

When recorded, mail to:
S. Annette Spendlove
City Recorder
North Ogden City
505 E 2600 N
North Ogden, UT 84414

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (“Easement”) is granted this ____ day of _____, 2011 by the NORTH OGDEN CITY, a municipal corporation organized and existing under the laws of the State of Utah (hereinafter referred to as “Grantor”), having an address of 505 E 2600 N, North Ogden, Utah 84414, in favor of [name of entity that will hold the easement] (hereinafter referred to as “Grantee”), having an address [Grantee’s address].

RECITALS:

WHEREAS, Grantor is the owner of a certain parcel of real property located at approximately [property address] consisting of approximately ____ acres, more particularly described in the legal description attached hereto as Exhibit “A” which is incorporated herein and made a part hereof (the “Property”); and

WHEREAS, the Property possesses natural, recreation, open space, waterway, wildlife and scenic values (hereinafter referred to as the “Preservation Values”) of great importance to the Grantor, the Grantee, the people of North Ogden, the people of Weber County and the people of the State of Utah; and

WHEREAS, the Preservation Values include continuing to preserve and maintain the Property so that it may continue to be used to provide scarce open space within a densely populated urban area; wildlife habitat; natural and historical interpretative opportunities; clean waterways; recreational area and trail improvements; and

WHEREAS, it is the purpose of this Easement to protect and preserve the Preservation Values of the Property and restrict any use of the Property that will significantly impair or interfere with this purpose; and

WHEREAS, Grantor and Grantee intend that the Property be and remain open and accessible to the public in perpetuity and that this Easement continue in perpetuity; and

WHEREAS, this Easement is intended to bind the Grantor and the Grantor’s successors in interest to the Property (hereinafter collectively referred to as the “Grantor”) during the period of time that said Grantor holds fee simple title to the Property; and

WHEREAS, Grantee is a “qualified organization” as defined in §57-18-3 and §9-8-503 of the Utah Code Annotated to acquire this Easement; and

WHEREAS, Grantor acknowledges receipt of the information and disclosures required by Utah Code Ann. §57-18-4 more than three (3) days prior to the execution of this Easement.

AGREEMENT:

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, the parties agree as follows:

1. Incorporation of Recitals. The parties hereto agree that the Recitals set forth above are accurate and the same are incorporated herein by this reference.
2. Grant of Easement. Grantor does hereby grant and convey unto the Grantee, its successors and assigns, a conservation easement (“Easement”) over and across the Property of the Grantor to preserve and protect the Preservation Values. Grantor makes this grant in accordance with the laws of the State of Utah and in particular Utah Code Ann. §§57-18-1, *et seq.* with the intention of making an irrevocable easement in perpetuity.
3. Type and Purpose of Easement. This Easement is of the type described in Utah Code Ann. §§9-8-501 *et seq.* and §§57-18-1 *et seq.*, is granted in perpetuity and the burdens imposed hereby upon the Property are a covenant, restriction and condition running with the land of the Property and are binding upon the Grantor and the Grantor’s successors in interest to the Property. It is the purpose of the Easement to: (i) assure that the Property will be retained forever in its natural, scenic, historic, recreational and open space condition; (ii) prevent any use and development of the Property that will significantly impair or interfere with the Preservation Values of the Property; and (iii) limit the use of the Property to such activities as are consistent with the purpose of this Easement, including, without limitation, those involving open space; wildlife habitat; natural and historical interpretative opportunities; clean waterways; recreational area and trail improvements as set forth in this Easement.
4. Baseline Documentation. The parties hereto have prepared an inventory and photographs of the Property’s relevant resources, features, and conditions which inventory and photographs are attached hereto as Exhibit “B” (the “Baseline Documentation”) and by this reference made a part hereof. The Baseline Documentation establishes the present condition of the Property’s open space; wildlife habitat; natural and historical interpretative opportunities; clean waterways; recreational area and trail improvements resources so as to make possible the proper monitoring of future uses of the Property and to ensure compliance with the terms of this Easement.
5. Rights of the Grantee. To accomplish the purpose of this Easement, the Grantee is given the following rights pertaining to the Easement.
 - (a) Grantee and its representatives shall be permitted at all reasonable times to inspect the Property. If Grantee reasonably determines that immediate entry is required to

prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon reasonable prior notice to Grantor, and shall not in any case unreasonably interfere with the use and quiet enjoyment of the Property by Grantor.

