

When Recorded Return to:
Utah Open Lands
1488 South Main Street
Salt Lake City, UT 84115

Lambert Park
Deed of
Conservation Easement

This DEED OF CONSERVATION EASEMENT ("Easement"), is made and given, as of this ____ day of _____, 2021, by ALPINE CITY ("Grantor"), having an address of 20 North Main Street, Alpine, Utah 84004, to UTAH OPEN LANDS CONSERVATION ASSOCIATION ("Grantee"), having an address of 1488 South Main Street, Salt Lake City, Utah 84115, to be held and enforced in perpetuity for the benefit of the public in accordance with the terms and for the conservation purpose set forth herein.

EXHIBITS AS FOLLOWS:

- Exhibit A: Property Description
- Exhibit B: Property Map
- Exhibit C: Baseline Documentation
- Exhibit D: Masterplan Trails and Improvements Map

RECITALS:

WHEREAS, Grantor is the owner of five parcels of real property, located in Alpine City, State of Utah, commonly known as the Lambert Park property and described in Exhibit A, Property Description, and located on the Property Map attached hereto as Exhibit B (the "Property");

WHEREAS, it is the purpose of this Easement and the intention of both Grantor and Grantee to forever protect and preserve the scenic, natural, open space, wildlife habitat, community heritage, recreational, and educational values of the Property;

WHEREAS, perpetual protection and preservation of the aforementioned values of the Property with this Easement will provide significant benefits to the public as recognized in the Utah Land Conservation Easement Act, *Utah Code Ann. § 57-18-1 et seq.* (the "Conservation Easement Act"),

and Grantor intends to convey this Easement under the statutory provisions of the Conservation Easement Act and other applicable provisions of Utah statutory and common law;

WHEREAS, Grantor and Grantee agree that this Easement constitutes a public charitable trust that is to be held and enforced forever by Grantee for the benefit of the public, including the residents of Alpine City;

WHEREAS, the Property possesses a significant public benefit and the purpose of this Easement is to protect in perpetuity the scenic, natural, open space, wildlife habitat, community heritage, recreational, and educational values of the Property described in more detail in paragraphs A through E immediately below (collectively, the "Conservation Values"). These Conservation Values are of great importance to Grantor and Grantee, provide incalculable benefits to the public, including the residents of Alpine City, and the granting of this Easement will result in the following:

- A. Protection and preservation of relatively natural habitat in substantially the manner in which it has been preserved historically;
- B. Protection of scenic, aesthetic, and open space values in the manner in which they have been preserved historically through the protection of views of the Property;
- C. Preservation of open space in the manner in which it has been preserved historically to further its protection and development as a natural park area;
- D. Protection of public recreational and educational values in the manner in which they have been preserved historically, including trailhead facilities and trails that will remain accessible to the general public to enable the public to experience and view the Property and enjoy outdoor recreational and educational opportunities in a manner that is consistent with the permanent protection and preservation of the Property's scenic, natural, open space, wildlife habitat, community heritage, recreational, and educational values; and
- E. Protection of areas that act as buffers to existing areas of protected open space, as the Property is adjacent to the Wasatch-Cache National Forest;

WHEREAS, Grantee has conducted an inventory of the Conservation Values and the current condition of the Property, as documented in the Baseline Documentation, which is attached hereto as Exhibit C;

WHEREAS, Grantor desires and intends that the Conservation Values of the Property be forever protected and preserved by prohibiting, as provided herein, the continuation, initiation, or introduction of uses of or activities on the Property that would have a material adverse impact on the Conservation Values;

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

WHEREAS, Grantor greatly values the undeveloped nature of the Property and its Conservation Values;

WHEREAS, the Property meets Grantee's criteria for acceptance of conservation easements and Grantee's Board of Directors has duly adopted a resolution approving Grantee's execution, acceptance, and recordation of this Easement;

WHEREAS, the State of Utah has recognized the importance of both public and private efforts to conserve and protect land in perpetuity with a conservation easement by the enactment of the Conservation Easement Act;

WHEREAS, Grantee's mission is to conserve and protect open space and natural areas for ecological, scientific, historic, recreational, agricultural, and educational purposes; and Grantee is a charitable tax-exempt organization under Internal Revenue Code § 501(c)(3), a qualified conservation easement holder under *Utah Code Ann.* § 57-18-3, and a qualified organization as defined in Internal Revenue Code § 170(h)(3);

WHEREAS, Grantee has agreed to accept this Easement upon the condition and understanding that the mutual intentions of Grantor and Grantee (the "Parties") regarding the future uses of the Property and the permanent protection and preservation of the Property's Conservation Values as expressed in this Easement shall be forever honored and defended;

