

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

Ent 524355 Bk 1422 Pt 370-404  
Date: 02-SEP-2022 11:31:47AM  
Fee: \$40.00 Check Filed By: HP  
MARCY M MURRAY, Recorder  
WASATCH COUNTY CORPORATION  
For: UTAH OPEN LANDS

**Kem C Gardner Midway Legacy Preserve**  
Gift of Deed of Conservation Easement

This DEED OF CONSERVATION EASEMENT ("Easement"), is made and given, as of August 31, 2022, by Midway City ("Grantor"), having an address of 75 N 100 W P.O. Box 277 Midway, UT 84049, and 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 and Attachments as Follows**

Exhibit A: Legal Description

Exhibit B: Property Map

Exhibit C: Baseline Documentation Report

Exhibit D: Trail, Trailhead, Monument, Gathering Areas and Pasture Map

WITNESSETH:

WHEREAS, Grantor is the owner of a certain tract of land, located in Wasatch County, Utah, described in the Legal Description, attached hereto as Exhibit A and by this reference made a part hereof, and the Property Survey, attached hereto as Exhibit B and by this reference made a part hereof (the "Property");

WHEREAS, the purpose of this Easement is to forever protect and preserve the scenic, natural, open space, wildlife habitat, community heritage, and public use and public recreational values of the Property;

WHEREAS, the Property provides significant benefits to the public as recognized in the Utah Land Conservation Easement Act (Utah Code Ann. § 57-18-1 et seq.), and Grantor intends to convey this Easement under the statutory provisions of that Act and

other applicable provisions of Utah statutory and common law;

WHEREAS, it is the intention of both the Grantor and the Grantee to maintain the Property to forever protect and preserve its scenic, natural, open space, wildlife habitat, community heritage, and public use and public recreational values;

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 citizens of Midway City, Wasatch County, the State of Utah, and the United States of America;

WHEREAS, the Property possesses scenic, natural, open space, wildlife habitat, community heritage, and public use and public recreational values described in paragraphs A-E immediately below (collectively referred to as the "Conservation Values") of great importance to Grantor and Grantee, and which provide incalculable public benefit to the citizens of Wasatch County, the State of Utah, United States of America, and the granting of this Easement will result in the:

- A. Protection and preservation of relatively natural habitat in accordance with Internal Revenue Code §170(h)(4)(A)(ii) and accompanying Treasury Regulations, including protection and preservation of habitat appropriate for several wildlife species identified as priorities for conservation by the State of Utah. Of the listed priority habitats the property serves as a valuable riparian resource as it includes Snake Creek and the protection of this property will provide for the continued flood plain and water quality value of the land and Snake Creek itself which is a vital tributary to the Provo River a designated blue ribbon trout stream as designated by the UDWR. The property provides critical winter range for Mule Deer (*Odocoileus hemionus*), and aquatic species as well as vital habitat for raptors and song birds including bald eagle (*Haliaeetus leucocephalus*) and osprey (*Pandion haliaetus*). The Property further provides important migration corridors for big game species, and as such is a vital link

between critical habitat in the Wasatch Mountains State Park, and Deer Creek Reservoir.

- B. Protection of scenic, aesthetic, and open space in accordance with Internal Revenue Code §170(h)(4)(A)(iii) and accompanying Treasury Regulations through the protection of views of the Property, as a major entry corridor to the town of Midway as it is on State Route 113, Wasatch Mountain State Park, and adjacent protected landscapes;
- C. Protection of scenic agricultural as specified in the resolution passed by Midway City specific to the conservation and significant public benefit of this Property and the clearly delineated governmental policy that established the Midway City Open Space Bond in accordance with Internal Revenue Code §170(h)(4)(A)(iii) and accompanying Treasury Regulations, as the Property is recognized as a critical flood plain area, public recreation and education potential, and entry corridor viewshed.
- D. Protection of public recreational and educational values, as the Property will provide a trailhead facility and access to connector trails, a public gathering space and public pavilion and allow for the placement of an entry monument for Midway City which will enable the public to experience and enjoy recreational opportunities in a manner that is consistent with the permanent protection and preservation of the Property's scenic, natural, ecological, forest, open space, water quality, watershed, riparian, and wildlife habitat values; and
- E. The Property is adjacent and in close proximity to several permanently protected open spaces, including Tate Barn, the State Owned DWR land, and Wasatch Mountain State Park, and as a result the Property expands existing areas of protected open space.

