

## INTERLOCAL COOPERATION AGREEMENT

Between  
SALT LAKE COUNTY  
And  
MILLCREEK

THIS INTERLOCAL COOPERATION AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by the between SALT LAKE COUNTY, a body corporate and politic of the State of Utah (“County”) and MILLCREEK, a municipal corporation of the State of Utah (“City”). County and City are referred collectively to as the “Parties”.

### RECITALS

A. UTAH CODE ANN. §11-13-202 and other provisions of the Interlocal Cooperation Act (codified as UTAH CODE ANN. § 11-13-101, *et seq.*) (the “Act”) provides that any two or more public agencies may enter into an agreement with one another for joint or cooperative actions.

B. UTAH CODE ANN. §11-13-214 provides that any public agency may convey property to or acquire property from any other public agencies for consideration as may be agreed upon.

C. The County and the City are public agencies for purposes of the Act, including Utah Code Ann. § 11-13-214.

D. The Parties are jointly working to acquire a parcel of undeveloped real property, known as Parcel No. 16-36-200-003, located in the City, approximately 8 miles southeast of Salt Lake City, on the east side of Salt Lake County at approximately 3885 Millcreek Canyon Road, Millcreek Utah, 84109 (the “Property”).

E. The Parties have identified a means to acquire the Property, maintain it as open space, and protect it from development by the County depositing into an escrow (“Escrow”) a total of \$250,000 and a conservation easement in substantially the form attached hereto as Exhibit A, which will be updated as provided herein (“Conservation Easement”) and the City delivering or causing to be delivered a deposit into the Escrow \$1,000,000.00 obtained from a Utah Office of Outdoor Recreation grant (the “Grant”). The Escrow pursuant to an escrow agreement in the form attached hereto will cause a deed in the form attached hereto as Exhibit B (“Deed”) to be recorded conveying the Property to the County, disperse the funds held by the Escrow as set forth in a closing statement approved by the Parties, and cause the Conservation Easement to be recorded granting the City the Conservation Easement.

F. The Parties, wishing to memorialize their arrangement, enter into this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the

Parties agree as follows:

**1. Conveyances and Deposits:**

Upon the terms and subject to the conditions set forth herein, the County hereby agrees to deposit the amount of \$250,000 and the Conservation Easement into the Escrow and the City will deliver or cause to be delivered a deposit of \$1,000,000 into the Escrow. The escrow agent pursuant to the Escrow will cause the Deed to be recorded conveying the Property to the County, disperse the funds held by the Escrow as set forth in a closing statement approved by the Parties, and as provided below, cause the Conservation Easement to be recorded granting the City the Conservation Easement.

**2. Consideration**

The Parties agree that pursuant to UTAH CODE ANN. §11-13-214 that the conveyance of the Property and the grant of the Conservation Easement to the respective Parties constitutes adequate consideration.

**3. Duration and Termination**

This Agreement shall take effect upon execution and terminate upon the performance by the parties of all the obligations described herein. The parties intend that the delivery of the complete Conservation Easement to the escrow agent for recording shall be accomplished as soon as the Baseline Documentation is prepared and attached as an exhibit to the Conservation Easement and any modifications to the Conservation Easement necessary to make it consistent with the Baseline Documentation have been adopted and approved by both parties in writing, but no later than one year from the date this Interlocal is signed by the last Party to sign it (as indicated by the date stated under that Party's signature). Any provision of this Agreement which contemplates performance subsequent to the expiration or earlier termination of this Agreement shall so survive such expiration or termination and shall continue in full force and effect until fully satisfied, but in no event shall this Agreement have a term longer than 50 years.

**4. Additional Interlocal Act Provisions.** In compliance with the requirements of the Act and other applicable law:

(a) No Interlocal Entity. The parties agree that they do not by this Agreement create an interlocal entity.

(b) Joint Board. As required by UTAH CODE ANN. § 11-13-207, the parties agree that the cooperative undertaking under this Agreement shall be administered by a joint board consisting of the County's Mayor or designee and the City's designee. Any real or personal property used in the parties' cooperative undertaking herein shall be acquired, held, and disposed in accordance with this Agreement.