(b) Grantee may employ or contract with individuals, agencies, or other entities for the express purpose of assisting with monitoring activities related to the Easement including the preparation of all reports and data related thereto. If Grantee becomes unable to fulfill the requirements outlined herein, its duties to monitor said Preservation Values shall be transferred and assigned to an organization of Grantee's reasonable choosing that qualifies and has the ability to preserve, protect and promote the Preservation Values of the Property as set forth in this Easement pursuant to paragraph 17.

(c) Grantee shall be given prior written notice by Grantor of any proposed alterations to the Property. The purpose of requiring notice to Grantee prior to undertaking certain permitted activities is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is consistent with the Preservation Values of the Property and the purpose of this Easement.

6. Prohibited. 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 expressly prohibited:

(a) Division, subdivision, or defacto subdivision (through long-term leasing or otherwise) of the Property or transfer of development rights from the Property to satisfy zoning or development requirements for other properties:

(b) Construction, expansion, relocation, removal or erection and location of any structure on the Property, except: (i) recreation trail improvements; (ii) municipal park improvements; (iii) irrigation and other landscaping improvements as approved by Grantee and consistent with this Easement;

(c) The granting of new easements or right-of-ways on, over or across the Property;

(d) Industrial or commercial activities;

(e) Placement, erection, or maintenance of signs, billboards, or outdoor advertising structures on the Property except for a reasonable number of signs of not to exceed 24" X 24" in size for the following purposes:

(1) To state the name of the Property, history or purposes;

(2) To identify rules or restrictions on use and to address safety concerns;

(3) Directional, interpretative, and educational signs;

- (4) Traffic control or safety signs required by North Ogden;
- (5) A plaque identifying the donors who committed funds to the preservation of the Property; or
- (6) Signs as may be customarily used by the Grantee to identify lands under conservation easement and the terms of such easement, with approval of Grantor;
- (f) Location of utility or transmission lines, except that those existing at the time this Easement is granted;
- (g) Any agricultural, residential, commercial, or industrial use of or activity on the Property except for those uses described in this Easement as being permitted;
- (h) Camping on the Property except as approved by Grantee consistent with the terms of this Easement;
- (i) Exploration and drilling for and extraction of oil and gas from any site on the Property;
- (j) Dumping of ashes, sawdust, bark, trash, rubbish, or any other unsightly or offensive materials which are visible from public roads or streets;
- (k) Filling, excavating, dredging, mining, quarrying, drilling, and the exploration for or extraction of minerals, hydrocarbons, soils, sand, gravel, rock, or other materials on, from or below the surface of any portion of the Property;
- (l) Dumping, depositing, discharging, releasing or abandoning any gaseous, liquid, solid or hazardous wastes, hazardous substances or material, pollutant or debris in, on or under the Property or into the surface or groundwater on or under the Property, except for the discharge of storm water;
- (m) Any use or activity that causes or is likely to cause significant soil quality degradation or soil erosion, interference with natural drainage, or depletion or pollution of any surface or subsurface waters;
- (n) Changing the topography of any portion of the Property by placing on it any soil, dredging spoils, land fill or other material; and
- (o) Allowing any use of the Property other than the uses consistent with the Preservation Values.

7. Rights and Obligations of Grantor. Grantor shall have the following rights and obligations to use and maintain the Property, during the time it holds fee simple title to the Property, consistent with the Preservation Values.