WHEREAS, Grantee is providing consideration for this Easement now and in perpetuity by funding a conservation easement stewardship fund to help fund and protect the Easement in perpetuity;

WHEREAS, Grantor finds that the consideration provided to the residents of Alpine City by Grantee in protecting and preserving the Property's Conservation Values and by incurring the obligations of Grantee, as expressed in this Easement, constitutes full and adequate consideration to Grantor for the granting of this Easement; and

WHEREAS, the Parties desire and agree that each provision of this Easement be construed to further the protection, preservation, and enhancement of the Property's Conservation Values.

NOW, THEREFORE, in consideration of the recitals as set forth above and the covenants, terms, 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 the Conservation Easement Act, Grantor hereby voluntarily and irrevocably gifts, grants, and conveys to Grantee and its successors in interest a PERPETUAL CONSERVATION EASEMENT to be held and enforced for the benefit of the public, including the residents of Alpine City. This Easement is made over and across all of the Property to forever preserve and protect the Conservation Values. This Easement shall forever bind Grantor, Grantee, and their successors in interest and assigns. This Easement is granted in perpetuity and any mortgage lien or other encumbrance, other than an encumbrance of record existing on the effective date of this Easement or an encumbrance determined by an appropriate court to have been in existence on the effective date of this Easement, shall be subordinate to all rights, terms, conditions, and intentions of this Easement, including Grantee's right to enforce the perpetual protection and preservation of the Conservation Values described herein.

SECTION I – CONSERVATION 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"). The Parties agree that the Conservation Values are not likely to be materially adversely affected by the continued or future use of the Property as authorized in Section III of 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

While retaining the same, and to accomplish the Conservation Purpose, Grantor hereby grants 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 this Easement;
- B. to prevent Grantor or 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 any remedy at law, injunctive and other equitable relief, or other available remedy or 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, 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 uses and practices described in this Section shall not be precluded or prevented by this Easement. While not an exhaustive recital of permitted uses and practices and subject to the limitations listed above, the following uses and practices are consistent with this Easement, are not prohibited, and do not require prior approval from Grantee under Section V of this Easement.

- A. Maintenance and Restoration of the Native Ecosystem. Grantor may use techniques and methods recognized as effective in restoring and maintaining the native biological diversity of the Property including but not limited to invasive weed suppression, successional forest restoration and passive restoration.
- B. Water Resources. The Parties acknowledge that Grantor owns or is authorized to use and maintain water resources and water-related infrastructure located on the Property, including springs, water tanks, water storage ponds, ditches, and pipelines, which are critical to Grantor's public responsibility and function as a municipality. The development, operation, and maintenance of such resources and infrastructure are paramount to, but also consistent with, the Conservation Values. Accordingly, Grantor may develop, enhance, and relocate water resources and infrastructure on the Property. This includes the development, installation, relocation, maintenance, repair, improvement, and replacement of existing and future critical water-related infrastructure. In the event Grantor elects to improve water storage areas, Grantor may allow non-motorized recreational use of such areas as a use permitted under this Easement. The parties acknowledge that this Easement does not impair any existing rights of Alpine Irrigation Company or its successors or assigns to use and maintain its existing water infrastructure

on the Property, or any rights or obligations of Grantor with respect to such infrastructure.

- C. Public Recreation and Educational Use. Grantor specifically retains the right for continued use of and access to the Property by the public for the purpose of public recreation, viewing, community heritage, and education uses. In furtherance of that right, Grantor may construct boardwalks or trails to allow access to portions of the Property for persons with disabilities. Grantor may also issue permits for motorized vehicle use of existing roads on the Property to provide such access to persons with disabilities.
- D. Streams and Ditches. Grantor retains the right to remove brush and vegetation from any stream or ditch or along the banks of any stream or ditch, as necessary to minimize the risk of accident, danger, injury, or drowning by the public, and to allow public access and to maintain or enhance trails. Removal methods shall limit, as reasonably practicable, 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.
- E. Public Access, Trails, and Trailheads. Grantor retains the right to identify, maintain, reroute, relocate, improve, and construct recreational and educational trails and trailhead parking areas on the Property for the benefit of the public. Trail use, maintenance and development shall allow for recreational engagement consistent with the preservation of the Conservation Values. Permitted recreational uses include single-track trails for equestrian use, hiking, dog walking, non-motorized biking, and electric assist bicycle use in accordance with policies and ordinances adopted by Grantor; interpretive trails; and human-powered winter activities, including snow shoeing. Grantor may identify, maintain, reroute, relocate, improve, and construct trails, provided that:
1. All trails are identified, maintained, rerouted, relocated, improved, and constructed, in accordance with the Management Plan (as defined below);
 2. All trails remain pervious to the soil, using natural materials or gravel road base for interpretive and ADA accessible trails;
 3. All trails, other than interpretive trails, are single-track in nature with a constructed

width no larger than four feet;

4. Interpretive trails may be large enough to accommodate a diversity of abilities as may be defined by national ADA standards; and
5. Any trail development shall ensure sensitivity to the Conservation Values and avoid sensitive water resources.

