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**ASSIGNMENT OF CONSERVATION EASEMENT**  
**Kanarra Mountains/Virgin River Headwaters (Ence) UT**

THIS ASSIGNMENT OF CONSERVATION EASEMENT (the "Assignment") is made and entered into this 21<sup>st</sup> day of October, 2009 by and between THE NATURE CONSERVANCY, a District of Columbia non-profit corporation (the "Conservancy") as assignor, and THE STATE OF UTAH, acting by and through the DEPARTMENT OF NATURAL RESOURCES, DIVISION OF FORESTRY, FIRE, AND STATE LANDS, whose address is 1594 West North Temple, Suite 3520, Salt Lake City, UT 84116 (the "State") as assignee, on the basis of the following facts and circumstances:

A. The Conservancy is the holder of a Conservation Easement (the "Conservation Easement") on certain real property located in Iron County, UT, owned by The Louis W. Ence Family Partnership, LTD, whose address is 557 Ridge Road, Cedar City, UT 84720 c/o Keith Ence. A copy of the recorded Conservation Easement is attached to this Assignment as Attachment 1, and incorporated herein by reference.

B. The State is a "qualified organization" as that term is defined in Section 170(h)(3) of the Internal Revenue Code, as that section may be amended from time to time, and has authority to hold, monitor and enforce the Conservation Easement pursuant to Utah state law.

C. The Conservancy desires to assign to the State and the State desires to accept from the Conservancy, the Conservancy's rights and obligations as the Grantee under the Conservation Easement.

 NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Conservancy hereby assigns to the State, and the State hereby accepts and assumes, all of the Conservancy's rights, title, interest, and obligations as Grantee, on all the terms and conditions set forth in the Conservation Easement; and the Conservancy is hereby released from all obligations under the Conservation Easement.

The State acknowledges that it acquired the Conservation Easement with federal funds under the Forest Legacy Program (P.L. 101-624; 104 Stat. 3359) and that the Conservation Easement cannot be sold, exchanged, or otherwise disposed of by the State unless the United States is reimbursed the market value of the Conservation Easement at the time of disposal. Provided, however, the Secretary of Agriculture may exercise discretion to consent to such sale, exchange, or disposition upon the State's tender of equal valued consideration acceptable to the Secretary.

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IN WITNESS WHEREOF, the Conservancy and the State have entered into this Assignment of Conservation Easement as of the date first written above.

THE NATURE CONSERVANCY,  
a District of Columbia non-profit corporation

By: [Signature]

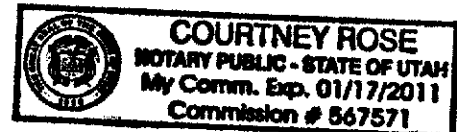
Title: Vice President

STATE OF UTAH                    )  
  )ss  
COUNTY OF SALT LAKE    )

The foregoing instrument was acknowledged before me this 19 day of October, 2009 by Dave Livermore, the Utah State Director and Vice President of THE NATURE CONSERVANCY, a District of Columbia non-profit corporation.

[Signature]  
Notary Public

Residing in: SLC, UT  
My commission expires: 1/17/2011



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THE STATE OF UTAH,  
DEPARTMENT OF NATURAL RESOURCES,  
DIVISION OF FORESTRY, FIRE AND STATE LANDS

By: Richard J. Buehler

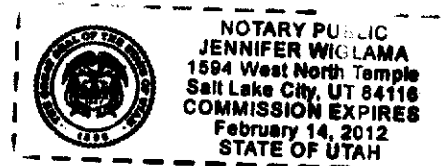
Title: State Forester

STATE OF UTAH                    )  
  )ss  
COUNTY OF SALT LAKE    )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of October, 2009 by Richard J. Buehler, the Director of THE STATE OF UTAH, DEPARTMENT OF NATURAL RESOURCES, DIVISION OF FORESTRY, FIRE, and STATE LANDS.

Jennifer Wiglana  
Notary Public

Residing in: Salt Lake County  
My commission expires: February 14, 2012



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When recorded, return to:  
The Nature Conservancy  
Legal Department  
559 East South Temple  
Salt Lake City, UT 84102

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**DEED OF CONSERVATION EASEMENT**  
**(Kanarra Mountain/Virgin River Headwaters – Ence) UT**

THIS DEED OF CONSERVATION EASEMENT is made this 27<sup>th</sup> day of October, 2009 by and between LOUIS W. ENCE FAMILY PARTNERSHIP, LTD., organized under the laws of the State of Utah, whose address is 557 Ridge Road, Cedar City, UT 84720 (the "Grantor") and THE NATURE CONSERVANCY, a District of Columbia non profit corporation whose address is 4245 N. Fairfax Dr., Arlington, VA 22203 ("Grantee").

Exhibits to this Deed of Conservation Easement include the following, which are incorporated herein by reference:

- Exhibit A – Legal Description of the Property and Water Rights;
- Exhibit B – Property Map;
- Exhibit C – Acknowledgment of Easement Baseline Documentation Report;
- Exhibit D – Forest Stewardship Plan;
- Exhibit E – Consistent Uses of the Property; and
- Exhibit F – Inconsistent Uses of the Property.

