

DEED OF CONSERVATION EASEMENT

Richards Ranch (SR 224)

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 24th day of MARCH, 2005, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation having an address of 445 Marsac Avenue, Post Office Box 1480, Park City, UT 84060-1480 ("Grantor"), in favor of the SUMMIT LAND CONSERVANCY, a Utah non-profit corporation having an address of Post Office Box 1775, Park City, UT 84060 ("Grantee").

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ALAN SPRIGGS, SUMMIT CO RECORDER
2005 MAR 30 10:50 AM FEE \$1.00 BY GGB
REQUEST: PARK CITY MUNICIPAL CORP

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of approximately 20.000 acres (871,200 square feet) of real property located west of SR 224 in Park City, Summit County, Utah, described more particularly at Exhibit A, attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Property possesses natural, scenic, recreational, and visual open space values (collectively, "Conservation Values") of great importance to Grantee, the people of Park City, and the people of the State of Utah which are worthy of protection; and

WHEREAS, the Property is prominently visible from one of Park City's two entry corridors, namely SR 224; and

WHEREAS, the Property's proximity to Aspen Springs, the McPolin Farm, Willow Ranch, and the Huntsman Gateway open spaces is significant as it is part of a continuous corridor of open space on the sensitive SR 224 entry corridor; and

WHEREAS, at a November 3, 1998 special bond election, Park City voters authorized the issuance of general obligation bonds in an amount of ten million dollars for the express purpose of acquiring and forever preserving undeveloped park and recreational land; and

WHEREAS, the Property was purchased by Grantor using proceeds of the November 3, 1998 special bond election; and

WHEREAS, Grantor intends that the conservation values of the Property be preserved and maintained by the continuation of land use patterns, including, without limitation, those relating to visual open space existing at the time of this grant, that do not significantly impair or interfere with those values; and

WHEREAS, Grantor further intends as owner of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

WHEREAS, Grantee is a publicly supported, tax-exempt charitable organization qualified under Sections 170(h) and 501(c)(3) of the Internal Revenue Code, whose primary purpose is the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, and/or open space condition; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, which the Parties agree constitute adequate consideration for this agreement, and pursuant to the laws of the State of Utah and in particular Utah Code Annotated, Title 57, Chapter 18, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (“Easement”).

1. **Purpose.** It is the purpose of this Easement to assure that the Property will be maintained forever (predominately) in open and recreational use, protecting in perpetuity its scenic, open and undisturbed character and recreational value, and preventing any use of the Property that may significantly impair or interfere with the conservation values of the Property. Grantor intends that this Easement will confine the use of the Property to those activities that are consistent with the purpose of this Easement.
- 1.1 **Baseline Documentation.** To establish the present condition of the Property’s agricultural, natural, scenic, recreational and/or other conservation resources and the Property’s manmade features, so as to make possible the proper monitoring of future uses of the Property and to ensure compliance with the terms of this Easement, the Parties may prepare an inventory of the Property’s relevant resources, features and conditions.
2. **Rights of Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:
 - a. To reserve and protect the conservation values of the Property;
 - b. To enter upon the Property at reasonable times in order to monitor Grantor’s compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor’s use and quiet enjoyment of the Property;
 - c. To enter upon 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;
 - d. To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of

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the Property that may be damaged by inconsistent activity or use, pursuant to Paragraph 6 herein; and