Grantor retains the right to temporarily or permanently close trails as may be necessary for public safety, maintenance, trail restoration, or the protection of Conservation Values.

F. Park Facilities, Trail-Related Structures, Pavilions, Picnic Tables and Public Gathering Areas.

Grantor retains the right to construct bridges, boardwalks, culverts, separated street crossings, gates, or other trail-related improvements on trails and at trailheads as well as park facilities, bathroom facilities, emergency aid facilities, landscaping, picnic areas, pavilions and gathering areas on the Property. Exhibit D attached hereto is illustrative of Grantor's current site plan for the Property and all improvements depicted on Exhibit D are allowed without approval of Grantee. Additional park type improvements such as bridges, boardwalks, culverts, separated street crossings, gates, or other trail-related improvements on trails and at trailheads as well as park facilities, bathroom facilities, emergency aid facilities, landscaping, picnic areas, pavilions and gathering areas not currently depicted on Exhibit D also may be installed on the Property so long as these additional improvements are exclusively for public use and enjoyment.

G. Fencing. Grantor retains the right to construct new fencing, replace existing fencing, and place gates for the purpose of defining Property boundaries, delineating specific uses or sensitive areas, or restricting unauthorized access across the Property.

H. Documentation of Conveyance. Grantor shall furnish Grantee with a copy of any document or conveyance utilized to effect the transfer of the Property within thirty (30) days after the execution of said document or conveyance. Grantor expressly conveys to Grantee the right to enforce this Easement against, and to seek and recover all remedies for violation of the terms of this Easement from all tenants or other occupants residing on or using the

Property with Grantor's knowledge or consent.

- I. Boundary Adjustment. Subject to the prior written approval of Grantee, Grantor may adjust the boundaries of the Property and absorb adjoining parcels as a result of such adjustment, provided that: (i) all land subject to this Easement prior to such adjustment remains subject to this Easement after the adjustment; and (ii) the boundary adjustment does not result in any development on the Property that could not occur but for such adjustment. Grantor shall notify Grantee in writing prior to undertaking any such boundary adjustment, and shall include with the notice a map showing the existing and proposed new boundary resulting from the adjustment. The adjusted land shall be considered part of the Property and shall be covered by all of the terms and conditions of this Easement, whether or not it is described in Exhibit A hereto.
- J. Leases. Grantor reserves the right to enter into management leases on the Property or portions thereof, subject to the terms and conditions of this Easement, as long as all such lessees operate exclusively for public use and enjoyment of the Property.
- K. Signs. Grantor retains the right to place signs on the Property for any purpose so long as the signs do not materially impair or interfere with the Conservation Purpose. Grantor may allow temporary advertising signs subject to a permit issued by Grantor.
- L. Noxious Weed Control. Chemicals considered necessary to control noxious weeds shall be used in a de minimis way, except as may be necessary for the express purpose of controlling phragmites (*Phragmites australis*). 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, to the extent reasonably practicable, any impairment of the natural ecosystems and their processes.
- M. Problem or Diseased Animals. Grantor may use legal methods to control diseased and problem animals as permitted by state and federal laws.

