

When recorded, return to:

The Utah Open Lands Conservation Association, Inc.

1488 S. Main Street

Salt Lake City, UT 84115

THE PARK CITY ARMSTRONG PASTURES
DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement"), made as of this 21 day of November, 2019, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation ("Grantor"), whose address of 445 Marsac Avenue, Park City, UT 84060, and

THE UTAH OPEN LANDS CONSERVATION ASSOCIATION, INC., a Utah non-profit corporation ("Grantee") whose address is 1488 S Main Street, Salt Lake City, Utah 84115.

EXHIBITS AS FOLLOWS:

Exhibit A: Property Description

Exhibit B: Property Map

Exhibit C: Trail Map Parcel

28493

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property, located along the Park City Municipal golf course, in Park City, Summit County, State of Utah, known as the Armstrong Pastures, more particularly described on Exhibit "A" attached hereto and incorporated herein, and located on the property map described on Exhibit "B" attached hereto and incorporated herein, which together constitutes (the "Property"); and

WHEREAS, the purpose of this Easement is to protect forever the scenic and aesthetic, public recreational, wildlife habitat, and open space qualities of the Property; and

WHEREAS, the Property has significant conservation values as recognized in the Utah Land Conservation Easement Act, (Utah Code §§ 57-18-1 to 57-18-7); and Grantor intends to convey this Easement under the statutory provisions of that Act and other applicable provisions of Utah statutory and common law; and

WHEREAS, the Property has open space value, including valuable scenic view characteristics, wildlife habitat including riparian systems, and public recreation, all of which constitute the Property's Conservation Values ("Conservation Values"), and are worthy of conservation and of great importance to Grantor, Grantee, the citizens of Park City, and the State of Utah (Park City, Utah voters approved by a 77.7% vote, significant governmental support to preserve the Conservation Values); and

WHEREAS, the Conservation Values are described in more detail in Paragraphs A through C immediately below and the preservation of which are of great importance to Grantor and Grantee, and which provide incalculable public benefit to the citizens of Park City and numerous counties in the State of Utah, and the United States of America, and the granting of this Easement will result in the:

- A. Protection and preservation of relatively natural habitat in accordance with 26 U. S. C. §170(h)(4)(A)(ii) and accompanying Treasury Regulations, including protection and preservation of habitat appropriate for several wildlife species identified on the Property including nesting sandhill cranes, fawning grounds for Mule Deer (*Odocoileus hemionus*), calving habitat for Shiras moose (*Alces, alces*) and habitat for Rocky Mountain Elk (*Cervus canadensis nelsoni*), important migration corridors for mule deer, Rocky Mountain elk, and moose, includes habitat for Mountain Lion (*Puma concolor*) which is known to be present on the Property, raptor habitat and upland hillsides on the Property provide Gambel's oak (*Quercus gambelii*) and mountain shrub communities that provide unique habitat values and include ecological connections to adjacent aspen forest and riparian habitats;
- B. Protection of open space for the scenic enjoyment of the general public and the protection of open space pursuant to a clearly delineated governmental policy in accordance with 26 U. S. C §170(h)(4)(A)(iii) and accompanying Treasury Regulations, as funding for the purchase of this Conservation Easement on the Property came in part from restricted proceeds of a \$48 million Treasure Hill and Armstrong Snow Ranch Pastures open space bond specific to the Property, which passed by a 77.7% margin of the Park City community on November 6, 2018, to "forever preserve open space, park and recreational land located in Treasure Hill and Armstrong Snow Ranch Pastures" and the protection of the scenic views of the Property which can be seen from several vantage points including the public Armstrong Trail, Park City Municipal Golf Course, Thaynes Canyon and Three Kings Drive, and Meadows Drive, and this protection is even more valuable because it is adjacent to similarly protected property owned by Park City Municipal Corporation;
- C. Protection of public recreation, as the Property will provide winter recreational trails accessible to the general public in the form of a destination snow shoe trail and winter nordic cross-country ski trail; and

WHEREAS, Grantee has documented and established throughout this Easement, an inventory of the Conservation Values and the current condition of the Property in the baseline documentation, defined below, which is, by this reference, made a part hereof; and

WHEREAS, Grantor desires and intends that the Conservation Values of the Property be conserved and maintained by the continuation, initiation, or introduction of activities on the Property that will not compromise nor be inconsistent with the protection of the Conservation Values; and

WHEREAS, Grantor, as the fee owner of the Property, holds the right to identify, conserve, enhance, and protect in perpetuity the Conservation Values of the Property; and

WHEREAS, Grantor values the undeveloped nature of the Property; and

WHEREAS, the State of Utah has recognized the importance of both public and private efforts to conserve and protect the state's natural resources by the enactment of Utah Code §§ 57-18-1 to 57-18-7; and

WHEREAS, Grantee's mission is to conserve and protect open space and natural areas for ecological, scientific, historic, recreational, and educational purposes; and The Utah Open Lands Conservation Association, Inc. is a non-profit, tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and a qualified conservation easement holder under Utah Code § 57-18-3; and Grantee is a qualified organization under Section 170(h)(3) of the Internal Revenue Code to receive and hold conservation easements; and

WHEREAS, the parties desire that any interpretation of this Easement be construed to further the conservation, protection, and enhancement of the Property's Conservation Values.