**WITNESSETH THAT:**

A. Grantor is the owner of certain real property in Iron County, Utah, consisting of 1,171 acres, more or less, more particularly described and shown in **Exhibits A and B** attached hereto and incorporated herein by this reference (the "Property").

B. The Property currently exists in a substantially undisturbed, natural state and provides significant relatively natural habitat for native plants and wildlife. As such, the Property has significant ecological, scientific, and aesthetic values of great importance to Grantor, the people of Iron County, and the people of the State of Utah. In particular, the Property possesses natural communities of sagebrush, aspen, oak, mountain brush and mixed conifer, and unfragmented open space that provides for the migration of wildlife, including, but not limited to deer, elk, bear, and cougar (the "Conservation Values").

C. Furthermore, the protection and preservation of the Conservation Values are consistent with the goals of the State of Utah's Forest Legacy Program and the establishment of this conservation easement will provide public benefits by preventing future conversions of forest land and forest resources; protecting and enhancing water quality and water supplies; protecting wildlife habitat and maintaining habitat connectivity and related values to ensure biodiversity; protecting riparian

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areas; maintaining and restoring natural ecosystem functions; and, maintaining forest sustainability and the cultural and economic vitality of rural communities, in accordance with the Cooperative Forestry Assistance Act of 1978, as amended by section 1217 of the Food, Agricultural, Conservation, and Trade Act of 1990 (104 Stat. 3528; 16 U.S.C. Section 2103c).

D. Grantor, as owner of the Property, owns the affirmative rights to identify, preserve, and protect in perpetuity its Conservation Values by granting this Conservation Easement. In accordance with the Utah Land Conservation Easement Act, Utah Code Annotated Sections 57-18-1 to 57-18-7, the purpose of this Conservation Easement is to preserve and maintain the land and water predominantly in a natural, scenic, or open condition, or for agricultural, cultural, wildlife habitat or other use or condition consistent with the protection of open land. By this grant, Grantor intends that only those uses of the Property that are consistent with the preservation and protection of the Conservation Values be permitted.

E. Grantee is a qualified to hold Conservation Easements under Section 170(b)(1)(A)(v) of the Internal Revenue Code and Title 57, Chapter 18 of the Utah Code.

F. Grantor has specifically requested that the value of donated interests at transfer be used as a non-federal match for the Forest Legacy Program.

### TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants contained herein, pursuant to the 'Land Conservation Easement Act' of Utah's statutes, Sections 57-18-1 to 57-18-7, Grantor hereby grants and conveys to Grantee, its successors and assigns, a perpetual Conservation Easement consisting of the rights and restrictions enumerated herein, over and across the Property (the "Easement").

1. Purposes. It is the primary purpose of the Easement to preserve and protect in perpetuity and, in the event of their degradation or destruction, the restoration of the relatively natural features and Conservation Values of the Property. It is further the specific purpose of this Easement to conserve important habitat for wildlife; to protect rare or unique native plants currently known or later identified; and to conserve the diverse forest, meadow, and riparian vegetative communities and the wildlife inhabiting these communities. It is also the purpose of this Easement to preserve the agricultural uses of the Property (as defined in the "Easement Documentation Report" required under Paragraph 3 below) in a manner consistent with the protection of the Conservation Values. Collectively, these purposes are hereinafter referred to as the "Conservation Purposes". In achieving these Conservation Purposes, it is the intent of the Easement to permit the continuation of such uses as may be conducted consistent with the Conservation Values protected herein.

2. Authority for Transfer to State of Utah. Grantor and Grantee acknowledge that this Easement may be transferred to the State of Utah and such acquisition by the State is authorized by the Cooperative Forestry Assistance Act of 1978, as amended by section 1217 of the Food, Agricultural, Conservation, and Trade Act of 1990 (104 Stat. 3528; 16 U.S.C. Section 2103c).

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3. Baseline Documentation Report. Competent naturalists familiar with the Property have prepared a collection of baseline data on the Property and its resources. The data and explanatory text are presented in the "Easement Documentation Report for the Kanarra Tract – Utah" (the "Report"). The parties acknowledge in the statement attached as Exhibit C that the Report is intended to document the current condition and uses and establish the condition of the Property subject to the Easement as of the date written above. For purposes of this Easement, and as a supplement to the Report, the existing water rights, if any associated with the Property are described on Exhibit A, together with all existing rights to springs, tributary groundwater, or non-tributary groundwater, and all additional unknown existing water rights appurtenant to the Property (the "Water Rights").

The parties agree that, in the event a controversy arises with respect to the nature and extent of the biological or physical condition of the Property, the parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other information to assist in the resolution of the controversy.

4. Rights of Grantee. The rights conveyed to Grantee by the Easement are the following:

A. To preserve and protect the Conservation Values of the Property in perpetuity.

B. To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor except in emergencies or cases of suspected deliberate violations, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

C. To enjoin any activity on or any use of the Property that is inconsistent with the Easement and may enforce against the perpetrating party the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

D. In the event that Grantor fails to defend the Water Rights against injury or abandonment, the Grantee may assert any defenses, seek to change the Water Rights, or take any other actions necessary to avoid their loss or diminishment. Any loss of the Water Rights through injury or abandonment shall not be considered a severance or other transfer of the title to the Water Rights from the Property.