WHEREAS, Grantee has conducted an inventory of the Conservation Values and

the current condition of the Property, as documented in the Baseline Documentation Report, which is defined herein;

WHEREAS, Grantor desires and intends that the Conservation Values of the Property be forever protected and preserved by limiting, as provided herein, the continuation, initiation, or introduction of 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, the Grantor greatly values the undeveloped nature of the Property and its Conservation Values;

WHEREAS, the Property meets the 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 the State's natural resources by the enactment of Utah Code Ann. § 57-18-1 et seq.;

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 the 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; and

WHEREAS, the Parties desire and agree that any 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 and conditions, and restrictions contained herein, which the Parties hereby agree constitute adequate consideration for this Easement, and pursuant to the laws of the State of Utah and in particular Utah Code Ann. § 57-18-1 et seq., Grantor hereby voluntarily and irrevocably grants and conveys to Grantee and its successors in interest a PERPETUAL CONSERVATION EASEMENT to be held and enforced for the benefit of the citizens of Midway City, Wasatch County, the State of Utah, and the United States of America. 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 encumbrances other than encumbrances of record existing at the time of the effective date of this Easement shall be subordinate to all rights and intentions of this Easement, including Grantee's right to enforce the perpetual protection and preservation of the Conservation Values described herein. The scope of this Easement is set forth in this deed.

#### 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 use of the Property as authorized in Section IV 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

To accomplish the Conservation Purpose, Grantor hereby conveys the following rights, without restriction, to Grantee, which rights shall be in addition to and not in limitation of any other rights and remedies available to Grantee:

- (a) to identify, preserve, and protect in perpetuity the Conservation Values consistent with the terms of this Easement;
- (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 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 that Grantee will have no adequate remedy at law);
- (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

- (g) to erect signage at such locations on the Property as determined mutually between Grantor and Grantee identifying Grantee as the holder of this Easement, the terms of this Easement, or the Property's protected status; and
- (h) to burden title to the Property in perpetuity and bind the Grantor and all future owners and tenants of the Property.

### SECTION III – BASELINE DOCUMENTATION REPORT

The Baseline Documentation Report, which by this reference is made a part hereof, contains a collection of baseline data that establishes the condition of the Property and its natural resources as of the effective date of this Easement attached hereto as Exhibit C and by this reference made a part hereof in accordance with Treasury Regulation U.S.C.26 § 1.170A-14(g)(5)(i). The Parties acknowledge that the Baseline Documentation Report has been completed by competent professionals familiar with the Property and agree that the Baseline Documentation Report provides an accurate representation of the Property as of the effective date of this Easement. The Parties further agree that all updates to the Baseline Documentation Report will be signed by both Grantee and Grantor and attached to the Baseline Documentation Report. A copy of the Baseline Documentation Report and all updates thereto shall remain on file in the Grantee's offices. Notwithstanding the foregoing should a future controversy arise over the condition of the Property or compliance with this Easement, the Parties may use all relevant documents, surveys, reports, and other information to assist in resolving the controversy.

### SECTION IV - PERMITTED USES AND PRACTICES

The uses and practices described in this Section shall not be precluded or prevented by this Easement, except when such uses and practices (i) occur in a manner or to a degree that would have or has a material adverse impact on the Conservation Values or the Conservation Purpose of the Easement, and or (ii) requires Grantee's prior approval in accordance with Section.

While not an exhaustive recital of permitted uses and practices and subject to the limitations listed above, the following uses are consistent with this Easement.

**A. Maintenance and Restoration of the Native Ecosystem:** Grantor may use

techniques and methods recognized as effective in maintaining and restoring the native biological diversity of the Property, including but not limited to invasive weed suppression, riparian corridor enhancement and passive restoration efforts, for which the Grantor and Grantee may utilize a qualified restoration ecologist.