NOW, THEREFORE, in consideration of the recitals as set forth above and the covenants, terms and conditions and restrictions contained herein, which the parties hereby agree constitute adequate consideration for this Easement and pursuant to the laws of the State of Utah and in particular Utah Code 57-18-1 et seq (1985), Grantor hereby irrevocably grants and conveys to Grantee and its successors in interest a PERPETUAL CONSERVATION EASEMENT. This Easement is made over and across all of the Property to preserve and protect its Conservation Values. This Easement shall forever bind Grantor and Grantor's successors in ownership and use of the Property as well as Grantee and any qualified successor of Grantee as identified in Section IX below. This Easement is granted in perpetuity and any mortgage lien or other encumbrance other than encumbrances of sight or record existing at the time of this instrument's signing, shall be subordinate to the rights and intentions of this Easement and Grantee's ability to enforce the protection of the Conservation Values described herein. The scope of this Easement is set forth herein.

SECTION I - PURPOSE

The purpose of this Easement is to forever protect and preserve the Conservation Values of the Property by prohibiting any use of the Property that may materially impair or interfere with such protection and preservation (the "Conservation Purpose"), allowing the Property to remain forever in its scenic open space setting.. The parties agree that the Conservation Values are not likely to be materially adversely affected by the continued use of the Property as authorized in Section III to this Easement. Grantor and Grantee intend that this Easement will confine uses of the Property to only those activities that are consistent with the Conservation Purpose.

SECTION II - RIGHTS OF GRANTEE

To accomplish the Conservation Purpose, Grantor hereby conveys the following rights, without

restriction, to Grantee, which rights shall be in addition to and not in limitation of any other rights and remedies available to Grantee:

- (a) to identify, preserve, and protect in perpetuity the Conservation Values consistent with the terms of this Easement and consistent with any third-party rights of record in and to the Property that were not subordinated to the terms and conditions of this Easement on the effective date of the purchase of the Property;
- (b) to prevent Grantor and third persons (whether or not claiming by, through, or under Grantor) from conducting any activity on or use of the Property that is not consistent with the terms of this Easement, and to require Grantor or third persons to restore any areas or features of the Property that may be damaged by an inconsistent activity or use;
- (c) to enter upon the Property at reasonable times and in a reasonable manner to monitor Grantor's compliance with and otherwise enforce the terms of this Easement;
- (d) to enter onto the Property in the case of an emergency as determined by Grantee, in which event Grantee shall notify Grantor prior to entering onto the Property, if possible, or as soon thereafter as is reasonably practical;
- (e) to obtain injunctive and other equitable relief against any violations, including restoration of the Property to the condition that existed prior to any such violation;
- (f) to enforce this Easement in the case of breaches by Grantor or by third persons (whether or not claiming by, through, or under Grantor) by appropriate legal proceedings, after providing Grantor with reasonable notice and a reasonable opportunity to cure as provided in Section VII;
- (g) to erect signage at such locations on the Property as determined mutually between Grantor and Grantee identifying Grantee as the holder of this Easement, the terms of this Easement, or the Property's protected status; and
- (h) to burden title to the Property in perpetuity and bind Grantor and all future owners and tenants of the Property.

SECTION III - PERMITTED USES AND PRACTICES

The following uses and practices, while not an exhaustive recital of permitted uses and practices, are consistent with this Easement. The uses and practices described in this Section may not be precluded or prevented by this Easement, except under the following circumstances: the uses and practices may be precluded when this Easement requires Grantee's prior approval of an activity as provided in Section IV of this Easement or when such uses or practices are conducted or allowed to take place in a manner which violate the terms of this Easement; pose a serious threat of material damage to the Conservation Values protected by this Easement; or constitute a prohibited use or practice as set forth in Section V of this Easement.

A. Wildlife Habitat, Open Space, and Native Ecosystem. Grantor may maintain and improve the Property for wildlife habitat and open space. In this regard, Grantor may use such techniques and methods selected from time to time by Grantor to restore and maintain the native biological diversity of the Property including, but not limited to, invasive weed suppression, successional forest restoration and other passive ecological restoration.

B. Public Access and Recreational Trail. The right to identify and construct a winter nordic cross-country trail in accordance with recognized applicable design standards and a snow shoe trail contemplated within the area identified in Exhibit "C", attached hereto and incorporated herein, for public access and maintenance of said trail, provided that

1. The surface materials used on the trail are natural such as woodchip or dirt and remain pervious to water;
2. Grantee shall approve the final design and layout of the trail prior to construction;
3. Any disturbance associated with the winter trail construction is revegetated;
4. Fencing is provided to clearly delineate the public trail access area;
5. Signage prohibiting dogs on the trail;
6. Grantor may mow the winter trail in preparation of the winter use.