E. To review, comment upon, approve or object to any proposed plans relating to uses as set forth below; and

F. To place signs on the Property which identify the Property as being protected by this Conservation Easement. The number and location of the signs are subject to Grantor's approval, which will not be unreasonably withheld.

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5. Reserved Rights; Consistent Uses of the Property. Grantor reserves all rights accruing from ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the rights set forth in **Exhibit E** are expressly permitted. In that regard, except as provided in **Exhibit F** attached hereto, the uses set forth in **Exhibit E** attached hereto and incorporated herein, though not an exhaustive list of consistent permitted uses, are consistent with this Easement, and shall not be precluded, prevented, or limited by this Easement, except for the requirement of prior approval by Grantee where such approval is required herein.

6. Inconsistent Uses of the Property. Any activity on or use of the Property that is inconsistent with the Conservation Purposes of this Easement is prohibited. Though not an exhaustive list of prohibited uses, none of the uses described in **Exhibit F** hereto shall be made of the Property. In making this grant, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both Grantor and Grantee that any such changes shall not be deemed to be circumstances justifying the termination, extinguishment or modification of this Easement. In addition, the inability of Grantor, or his/her/their heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination, extinguishment or modification.

7. Prior Notice and Approval. Grantor shall not undertake or permit any activity requiring prior approval by Grantee without first having notified and received written approval from Grantee as provided herein.

Prior to the commencement of any such activity, Grantor shall send Grantee written notice of Grantor's intention to undertake or permit such activity. The notice shall inform Grantee of all aspects of the proposed activity, including location, design, materials or equipment to be used, dates and duration, and any other relevant information, and shall be delivered by overnight courier or registered or certified mail, return receipt requested, to The Nature Conservancy, 559 East South Temple, Salt Lake City, UT 84102, Attention Director of Conservation Programs, or such other addresses as Grantor may from time to time be informed of in writing by Grantee. Upon transfer of this Conservation Easement to the State of Utah, such notice shall be delivered to the Utah Division of Forestry, Fire and State Lands, 1594 West North Temple, Suite 3520, Salt Lake City, UT 84116.

Grantee shall have forty-five (45) days from receipt of the notice, as indicated by the date of the return receipt, to review the proposed activity and to notify Grantor of any objections thereto; provided that the 45-day period shall not begin until such time as Grantee has received adequate information from Grantor to evaluate the proposed activity. In the event that Grantee requires additional information to evaluate the proposed activity, Grantee shall request the information from Grantor as soon as practicable and in any case not later than 30 days after the receipt of the notice of the proposed activity.

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Grantee's written decision to approve or disapprove the activity proposed by Grantor shall be sent by registered or certified mail, return receipt requested, to Grantor at the address first stated above, or to such other address as Grantee may from time to time be informed of in writing by Grantor.

A decision by Grantee to disapprove a proposed activity must be based upon Grantee's determination that the proposed activity is inconsistent with the Conservation Purposes of the Easement. If in Grantee's judgment it is possible that the proposed activity can be modified to be consistent with the Easement, Grantee's decision notice shall inform Grantor of such modification(s). Once modification is made to the satisfaction of Grantee or Grantee otherwise concurs with the matters set forth in Grantor's notice, the proposed activity may thereafter be conducted in a manner that is acceptable to Grantee.

Should Grantee fail to post its response to Grantor's notice within forty-five (45) days of its receipt of notice or within forty-five (45) days of the time that Grantee has received adequate information to evaluate the proposed activity, whichever is later, the proposed activity is automatically deemed consistent with the terms of the Easement, Grantee having no further right to object to the activity identified by such notice.

If Grantee raises objections to a proposed activity, and the parties cannot agree to a resolution despite the parties' best efforts, either one of the parties may submit the matter to non-binding arbitration. Any matter submitted to arbitration shall be submitted to and heard by the Salt Lake City Office of the American Arbitration Association in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association.

8. Remedies, Breach and Restoration. The provisions of this Easement are enforceable in law or equity by the Grantee, its successors or assigns, as follows:

A. Notice of Violation; Corrective Action. If the Grantee determines that a violation of the terms of this Easement has occurred or is threatened, the Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by the Grantee.

B. Injunctive Relief. If Grantor fails to cure the violation within thirty (30) days or such longer period mutually agreed to by Grantor and Grantee after receipt of notice thereof from the Grantee (hereinafter the "Cure Period"), or under circumstances where the violation cannot reasonably be cured within the Cure Period, fail to begin curing such violation within the Cure Period, or fail to continue diligently to cure such violation until finally cured, the Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

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C. Damages. The Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

D. Emergency Enforcement. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the Grantee may pursue its remedies under this Paragraph 8 without prior notice to Grantor or without waiting for the period provided for cure to expire.

E. Scope of Relief. The Grantee's rights under this Paragraph 8 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that the Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that the Grantee shall be entitled to the injunctive relief described in Paragraph 8.B. above, both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Paragraph 8. shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

F. Forbearance. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights under this Easement. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

G. Waiver of Certain Defenses. As between Grantor and Grantee Grantor hereby waives any defense of laches, estoppel or prescription.

H. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

9. Liabilities. Grantor shall hold harmless, indemnify, and defend Grantee and Grantee's members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with the presence or release of any Hazardous Material (as that term is defined in Paragraph 18 below) or substance of any kind on the Property. This Paragraph shall not apply in the case of any

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Hazardous Material or substance in any manner placed on the Property by Grantee or Grantee's representatives or agents.

10. Costs and Legal Requirements. 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 and agree that Grantee shall have no duty or responsibility for the operation or maintenance of the Property, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public, or any third parties from risks relating to conditions on the Property. Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Property before delinquency and that Grantor shall keep Grantee's interest in the Property free of any liens, including those arising out of any work performed for, materials furnished to or obligations incurred by Grantor. Grantor shall be solely responsible for any costs related to the maintenance of general liability insurance covering acts on the Property. The prior sentence does not require Grantor to maintain such coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. If more than one person or entity constitutes Grantor, the obligations of each and all of them under this Easement shall be joint and several.

11. Access. Nothing contained in this Easement shall give or grant to the public a right to enter upon or use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Easement.

12. Subsequent Transfers. Grantor agrees that the terms, conditions, restrictions and purposes of this Easement or reference thereto will be inserted by Grantor in any subsequent deed or other legal instrument by which Grantor divests either the fee simple title or possessory interest, including, but not limited to, any leases of the Property; and Grantor further agrees to notify Grantee of any pending transfer at least thirty (30) days in advance. The failure of Grantor to comply with this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way. Any successor in interest of Grantor, by acceptance of a deed, lease or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions and conditions of this Easement.

13. Amendment. If circumstances arise under which an amendment to or modification of the Easement would be appropriate, Grantor and Grantee may jointly amend the Easement; provided that no amendment shall be allowed that affects the qualification of the Easement under the IRS Code or the 'Land Conservation Easement Act' of Utah's statutes, Sections 57-18-1 to 57-18-7. Any such amendment shall be consistent with the purposes of the Easement, shall not affect its perpetual duration, shall not permit additional development or improvements to be undertaken on the Property other than development or improvements currently permitted by the Easement, and shall not impair any of the significant Conservation Values of the Property. Any such amendment shall be recorded in the official records of the county in which the Property is located.

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14. Extinguishment and Condemnation.

A. Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or any other property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and after the satisfaction of prior claims and net of any costs or expenses associated with such sale, Grantor and Grantee shall divide the proceeds from such sale (minus any amount attributable to the value of improvements made by Grantor after the effective date of this Easement, which amount is reserved to Grantor) in accordance with their respective percentage interests in the fair market value of the Property, as such percentage interests are determined under the provisions of Paragraph 14.B., adjusted, if necessary, to reflect a partial termination or extinguishment of this Easement. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with Grantee's conservation purposes.

B. Percentage Interests. For purposes of the paragraph, the parties hereto stipulate that as of the effective date of this grant the Easement and the restricted fee interest in the Property each represent a percentage interest in the fair market value of the Property. Said percentage interests shall be determined by the ratio of the value of the Easement on the effective date of this grant to the value of the Property, without deduction for the value of the Easement, on the effective date of this grant. The values on the effective date of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code. The parties shall include the ratio of those values with the Baseline Documentation of the Property (on file at Grantee's offices) and shall amend such values, if necessary, to reflect any final determination thereof by the Internal Revenue Service or court of competent jurisdiction. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant, and the percentage interests of Grantor and Grantee in the fair market value of the Property thereby determinable shall remain constant.

C. Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in Paragraph 14.B. Grantee has received money from the Utah Quality Growth Commission ("Commission") as partial funding for the acquisition of this Easement. In the event of condemnation or termination, the Commission shall be entitled to receive that portion of the net proceeds of condemnation or sale of the Property, or any portion thereof, that Grantee is entitled to under the terms of this Easement equal to the proportionate value of the Grant funds that were used to pay for this Easement as established at the time of its creation. At the option of the Commission, Grantee may retain the Commission's share of the proceeds, provided that the

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proceeds shall be used in a manner and for a purpose consistent with the conservation values for which the Grant was made.

D. Application of Proceeds. Grantee shall use any proceeds received under the circumstances described in this Paragraph 14 in a manner consistent with its conservation purposes, which are exemplified by this grant.

15. Interpretation. The provisions of this Easement shall be liberally construed to effectuate their purpose of preserving and protecting habitat for wildlife, unique native plants, and diverse forest, meadow and riparian vegetative communities, as well as preserving the agricultural uses in those areas designated for such uses in the Report. No remedy or election given by any provision in this Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Easement. In the event of any conflict between the provisions of this Easement and the provisions of any use and zoning restrictions of the state or county in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply. This Easement shall be interpreted in accordance with the laws of the state in which the Property is located.

16. No Use or Transfer of Development Rights. All development rights, except as specifically reserved in this Easement, that are now or hereafter allocated to, implied, reserved or inherent in the Property are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Property or any other property.