- N. Fire Suppression. Grantor retains the right to remove brush and vegetation necessary to minimize the risk of wildfire on the Property. Removal methods shall limit, to the extent reasonably practicable, 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.
- O. Utilities. Existing utilities may be maintained, improved, repaired, replaced, or relocated, provided any disturbance to the Property from any such action is restored, as much as reasonably practicable, to the original undisturbed nature of the Property. Grantor reserves the right to install, construct, maintain, repair, and replace new underground utilities, such as sewer, storm drain, and fiber optic cable, as long as the Property is restored, as much as reasonably practicable, to its original undisturbed nature. Notwithstanding the foregoing, any new utilities (whether located underground or not) must be reasonably necessary to promote the public health, safety, or welfare, or otherwise be specific to a use permitted in this Easement.
- P. Water Rights. The water rights associated with or appurtenant to the Property may continue to be used for agriculture, stock watering, pond and water tank storage, park facilities, bathroom facilities, emergency aid facilities, picnic areas, pavilions and gathering areas, each of which enhances the Conservation Values. The place of use of any existing water rights may not be removed from the Property by Grantor without prior written consent of the Grantee.
- Q. Events, Special Uses, and Related Temporary Structures. Grantor retains the right to authorize events or special uses, and one or more temporary structures associated with an event or a special use, provided that: (i) the event or special use is receives a permit from Grantor and complies with Grantor's mass gathering requirements; (ii) any temporary structure is located to minimize impacts on the natural environment; (iii) requests in conjunction with filming include an analysis of potential impacts on Conservation Values; and (iv) the staging, event or special use, and any temporary structures are located to the extent possible in areas where adequate infrastructure already exists, such as at trailheads

and parking lots. Events, special uses, and one or more temporary structures associated with an event or a special use are permitted at the discretion of Grantor.

R. Roads. Grantor may maintain and allow the use of existing emergency access roads, the rodeo grounds road, and other roads on the Property (paved or unpaved) consistent with their historic maintenance and use. Grantor may construct new roads only as necessary to provide access to trailhead parking areas. Grantor may reroute or improve the portion of Box Elder Drive that crosses the Property, and may improve the portion of Grove Drive that crosses the Property, as reasonably necessary to maintain or enhance public safety.

S. Motorized Vehicles. Grantor may allow only the following motorized vehicles on the Property:

1. emergency vehicles, including emergency aircraft;
2. vehicles using existing roads or existing or enhanced parking areas;
3. vehicles used in routine maintenance of the Property, provided the vehicles are in good working order and under the direct control of Grantor or Grantee or their agents; and
4. vehicles used in conjunction with a use permitted under this Section III.

Grantor retains the right to adopt and enforce policies prohibiting or restricting motorized vehicles in designated areas of the Property.

T. Cell Tower. The parties acknowledge that Grantor leases a certain portion of the Property for purposes of maintaining a cell tower and related facilities. Grantor may continue to lease that portion of the Property, and the lessees and their successors and assigns may access the Property for the purpose of maintaining, repairing, or replacing such facilities.

U. Public Safety. Grantor retains the right to use and to conduct and restrict activities on the Property as reasonably necessary to preserve the public health, safety, and welfare, including for purposes of fire suppression and prevention, flood control and prevention, and preventing other similar threats to life or property, whether emergent or not. Grantor

may adopt rules limiting hours of use or activities on the Property in order to promote public safety, consistent with the Conservation Purpose. Grantor retains the right to enforce any such rules as well as the provisions of this Easement.

- V. Rodeo Grounds. The Parties acknowledge that a portion of the Property is designated on the Masterplan Trails and Improvements Map (Exhibit D) as “rodeo grounds.” Grantor reserves the right to use and maintain the rodeo grounds and associated roads and parking areas for public events, subject to a permit issued by Grantor. Such events may include, but are not limited to, rodeos, demolition derbies, dog agility competitions and training, and concerts.
- W. Future Anticipated Municipal Uses. Grantor anticipates that certain areas on the Property may be designated for future public uses, including a cemetery, pickleball courts, or other public uses, as provided in the Management Plan (as defined below). The Management Plan shall give consideration for appropriate areas sufficient to provide for such uses, provided that:
1. The cemetery may be no larger than 10 acres in size, must be located adjacent to or within close proximity of a public road that provides appropriate access, and must be low impact in design and siting so as not to impair the Conservation Values; and
 2. No more than one-quarter ($\frac{1}{4}$) acre of land may be used for pickleball courts, and the courts are located in an area that is already disturbed and sufficiently flat to reduce grading requirements and provide appropriate access and parking.
- X. Management Plan. Grantor retains the right, through its city council, to adopt, implement, amend, and enforce a plan for managing the Property (the “Management Plan”), including any rules and regulations, as long as the Management Plan, rules and regulations are consistent with the Conservation Values and the Conservation Purpose. The Parties acknowledge that the Management Plan may include the Rodeo Grounds Master Plan dated August 14, 2007, and the Lambert Park Landscape Concept plan for the Bowery dated July 17, 2018, both of which are consistent with the Conservation Values and Conservation

Purpose.

- Y. Residual Rights. Except as expressly limited by this Easement, Grantor may exercise and enjoy all rights as owner of the Property, including the right to use the Property for any non-residential or non-commercial purpose not inconsistent with this Easement. The Parties acknowledge that any existing use of the Property by the City is permitted.