This Subsection B of Section III is to be interpreted so as to further the intent of the Grantor and Grantee to minimize trail development, trail use, and trail activity that materially interferes with the Conservation Values; including open space and wildlife conservation values.

B. Recreational Trail. The right to identify, construct, and maintain other public trails provided that:

C.

1. the surface materials used on the trail are natural such as woodchip or dirt and remain pervious to water;
2. Grantee approves the final design, and layout of the trial prior to construction after considering all factors, including potential adverse impact to all Conservation Values including wildlife and water quality and adverse impact on the Armstrong Snow Ranch Pastures neighboring property;
3. Appropriate fencing to delineate the trail to the extent Grantee believes it is needed, provided said fencing protects the scenic quality;
4. All disturbance associated with the construction is revegetated; and
5. Dogs will be prohibited and appropriate signage will be placed on the trial

D. Trail Related Improvements. The right to construct minimal trail related improvements to any permitted trail, provided that the improvements are necessary to prevent the impairment of the Conservation Values. This permitted use shall allow for the placement of no more than two (2) benches at scenic points of the Property.

E. Signs. The right to place signs on the Property for the following purposes:

1. To state the purpose of the conservation easement and the terms of this Easement;
2. To identify the trail or interpretive sites on the Property;
3. To post the Property with no trespass and/or no hunting signs;
4. To state rules and regulations, safety, or hazardous conditions found on the

Property; and

5. This Subsection D of Section III should be interpreted so as to further the intent of the Grantor to post the property and the regulations of its use while simultaneously minimizing the effect signs may have on the scenic character.

F. Noxious Weed Control. Chemicals considered necessary to control noxious weeds shall be used in a de minimis way to ensure protection of the riparian value of the Property and to minimize possible harm to the native biological diversity of the Property. Grantor may use agrichemicals as necessary to control noxious weeds or insects. Pesticide application is prohibited within a minimum of twenty five feet (25') of all wetland edges and streams. Chemical controls may only be used in accordance with all applicable laws, and in those amounts and with that frequency of application constituting the minimum necessary to accomplish reasonable noxious weed objectives. The use of such agents shall be conducted in a manner to minimize any adverse effect on the natural values of the Property and to avoid any impairment of the natural ecosystems and their processes.

G. Problem or Diseased Animals. Grantor may use legal methods to control diseased and problem animals as permitted by state and federal laws.

H. 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 and should include requiring removal of deadfall and slash. Removal methods shall limit the effect on the native biological diversity and may include, but would not be limited to: hand removal, mechanized methods, and biological methods such as short-duration grazing.

I. Utilities. Existing utilities may be maintained or relocated provided any utility relocation is first approved by Grantee, the utility is buried, and any disturbance to the property is restored, as much as is practical, to the original undisturbed nature of the Property.

J. Residual Rights. Except as expressly limited by this Easement, Grantor may exercise and enjoy all rights as owner of the Property not inconsistent with this Easement.

SECTION IV - PRIOR APPROVAL

If any provision of this Easement requires Grantor to obtain Grantee's approval prior to performing any act or undertaking any enterprise, Grantor shall not perform that act or undertake that enterprise until the notice and approval provisions of this Section have been fully satisfied. Nothing in this Section shall in any way prohibit or limit the Grantee's ability to obtain writs or injunctive relief relating to any violation of this Easement.

A. Grantor's Written Notice. Prior to the commencement of any activity, use, or enterprise which requires Grantee's approval, Grantor will first notify Grantee in writing of the proposed activity, use, or enterprise. The notice must fully inform Grantee of all material aspects

of the proposed activity, use, or enterprise. Grantor will send such notices to Grantee by registered or certified mail, return receipt requested, addressed to Utah Open Lands Conservation Association, Inc., 1488 South Main Street, Salt Lake City, UT 84115, Attention: Board of Trustees, or to such other address as Grantee may designate in writing.

B. Grantee's Response. Grantee shall have forty-five (45) days from the date such notice is received (as indicated by the registered or certified return receipt) to review the proposed activity, use, or enterprise and to notify Grantor of any objections it may have to the activity, use, or enterprise. The objections, if any, shall be based upon Grantee's opinion that the proposed activity, use or enterprise is likely to cause material damage to the Property's Conservation Values or is otherwise inconsistent with the purpose and/or provisions of this Easement. If, in the Grantee's judgment, the proposal presented by Grantor can be modified to avoid material damage to the Conservation Values and otherwise comply with the purpose and provisions of this Easement, then the response shall inform Grantor how the proposed activity, use or enterprise may be modified to conform with this Easement. Except as provided in Subsection C of this Section IV, Grantor may commence the proposed activity, use, or enterprise only after it receives Grantee's express written approval, and only in the manner explicitly proposed by the Grantor and approved by Grantee. The Grantee will send such response to Grantor by registered or certified mail, return receipt requested, addressed to Grantor at Grantor's addresses as set forth on page one, or to such other address as Grantor may designate in writing.