- (a) Use of and access to the Property by Grantor;
- (b) The right and obligation to maintain, replace, restore or enhance the Property provided such replacement, restoration, or enhancement is consistent with the Preservation Values;
- (c) The right to participate and engage in safety management protecting both the Property's users and the Preservation Values;
- (d) Grantor shall pay any and all taxes assessed against the Property, including but not limited to ad valorem taxes for which Grantee might otherwise be liable.
- (e) The Grantor shall maintain comprehensive general liability insurance against claims for personal injury, death, and property damage of a type and in such amounts as would, in the reasonable opinion of Grantee, normally be carried on a property such as the Property protected by an easement such as the Easement.

8. Mortgage Subordination. Grantor and Grantee agree that the rights of holders of mortgages, deeds of trust, and similar encumbrances of the Property (collectively, "Mortgagees") are subject and subordinate at all times to the rights of Grantee to enforce this Easement. Grantor has provided a copy of the Easement to all Mortgagees of the Property as of the date of this Agreement. The following provisions apply to all Mortgagees now existing or hereafter creating a mortgage, deed of trust, or similar encumbrance (collectively, "Mortgage") on the Property:

- (a) If a Mortgage grants to a Mortgagee the right to receive the proceeds of condemnation proceedings arising from any exercise of power of eminent domain as to all or any part of the Property or the right to receive insurance proceeds as a result of any casualty, hazard, or accident occurring to or about the Property, the Mortgagee shall have a prior claim to the insurance and condemnation proceeds and shall be entitled to same in preference to Grantee until the Mortgage is satisfied and discharged notwithstanding that the Mortgage is subordinate in priority to the Easement.
- (b) If a Mortgagee has received an assignment of the leases, rents, and profits of the Property as security or additional security for a loan, then the Mortgagee shall have a prior claim to the leases, rents, and profits of the Property and shall be entitled to receive the same in preference to Grantee until said Mortgagee's debt is paid off, notwithstanding that the Mortgage is subordinate to the Easement.
- (c) Until a Mortgagee or purchaser at foreclosure obtains ownership of the Property following foreclosure of its Mortgage or deed in lieu of foreclosure, the Mortgagee or purchaser shall have no obligation, debt, or liability under the Easement.
- (d) Before exercising any right or remedy due to breach of the Easement except the right to enjoin a violation hereof Grantee shall give all Mortgagees of record written

notice describing the default, and the Mortgagees shall have sixty (60) days thereafter to cure or cause a cure of the default.

(e) Nothing contained in the above paragraphs or in the Easement shall be construed to give any Mortgagee the right to extinguish this Easement by taking title to the Premises by foreclosure or otherwise.

9. Indemnification. Grantor, during the time it owns fee title to the Property, agrees to pay protect, indemnify, hold harmless, and defend at its own cost and expense, Grantee, its agents, director, trustees, and employees, and independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures (including reasonable attorney's fees and disbursements hereafter incurred) arising out of or in any way relating the administration, performed in good faith, of this Easement, including, but not limited to, the granting or denial of consents hereunder, the reporting on or advising as to any condition on the Property, and the execution of work on the Property. In the event that Grantor is required to indemnify Grantee pursuant to the terms of the Easement, the amount of such indemnity, until discharged, shall constitute a lien on the Property.

10. Violations.

(a) Grantor will, at Grantor's expense, cure any breach or violation of the terms of this Easement within thirty (30) days after receiving notice or knowledge thereof, or if such breach or violation cannot be cured within such 30-day period, then within any such longer period as may be reasonably required to cure such breach or violation, so long as Grantor commences the cure within said 30-day period and thereafter diligently pursues the cure to completion. In the event Grantor fails so to cure, Grantor will pay the costs and expenses, including reasonable attorneys' fees incurred by Grantee, for any action reasonably necessary to enforce the terms hereof, including the curing of any breach or violation of the terms of this Easement.