- B. Water Resources: Grantor may enhance water quality and wetland features on the Property to protect the watershed value or to benefit the wildlife or carbon sequestration. Such enhancements may include the protection of the riparian corridor, floodplain and wetlands on the Property, and the enhancement of ecological resources, including habitat as well as replacing water flow structures such as culverts to restore more natural riparian, wetland and floodplain functioning.
- C. Agricultural Scenic Pasture Management: to facilitate pasture and grazing activities on the property for which grantor shall provide water rights sufficient for that purpose of irrigation such that Grantor maintains on the property those rights as they become available which would facilitate the right to create community gardens or community supported agricultural operations or lease the ground for the cutting of hay or grazing of livestock in a manner that sustains the scenic value of the property in accordance with the clearly delineated governmental policy that established the Midway City Open Space Bond and as further delineated in Exhibit D.
- D. Public Gathering Areas, Trails and Trailhead: Grantor reserves the right to install within the areas designated in Exhibit D (including appropriate parking areas to facilitate public access) the following: general gathering areas, picnic pavilions, an outdoor amphitheater, connector trails, restroom facilities, benches, maintained grassy areas, interpretive historic information, agricultural and natural heritage information, and other facilities or amenities in harmony with the purposes of this conservation easement. Installation shall be allowed provided the location, number of facilities and siting of facilities is first approved by

Grantee to ensure the protection of the scenic values in accordance with Section VII.

E. Monument, Train Stop and Pavilion Area: Grantor and Grantee have identified in Exhibit D three separate areas to facilitate public engagement with the land and to identify the entry corridor to Midway City celebrating its Swiss and pioneer heritage. This includes locating structures in a manner that minimizes impacts to the scenic view scape while enhancing the cultural scenic character of Midway City and providing the public with the customary monument utilized by the city at the corresponding entrances on the North and East end of the city. As identified in Exhibit D, in addition to gathering areas for the public, the Grantor reserves the right to build/improve a functioning train stop that may be used by the Heber Valley Railroad or its successors, for use associated with heirloom and cultural activities. This train stop may include limited historical structures that preserve the heritage of steam engine travel, with functionality that facilitates use of the Heber Valley Railroad, a reduction in carbon emissions, tourism, engagement with the land and attendant trail system, increases in community wide walkability and access to other amenities on the property in accordance with all regulatory laws associated with the certification of the Historic Heber Railroad.

F. Trail Related Structures: Grantor may construct bridging, benches, boardwalks, culverts, separated street crossings, gates, or other trail-related improvements.

G. Fence and Gating: Grantor may place a limited amount of 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, subject in all cases to approval by Grantee in accordance with Section VII and provided that all fencing must be sensitive to wildlife and wildlife migration and is not considered "game proof".

H. Utilities: Existing utilities may be maintained or relocated, and new connections

Grantor deems necessary and appropriate in conjunction with a permitted use under this Section are permitted, provided that, in the case of any utility relocation or new construction: (i) it must be approved by Grantee in accordance with Section VII; (ii) the utility must be buried to the extent reasonably practicable; and (iii) any surface disturbance to the Property must be restored, to the extent reasonably practicable, to its original undisturbed state.

- I. Signs: Grantor may place a limited number of signs: (i) stating the rules and regulations; (ii) stating safety or hazardous conditions; (iii) identifying trails or interpretive sites; (iv) stating the Conservation Purpose of this Easement and the Property's protected status; and (v) identifying the restoration areas. This subparagraph H of Section IV provides for a single Monument sign identical in vernacular to the Monument signs identified in the baseline documentation solely provided to the City of Midway
  
- J. Events, Special Use, and Related Temporary Structures For Public Use: Temporary structures associated with an event or a special use are permitted provided that except in the conjunction with a successful Olympic bid the (i) event or special use not exceed five (5) consecutive days (ii) the structures are located to minimize impacts on the natural environment, (iii) structures intended to be in place for more than five (5) consecutive days shall first be approved by Grantee in accordance with Section VII with consideration given by Grantee to the impact on the scenic character and natural processes on the property, and (iv) the staging and event itself is located to the extent possible in areas where adequate infrastructure already exists, such as within, at or near the existing designated parking area. In the event of a successful Olympic bid use of the property as a staging area for the Olympic venues in Midway and Wasatch County provided that this temporary use not impair the floodplain values or materially damage the Conservation Values.