C. Grantee's Failure to Respond: Grantee agrees to use reasonable diligence to respond to a notice from Grantor within forty-five (45) days from the date such notice is received (as indicated by the registered or certified mail return receipt or the "read receipt" confirming that the email message was opened by Grantee) or within forty-five (45) days after Grantee has received adequate information to evaluate the proposed act, use, or practice, whichever is later. Grantee's failure to respond within the forty-five (45) day period shall be deemed a constructive denial. Grantor may seek any legal remedy from the courts and recover reasonable fees and costs if a court rules the denial unjustified.

D. Force Majeure. Grantor will not be obligated to send a notice to Grantee, and Grantee will not be entitled to bring an action against Grantor for undertaking any prudent activity in a bona fide emergency situation to prevent, abate, or mitigate the immediate threat of significant damage to the Property resulting from causes beyond Grantor's control, including fire, flood, storm, and earth movement. Grantor will promptly notify Grantee of any injury to the Property caused by such events or the efforts to prevent, abate, or mitigate any damage caused by such events.

SECTION V - PROHIBITED USES AND PRACTICES

Any activity on or use of the Property inconsistent with the purpose of this Easement and which is likely to cause material damage to the Conservation Values is expressly prohibited. Grantor agrees that the following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are explicitly deemed inconsistent with the purposes of this Easement, and shall be prohibited (the "Prohibited Uses").

A. Subdivision. Grantor does not have the right nor will any attempt be made to divide, subdivide, or take any action which creates an actual or *de facto* subdivision of the Property.

D. Construction. Grantor will not construct or affix to the ground any structures or facilities on the Property for use in human habitation, to shelter domestic animals or feral cats, or for commercial or industrial activities whether temporary or permanent. No materials shall be applied to the property in the maintenance of the property or for trail use that are impervious to water or are of a synthetic material.

E. Proffers, Dedications, Transfer of Development Rights. Proffer or dedication of the Property or any portion thereof as open space in or as part of any residential subdivision, any real estate development plan, or any other type of residential, commercial, or industrial development is prohibited. Proffer or dedication of the Property or any portion thereof for the purpose of fulfilling density requirements to obtain approvals for any zoning, subdivision, site plan, or building permits, is prohibited. Transfer of any development rights that have been encumbered or extinguished by this Easement to any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise is prohibited and this Easement terminates all development agreements associated with this Property.

D. Wildlife Disturbance or Harassment. Harassment of wildlife on the Property by people, vehicles or domestic animals is prohibited. The taking, removal, translocation or captivity of wildlife is prohibited, except as necessary by utilization of legal methods to control diseased and problem animals as permitted by state and federal laws

E. Hunting. Hunting on the Property is prohibited.

F. Alteration of Watercourses and Topography. Grantor will not change, disturb, alter, excavate, or impair any watercourse or wetland or the topography of the ground on the Property, except as expressly permitted by Section III of this Easement. Grantor shall conform uses on the Property to ensure compliance with all state and federal laws.

G. Roads. No roads over, through, or across this Property are permitted.

H. Recreational Structures. No permanent recreational structures or facilities will be allowed on the Property except as expressly permitted by Section III of this Easement.

I. Motorized Vehicles. Are not permitted to access this Property except for:

- 1) Emergency vehicles.
- 2) Vehicles necessary to carry out a permitted use as identified under Section III of this Easement, provided these vehicles are in sound working order.

J. Dumping. Trash, debris, ashes, sawdust, and other non-compostable refuse may

not be dumped or otherwise disposed of on the Property.

K. Utilities. New utility corridors and new utilities are prohibited.

L. Mineral Activities. Exploration or extraction of oil, gas, rock, gravel, sand, minerals, artifacts, or other materials found in, on, or under the Property by Grantor is prohibited. No sub-surface exploration or extraction of oil, gas, rock, gravel, sand, minerals, artifacts, or other materials (including the lease, sale, or other disposition of the rights to such materials) are permitted by this document.

M. Billboards and Signs. Grantor will not construct, maintain, lease, or erect any commercial signs, political signs or billboards on the Property and signs shall be limited in size and number to minimize impacts to the scenic Conservation Values.

N. Hazardous Waste. Grantor will not store, dump, or otherwise dispose of any toxic and/or hazardous material on the Property. Neither this specific prohibition nor any other right granted in this Easement makes Grantee an owner of the Property, nor does it permit Grantee to control any use of the Property by Grantor which may result in the storage, dumping or disposal of hazardous or toxic materials; provided, however, Grantee may bring an action to protect the Conservation Values of the Property. This prohibition does not impose liability on Grantee, nor shall Grantee be construed as having liability as a “responsible party” under CERCLA or other similar state or federal statutes.