17. Maintenance. Each party shall bear sole responsibility for any cost or expense reasonably required for the maintenance of any structure, building, road, fence or other improvement or enhancement made to or existing on the Property by that party. This Paragraph is not intended to give Grantee permission to build new improvements or structures.

18. Miscellaneous.

A. Definitions.

(1) The terms "Grantor" and "Grantee," wherever used in this Easement and any pronouns used in place thereof, shall mean and include, respectively, the above-named Grantor, his personal representatives, heirs, devisee, personal representatives, and assigns, and all other successors as their interest may appear and the Grantee and its successors and assigns.

(2) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive, or radioactive; (b) petroleum products; and (c) hazardous

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materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC 9601 et seq.) (hereinafter "CERCLA"), and the Hazardous Materials Transportation Act (49 USC section 6901 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state, or local laws, ordinances, rules, or regulations now in effect or enacted after this date.

(3) The term "Environmental Laws" includes, without limitation, any federal, state, local or administrative agency statute, regulation, rule, ordinance, order or requirement, applicable to the Property, relating to pollution, protection of human health, the environment or Hazardous Materials.

B. Binding Effect. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

C. Severability. The terms and purposes of this Easement are intended to be perpetual. If any provision or purpose of the Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions and purposes of the Easement, and the application of such provision or purpose to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

D. Re-Recording. Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement; for such purpose, Grantor appoints Grantee his/her/their attorney-in-fact to execute, acknowledge and deliver any necessary instrument on his/her/their behalf. Without limiting the foregoing, Grantor agrees to execute any such instruments upon request.

E. Subsequent Liens On Property. No provision of this Easement should be construed as impairing the ability of Grantor to use the Property as collateral for subsequent borrowing, provided that any mortgage, deed of trust or lien arising from such a borrowing is at all times subordinated to this Easement.

F. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

G. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Paragraph 13 above.

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

IN WITNESS WHEREOF, Grantor has hereunto set its hand as of the date first written above.

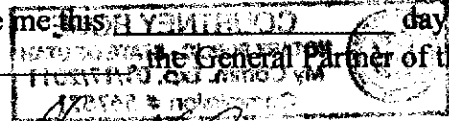
GRANTOR:

LOUIS W. ENCE FAMILY PARTNERSHIP, LTD.

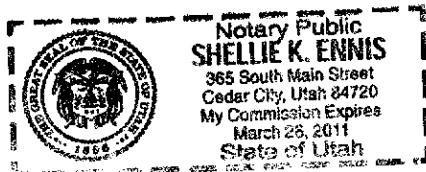
By: Louis W. Ence  
Title: General Partner

STATE OF UTAH )  
COUNTY OF Iron ) ss.

The foregoing instrument was acknowledged before me this 27th day of October, 2009, by Louis W. Ence the General Partner of the Louis W. Ence Family Partnership, Ltd.



Shellie K. Ennis  
Notary Public in and for the State of Utah  
Residing at Cedar City, Utah  
My commission expires on 3-28-2011



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THE FOREGOING DEED OF CONSERVATION EASEMENT IS HEREBY ACCEPTED BY  
THE NATURE CONSERVANCY,  
A DISTRICT OF COLUMBIA NON-PROFIT CORPORATION

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

Title: \_\_\_\_\_

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF SALT LAKE    )

The foregoing instrument was acknowledged before me this 19 day of October, 2009, by Dave Livermore as the Utah State Director of The Nature Conservancy, a District of Columbia non-profit corporation.



\_\_\_\_\_  
Notary Public

Residing at: Salt Lake City Utah.

My commission expires: January 17, 2011.

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**Exhibit A**  
**To Deed of Conservation Easement**  
**(Kanarra Mountain/Virgin River Headwaters -- Ence) UT**

**Property Description and Water Rights**

**Parcel 1**

Lot Nineteen (19), Section 15, Township 38 South, Range 11 West, Salt Lake Base and Meridian. Also commencing at the Southeast corner of Lot Fourteen (14), Section 15, thence West 1320 feet; North 470 feet; East 1713 feet; South 05°30' West 102 feet; South 55°00' East 400 feet; South 18°30' West 1435 feet; South 42°00' East 350 feet; South 480 feet; West 495 feet; North 1961 feet to the point of beginning.

**Parcel 2**

Commencing 282 feet West from the Southeast Corner of Lot Twenty Four (24), Section 14, Township 38 South, Range 11 West, Salt Lake Base and Meridian; thence North 400 feet; thence North 14° West 600 feet; thence North 28°30' West 400 feet; thence North 39° West 543 feet; thence North 14° West 1000 feet; thence North 29° West 466 feet; thence North 15° East 550 feet; thence North 60° East 320 feet; thence North 48° East 295 feet; thence North 24° East 220 feet; thence North 12°30' East 200 feet; thence North 8° East 869 feet; thence West 781 feet; thence South 5280 feet; thence East 1038 feet to the place of beginning. Being parts of Lots Nine (9), Sixteen (16), Seventeen (17) and Twenty Four (24), Section 14.