(c) Financing Joint Cooperative Undertaking and Establishing Budget. There is no

financing of joint or cooperative undertaking and no budget shall be established or maintained.

(d) Attorney Review. This Agreement shall be reviewed as to proper form and compliance with applicable law by the authorized attorneys for County and City in accordance with UTAH CODE ANN. § 11-13-202.5.

(e) Copies. Duly executed original counterparts of this Agreement shall be filed with the keeper of records of each party, pursuant to UTAH CODE ANN. § 11-13-209.

(f) Manner of Acquiring, Holding or Disposing of Property. The Property shall be acquired, held or disposed of pursuant to this Agreement and unless agreed to herein shall not be used in a joint or cooperative undertaking.

**5. General Provisions**. The following provisions are also integral parts of this Agreement:

(a) Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) Captions. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable, or invalid provision shall not affect the other provisions of this Agreement.

(e) Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

(f) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy, or priority allowed by law.

(g) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) Time of Essence. Time is the essence in this Agreement.

(i) Interpretation. This Agreement shall be interpreted, construed, and enforced according to the substantive laws of the state of Utah.

(j) Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within three (3) days after such notice is deposited in the United States mail, certified mail postage prepaid and addressed to the parties at their respective addresses.

(k) Exhibits and Recitals. The Recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of this Agreement.

(l) Governmental Immunity. Both parties are governmental entities under the Governmental Immunity Act, UTAH CODE ANN. § 63G-7-101, *et seq.* (the “Immunity Act”). Consistent with the terms of the Immunity Act, the parties agree that each party is responsible and liable for any wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. Neither party waives any defenses or limits of liability otherwise available under the Immunity Act and all other applicable law, and both parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable law.

(m) Ethical Standards. The parties hereto represent that they have not: (a) provided an illegal gift or payoff to any officer or employee, or former officer or employee, or to any relative or business entity of an officer or employee, or relative or business entity of a former officer or employee of the other party hereto; (b) retained any person to solicit or secure this Agreement upon any contract, agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in State statute or County’s Ethics, Gifts and Honoraria ordinance (Chapter 2.07, SALT LAKE COUNTY CODE OF ORDINANCES [2001]); or (d) knowingly influenced, and hereby promise that they will not knowingly influence, any officer or employee or former officer or employee to breach any of the ethical standards set forth in State statute or County ordinances.

IN WITNESS WHEREOF, the parties have subscribed their names and seals the day and year first above written.

SALT LAKE COUNTY

By \_\_\_\_\_  
Mayor Jennifer Wilson or Designee

Approved as to Form and Legality:

By \_\_\_\_\_  
R. Christopher Preston  
Deputy District Attorney

[Additional Signatures on Following Page]

MILLCREEK

By \_\_\_\_\_  
Mayor or Designee

ATTEST:

\_\_\_\_\_  
Recorder

Approved as to Form and Legality:

\_\_\_\_\_  
Attorney for Millcreek

Exhibit A  
(Conservation Easement)

When Recorded Return to:  
**Salt Lake County Real Estate**  
**2001 South State Street, S3-110**  
**Salt Lake City, UT 84190**

DEED OF CONSERVATION EASEMENT

This Deed Of Conservation Easement ("Easement"), made as of this \_\_\_\_\_, 2021, by and between Salt Lake County ("Grantor"), a body corporate and politic of the State of Utah having an address of 2001 South State Street, N4-500 Salt Lake City, UT 84109 and Millcreek, a Utah municipality ("Grantee") having an address of 3330 South 1300 East, Millcreek, Utah 84106. Grantor and Grantee may be collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, Grantor is the owner of approximately 138.73 acres of real property, located near Millcreek, Utah, known as the Rain Clouds property, that is more particularly described in the attached Exhibit "A" ("Property"), whose address is approximately 3885 Millcreek Canyon Rd, Millcreek, Utah Parcel No. 16-36-200-003; and

WHEREAS, Grantor intends to convey this Easement under the Utah Land Conservation Easement Act, U.C.A. §§ 57-18-2 through -7 (2017) and other applicable provisions of the Internal Revenue Code and Utah statutory and common law; and

WHEREAS, the purpose of this Conservation Easement is to protect and forever preserve the scenic, natural, ecological, open space, and public educational benefits of the Property; and