SECTION VI - BASELINE DOCUMENTATION

A baseline inventory has been completed prior to the signing of this Easement. The parties acknowledge that this collection of baseline information contains an accurate representation of the Property’s condition and natural resources as of the date of the execution of this Easement in accordance with Treasury Regulation 1.170A-14(g)(5)(I) (the “Baseline Documentation”). The parties agree that subsequent updates to the Baseline Documentation will be signed by both Grantee and Grantor. The parties acknowledge that the inventory of Baseline Documentation relating to the Property has been completed by competent professionals familiar with the Property and that it is an accurate representation of the current conditions of the Property as of the signing of this Easement. Copies of the Baseline Documentation and subsequent updates to the Baseline Documentation are on file in Grantee’s offices.

Notwithstanding the foregoing, should a future controversy arise over the biological and/or physical condition of the Property, the parties may use all relevant documents, surveys, reports and other information contained in the Baseline Documentation to assist in resolving the controversy.

SECTION VII - BREACH, RESTORATION, AND REMEDIES

A. Breach and Restoration: If either Grantor or Grantee becomes aware of a violation or potential violation of this Easement, or becomes aware of any damage or potential damage to the Conservation Values associated with the Property, whether precipitated by Grantor or by a

third party, the party who has become aware must promptly notify the other party of such violation, potential violation, damage, or potential damage by registered or certified mail return receipt requested or by email with a “read receipt” tracking option. Grantor shall have thirty (30) days from the date of receipt of a notice from Grantee of a violation or potential violation or of damage or potential damage to commence actions, including restoration of the Property, that are reasonably calculated to prevent or correct the violation or damage (Grantor’s receipt of such a notice shall be indicated by the registered or certified mail return receipt or the “read receipt” confirming that the email message was opened by Grantor). If Grantor fails to take such corrective action within the thirty (30) day time period, Grantee may undertake appropriate action, including legal action, to effect such prevention or correction. Grantor shall pay the cost of such prevention or correction, including Grantee’s reasonable expenses, court costs, and attorney’s fees.

B. Injunctive and Other Relief: Grantee shall have the right to obtain injunctive relief or writs from courts of competent jurisdiction, or seek any legal remedy to stop or prevent activities that are prohibited or not authorized by the terms of this Easement and to force the restoration of the portion of the Property affected by such unauthorized activity to a similar or equivalent condition that existed prior to such unauthorized activity. Such restoration may include, but is not limited to, restoring soils, replanting suitable native vegetation, and taking such other action as Grantee deems reasonably necessary to achieve such restoration. The costs by Grantee in such restoration and any required litigation, including reasonable attorney’s fees, shall be reimbursed by Grantor or those of its successors or assigns against whom a judgment is entered.

C. Actual or Threatened Non-Compliance: Grantor acknowledges that irrevocable damage may result from any actual or threatened instances of non-compliance under this Easement and that Grantee’s remedies at law for any such breach may be inadequate and Grantor acknowledges and agrees that Grantee, in addition to such other remedies as may be available to it at law, is entitled to seek and obtain an injunction and/or other equitable relief.

D. Cumulative Remedies: Grantee’s remedies set forth in this Easement are cumulative. Any, or all, of the remedies may be invoked by Grantee if there is an actual or threatened violation of this Easement.

E. No Waiver of Enforcement: Grantee may exercise discretion in enforcing this Easement, subject to its fiduciary obligations to the public as beneficiary of the Easement. No delay or omission by Grantee in the exercise of any right or remedy under this Easement or applicable law shall impair such right or remedy or be construed as a waiver. Grantee's failure to exercise its rights under this Easement, in the event of a breach by Grantor, shall not be considered a waiver of Grantee's rights under this Easement in the event of any subsequent breach. Enforcement of this Easement shall not be defeated by adverse possession, laches, or estoppel. The parties agree that the rights of the public, as beneficiary of this Easement, shall not be forfeited by any acts or omissions of Grantee.

SECTION VII – NOTICES, SUPERIORITY OF EASEMENT, COSTS, TAXES & FEES

A. Notices: To provide Grantee with notice of a change in ownership or other transfer of an interest in the Property, Grantor agrees to notify Grantee in writing of the names and addresses of any party to whom the Property or any interest therein (including a leasehold interest) is transferred. Grantor further agrees to make specific reference to this Easement in a separate paragraph of any subsequent deed or other instrument by which any interest in the Property is conveyed, and attach a copy of this Easement to such instrument. Grantor also agrees to provide written notice of this Easement to all agents working under the direct control of Grantor in conjunction with the Property. Any failure to comply with the terms of this paragraph shall in no manner render this Easement or any provisions of this Easement unenforceable.

B. Superiority of Easement: Any lease, mortgage, trust deed, lien, judgment, or other interest executed or entered against the Property after the effective date of this Easement, except as expressly provided for herein, shall be subordinate to this Easement and in no way enable the holder of such interest or their successor(s) in interest to breach the terms of this Easement or otherwise negatively impact the Conservation Values protected by this Easement.