**Parcel 3**

Lots Five (5), Six (6), Seven (7), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Eighteen (18), Nineteen (19), Twenty (20), Twenty-One (21), Twenty-Two (22), and Twenty-Three (23), Section 14, Township 38 South, Range 11 West, Salt Lake Base and Meridian; Lots Eight (8), Nine (9), Sixteen (16), Seventeen (17) and TwentyFour (24), Section 15, Township 38 South, Range 11 West, Salt Lake Base and Meridian; also, Commencing 493 feet East of the Northwest corner of Lot Seven (7), said Section 15, thence South 10° West 800 feet; thence South 12° East 1000 feet; thence South 5°30' West 1835 feet; thence South 55° East 400 feet; thence South 18°30' West 1435 feet; thence South 42° East 350 feet; thence South 480 feet; thence ~~West 495 feet~~; thence South 679 feet; thence East 1320 feet; thence North 6600 feet; thence West 827 feet, to the point of beginning.

**Parcel 4**

Commencing at the Southeast Corner of Lot Two (2), Section 14, Township 38 South, Range 11 West, Salt Lake Base and Meridian; thence West 6107 feet; thence North 8°45' East 9.98 rods; thence East 6082 feet; thence South 9.86 rods, to the point of beginning.

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Parcel 5

Commencing at a point 900 feet West from the Southeast Comer of Lot Eight (8), Section 14, Township 38 South,

Range 11 West, Salt Lake Base and Meridian; thence running West 420 feet; thence North 2547.60 feet; thence East 1320 feet; thence South 57 feet to a point 2490.60 feet North of the Southeast Comer of Lot Eight (8), Section 14, thence Southwesterly to the point of beginning.

Water Rights

#81-2631 - Gail Spring

#81-2632 - Scott Spring and Natalie Spring

#81-2633 - Kelly Spring

#81-2634 - Louis Spring

#81-2635 - Elizabeth Seep

D- 1116 - 0001 - 0000

D- 1125 - 0000 - 0000

D- 1119 - 0002 - 1124

D- 1123 - 0000 - 0000

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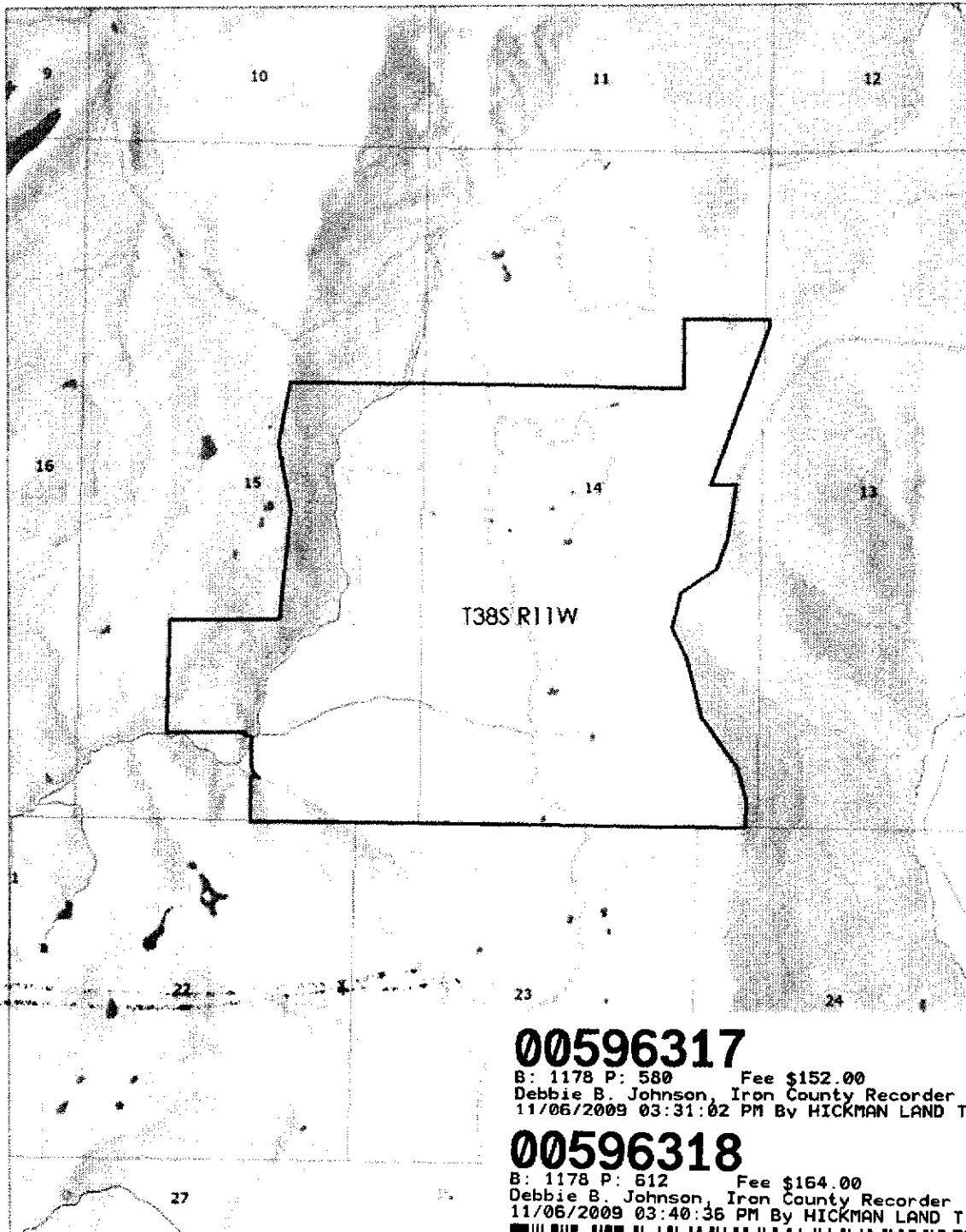
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**Exhibit B**  
**To Deed of Conservation Easement**  
**(Kanarra Mountain/Virgin River Headwaters – Ence) UT**