WHEREAS, the Property possesses unique, sensitive, natural, scenic, aesthetic, and conservation values ("Conservation Values") of great importance to the Grantor and Grantee, and which provide tremendous public benefit to the residents of Salt Lake County and the State of Utah, and the United States of America; and

WHEREAS, Grantor desires and intends that the Conservation Values of the Property be conserved and maintained by the continuation, initiation, or introduction of activities on the Property that will not compromise the Conservation Values, including, but not limited to wildlife viewing, public education and access, historic and ecological interpretive use; and

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

WHEREAS Grantee is a governmental entity qualified under the Act to acquire the Easement; and

WHEREAS Grantee has agreed to accept this Easement upon the condition and understanding that the mutual intentions of the Parties regarding the future uses and preservation of the Property as expressed in this Easement shall be forever honored and defended; and

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

NOW, THEREFORE, in consideration of the recitals as set forth above and the covenants terms and conditions and restrictions contained herein, which the Parties hereby agree constitute adequate consideration for this agreement and pursuant to the Act, Grantor hereby irrevocably grants and conveys to Grantee and its successors in interest a Perpetual Conservation Easement. This Easement is made over and across all of the Property to preserve and protect the Conservation Values and to enable the property to remain forever undeveloped and pristine. Additionally, the Easement will preserve the natural, ecological, recreational use, and utility, its scenic open and undisturbed character, and its wildlife values, preventing any use of the property that may materially impair or interfere with its Conservation Values. This Easement shall forever bind Grantor and Grantor's successors in ownership and use of the Property as well as Grantee and any qualified successor of Grantee as identified in Section IX below. This Easement is granted in perpetuity and any mortgage lien or other encumbrance shall be subordinate to the rights and intentions of this Easement and Grantee's ability to enforce the protection of the Conservation Values described herein.

#### SECTION I - PURPOSE

This Conservation Easement is established to enable the Property to remain forever open and accessible to the public, protecting in perpetuity its natural and ecological value and its recreational and scientific educational use/utility, its scenic open and undisturbed character and its wildlife values, preventing any use of the Property that may materially impair or interfere with its Conservation Values.

#### SECTION II - RIGHTS OF GRANTEE

Grantor hereby grants the following rights to Grantee, which rights shall be in addition to and not in limitation of, all other rights and remedies available to Grantee:

- A. 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 inconsistent with the purpose of this Easement, and to require of Grantor or third persons the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use;
- B. To enter upon the Property at reasonable times and in a reasonable manner in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement;
- C. To enter onto the Property in the case of an emergency as determined by Grantee;
- D. To obtain injunctive and other equitable relief against any violations, including restoration of the Property to the condition that existed prior to any such violation, it being agreed by the Parties that Grantee will have no adequate remedy at law;



E. 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.

F. To preserve and protect the Conservation Values of the Property.

### SECTION III - PERMITTED USES AND PRACTICES<sup>1</sup>

While not an exhaustive list, the uses and practices stated below in this Section are consistent with this Easement and may not be precluded or prevented by this Easement, except under the circumstances described herein. The uses and practices in this section may be precluded if Grantee in its sole discretion believes that a certain use or practice is occurring in a manner, or to a degree that causes harm to the Conservation Values.

A. Public Access and Education. Grantee shall allow the public and Grantor the right to engage in passive wildlife viewing and educational activities on the Property, including the right to develop the Bonneville Shoreline Trail and other recreational trails consistent with the purposes of this Easement.

B. 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 control successional forest restoration and passive restoration, provided competent restoration ecologists are utilized in creating any restoration plan.

C. Signs. The right to place a limited number of signs for the following purposes:

1. To state the purpose of the Conservation Easement and the terms of this agreement and provide directions;
2. To commemorate the partnership involved in preserving this land;
3. To identify interpretive values on the property; and
4. To state rules and regulations, safety, or hazardous conditions found on the Property in accordance to the Grantor's established guidelines for properties they own.