## SECTION V - 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, 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 are prohibited. Only those structures permitted under Section IV pursuant to a permitted use are allowed.
- D. Wildlife Disturbance or Harassment: Disturbance or harassment of wildlife by any means (for example, by people or domestic animals) is prohibited. The taking, removal, translocation, or captivation of wildlife is prohibited, however nothing within this provision shall restrict Grantor and Grantee from determining healthy carrying capacities of big game species on the Property and employing appropriate management mechanisms or from removing problem or diseased

animals.

E. Alteration of Watercourses and Topography: Disturbance, alteration, excavation, and 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 IV.

F. Non-native Species: Intentional introduction onto the Property of any non-native plant or animal species is prohibited.

G. Roads: New Roads over, through, or across the Property are prohibited. For the purposes of this paragraph access to trail head parking shall not be considered a road.

H. Motorized Vehicles: Motorized vehicles are prohibited on the Property except for:

- i. emergency vehicles;
- ii. vehicles used in routine maintenance of the Property, provided the vehicles are under the direct control of Grantor or Grantee; and
- iii. vehicles in conjunction with a permitted use.

I. Dumping: The dumping or other disposal of trash, debris, ashes, sawdust, or other refuse on the Property is prohibited.

J. Utilities: New utilities and new utility corridors are prohibited, except as are necessary in conjunction with a permitted use permitted in Section IV.

K. 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.

L. Signs and Billboards: Except as permitted in Sections II and IV, the construction, maintenance, lease, or erection of any signs or billboards on the Property is prohibited. This prohibition encompasses, but is not limited to, commercial and political signs and billboards.

M. 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.

## SECTION VII - 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 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 grant approval pursuant to this Section only 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 the 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 forty-five (45) days from the date such notice is received (as indicated by the registered or certified mail return receipt or the "read receipt" confirming that the email message was opened by Grantee) 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 it may have. The forty-five (45) 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 forty-five (45) days after receipt of the notice. Grantee's objections to a proposed act, use, or practice, if any, shall be based upon Grantee's 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 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, 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. Grantee's Failure to Respond: Grantee agrees to use reasonable diligence to respond to a notice from Grantor within forty-five (45) days from the date such notice is received (as indicated by the registered or certified mail return receipt or the "read receipt" confirming that the email message was opened by Grantee) or within forty-five (45) days after Grantee has received adequate information to evaluate the proposed act, use, or practice, whichever is later. Grantee's failure to respond within the forty-five (45) day period shall be deemed a constructive denial. Grantor may resubmit the request as the constructive denial does not preclude the Grantee from evaluating and responding to the request.

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

E. 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 XIV.

## SECTION VIII - BREACH, RESTORATION, AND REMEDIES

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

B. Injunctive and Other Relief: Grantee shall have the right to obtain injunctive relief or writs from courts of competent jurisdiction, or take other appropriate legal 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 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 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. No Waiver of Enforcement: Grantee may exercise discretion in enforcing this Easement, subject to its fiduciary obligations to the public as beneficiary of the easement. No delay or omission by Grantee in the exercise of any right or remedy under this Easement or applicable law shall impair such right or remedy or be construed as a waiver. Grantee's failure to exercise its rights under this Easement, in the event of a breach by Grantor, shall not be considered a waiver of Grantee's rights under this Easement in the event of any subsequent breach. Enforcement of this Easement shall not be defeated by adverse possession, laches, or estoppel. The Parties agree that the rights of the public, as beneficiary of this Easement, shall not be forfeited by any acts or omissions of Grantee.

## SECTION IX – NOTICES, SUPERIORITY OF EASEMENT, COSTS, TAXES & FEES

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

provisions of this Easement unenforceable.