- e. To enforce this Easement by appropriate legal proceedings, after providing Grantor with reasonable notice and reasonable opportunity to cure.
3. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are prohibited in perpetuity on the Property:
- a. Construction of buildings, residences, mobile homes, or other structures, or any other permanent improvements for use for human habitation, constructed or placed in, on, under, or upon the Property; and
 - b. Any unanticipated use or activity on or at the Property which would significantly impair the conservation values of the Property, unless such use or activity is necessary for the protection of the conservation values that are the subject of this Easement, in which case such use or activity shall be subject to the prior approval of Grantee, which approval shall not be unreasonably withheld.
4. **Reserved Rights.** Grantor reserves to itself, and to its successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, Grantor expressly reserves the right to:
- a. Use the Property as undeveloped park and recreational land; and
 - b. Construct related amenities.
5. **Continuous Conservation Reserve Program (CCRP).** Part of the property is presently encumbered by a CCRP contract; dated June 1, 2003. The CCRP is a 15- year USDA - Farm Service Agency contractual agreement for the stream corridor that is enrolled is 180' from the stream embankment and the designated land classification is riparian buffer zone. The parties expressly agree that requirements of the CCRP contract are permitted during the CCRP's effective period. Both parties recognize the contract and will honor its terms for its effective period.
6. **Notice of Intent to Undertake Certain Permitted Actions.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in Paragraph 4, is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement.

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Whenever notice is required, Grantor shall notify Grantee not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question:

- a. in writing; and/or
- b. by electronic notification. Electronic notification is sufficient with proof of receipt.

The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

6.1 Grantee's Approval. Where Grantee's approval is required, as set forth in Paragraph 5, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's written request therefore. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

7. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. Grantee and Grantor agree to mediate any dispute in a timely manner if the issue of a violation is disputed. If mediation is unsuccessful and Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this Paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this Paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Paragraph, both prohibitive and mandatory, in

addition to such other relief to which Grantee 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. Grantee's remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies not or hereafter existing at law or in equity. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee. If Grantee prevails in any action to enforce the terms of this Easement, Grantee's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantor.

- 7.1 **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any right or remedy upon a breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 7.2 **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
8. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement.
9. **Costs and Liabilities.** 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 the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.
- 9.1 **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized but in no event obligated to make or advance any payment of taxes, upon ten (10) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of two (2) percentage points over the prime rate of interest from time to time charged by Zion's Bank or the maximum rate allowed by law.

- 9.2 **Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors (collectively “Indemnified Parties”) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorneys’ fees arising from or in any connection with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in Paragraphs 9 and 9.1; and (3) the existence or administration of this Easement.
10. **Extinguishment.** Grantee shall not voluntarily or willingly allow the extinguishment of any of the restrictions of this Easement, and if any or all of the restrictions of this Easement are nevertheless extinguished by a judicial or other governmental proceeding, any and all compensation received by Grantee as a result of the extinguishment shall be used by Grantee in a manner consistent with the conservation purposes of this Easement.
- 10.1 **Condemnation.** If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.
- 10.2 **Amendment.** This Easement, including the prohibited uses and reserved rights, may be modified only by mutual written agreement of Grantor and Grantee. No amendment shall be made that will adversely affect the status of this Easement as a qualified conservation easement pursuant to Title 57, Chapter 18 of the Utah Code, nor Grantee’s status as a publicly supported, tax-exempt charitable organization qualified under Sections 170(h) and 501(c)(3) of the Internal Revenue Code and applicable laws of the state of Utah. Any such amendment shall be consistent with the stated purposes of this Easement, shall not affect its perpetual duration, and shall not permit any impairment of the significant conservation values of the Property. Any such amendment shall be filed in the office of the Summit County Recorder.
11. **Transfer of Easement.** If Grantee determines that it no longer is able to perform its obligations or enforce its rights under this Easement, or that it no longer desires to enforce said rights, or if Grantee ceases to exist, or is otherwise prevented from enforcing its rights under this Easement, or if Grantee no longer qualifies as a qualified organization under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), Grantee may convey its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under State statute. Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out. Grantee is hereby expressly prohibited from subsequently transferring the Easement, under any circumstances and whether or not for consideration, unless:

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- a. Grantee, as a condition precedent of the transfer, requires that the conservation purposes which this Easement is intended to advance continue to be carried out;
 - b. The transferee is an organization qualifying at the time of transfer as eligible under Paragraph 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable) and regulations promulgated thereunder; and
 - c. Grantor and/or its successor in interest, at its sole discretion, either selected the transferee or consents in writing to the transfer.
12. **Grantor Transfer of Interest.** Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which he divests himself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way.
13. **Estoppel Certificates.** Upon request by Grantor, Grantee shall within twenty (20) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.
14. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows (or to such other address as either party from time to time shall designate by written notice to the other):
- To Grantee: SUMMIT LAND CONSERVANCY**
Attn: Executive Director
Post Office Box 1775
Park City, UT 84060
- To Grantor: PARK CITY MUNICIPAL CORPORATION**
Attn: City Recorder
445 Marsac Avenue
Post Office Box 1480
Park City UT 84060-1480
15. **Recordation.** Grantee shall record this instrument in timely fashion in the official records of Summit County, Utah, and may re-record it at any time as may be required to preserve its rights in this Easement.

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16. General Provisions.

- a. Controlling Law. The laws of the state of Utah shall govern the interpretation and performance of this Easement.
- b. Liberal Construction. Any general rule of construction to the contrary notwithstanding this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purposes of Utah statute. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
- e. No Forfeiture. Nothing contained herein will result in the forfeiture or reversion of Grantor's title in any respect.
- f. Joint Obligation. If more than one person or entity is the successor or assign of Grantor, the obligations imposed by this Easement upon Grantor shall be jointly and severally binding on each such person or entity.
- g. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.
- h. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that ability for acts or omissions occurring prior to transfer shall survive transfer.
- i. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction of interpretation.


- j. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

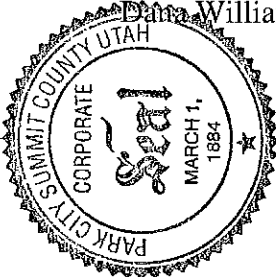
GRANTOR:

PARK CITY MUNICIPAL CORPORATION

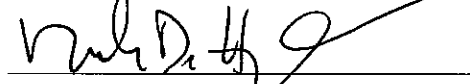

Dana Williams, Mayor

ATTEST:


Janet M. Scott, City Recorder

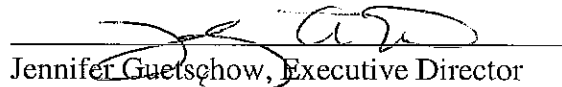


APPROVED AS TO FORM:


Mark D. Harrington, City Attorney

GRANTEE:

SUMMIT LAND CONSERVANCY


Jennifer Guetschow, Executive Director

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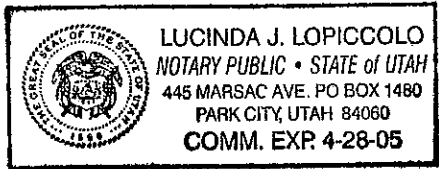
Corporate Acknowledgment

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this 24th day of MARCH, 2005, personally appeared before me Jennifer Guetschow, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn (or affirmed), did say that she is the Executive Director of the SUMMIT LAND CONSERVANCY by Authority of its Bylaws/Resolution of its Board of Directors, and acknowledged to me that said corporation executed the same.

Lucinda J. Lopiccolo

Notary Public



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EXHIBIT A

Beginning at a point West 2403.70 feet, and North 655.95 feet from the Southeast Corner of Section 5, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running Thence East 187.26 feet; thence South 577.14 feet to the North line of Thaynes Creek Ranch Subdivisions as recorded; thence East along said North line 831.89 feet to the West line of State Highway U-244; thence North $21^{\circ}12'$ West along said West line 1351.47 feet; thence West 539.30 feet; thence South $0^{\circ}44'37''$ East 682.93 feet to the point of beginning;

TOGETHER WITH all of the right, title and interest of Grantor in the right of use in and to 8.34% of the irrigation portion of the water and water rights included in the Weber River Decree Award No. 458 being sufficient water for the irrigation of 3.33 acres, or 10 acre feet, heretofore used for the irrigation of the above described lands, reserving unto the Grantor all remaining rights of the Grantor in and to the use of the water evidenced by the said Award No. 458.

SC 1041-87
PCA 1041-87

Excepting all area within 180 feet of the stream embankment covered in the CCRP Agreement.

Subject to all matters of record.

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