(b) Upon any breach of the terms of this Easement by Grantor, Grantee shall, in addition to the rights conferred on Grantee by the paragraph above, have the following rights which shall be cumulative and shall be in addition to any other rights and remedies available to Grantee, at law or in equity: (1) to require restoration of the Property to its condition at the time of the granting of this Easement or to the enhanced condition of the Property as a result of the requirements for repair, restoration or maintenance contained in this Easement; (2) to enjoin any further breach or enforce any covenant hereof by action in an appropriate court of competent jurisdiction; (3) to recover damages for any breach of the conditions hereof or for the purpose of accomplishing the restoration of the Property or Buildings thereon by Grantee; and/or (4) to enter upon the Property, correct any such violation, and hold Grantor, their successors, and/or assigns, liable for the cost thereof, and, any amounts expended by Grantee to correct said violation shall accrue interest at the rate of one percent (1%) per month until paid. Any amounts so expended by Grantee, together with interest as aforesaid, shall constitute a lien upon the Property, which lien may be foreclosed in the manner provided by the laws of the State of Utah, and Grantor shall be liable for any costs and expenses incurred in connection therewith, including a reasonable attorney's fees and costs.

(c) Rights under this Agreement apply equally in the event of either actual or threatened violations of the terms of this Easement. Remedies of law for any violation of the terms of this Easement may be inadequate, and, in such event, injunctive relief, both prohibitive and mandatory, shall be appropriate in addition to such other relief to which the enforcing party may be entitled, including specific performance of the terms of this Easement.

11. Remedies.

(a) Damages may be recovered for violation of the terms of this Easement or injury to any Preservation Values protected by this Easement, including reasonable damages for the remediation of lost scenic, aesthetic and environmental values, as well as the Preservation Values. Any damages recovered shall be applied to the cost of undertaking any corrective or remedial action on the Property. Any costs of restoration or remediation necessitated by violation of the terms of this Easement shall be borne by the party causing such violation.

(b) In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for costs or expenses incurred in connection therewith, including all reasonable court costs, and attorney's, architectural, engineering, and expert witness fees and costs.

12. Grantee's Covenants. Grantee hereby warrants and covenants that:

(a) Grantee is a Qualified Organization for purposes of Utah Code Ann. §§ 57-18-1 *et seq.* and §§ 9-8-501 *et seq.*.

(b) In the event that Grantee shall at any time in the future become the fee simple owner of the Property, Grantee covenants and agrees, in the event of a subsequent conveyance of the Property to another entity, Grantee shall create a new conservation easement containing the same restrictions and provisions as are contained herein, and either retain such easement in itself or convey such easement to a similar unit of federal, state, or local government, or local, state, or national organization: (i) whose purposes, inter alia, are to promote preservation of historical, cultural, or architectural resources; (ii) that is a qualified organization under Utah Code Ann. §§ 57-18-1 *et seq.* and §§ 9-8-501 *et seq.*; and (iii) is capable of preserving, protecting and promoting the Preservation Values of the Property. Any transfer of this Easement shall be subject to the provisions of paragraph 17, below.

(c) Grantee agrees to hold this Easement for preservation purposes as set forth in paragraph 3. Grantee shall prevent any activity on or use of the Property that is inconsistent with or which may be reasonably expected to have an adverse impact on the Preservation Values of the Property, and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

13. Acts Beyond Control. Nothing contained in the Easement shall be construed to entitle Grantee to bring any action for any injury to or change in the Property resulting from extraordinary causes, including, without limitation, fire, flood, storm and earth movement, or

from any prudent action taken under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

14. Evidence of Compliance. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with any obligation of Grantor contained herein.

15. No Waiver. No failure on the part of Grantee to enforce any provisions herein, nor any waiver of any right hereunder by Grantee shall discharge or invalidate such provision, nor shall same operate to affect the right of Grantee to enforce the terms and conditions hereof.

16. Transfer of Easement. In the event Grantee ceases to exist, no longer qualifies as a "qualified organization" under Utah Code Ann. §§ 57-18-1 *et seq.* and §§ 9-8-501 *et seq.*, or determines that it no longer is able to enforce its rights under this Easement or that it no longer desires to enforce said rights, or is otherwise prevented from enforcing its rights under this Easement, Grantee shall as soon as practical convey in perpetuity all its rights under this Easement and deliver a copy of this instrument to another organization designated by the Grantee ("Successor Entity") to ensure that the Easement is enforced. Such Successor Entity must be a qualified organization pursuant to Utah Code Ann. §57-1 8-1 *et seq.* and §9-8-501 *et seq.* (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the Preservation Values that this grant is intended to advance continue to be carried out by the Successor Entity.