- B. Superiority of Easement: Any lease, mortgage, trust deed, lien, judgment, or other interest executed or entered against the Property after the effective date of this Easement 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, and agrees to reimburse Grantee 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 X – INDEMNITY

Grantor agrees to defend, indemnify, and hold harmless the 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 the 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 cause by Grantee.

#### SECTION XI – RESTRICTION ON TRANSFER OF EASEMENT

- A. Grantee is prohibited from assigning or otherwise transferring this Easement, whether or not for consideration, unless (i) the transferee is, at the time of the

transfer, a “qualified organization” and an “eligible donee,” as those terms are defined in §170(h) of the Internal Revenue Code and accompanying Treasury Regulations, (ii) the transferee is qualified to hold a conservation easement under Utah law, (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, and (iv) Grantor consents in writing to the transfer, which consent shall not be unreasonably withheld.

- B. If Grantee shall cease to exist, or cease to be a qualified organization or eligible donee (as those terms are defined in § 170(h) of the Internal Revenue Code and accompanying Treasury Regulations) or qualified to hold a conservation easement under Utah law, 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 vest in such entity as a court of competent jurisdiction shall direct pursuant to the doctrine of *cy pres* and provided that the requirements of this Section shall be satisfied.
- C. A transfer of this Easement in connection with a judicial extinguishment that satisfies the requirements of Section IX shall not violate the provisions of this Section.

#### SECTION XII – 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 the 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 C of this Section. Any removal of land from this Easement constitutes an extinguishment, however such removal might be characterized.

- C. In the event of an extinguishment, Grantee shall be entitled to a share of the proceeds from any sale, exchange, or involuntary conversion of the property removed from this Easement equal to the appraised value of this Easement (or portion of this Easement encumbering the property to be removed) immediately before and ignoring the extinguishment, calculated using an appropriate "before and after" valuation methodology. Grantor shall be entitled to the remainder of the proceeds. Grantee has a right to record a lien to secure its recovery of its share of the proceeds.
- D. 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 interest 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 permitted uses, or that neighboring properties may in the future be put entirely to uses inconsistent with the Conservation Purpose of this Easement, has been considered by Grantor in granting and by Grantee in accepting this Easement,

and it is the intent of both Grantor and Grantee that any such changes shall not impair the validity of this Easement or be considered grounds for its extinguishment in whole or in part. In addition, the inability to carry on any or all of the permitted uses and practices, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its extinguishment in whole or in part.

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

### SECTION XIII – LIMITED POWER OF AMENDMENT

A. Grantor and Grantee intend that the Conservation Values and conservation interests of the Property 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 Conservation Values of the Property 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 Conservation Values of the Property. To that end, Grantor and Grantee have the right to agree to amendments to this Easement, provided, however, that any amendment must comply with each of the following requirements.

- i. Only the following types of amendment are permitted:
  - a. Amendments that are technical in nature (such as correcting a scrivener's error).
  - b. Amendments that eliminate or reduce one or more of Grantor's reserved rights.
  - 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.

- ii. An amendment must not materially injure or destroy any of the Conservation Values of the Property or be detrimental to or inconsistent with the Conservation Purposes of this Easement. For example, this requirement prohibits “trade-off” amendments that would materially negatively impact the Conservation Values, even if it arguably would further the protection of the Conservation Values of the Property. Thus, for example, an amendment that would involve the relaxation or elimination of a restriction or other conservation protection in this Easement in exchange for the addition of land to this Easement is prohibited.
- iii. An amendment must not limit or otherwise alter the perpetual duration of this Easement.
- iv. An amendment must not adversely affect the status of the Grantee as a qualified organization, eligible donee, or eligible holder of this Easement under any applicable laws.
- v. An amendment must not result in private inurement or confer impermissible private benefit.
- vi. An amendment must be in writing, duly signed, and promptly recorded in the appropriate location for public land records, and Grantee must document the amendment’s compliance with the requirements of this Section in writing.