**Property Map**



**Exhibit C**  
**To Deed of Conservation Easement**  
(Kanarra Mountain/Virgin River Headwaters – Ence) UT

**ACKNOWLEDGMENT OF EASEMENT DOCUMENTATION REPORT**

Grantor and the Grantee acknowledge that each has read the "Easement Documentation Report for the Kanarra Tract – Utah" and that the report accurately reflects the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

GRANTOR:

By: Louis K Ence  
Its: General Partner

GRANTEE:

THE NATURE CONSERVANCY, a District  
of Columbia non profit corporation

By: [Signature]  
Its: Vice President

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**Exhibit D**  
**To Deed of Conservation Easement**  
**(Kanarra Mountain/Virgin River Headwaters – Ence) UT**

**Forest Stewardship Plan**

The Forest Stewardship Plan is on file at the Utah Division of Forestry, Fire and State Lands.

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**Exhibit E**  
**To Deed of Conservation Easement**  
(Kanarra Mountain/Virgin River Headwaters – Ence) UT

**Consistent Uses Of The Property**

The following are set forth both to list specific permitted activities and to provide guidance in determining the consistency of other activities with the Conservation Values of this Conservation Easement:

A.     Ranching and Farming Activities. Grantor may use the Property for historical or common ranching and farming activities, including grazing, feeding, breeding, raising, and managing livestock, provided these activities do not materially degrade the wildlife habitat values. Generally, the term "livestock" means traditional livestock (cattle, sheep, horses). Grazing and pasturing, on the entire Property, of traditional livestock is allowed provided that range conditions shall be maintained at, or improved from, those documented in the attached Report. Grazing of privately owned wildlife, including but not limited to bison, elk, or deer is prohibited. Grantor may also use the Property to grow suitable grains, hay and other crops that have historically been cultivated on the Property.

Good range stewardship and proper management of domestic livestock are integral to the conservation goals of this Easement. Livestock grazing shall not exceed the appropriate degree of use prescribed by the United States Department of Agriculture, Natural Resource Conservation Service, to ensure the renewable range resource remains in proper ecological health including the riparian habitat.

In cases where a Grazing Management Plan (GMP) is required, it shall be prepared, completed, and incorporated into this Easement or FSP. A GMP may be modified or created following the execution of this Easement where changing needs and uses precipitate grazing practice regulation to ensure compliance with the terms of this Easement and protection of the Conservation Values identified herein. The GMP will describe appropriate use levels, seasons of use, kinds of livestock that will be grazing and necessary management practices. The GMP must meet all applicable state and federal laws, policies, guidelines, and regulations.

B.     Grantor may construct additional fences as may be necessary for ranching and the other agricultural uses permitted by this Easement upon prior written approval by Grantee, as provided in Section 7 of this Easement. Grantor may construct fences along the exterior border of the Property without prior approval of Grantee. Drift fences may be constructed as necessary to control drifting snow. Big game proof fences are permitted around harvested crops (e.g. haystacks) or domestic gardens. No other big game proof fences will be constructed on the Property or on the exterior boundary of the Property.

C.     Construction, operation, maintenance, repair, and, if destroyed, reconstruction of gathering and holding corrals.

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D. Maintenance, repair, and if destroyed, reconstruction of the existing water facilities and facilities documented in the Report, or facilities subsequently approved in writing by Grantee, which approval will not be unreasonably withheld.

E. Use of biological weed and insect control agents, subject to prior written approval by Grantee.

F. Use of agricultural chemicals for the following purposes and under the following conditions:

(1) For the control of noxious weeds, as required by Utah state law, for the control of competing weeds in agricultural crops, and for the control of other invasive exotic plant species; provided that chemical herbicides may be used only in those amounts and with a frequency of application that constitute the minimum necessary for control; and that the herbicide is not applied by aerial spraying except with prior written approval of Grantee.

(2) For the control of agricultural or forest pests.

(3) For the fertilizing of crops, if applied according to State and Federal regulations; except that aerial spraying is specifically prohibited.

G. Construction of utility systems for the uses permitted in this Easement; provided, however, that Grantor shall bury all utility systems or extensions of existing utility systems constructed in the future. Notwithstanding anything to the contrary in the foregoing, if Grantor constructs a solar or wind power system for generation of power to be used on the Property and not for generating power for sale, said solar panels or structures to capture the wind shall be allowed above ground.

