parcel under the terms and conditions of this Easement as applied to the Property as a whole.
13. COMMERCIAL RECREATIONAL USES. The Property may be used non-exclusively by schools, summer camps or other community groups for educational or recreational purposes, provided such uses are consistent with the Preservation Values and do not unduly interfere with the public use and enjoyment of the Property by other recreational users.

14. RESIDENTIAL AND INDUSTRIAL USES: The Property shall not be used for residential or industrial purposes.
15. MINING AND NATURAL RESOURCES DEVELOPMENT. Subject to pre-existing mineral rights of record, the exploration for or extraction of minerals, gas, hydrocarbons, soils, sands, gravel, or rock, or any other material on or below the surface of the Property is prohibited. Owner will not grant any rights to any minerals, oil, gas, or hydrocarbons, including the sale or lease of surface or subsurface minerals or any exploration or extraction rights in or to the Property, and Owner will not grant any right of access to the Property to conduct exploration or extraction activities for minerals, oil, gas, or hydrocarbons, or other substances on any other property.
16. 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 for landscaping may be used and on the Property, provided that all such use is in compliance with applicable health, safety, and Environmental Laws and regulations and further provided that all such use does not diminish or impair the Preservation Values.
17. DOGS. Leashed and off-leash dogs are permitted, pursuant to City and County laws and regulations in effect from time-to-time.
18. BICYCLE USES. The use of bicycles and similar wheeled devices is permitted, but the Property shall not be specifically developed for bicycle uses.
19. UTILITIES. Granting or installation of new utility corridors for above-ground utilities that serve land other than the Property is prohibited. Upon prior written notice to the Conservancy, the Owner may permit underground utilities to serve land other than the Property provided such approval is conditioned upon restoration and re-vegetation of the Property and timely completion of the utility installation.

Comment [A7]: Maintenance of existing utilities is permitted. Maintenance or improvements associated with adjacent rights of way or library parking may utilize the field for temporary construction access and staging compliant with Park City Planning and Building Department permitting.