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

#### SECTION XIV – 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: Midway City  
City Mayor  
75 N 100 W, PO Box 277  
Midway, UT 84049

With a copy to  
Midway City  
City Manager  
75 N 100 W, PO Box 277  
Midway, UT 84049

Grantee: Utah Open Lands Conservation Association Inc.  
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 XV - 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. "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."
- 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 forever protecting and preserving the Conservation Values of the Property and carrying out the Conservation Purpose of this Easement, 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.
- E. Successors: This Easement shall be binding upon both Grantor and Grantee and their respective successors in interest and assigns.
- F. Governing Law: This Easement will be interpreted and construed in accordance with applicable Utah laws.

- G. Venue: any legal action concerning this Easement shall be filed in the Judicial District of Utah, Wasatch County.
- H. Entire Agreement: This Easement sets forth the entire agreement of the Parties. It is intended to supersede all prior discussions or understandings.
- I. Compliance With Law: All uses and practices permitted by this Easement shall comply with all applicable local, state and federal laws.
- J. Effective Date: The effective date of this Easement will be the date of its recordation.
- K. State Law Notice Requirements: Grantor hereby acknowledges that Grantee, at least three days prior to the execution of this Easement, discussed with it the types of conservation easements available, the legal effect of each easement, and the advisability of consulting legal counsel concerning any possible legal and tax implications associated with granting this Easement.
- L. No Merger: The Parties intend that this Easement may be extinguished in whole or in part only as provided in Section XII. To that end, the Parties hereby agree that (i) no purchase by or transfer to Grantee of the underlying fee interest in the Property shall be deemed to extinguish this Easement, or any portion thereof, under the doctrine of merger or other legal doctrine, and (ii) should Grantee come to own all or a portion of the underlying fee interest in the Property, (a) Grantee, as successor in title to Grantor, shall observe and be bound by the obligations of Grantor under and the restrictions imposed upon the Property by this Easement and (b) Grantee shall continue to hold and enforce this Easement as a public charitable trust for the benefit of the citizens of Wasatch, the State of Utah, and the United States of America and be bound by its terms.

M. 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.

N. 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:

Midway City

Mayor Celeste Johnson

Dated this 18 day of August  
\_\_\_\_\_, 2022

GRANTEE:

UTAH OPEN LANDS CONSERVATION  
ASSOCIATION, INC.,

Dated this 31 day of August  
\_\_\_\_\_, 2022

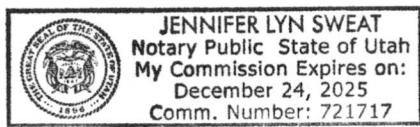
By

Wendy Fisher, Executive Director,  
Utah Open Lands Conservation  
Association, Inc.

STATE OF UTAH )  
: ss.  
County of Salt Lake )  
Wasatch

On this 18 day of <sup>August</sup> June 2022, Celeste Johnson, representing Midway City, known to me to be the person whose name is subscribed to the instrument set forth above, personally appeared before me, Jennifer Lyn Sweat, a Notary Public for the State of Utah, and acknowledged that he is the authorized to sign on behalf of

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



(SEAL)

Notary Public for the State of Utah

Residing at

Midway CityMy commission expires December 24, 2025

STATE OF UTAH )  
: ss.  
County of Salt Lake )

On this 31 day of <sup>Aug</sup> June 2022 Wendy Fisher, who is known to me to be the

Executive Director of Utah Open Lands Conservation Association Inc., and the person whose name is subscribed to the instrument set forth above, personally appeared before me, Wendy Fisher, a Notary Public for the State of Utah, and acknowledged that he executed the same on behalf of Utah Open Lands Conservation Association Inc.