D. Chemicals and Biological Controls. Grantor may use agrichemicals and biological controls on the Property as necessary to control noxious weeds or insects that pose a demonstrable threat to human health such as mosquitoes. Chemical and biological controls may only be used in accordance with all applicable laws, and in those amounts and with that frequency of application constituting the minimum necessary to accomplish reasonable noxious weed objectives. The use of such agents shall be conducted in a manner to minimize any adverse effect on the natural values of the Property and to avoid any impairment of the natural ecosystems and their processes.

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<sup>1</sup> To be amended as necessary to conform to Baseline Documentation.

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

F. Fire Suppression. Grantor may remove brush and vegetation necessary to minimize the risk of wildfire on the Property while maintaining to the extent possible deadfall and brush of value for wildlife. Potential means to reduce or remove high risk fuel loads may include, but would not be limited to: biological controls, including short-duration grazing; and sustainable methods to remove deadfall and slash.

#### SECTION IV - PROHIBITED USES AND PRACTICES<sup>2</sup>

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

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

B. Construction. Grantor will not construct any structures or facilities on the Property for use in human habitation or for commercial or industrial activities.

C. Wildlife Disturbance or Harassment. Harassment of wildlife on the Property by people, vehicles or domestic animals is prohibited. The taking, removal, translocation or captivity of wildlife by the public is prohibited.

D. Alteration of Watercourses and Topography. Grantor will not change, disturb, alter, excavate, or impair any watercourse or wetland or the topography of the ground on the Property, except as expressly permitted by Section III of this Easement. Grantor shall conform to all state and federal laws when constructing or altering wetlands, watercourses and habitat.

E. Non-native Species. Grantor will not introduce into the Property any non-native plant or animal species.

F. Roads. No roads over, through, or across the Property are permitted.

G. Recreational Structures. No recreational structures or facilities will be allowed on the Property except for signage in conjunction with a permitted use under Section III of this Easement.

H. Motorized Vehicles. Motorized vehicles are not permitted to access the Property except for:

1. Emergency vehicles;

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<sup>2</sup> To be amended as necessary to conform to Baseline Documentation.

2. Vehicles used in routine maintenance of the Property provided these vehicles are in sound working order; and

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

I. Agricultural Uses. Agricultural uses are prohibited on the Property except as it may be consistent with management practices for fire reduction or noxious weed management in conjunction with a permitted use as identified in Section III.

J. Dumping. Trash, debris, ashes, sawdust, and other non-compostable refuse may not be dumped or otherwise disposed of on the Property.

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

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

M. Billboards. Grantor will not construct, maintain, lease, or erect any commercial signs, political signs, kiosks or billboards on the Property. Not limiting the generality of the foregoing a limited number of signs for the purpose of providing directions, and identifying ecological and heritage values on the Property.

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

## SECTION V - BREACH, RESTORATION, AND REMEDIES

A. Breach and Restoration. Where Grantee becomes aware of a violation or potential violation of any restriction contained in 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, Grantee may notify Grantor in writing of such violation, potential violation, damage or potential damage. Upon Grantor’s receipt of such notice, Grantor agrees to immediately take action to prevent or stop the activity which potentially or actually violates the terms or intent of this Easement.

Grantor shall have thirty (30) days after receipt of such notice to undertake actions, including restoration of the Property, that are reasonably calculated to swiftly correct the

conditions caused by such violation. If Grantor fails to take such corrective action, Grantee may undertake appropriate action, including legal action, to effect such corrections. Grantor shall pay the cost of such corrections, including Grantee's expenses, court costs, and attorney's fees.

B. Injunctive and Other Relief. In the event Grantor undertakes or causes to be undertaken any activity in violation or potential violation of the terms of this Easement, Grantee shall have the right to obtain injunctive relief or writs from courts of competent jurisdiction to stop any unauthorized activities and/or force the restoration of that portion of the Property affected by such 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/or taking such other action as Grantee deems necessary to achieve restoration. In such case, the costs of restoration and litigation, including reasonable attorney's fees, shall be borne by Grantor or those of its successors or assigns 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 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. Delay in Enforcement. A delay in enforcement shall not be construed as a waiver of Grantee's right to enforce the terms of this Easement.

#### SECTION VI – MAINTENANCE COSTS, TAXES & 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 the control of noxious weeds in accordance with all applicable Utah laws. Grantor agrees to bear all costs of operation, upkeep and maintenance of the Property, and agrees to reimburse the Grantee and its successors and assigns for all claims and obligations arising from the operation, upkeep, and maintenance of the property. Grantor shall pay any and all lawful taxes, assessments, fees, and charges levied by competent authority.