SECTION IV - PROHIBITED USES AND PRACTICES

Any use or practice that is inconsistent with the Conservation Purpose of this Easement or likely to cause material damage to the Conservation Values is prohibited. Grantor agrees that the following uses and practices, though not an exhaustive recital of all prohibited uses and practices, are inconsistent with the Conservation Purpose of this Easement and thus prohibited.

- A. Subdivision. Division or subdivision of the Property, and any action that creates an actual or *de facto* subdivision of the Property, is prohibited.
- B. Proffers, Dedications, and 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.
- C. Construction. Structures or facilities for residential, commercial, or industrial use on the Property are prohibited. However, structures or facilities are allowed for the limited purposes stated herein and only if they constitute a permitted use under Section III.
- D. Wildlife Disturbance or Harassment. The presence of humans is not deemed a disturbance or harassment of wildlife. Beyond what has occurred historically or in the event of an

emergency to protect the public health, safety, or welfare, the intentional disturbing of wildlife is prohibited by any means (for example, by people or domestic animals). The taking, removal, translocation, or captivation of wildlife is prohibited; provided, however, that nothing within this provision shall (i) restrict Grantor and Grantee from determining healthy carrying capacities of species on the Property and employing appropriate management mechanisms, including permitting select and limited wildlife take methods to remove problem or diseased animals, or (ii) restrict the Utah Department of Natural Resources from managing wildlife on the Property consistent with state policy. This paragraph does not preclude fishing on the Property in accordance with policies as may be implemented by Grantor.

- E. Alteration of Watercourses, Wetlands, or Topography. Disturbance, alteration, excavation, or impairment of any watercourse or wetland or the topography of the Property is prohibited, except as permitted in connection with the permitted uses and practices in Section III.
- F. Non-native Species. Intentional introduction onto the Property of any non-native plant or animal species is prohibited, except as permitted in connection with the permitted uses and practices in Section III or for the landscaping needs of the Property.
- G. Roads. Except as specifically permitted under Section III, new roads over, through, or across the Property are prohibited.
- H. Motorized Vehicles. Except as specifically permitted under Section III, motorized vehicles are prohibited on the Property.
- I. Camping and Manmade Fires. Camping is prohibited, except in areas designated by Grantor that are consistent with the Conservation Values. Manmade fires are prohibited, except in Grantor's designated fire rings and barbeque facilities.
- J. Dumping. The dumping or other disposal of trash, debris, ashes, sawdust, or other refuse on the Property is prohibited; provided, that Grantor is permitted to store materials on the Property consistent with Grantor's historical use of the Property.

- K. Utilities. New utilities and new utility corridors are prohibited, except in conjunction with permitted utilities identified in Section III.
- L. Mineral Activities. Any surface or subsurface exploration or extraction of oil, gas, rock, gravel, sand, minerals, artifacts, or other materials found in, on, or under the Property (including, but not limited to, the lease, sale, or other disposition of the rights to such materials, and any horizontal drilling under the Property from other properties) is prohibited.
- M. Signs and Billboards. Except as permitted in Sections II and III, the construction, maintenance, lease, or erection of any advertising billboards on the Property is prohibited, except for billboards advertising Lambert Park. This prohibition encompasses, but is not limited to, commercial and political signs and billboards.
- N. Hazardous Waste. The storage, dumping, or other disposal of any toxic or hazardous material on the Property is prohibited. Use of small quantities of hazardous materials necessary to accomplish a permitted use or practice is allowed but only if such use does not (i) violate any federal, state, or local environmental law, regulation, or other requirement or (ii) negatively impact the Conservation Purpose of this Easement. Neither this provision nor any other right granted in this Easement shall impose liability on Grantee, nor shall Grantee be construed as having liability as a “responsible party” under CERCLA or other similar local, state, or federal statute.
- O. Public View. Grantor agrees not to obstruct the substantial and regular opportunity of the public to view Lambert Park that exists as of the date hereof, but this provision shall not limit Grantor’s rights set forth elsewhere in this Easement.
- P. Lighting. Lighting and, in particular, overhead lighting, is prohibited, except for (i) safety lighting associated with trailhead, rodeo grounds, and bowery parking, as well as structures such as restrooms and pavilions; (ii) temporary lighting for events and special uses, subject to a permit issued by Grantor; and (iii) lighting of pickleball courts or other recreational facilities permitted under Section III, all in accordance with the Management Plan.