17. Extinguishment. If circumstances arise in the future that render the purposes of this Easement impossible to accomplish as determined by judicial proceedings in a court of competent jurisdiction, this Easement shall terminate and Grantee shall not be entitled to any compensation for value of the Easement or Property. Grantee shall provide written notice to Grantor of an extinguishment within thirty (30) days of its occurrence.

18. Subsequent Notification. Grantor shall insert a reference to this Easement in any subsequent deed, sales or purchase contract, financing instrument, or other legal instrument by which Grantor is divested of either the fee simple title or equitable title, a possessory ownership interest in the Property, or any part thereof. Grantor further agrees to give written notice to the Grantee of the transfer of any interest in the Property at least thirty (30) days prior to the date of such transfer. Said reference shall be substantially as follows:

The property conveyed herein is subject to a Conservation Easement which controls the ability of any owner or other possessor of the Property to use or alter the Property as set forth therein. This easement was recorded _____, 20____, as Entry No. _____, in Book _____, at Page _____, in the office of the Salt Lake County Recorder, State of Utah.

19. Recordation. Grantee shall record this instrument in a timely fashion in the official records of Salt Lake County, Utah, and may re-record it at any time as may be required to preserve its rights in this Easement.

20. Easement Binding on Grantor Holding Fee Simple Title. The terms, conditions, obligations and liabilities set forth in this Easement shall run with the land and shall be binding upon the Grantor who is the then owner of the fee simple title to the Property. No liability or obligation shall be imposed on a Grantor for acts or omissions that occurred during a time that said Grantor did not hold fee simple title to the Property.

21. General Provisions.

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Utah.

(b) Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be construed liberally to effect the purpose of this Easement. 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 circumstance 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. No alteration or variation of this instrument shall be valid or binding unless in writing and recorded in the office of the Salt Lake County Recorder.

(e) 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.

(f) Merger. This Easement shall not merge with title in the event that the ownership of the Easement and the fee simple interest are ever owned by one entity or individuals. The parties shall use their best efforts to ensure that sole ownership of the Easement and the fee simple interest does not occur, or if such event occurs, shall take all steps necessary to have one of the interests transferred to a capable party upon the terms otherwise set forth herein.

(g) 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 liability for acts or omissions occurring prior to transfer shall survive transfer.

(h) Heading. The paragraph and other headings contained in this Easement are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any of the provisions of the Easement.

(i) Counterparts. The parties may execute this instrument in two or more counterparts, which shall in the aggregate be signed by all parties. Each counterpart shall be deemed an original instrument as against any of the parties. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(j) Authority of Signators. The persons executing this Easement on behalf of the Grantor and the Grantee warrant that they have the authority to do so and bind the Grantor and the Grantee, respectively.

IN WITNESS WHEREOF, Grantor and Grantee have hereunto set their hands this ____ day of _____, 2009.

GRANTOR:

CITY OF SOUTH SALT LAKE

Robert D. Gray, Mayor

S T A T E O F U T A H)
 : s s
C O U N T Y O F S A L T L A K E)

On the day of _____, 2009, _____
signer of the above instrument, personally appeared before me, Robert D. Gray, and
acknowledged to me that he is the Mayor of the City of South Salt Lake and that the foregoing
instrument was signed on behalf of said City by authority of law.

Notary Public
Residing at: _____

GRANTEE:

SALT LAKE COUNTY

Peter Corroon, Mayor

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On the ____ day of _____, 2009 _____
signer of the above instrument, personally appeared before me, Peter Corroon, and
acknowledged to me that he is the Mayor of Salt Lake County and that the foregoing instrument
was executed on behalf of said County by authority of law.

Notary Public
Residing at: _____

Exhibit "A"

(Property Legal Description)

Exhibit "B"
(Baseline Documentation)