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

adriana reyes

(SEAL)



ADRIANA REYES  
NOTARY PUBLIC • STATE OF UTAH  
COMMISSION NO. 717214  
COMM. EXP. 3-9-2025

Notary Public for the State of Utah

Residing at

KEYBANK 1098 S 300 W SLC, UT 84101

My commission expires

3-9-2025

## Exhibit A

**Kem C. Gardner Midway Legacy Preserve**

## Legal Description

## PARCEL 1 (Parcel Nos. 00-0020-4290 and 00-0020-4291):

Beginning 441 feet North of the Southwest corner of the Northwest quarter of Section 11 of Township 4 South, Range 5 East, Salt Lake Meridian; thence North 84°53' East 368 feet; thence on regular curve to right having radius of 1960.1 feet and distance of 666 feet as measured on arc of curve; thence South 75°39' East 307 feet; thence North 24°15' West 906.24 feet; thence North 89°12' West 14.53 chains; thence South 747.02 feet to the place of beginning:

LESS AND EXCEPTING the following:

Beginning at a point which is East 23.98 feet and North 1166.02 feet from the Southwest corner of the Northwest quarter of Section 11, Township 4 South, Range 4 East, Salt Lake Base and Meridian and running thence North 22.0 feet; thence South 89°12' East 935.0 feet; thence South 24°15' East 906.3 feet; thence North 76°20'28" West 390.8 feet; thence North 16°36' West 629.23 feet; thence West 193.4 feet; thence North 114.3 feet; thence No1ih 89°12' West 555.2 feet to the point of beginning.

## PARCEL 2 (Parcel Nos. 00-0020-4292, 00-0020-4293, 00-0020-5563, 00-0020-5564, 00-0020-8417, 00-0020-8420 and 00-0020-8424):

Beginning at the Wasatch County survey monument for the Southwest corner of Section 2, Township 4 South, Range 4 East, Salt Lake Base and Meridian (from said Southwest corner of Section 2 the West one-quarter corner of Section 11, Township 4 South, Range 4 East, Salt Lake Base and Meridian, bears South 00° 15' 15" East 2671.45 feet) and running thence North 00°06'19" West 314.92 feet along the section line; thence East 882.44 feet to an existing fence line; thence South 11 °03' 12" West 119. 73 feet along an existing fence line; thence South 09°10'19" West 256.34 feet along an existing fence line; thence South 25°51'16" West 193.66 feet along an existing fence line; thence South 14°55'00" East 206.89 feet; thence South 58°50'00" East 188.10 feet; thence South 02°45'00" West 217.80 feet; thence South 85°40'00" West 16.97 feet; thence South 02°54'57" West 36.18 feet along an existing fence line; thence South 85°53'31" West 288.74 feet along an existing fence line; thence South 36°13'40" West 174.05 feet along an existing fence line; thence South 17°20'00" East 92.62 feet; thence South 06°00'00" East 430.98 feet; thence No1ih 89°12'00" West 0.92 feet; thence South 06°45'46" East 12.88 feet along an existing fence line; thence North 89°41 '03" West 594.47 feet along an existing fence line; thence North 00°15'15" West 1469.80 feet along the section line to the point of beginning.

SUBJECT TO the effects of that certain Boundary Line Agreement recorded January 20, 2009 as Entry No. 343791 in Book 981 at Page 407 of official records of the Wasatch County Recorder.

**Exhibit B**

Kem C. Gardner Midway Legacy Preserve Parcels: 00-0020-4290, 00-0020-4291, 00-0020-4292, 00-0020-4293, 00-0020-5563, 00-0020-5564, 00-0020-8417, 00-0020-8420, & 00-0020-8424



Boundaries are approximate.  
Maps are not intended for use as survey.

0 0.025 0.05 0.1 Miles

Conservation Easement  
Baseline Document Report

KEM C. GARDNER  
MIDWAY LEGACY PRESERVE



PREPARED ON August 29, 2022, BY

Maevlyn Stevens  
*Conservation Acquisitions & Land Protections  
Director*

Wendy Fisher  
*Executive Director*

UTAH OPEN LANDS CONSERVATION ASSOCIATION  
1488 S MAIN ST, SLC, 84115  
(801) 463-6156



# ABOUT THE PROPERTY

The Kem C. Gardner Midway Legacy Preserve ("the Property") consists of ~40.84 acres and is located in Wasatch County, UT. Sitting adjacent to SR-113 (South Center Street) the Property provides spectacular views along the entry corridor of the municipality of Midway, granting first and last impressions of open space importance to visitors from near and far. Within close proximity to this part of the Provo Canyon Scenic Byway are three more intersections, one of which connects to Wasatch Mountain State Park. In addition to its scenic value, the Property possesses natural, open space, riparian, agricultural, and wildlife habitat conservation values that are further investigated and explained in this Baseline Document Report conducted by Utah Open Lands (UOL).