- Q. Recreational Aircraft. Unmanned aircraft may not take off or land on the property, unless their use is directly related to a permit issued by Grantor. All other recreational aircraft requiring a motor or mechanized source to power flight are prohibited from taking off or landing on the property. Recreational aircraft not powered by motors or mechanized sources for flight are subject to Grantor's existing ordinances.

SECTION V – PRIOR APPROVAL FROM GRANTEE

If any provision of this Easement requires Grantor to obtain Grantee's approval prior to the performance of an act or the undertaking of a use or practice, Grantor shall not perform that act or undertake that use or practice (whether directly or through an agent) until the notice and approval provisions of this Section have been fully satisfied. Grantee shall not unreasonably withhold, condition, or delay approval, and shall grant approval pursuant to this Section if the proposed act, use, or practice will not cause material damage to the Property's Conservation Values or otherwise be inconsistent with the Conservation Purpose or provisions of this Easement. This Section is not intended for any other purpose, including, without limitation, to request approval of: (i) an act, use, or practice that is expressly prohibited by this Easement; (ii) an existing or threatened violation of this Easement; or (iii) an act, use, or practice for which an amendment to this Easement would be needed. Nothing in this Section shall in any way prohibit or limit Grantee's ability to obtain writs or injunctive relief or otherwise enforce this Easement.

- A. Grantor's Written Notice. Prior to the performance of any act or the undertaking of any use or practice that requires Grantee's approval, Grantor must notify Grantee in writing of the proposed act, use, or practice. The notice must fully inform Grantee of all material aspects of the proposed act, use, or practice (including the nature, scope, design, location, and timetable for such proposed act, use, or practice), and Grantor must send the notice to Grantee by registered or certified mail, return receipt requested, or by email with a "read receipt" tracking option.
- B. Grantee's Written Request or Response. Grantee shall have thirty (30) 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) to review the

proposed act, use, or practice and, in writing, either approve the proposed act, use, or practice or notify Grantor of any objections Grantee may have. The thirty (30) day period shall not begin to run for purposes of this paragraph until such time as Grantee has received adequate information from Grantor to effectively evaluate the proposed act, use, or practice. In the event Grantee requires additional information to evaluate the proposed act, use, or practice, Grantee shall, in writing, request the information from Grantor as soon as practicable and in any case no later than thirty (30) days after receipt of the notice. Grantee's objections to a proposed act, use, or practice, if any, shall be based upon Grantee's reasonable opinion that the proposed act, use, or practice is likely to cause material damage to the Property's Conservation Values or is otherwise inconsistent with the Conservation Purpose or provisions of this Easement. If, in Grantee's good faith and reasonable judgment, the proposal presented by Grantor can be modified to avoid material damage to the Property's Conservation Values and otherwise comply with the Conservation Purpose and provisions of this Easement, then Grantee's response shall inform Grantor how the proposed act, use or practice may be modified to comply with this Easement. Grantor may commence the proposed act, use, or practice only after it receives Grantee's express written approval, which shall not be unreasonably withheld, conditioned, or delayed, and only in the manner explicitly proposed by Grantor and approved by Grantee. Grantee must send any request for more information or response to Grantor by registered or certified mail, return receipt requested, or by email with a "read receipt" tracking option.

- C. 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 reasonably prudent activity in a bona fide emergency situation to prevent, abate, or mitigate the immediate threat of significant damage to the Property or other property, or injury to persons, resulting from causes beyond Grantor's control, including fire, flood, storm, avalanche, and earth movement. Grantor will promptly notify Grantee of any injury to the Property caused by such events and of any efforts to prevent, abate, or mitigate any damage caused by such events.

- D. Addresses. The addresses of Grantor and Grantee for purposes of mailing or emailing the notices, requests, and responses addressed in this Section are set forth in Section VIII.

SECTION VI - BASELINE DATA

- A. An inventory of baseline data (“Baseline Documentation”) shall be completed prior to the signing of this Easement and attached hereto as Exhibit C. The Parties acknowledge that this collection of baseline data contains an accurate representation of the Property’s condition and natural resources as of the date of the execution of this Easement. The Parties acknowledge that an inventory of baseline data relating to the Property, dated ____, 2021, has been completed by competent professionals familiar with the Property, namely by Wendy Fisher, Executive Director of Utah Open Lands. The Baseline Documentation will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Easement. The Parties further agree that subsequent updates to the Baseline Documentation will be signed by both Grantee and Grantor. Copies of this inventory of baseline data and subsequent updates to the Baseline Documentation shall be maintained on file in Grantee’s offices.
- B. 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 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. For a violation or potential violation of this Easement allegedly caused by Grantor, 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 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 expenses, court costs, and attorney's fees. For a violation or potential violation of this Easement caused by a third party, Grantor and Grantee shall work together to resolve the violation or potential violation of this Easement.