#### SECTION VII – INDEMNITY AND INSURANCE

A. Grantor agrees to defend, indemnify and save harmless the Grantee from and against any damage, liability and loss occasioned by, growing out of, or arising or resulting from any act or omission by the Grantor, its agents or employees while on the property.

B. Grantee and Grantor are governmental entities under the Utah Governmental Immunity Act ("Act"), Utah Code Ann. §§ 63G-7-101, et. seq. The Parties agree they shall only be liable, if at all, within the parameters of the Act. Nothing contained in this Easement shall be construed in any way, to modify the limits of liability set forth in that Act or the basis for liability as established in the Act.

## SECTION VII - ASSIGNMENT OF EASEMENT

Grantee may not transfer or assign its interest in the Property created by this Easement except to an organization identified in Utah Code Ann. §57-18-3, as amended.

## SECTION IX - BASELINE DOCUMENTATION

A baseline documentation inventory completed prior to the signing of the Easement provides a collection of baseline data providing an accurate representation of the Property's condition and natural resources as of the date of the execution of this Easement in accordance with Treasury Regulation 1.170A-14(g)(5)(I) (the "Baseline Documentation"). The Parties agree that subsequent updates to the Baseline Documentation inventory will be signed by both Grantee and Grantor and attached to the Baseline Documentation. The Parties acknowledge that the Baseline Documentation inventory relating to the Property has been completed by competent professionals familiar with the Property. Copies of the Baseline Documentation inventory and subsequent updates to the Baseline Documentation inventory are on file in Grantor's and Grantee's offices. The Baseline Documentation is attached to this Easement as Exhibit B, and is hereby incorporated by reference.

## SECTION X - SUBSEQUENT SALE, EXCHANGE, OR INVOLUNTARY CONVERSION; NOTICES; CO ENFORCEMENT

A. Grantor and Grantee agree that the conveyance of this Easement creates a property right immediately vested in Grantee. Grantee's property right in this Easement shall be based on the condition and improvements on the Property at the time the Easement is established, and this condition shall be documented as referred to in Section IX, above. For purposes of this Section, the property right shall be deemed to have a fair market value at least equal to the proportionate value this Easement bears to the entire value of the Property as a whole at the time of its creation. That proportionate value of Grantee's property rights shall remain constant.

B. This Easement was the result of efforts and financial contribution by all the Parties. Should a change in conditions give rise to the extinguishment of this Easement as provided in Treasury Regulation Section 1.170A-14(g)(6)(I) or any subsequent revision to that section of the IRS Code, or extinguishment of a portion of this Easement, on a subsequent sale, exchange, conveyance, or involuntary conversion (such as exercise of eminent domain, or under claim of right of eminent domain, by public, corporate, or other authority so as to abrogate the restrictions imposed by this Easement) of the Property, or a portion of the Property, Grantee shall be entitled to a portion of the proceeds at least equal to such proportionate value of this Easement as established at the time of its creation. All interpretations of Grantee's property rights shall follow Treasury Regulation Section 1.170. Grantor and Grantee recognize that extinguishment of this Easement is only possible through court proceedings.

C. Subsequent Sale. Grantor agrees that reference to this Easement will be made in any subsequent deed, or other legal instrument, by means of which any interest in the Property (including any leasehold interest) is conveyed, and that a copy of this Easement will be attached

thereto. Grantor will notify Grantee in writing of any conveyance of interest by sending written notice to Grantee as provided below in Subsection D. Grantor agrees to provide notice of this Easement to all successors in interest, and to any potential purchasers or subsequent owners. In the event Grantor elects to sell the Property, Grantor agrees to provide notice of this Easement in any sale or solicitation materials or information. Any failure to comply with the terms of this paragraph shall in no manner render this Easement or any provisions of this Easement unenforceable.