C. Costs, Taxes, and Fees: Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including responsibility for fire suppression and the control of noxious weeds in accordance with all applicable laws. Grantor agrees to bear all costs of operation, upkeep, and maintenance of the Property. Grantor shall pay any and all lawful taxes, assessments, fees, and charges levied by competent authority.

SECTION VIII – INDEMNITY

Grantor and successors agree to defend, indemnify, and hold harmless Grantee from and against any damage, liability, and loss occasioned by, growing out of, or arising or resulting from (i) any act or omission by Grantor or its agents or employees while on the Property or (ii) the presence or release of any toxic or hazardous material or substance on the Property, except where the presence or release was directly caused by Grantee.

SECTION IX – RESTRICTION ON TRANSFER OF EASEMENT

A. Grantee is prohibited from assigning or otherwise transferring this Easement, whether or not for consideration, unless (i) the transferee is, at the time of the transfer, a “qualified organization” and an “eligible donee,” as those terms are defined in §170(h) of the Internal Revenue Code and accompanying Treasury Regulations, as from time to time amended, (ii) the transferee is qualified to hold a conservation easement under Utah law, (iii) the transferee agrees in writing that the Conservation Purpose of this Easement will continue to be carried out, and (iv) Grantor consents in writing to the transfer, which consent shall not be unreasonably withheld.

B. If Grantee shall cease to exist, or cease to be a qualified organization or eligible donee (as those terms are defined in § 170(h) of the Internal Revenue Code and accompanying Treasury Regulations) or qualified to hold a conservation easement under Utah law, Grantor shall identify a "qualified organization and eligible donee" in compliance with this Section.

C. A transfer of this Easement in connection with a judicial extinguishment that satisfies the requirements of Section XIII shall not violate the provisions of this Section.

SECTION X – EXTINGUISHMENT; VALIDITY

A. Grantor agrees that the conveyance of this Easement gives rise to a property right that immediately vests in Grantee. Grantor further agrees that this property right has a fair market value on the effective date of this Easement that was equal to the proportionate value that this Easement, at that time, bore to the value of the Property as a whole at that time.

B. This Easement may be extinguished in whole or in part (whether through release, termination, eminent domain, abandonment, swap, exchange, reconfiguration, or otherwise) only (i) in a judicial proceeding in a court of competent jurisdiction, (ii) upon a finding by the court that a subsequent unexpected change in conditions has made impossible or impractical the continued use of the Property (or the portion thereof to be removed from this Easement) for conservation purposes. Where applicable payment of proceeds to Grantor and Grantee is as provided in Paragraph C of this Section. Any removal of land from this Easement constitutes an extinguishment, however such removal might be characterized.

C. In the event of an extinguishment, Grantee shall be entitled to a share of the proceeds from any sale, exchange, or involuntary conversion of the property removed from this Easement equal to the appraised value of this Easement (or portion of this Easement encumbering the property to be removed) immediately before and ignoring the extinguishment, calculated using an appropriate "before and after" valuation methodology and this value shall remain constant. The parties agree that the proportionate value of the open space bond allocated to the Property of Three Million Five Hundred Fifty Thousand Dollars (\$3,550,000.00) shall remain constant. Grantor shall be entitled to the remainder of the proceeds. Grantee has a right to record a lien to secure its recovery of its share of the proceeds.

D. Grantor and Grantee acknowledge that the Property was purchased with restricted bond proceeds and restricted funds that were granted or raised for the express purpose of forever protecting and preserving the Property's Conservation Values. Grantor and Grantee agree that any proceeds each receives upon any extinguishment of this Easement will be used to protect Conservation Values in a manner that is consistent with the conservation purpose of this Easement.

E. If all or any part of the Property is taken under the power of eminent domain, Grantor and Grantee shall participate in appropriate proceedings at the time of such taking to recover the full value of their respective interests subject to the taking as well as all incidental or direct damages resulting from the taking. All reasonable expenses incurred by Grantor or Grantee in any such action shall first be reimbursed out of the recovered proceeds; the remainder

of such proceeds shall be divided between Grantor and Grantee as provided in Paragraph C of this Section.

F. The fact that any use of the Property expressly prohibited by this Easement or otherwise determined to be inconsistent with the Conservation Purpose of this Easement may become significantly more valuable or economical than permitted uses, or that neighboring properties may in the future be put entirely to uses inconsistent with the Conservation Purpose of this Easement, has been considered by Grantor in granting and by Grantee in accepting this Easement, and it is the intent of both Grantor and Grantee that any such changes shall not impair the validity of this Easement or be considered grounds for its extinguishment in whole or in part. In addition, the inability to carry on any or all of the permitted uses and practices, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its extinguishment in whole or in part.