- B. Injunctive and Other Relief. Grantee shall have the right to obtain injunctive relief or writs from courts of competent jurisdiction, seek any legal remedy, or take other appropriate action to stop or prevent unauthorized activities and to force the restoration of the portion of the Property affected by an unauthorized activity to a similar or equivalent condition that existed prior to the 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 necessary to achieve restoration. The costs of restoration and litigation, including reasonable attorney's fees, shall be borne by those against whom a judgment is entered.
- C. Actual or Threatened Non-Compliance. Grantor acknowledges that actual or threatened instances of non-compliance under this Easement constitute immediate and irreparable harm. Grantee is entitled to invoke the equitable jurisdiction of any court authorized to enforce this Easement.
- 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, which is the beneficiary of this 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 or any third party, 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 VIII – 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 not 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, other than an encumbrance determined by an appropriate court to have been in existence on the effective date of this Easement, 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 or the Conservation Purpose of 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 IX – INDEMNITY

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

SECTION X – RESTRICTION ON TRANSFER OF EASEMENT

- A. Grantee is prohibited from assigning or otherwise transferring this Easement, whether or not for consideration, without the written consent of Grantor, which consent shall not be unreasonably withheld. If Grantor consents to the transfer of this Easement, then the following is required: (i) the transferee is, at the time of the transfer, a “qualified organization” and an “eligible donee,” as those terms are defined in Internal Revenue Code § 170(h) and accompanying Treasury Regulations; (ii) the transferee is qualified to hold a conservation easement under Utah law; and (iii) Grantee, as a condition of the transfer, requires that the transferee agree in writing that the Conservation Purpose of this Easement will continue to be carried out.
- B. If Grantee shall cease to exist, or cease to be a qualified organization or eligible donee (as those terms are defined in Internal Revenue Code § 170(h) and accompanying Treasury Regulations) or qualified to hold a conservation easement under Utah law, and a prior transfer is not made in accordance with the requirements of this Section, then Grantee’s

rights and obligations under this Easement shall revert to Grantor.

- C. A transfer of this Easement in connection with a judicial extinguishment that satisfies the requirements of Section XI shall not violate the provisions of this Section.
- D. Nothing in this Easement prohibits Grantor from transferring the Property to the State of Utah or a political subdivision of the State of Utah.

SECTION XI – 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 had 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 and that value shall remain constant.
- 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, and (iii) with a payment of proceeds to Grantor and Grantee as provided in paragraph D of this Section. Any removal of land from this Easement constitutes an extinguishment regardless of how such removal might be characterized.
- C. In the event of an extinguishment of this Easement, the Easement shall revert to Grantor provided that no private benefit occurs through the act of extinguishment.
- D. 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.

- E. 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 uses permitted by this Easement, 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 uses and practices permitted by this Easement, 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.
- F. All provisions of this Section shall survive any extinguishment of this Easement in whole or in part.

SECTION XII – LIMITED POWER OF AMENDMENT

- A. Grantor and Grantee intend that the Property’s Conservation Values and 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 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. 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.
 - 1. 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 eliminate or reduce one or more of the uses or practices permitted by the terms of this Easement.
 - c. Amendments that enhance the protection of one or more of the Conservation Values of the Property and are not detrimental to or inconsistent with the Conservation Purpose of this Easement, including an amendment to add land to this Easement as provided in paragraph I of Section III of this Easement.
 - d. Amendments that enhance the protection of one or more of the Conservation Values of the Property and are not detrimental to or inconsistent with the Conservation Purpose of this Easement.
2. An amendment must not impair, injure, or destroy any of the Property’s Conservation Values, or be detrimental to or inconsistent with the Conservation Purpose 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 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 if it has more than a negligible adverse impact on the protection of the Conservation Value.
 3. An amendment must not limit or otherwise alter the perpetual duration of this Easement.

4. 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 laws.
5. An amendment must not modify the restriction on transfer, extinguishment, amendment, liberal construction, or no merger provisions of this Easement.
6. An amendment must not result in private inurement or confer impermissible private benefit, as those terms are defined for purposes of federal tax law.
7. An amendment must be in writing, duly signed, and promptly recorded in the appropriate location for public land records. Grantee must document in writing (a) the amendment's compliance with the requirements of this Section and (b) approval of the amendment by Grantee's governing body. Such documentation must be permanently retained in Grantee's files for this Easement.