D. Notices Any notice demand request consent, approval or communication shall be in writing and served personally or sent by first class mail addressed as follows:

Grantor:

Millcreek

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Grantee:

Salt Lake County  
Attn Open Space Program Manager  
2001 S State Street, S4-700  
Salt Lake City, UT 84190-3050

#### SECTION XI – AMENDMENTS

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Easement provided that no amendment may adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the State of Utah. Any such amendment will be consistent with the purpose of this Easement, will not affect its perpetual duration, will not permit residential, commercial, or industrial development of the Property, and will not permit any impairment of the significant Conservation Values of the Property. Any such amendment must be filed in the County Recorder’s office of Salt Lake County, Utah. Nothing in this paragraph requires Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

#### SECTION XII - MISCELLANEOUS PROVISIONS

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

B. Enforcement. Grantor intends that enforcement of the terms and provisions of this

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

C. Titles. Section and Subsection titles and subtitles are for convenience only and shall not be deemed to have legal effect.

D. Liberal Construction. This Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property, and in accordance with Utah Code Ann. §§ 57-18-1 et seq. or its successor. 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.

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

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

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

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

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

J. 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 the possible legal and tax implications associated with granting this Easement.

K. Merger. The Parties intend that this Easement will not merge and it being the intent of the Parties that the Easement never be extinguished but remains in full force enjoining Grantee or its successor in interest to perpetually comply with its terms and conditions regardless who holds title to the underlying fee interest.

L. 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.

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

N. No-Third-Party Beneficiaries. The Parties do not intend that this Easement benefit any person which is not named as a Party herein.



IN WITNESS WHEREOF, the Parties have executed this Deed of Conservation Easement on the dates set out below.

MILLCREEK CITY

By Exhibit Only - Do Not Sign  
MAYOR  
Date \_\_\_\_\_

STATE OF UTAH            )  
                                      :SS  
County of Salt Lake        )

On this \_\_\_\_ day of \_\_\_\_\_, 2021, \_\_\_\_\_, who is known to me to be the \_\_\_\_\_ of Millcreek City Corporation, and 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 executed the same on behalf of Millcreek City Corporation.

IN WITNESS WHEREOF, I hereunto set my hand and affix my notary seal on the date above written.

(SEAL)

\_\_\_\_\_  
Notary Public for the State of Utah  
Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Recorder

SALT LAKE COUNTY

By: Exhibit Only - Do Not Sign  
MAYOR or Designee

Date: \_\_\_\_\_

STATE OF UTAH )  
 :ss  
COUNTY OF SALT LAKE )

On this \_\_\_ day of \_\_\_\_\_, 2021, personally appeared before me \_\_\_\_\_, who being duly sworn, did say that (s)he is the \_\_\_\_\_ of Salt Lake County, Office of Mayor, and that the foregoing instrument was signed on behalf of Salt Lake County, by authority of law.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in Salt Lake County, Utah

Approved as to Form:

By: \_\_\_\_\_  
R. Christopher Preston  
Deputy District Attorney

SALT LAKE COUNTY CLERK

By: \_\_\_\_\_  
Salt Lake County Clerk

Date: \_\_\_\_\_

STATE OF UTAH )  
 :ss  
COUNTY OF SALT LAKE )

On this \_\_\_ day of \_\_\_\_\_, 2021, personally appeared before me Sherrie Swensen, who being by me duly sworn, did say and acknowledge that (s)he is the Clerk of Salt Lake County, and that the foregoing instrument was signed by her on behalf of Salt Lake County by authority of a Resolution of the Salt Lake County Council.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in Salt Lake County, Utah

Exhibit A  
Property Description

COMMENCING IN THE CENTER OF SECTION 36, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 160 RODS, THENCE EAST 160 RODS, THENCE SOUTH 1940 FEET, THENCE SOUTHWESTERLY TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM THAT PORTION OF SUBJECT PROPERTY AS DISCLOSED ON THAT CERTAIN QUIT CLAIM DEED RECORDED SEPTEMBER 14, 1973 AS ENTRY NO. 2569299, IN BOOK 3418, AT PAGE 350, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH-SOUTH CENTER OF SECTION LINE OF SECTION 36, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING SOUTH 2418.81 FEET AND EAST 2640.0 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 36 AND RUNNING THENCE SOUTH 55°31', EAST 58.66 FEET; THENCE SOUTH 34°29" WEST 85.40 FEET TO A POINT ON SAID CENTER OF SECTION LINE; THENCE NORTH TO THE POINT OF BEGINNING.