G. All provisions of this Section shall survive any extinguishment of this Easement in whole or in part.

SECTION XIV – LIMITED POWER OF AMENDMENT

A. Grantor and Grantee intend that the Property's Conservation Values and other significant conservation interests as well as the Conservation Purpose of this Easement will be protected in perpetuity by this Easement. While Grantor and Grantee have endeavored to foresee all possible threats to the perpetual protection of the Property's Conservation Values and other significant conservation interests and the Conservation Purpose of this Easement, there may come a time when this Easement should be amended to correct an error, to eliminate or reduce reserved rights, to clarify an ambiguity, or to otherwise enhance the protection of the Property's Conservation Values or other significant conservation interests. To that end, Grantor and Grantee have the right to agree to amendments to this Easement, provided, however, that any amendment must comply with each of the following requirements.

- i. Only the following types of amendment are permitted:
 - a. Amendments that are technical in nature (such as correcting a scrivener's error).
 - b. Amendments that enhance the protection of one or more of the Property's Conservation Values or other significant conservation interests and the Conservation Purpose of this Easement.
- ii. An amendment must not impair, injure, or destroy any of the Property's Conservation Values or other significant conservation interests, or be detrimental to or inconsistent with the Conservation Purposes of this Easement. As one example, this requirement prohibits "trade-off" amendments. A trade-off amendment is an amendment that would impair, injure, or destroy one or more of the Property's Conservation Values or other significant conservation interests and also involve a conservation

benefit (or an arguable conservation benefit). Thus, for example, an amendment that would permit development or some other use on part of the Property, which would impair, injure, or destroy one or more Conservation Values there, in exchange for adding one or more restrictions or other conservation protections elsewhere on the Property, is prohibited. Similarly, an amendment that would involve the relaxation or elimination of one or more restrictions or other conservation protections in this Easement in exchange for the addition of adjacent or nearby land to this Easement or the protection of some other land is prohibited. For purposes of this Easement, an amendment will be considered to "impair, injure, or destroy" a Conservation Value or other significant conservation interest if it has more than a negligible adverse impact on the protection of the Conservation Value or interest.

- iii. An amendment must not limit or otherwise alter the perpetual duration of this Easement.
- iv. An amendment must not adversely affect the status of Grantee as a qualified organization, eligible donee, or eligible holder of this Easement under any applicable law.
- v. An amendment must not modify the restriction on transfer, extinguishment, amendment, liberal construction, or no merger provisions of this Easement.
- vi. An amendment must not result in private inurement or confer impermissible private benefit, as those terms are defined for purposes of federal tax law.
- vii. An amendment must be in writing, duly signed, and promptly recorded in the appropriate location for public land records. The Grantee must document in writing (a) the amendment's compliance with the requirements of this Section and (b) approval of the amendment by the Grantee's governing body. Such documentation must be permanently retained in Grantee's files for this Easement.

B. Nothing in this Section shall require Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

SECTION XII – NOTICES

Any notice, demand, request, consent, approval or other communication shall be in writing and shall be sent by registered or certified mail return receipt requested or by email with a read receipt tracking option to:

Grantor:

Park City Municipal Corporation
c/o Thomas A. Daley, Deputy City Attorney

The Park City
Armstrong Pastures
DEED OF CONSERVATION EASEMENT

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445 Marsac Avenue
Park City, UT 84060
tdaley@parkcity.org

Grantee:

Utah Open Lands
c/o Executive Director
1488 South Main Street
Salt Lake City, UT. 84115
wendy@utahopenlands.org

Grantor or Grantee may, by written notice to the other, designate a different recipient (i.e. "Attn.:" or a different mail or email address).

SECTION XIII- MISCELLANEOUS PROVISIONS

A. **Partial Invalidity.** If any provision of this Easement, or the application of this Easement, or the application of this Easement to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement, and the application of such provisions to persons or circumstances other than those to which it is found to be invalid, shall not be affected thereby.

B. **Enforcement.** Grantor intends that enforcement of the terms and provisions of this Easement shall be at the discretion of Grantee, and that Grantee's failure to exercise its rights under this Easement, in the event of any breach by Grantor, shall not be considered a waiver of Grantee's rights under this Easement in the event of any subsequent breach.

C. **"Grantor" and "Grantee".** The term "Grantor", as used in this Easement, and any pronouns used in place thereof shall mean and include the above-named Grantor, and its successors and assigns. The term "Grantee", as used in this Easement and any pronouns used in place thereof shall mean The Utah Open Lands Conservation Association, Inc. and its successors and assigns.

D. **Titles.** Section and subsection titles and subtitles are for convenience only and shall not be deemed to have legal effect.

E. **Liberal Construction.** This Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property, and in accordance with Utah Code §§ 57-18-1 to 57-18-7. The parties acknowledge that each has reviewed and revised this Easement with the assistance of counsel, and that no rule of construction resolving ambiguities against the drafting party shall be employed in interpreting this Easement.

F. **Successors.** This Easement is binding upon, and will inure to the benefit of Grantor's and Grantee's successors in interest and assigns. All subsequent owners of the Property are bound to all provisions of this Easement to the same extent as Grantor as to that

portion of the Property conveyed to such subsequent owner. In the event the Grantor or a successor owner to Grantor conveys all of its interest in the Property, Grantor or such successor owners shall no longer have any obligations under this Easement.