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

SECTION XIII – 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: Alpine City
Attn: City Administrator
20 North Main Street
Alpine, Utah 84004
ssorensen@alpinecity.org

With a copy to the following:

Grantee: Utah Open Lands Conservation Association
Attn: Executive Director
1488 South Main Street

Salt Lake City, Utah 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 XIV - MISCELLANEOUS PROVISIONS

- A. Partial Invalidity. If any provision of this Easement or application of any provision 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 the provision 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 Utah Open Lands Conservation Association and its successors and assigns. Grantor and Grantee may be referred to herein collectively as the "Parties."
- D. Titles. Section and Subsection titles and subtitles are for convenience only and shall not be deemed to have legal effect.
- E. Headings. Section and paragraph headings are for convenience only and shall not be deemed to have legal effect.
- F. Construction. This Easement shall be reasonably construed in accordance with the intent of the parties, and under no circumstances shall this Easement be construed in favor of the free use of land. 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.

- G. Successors. This Easement shall be binding upon both Grantor and Grantee and their respective successors in interest and assigns.
- H. Governing Law. This Easement shall be interpreted and construed in accordance with applicable Utah laws.
- I. Interaction with State Law. Grantor and Grantee are prohibited from exercising any power or discretion that may be granted under Utah law regarding the transfer, amendment, or termination of easements that would be inconsistent with (i) the provisions of this Easement, (ii) the continued protection in perpetuity of the Property's Conservation Values, or (iii) the Conservation Purpose of this Easement. Grantor and Grantee are bound by the terms of this Easement, which constitutes a public charitable trust, the terms and purpose of which are enforceable by the courts on behalf of the public as with any charitable grant.
- J. Venue. Any legal action concerning this Easement shall be filed in the Fourth Judicial District of Utah, Utah County or, as appropriate, in the United States District Court for the District of Utah located in Salt Lake City, Utah.
- K. Entire Agreement. This Easement sets forth the entire agreement of the Parties. It is intended to supersede all prior discussions or understandings. The exhibits to this Easement are incorporated by reference and made a part of this Easement.
- L. Compliance with Law. All uses and practices permitted by this Easement shall comply with all applicable local, state, and federal laws.
- M. Effective Date. The effective date of this Easement shall be the date of its recordation.
- N. State Law Notice Requirements. Grantor hereby acknowledges that Grantee, at least three days prior to the execution of this Easement, discussed with Grantor the types of conservation easements available, the legal effect of each easement, and the advisability

of consulting legal counsel concerning any possible legal and tax implications associated with granting this Easement.

- O. Merger. The Parties intend that this Easement will not merge even in the event that Grantee becomes the fee title owner of the Property. It is acknowledged that the conservation easement set forth herein constitutes the intention of both Grantor and Grantee that no merger of interest shall obfuscate the duty of Grantee to uphold the public trust and donative intent conveyed by this Easement; 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 of who holds title to the underlying fee interest.

- P. 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 on 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.

- Q. Warranty of Authority to Sign. By their signature below, the Parties warrant that this Easement is a valid, binding, and enforceable document which is executed after having obtained all necessary authority from their respective entities.

- R. References. All references to the Internal Revenue Code, Treasury Regulations, and the Utah Code Annotated in this Easement shall be to the code and regulation provisions in effect as of the effective date of this Easement.

-Remainder of page intentionally left blank-

IN WITNESS WHEREOF, Grantor and Grantee execute this Easement.

GRANTOR:

ALPINE CITY

ATTEST:

By: _____
Bonnie Cooper, City Recorder

By: _____
Troy Stout, Mayor

STATE OF UTAH)
 : ss
County of Utah)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__,
by _____, in his/her capacity as Alpine City Mayor.

Notary Public

STATE OF UTAH)
 : ss
County of Utah)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__,
by _____, in his/her capacity as the Alpine City Recorder.

Notary Public

APPROVED AS TO FORM AND LEGALITY:
Stephen B. Doxey
Alpine City Attorney

By: _____

GRANTEE:

UTAH OPEN LANDS CONSERVATION ASSOCIATION

By _____
Wendy Zeigler, President, Utah Open Lands Conservation Association

STATE OF UTAH)
 : ss
County of Utah)

On this _____ day of _____, 202_____, _____,
representing Utah Open Lands Conservation Association, known to me to be the person whose name
is subscribed to the instrument set forth above, personally appeared before me, _____
_____, a Notary Public for the State of Utah, and acknowledged
that he/she executed the same on behalf of Utah Open Lands Conservation Association.

Notary Public