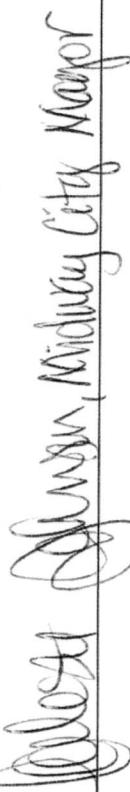
A copy of the Baseline Documentation Report and all updates thereto shall remain on file in the Grantee's offices.

# ACKNOWLEDGEMENTS & CERTIFICATIONS

This baseline documentation report (consisting of 113 pages including a cover page, table of contents, narrative descriptions, 23 maps and 251 photographs) was prepared on May 4, 2022, and completed on August 29, 2022 to document the present condition of the Property and is to be used for the purpose of monitoring and enforcement of the conservation easement.

## GRANTOR CERTIFICATION OF ACCURACY AND ACCEPTANCE

This statement certifies that I, Wendy E. Fisher, am the Grantor and current owners of the Property. Tax parcel IDs 00-0020-4290; 4291; 4292; 4293; 5563; 5564; 8417; 8420; and 8424 are subject to the conservation easement conveyed to Utah Open Lands Conservation Association and recorded in the official records of Wasatch, Utah. We have read and independently reviewed this baseline documentation report and declare that this report accurately describes the status of the physical features and uses of the conservation easement Property.

  
Wendy E. Fisher, Midway City Mayor

Signature: Wendy E. Fisher Date: Aug 30, 2022  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

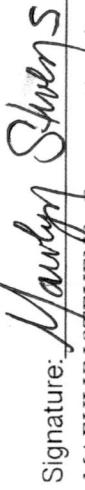
## LAND TRUST CERTIFICATION OF ACCURACY AND ACCEPTANCE

As the Executive Director of Utah Open Lands Conservation Association, I, Wendy E. Fisher declare that Utah Open Lands Conservation Association has relied upon and will rely upon the information contained in this report which describes the condition of the Property at the time of the signing of the conservation easement. Further, I certify that the preparation of this document complies with our general policy and procedures for creating and maintaining business records and specifically with our policy and procedures for baseline documentation reports and record keeping. This document was created in the regular course of business for the purpose of monitoring this conservation easement and along with the language contained within the conservation easement aids our enforcement of the conservation values attendant to the land.

  
WENDY E. FISHER, Executive Director, Utah Open Lands Conservation Association

## PREPARER'S CERTIFICATIONS AND QUALIFICATIONS

This statement certifies that I, Maevlyn Stevens, prepared this Baseline Documentation Report through a site visit to the Property, research, review of publicly accessible data and personal interviews. All photographs provided in this report were taken by UOL staff on September 28, 2020, and May 4, 2022. I certify that I have worked with Utah Open Lands from October 2021. I have been trained in the procedures for the production of Baseline Documentation Reports and am qualified to author such a report in accordance with Utah Open Lands' Baseline Documentation Policy re-affirmed by the Board of Directors on October 21, 2010. The site visit was conducted by Utah Open Lands' staff members, Wendy Fisher and Marie Schleicher, on September 28, 2020, and by Maevlyn Stevens on May 4, 2022.

  
Maevlyn Stevens

Date: August 30, 2022  
MAEVLYN STEVENS, Conservation Acquisitions & Land Protection Director, Utah Open Lands Conservation Association

## Exhibit D

Kem C. Gardner Midway Legacy Preserve  
Proposed Trail, Trailhead, Monument, Gathering Areas, Pasture

Boundaries are approximate.  
Maps are not intended for use as survey.

0 0.02 0.05 0.09 0.14 0.19 Miles