(For reference purposes only: Tax Parcel No. 16-36-200-003)

Exhibit B  
Baseline Documentation  
(To Be Added Before Recording)

Exhibit B

(Deed)

C end WHEN RECORDED RETURN TO:  
Salt Lake County Real Estate  
2001 South State Street, Suite S3-110  
Salt Lake City, Utah 84114-3300

*Space above for County Recorder's use*

*Parcel No. 3834.001:C  
Tax Serial No. 16-36-200-003  
Surveyor WO: W120121074*

**WARRANTY DEED  
Limited Liability Company**

**Rain Clouds, LLC a Utah Limited Liability Company, as to an undivided 1/2 interest and Shaw Properties, LLC, a Utah limited liability company, as to an undivided 1/2 interest,** GRANTOR(s), of Salt Lake County, State of Utah, hereby Convey(s) and Warrant(s) to **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah, GRANTEE, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the following described parcel of real property in Salt Lake County, Utah, to wit:

**(SEE EXHIBIT A)**

**IN WITNESS WHEREOF**, said **Rain Clouds, LLC and Shaw Properties, LLC,** have caused this instrument to be executed by its proper officers hereunto duly authorized this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Rain Clouds, LLC

Shaw Properties, LLC

By: Exhibit Only - Do Not Sign

By: Exhibit Only - Do Not Sign

By: \_\_\_\_\_

By: \_\_\_\_\_

*Acknowledgement continues on following page*

Acknowledgement continued from preceding page

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

On the date first above written personally appeared before me \_\_\_\_\_, and \_\_\_\_\_, who, being by me duly sworn said that he/she/they is/are the \_\_\_\_\_ and \_\_\_\_\_ of Rain Clouds, L.L.C., a Utah Limited Liability Company, and that the within and foregoing instrument was signed in behalf of said company by authority of its Operating Agreement, and said \_\_\_\_\_, and \_\_\_\_\_ acknowledged to me that said company executed the same.

**WITNESS** my hand and official stamp the date in this certificate first above written:

Notary Public \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Residing in \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

On the date first above written personally appeared before me \_\_\_\_\_, and \_\_\_\_\_, who, being by me duly sworn said that he/she/they is/are the \_\_\_\_\_ and \_\_\_\_\_ of Shaw Properties, L.L.C., a Utah Limited Liability Company, and that the within and foregoing instrument was signed in behalf of said company by authority of its Operating Agreement, and said \_\_\_\_\_, and \_\_\_\_\_ acknowledged to me that said company executed the same.

**WITNESS** my hand and official stamp the date in this certificate first above written:

Notary Public \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Residing in \_\_\_\_\_

**(EXHIBIT A)**

An entire tract of land described in that Warranty Deed recorded as Entry No. 13228693 in Book 10917 at Page 2768 in the office of the Salt Lake County Recorder. Said entire tract is located in the Northeast Quarter of Section 36, Township 1 South, Range 1 East, Salt Lake Base and Meridian; and is described as follows:

COMMENCING IN THE CENTER OF SECTION 36, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 160 RODS, THENCE EAST 160 RODS, THENCE SOUTH 1940 FEET, THENCE SOUTHWESTERLY TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM THAT PORTION OF SUBJECT PROPERTY AS DISCLOSED ON THAT CERTAIN QUIT CLAIM DEED RECORDED SEPTEMBER 14, 1973 AS ENTRY NO. 2569299, IN BOOK 3418, AT PAGE 350, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH-SOUTH CENTER OF SECTION LINE OF SECTION 36, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING SOUTH 2418.81 FEET AND EAST 2640.0 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 36 AND RUNNING THENCE SOUTH 55°31', EAST 58.66 FEET; THENCE SOUTH 34°29" WEST 85.40 FEET TO A POINT ON SAID CENTER OF SECTION LINE; THENCE NORTH TO THE POINT OF BEGINNING.

The above-described entire tract contains 138.26 acres, per that Record of Survey plat filed as S2003-10-0733 in the office of the Salt Lake County Surveyor

**EXHIBIT "B":** By this reference, made a part hereof.