G. Governing Law. This Easement will be interpreted and construed in accordance with applicable Utah laws.

H. Entire Agreement. This Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

I. Compliance With Law. All uses and practices permitted by this Easement, shall comply with all applicable state and federal laws.

J. Effective Date. The effective date of this Easement will be the date signed by all parties.

K. State Law Notice Requirements. Grantor hereby acknowledges that Grantee, at least three (3) days prior to the execution of this Easement, discussed with it the types of conservation easements available, the legal effect of each easement, and the advisability of consulting legal counsel concerning the possible legal and tax implications associated with granting this Easement.

L. Merger. The parties intend that this Easement will not merge with or into the fee ownership, it being the intent of the parties that the Easement never be extinguished but remain in full force, enjoining Grantee or its successor in interest to perpetually comply with its terms and conditions regardless who holds title to the underlying fee interest. To that end, the parties hereby agree that (i) no purchase by or transfer to Grantee of the underlying fee interest in the Property shall be deemed to extinguish this Easement, or any portion thereof, under the doctrine of merger or other legal doctrine, and (ii) should Grantee come to own all or a portion of the underlying fee interest in the Property: (a) Grantee, as successor in title to Grantor, shall observe and be bound by the obligations of Grantor under the restrictions imposed upon the Property by this Easement and (b) Grantee shall continue to hold and enforce this Easement as a public charitable trust for the benefit of the citizens of Park City, Summit County, the State of Utah, and the United States of America and be bound by its terms.

M. Change of Conditions. The fact that any use of the Property expressly prohibited by this Easement or otherwise determined inconsistent with the purpose of this Easement may become significantly more valuable or economical than permitted uses, or that neighboring properties may in the future be put entirely to uses inconsistent with this Easement, has been considered by Grantor in granting this Easement. It is Grantor's belief that any such changes will increase the public's benefit and interest in the continuation of this Easement, and it is the intent of both Grantor and Grantee that any such changes not be considered circumstances sufficient to terminate this Easement, in whole or in part. In addition, the inability to carry out any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination.

N. Superiority of Easement. Any mortgage, trust deed, lien, judgment, or other financial interest executed or entered against the Property hereafter shall be subordinate to this Easement and in no way enable the holder of such interest or their successor(s) in interest to breach the terms of this Easement or otherwise compromise the Conservation Values protected thereby.

[Notary and Signature Pages to Follow]

IN WITNESS WHEREOF, Grantor and Grantee hereby execute this Easement to be effective as of the date first written above.

GRANTEE:

THE UTAH OPEN LANDS
CONSERVATION ASSOCIATION

By: [Signature]
Name: Matthew A. Steward
Title: President

GRANTOR:

Park City Municipal Corporation

By: [Signature]
Name: Andy Beerman
Title: Mayor

STATE OF UTAH)

: ss.

County of Summit)

On this 21st day of November, 2019, before me, the undersigned notary public, personally appeared Andy Beerman, Mayor of Park City Municipal corporation, a Utah municipal corporation, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]
Notary Public

STATE OF UTAH

County of Salt Lake

)
: ss.
)

On this 21st day of November, 2019, before me, the undersigned notary public, personally appeared Matt Steward, Chair of The Utah Open Lands Conservation Association, Inc., a Utah non-profit corporation, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Kari J Peck
Notary Public

Exhibit "A"
Property Description

PCMC SNOW RANCH PASTURES PROPERTY
5 ACRE PARCEL
LEGAL DESCRIPTION
OCTOBER 18, 2019

A parcel of land in the east half of the northwest quarter of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said parcel being described as follows:

Beginning at a point South 00°22'02" West 1218.90 feet coincident with the section line and West 3953.97 feet from the northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being South 00°22'02" West 2627.35 feet between said northeast corner and the east quarter corner of said Section 8), said point being the southwesterly corner of Lot 11, Thaynes Canyon Subdivision No. 3, recorded October 7, 1977, as Entry No. 141404 in the Summit County Recorder's Office; and running thence coincident with the southerly boundary of said Lot 11 South 79°26'22" East 283.03 feet (Plat: 79°32'00" East); thence South 01°40'14" West 257.78 feet; thence South 12°53'36" West 773.23 feet to a point on the north line of the southwest quarter of the southwest quarter of the southeast quarter of the northwest quarter of said Section 8; thence coincident with said north line North 89°58'18" West 99.77 feet to a point on the west line of the southeast quarter of the northwest quarter of said Section 8; thence coincident with said west line North 00°05'07" East 1063.23 feet to the point of beginning.

Description contains 5.00 acres.

Part of Parcel PCA-1001 and 95-108

Exhibit "B"
Property Map



Armstrong Snow Ranch Pastures Ownership Map

Exhibit "C"
Trail Map

Snow Ranch Pasture Conceptual Winter Trails