H. Any passive recreational uses, including but not limited to camping, hiking, horseback riding, canoeing, swimming, picnicking and bird watching, which do not have an adverse effect on the Property. Passive recreational uses do not include the off-road or off-trail use of motorcycles, dune buggies, all-terrain vehicles, motorboats or other types of motorized vehicles, except to retrieve downed game during hunting season and agricultural or ranch management uses.

I. Maintenance and improvements of existing roads and trails; provided that Grantor shall not have the right to pave any such existing road or trail with pavement, concrete, hot or cold press asphalt, or any other hard impervious material unless approved in writing by the Grantee; further provided that Grantor shall not have the right to widen any such existing roads to a width greater than twenty-five (25) feet; and further provided that Grantor shall not have the right to widen any such existing trails.

J. The improvement of water resources on the Property if such improvement is reasonably necessary or beneficial to domestic use, grazing livestock, irrigating crops, wildlife, or

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fisheries on the Property, and upon prior written approval by Grantee. Such improvements must be consistent with the terms of this Easement and the Conservation Values protected herein, as well as comply with all applicable laws and regulations. Such improvements include dug-out development and watering tank installation, provided the improvement does not result in any water pollution having a detrimental effect on the Conservation Values.

Upon prior written approval by Grantee as required in Paragraph 7 of this Easement, Grantor may also carry out activities to restore and enhance aquatic, terrestrial, and wetland habitat for fish and wildlife use and production. Such activities may include stream bank stabilization, improvement to the quality and quantity of water available, and development of watering facilities and ponds; provided such activities are conducted in a manner consistent with accepted waterway stabilization, rehabilitation, and enhancement methods, state and federal laws and regulations, and the terms and intent of this Easement.

Water usage or distribution on the Property shall not be altered in such a manner as to compromise the terms of this Easement or the Conservation Values protected therein, as identified in the Report.

K. So long as the Conservation Values of the Property are not adversely impacted, as determined by the Grantee in its sole and reasonable discretion, Grantor may change the use or point of diversion of the Water Rights within the Property, and may maintain, develop, repair, and if destroyed, reconstruct related facilities, but Grantor shall not be obligated to use, defend, or change the Water Rights, or obtain other water rights for use on the Property, to maintain or improve the Conservation Values of the Property. Further, Grantor makes no warranties as to the sufficiency of the Water Rights to maintain or improve the Conservation Values.

L. In addition to the grazing uses contemplated under Paragraph A above, temporary use of camp wagons, trailers, or tents for agricultural and hunting, management, maintenance and security, not to exceed a total of seven (7) months within a calendar year.

M. Except as prohibited in this Easement, forest management activities are permitted on the Property in accordance with all federal and state laws and regulations, and in accordance with the Forest Stewardship Plan (FSP) mutually agreed upon by Grantor and the Utah Division of Forestry, Fire and State Lands as set forth in **Exhibit D**, and the State of Utah's Forest Water Quality Guidelines contained in the document, "Nonpoint Source Management Plan for Silvicultural Activities." The FSP is effective and approved only upon mutual written assent of both Grantor and Grantee. The original FSP, subsequent FSPs, and revisions or updates thereto, are effective and approved only upon mutual written assent of both Grantor and Grantee. Sound management practices, in accordance with the Forest Stewardship Plan, must be maintained to achieve a healthy, sustainable ecosystem. Grantor may cut trees for posts and poles for use on the Property and cut and gather dead, dying and down trees for firewood for use on the Property. Grantor may also cut and remove trees to abate disease or infestation or to perpetuate a healthy forest according to the FSP. Grantor does not have the right to harvest timber on the Property except as specifically allowed in the Forest Stewardship Plan or except as noted in this Paragraph. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may

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apply any damages recovered to the cost of undertaking any corrective action on the Property. Notwithstanding the above, Grantor shall obtain written approval by Grantee prior to the harvesting of any tree with evident bird or mammal nest holes or dens. Prior to implementing recommended practices outlined in the FSP, Grantor must consult with Grantee. Implementation of projects or prescriptions identified in the FSP require the involvement of a resource management professional.

N. Erection and maintenance of signs indicating the name of the Property, boundary markers, directional signs, signs restricting hunting, fishing or trespassing. The number, size and visual appearance of such signs shall be consistent with the custom and usage of the area. Temporary signs indicating that property is for sale/lease or notice of workshops are permitted provided that Grantor immediately remove such signs upon completion of the activity being advertised.

O. Hunting and fishing of wild game animals is permitted on the Property only to the extent such activities are consistent with state and federal laws and regulations. The intent of this provision is to permit levels of hunting and fishing which are not detrimental to sustainable levels of wildlife and fish populations as determined by the Division of Wildlife Resources. As set forth in **Exhibit F**, trapping is prohibited except for certain purposes.

Grantor may use the Property to participate in the Cooperative Wildlife Management Unit program, as described in Title 23, Chapter 23 of the Utah Code, or other similar program. Grantor may also require compensation from persons desiring to enter the Property for purposes of recreational hunting, trapping or fishing wild game animals, provided such activities are consistent with state and federal laws and do

P. The use of mountain bikes, snowmobiles and all-terrain vehicles (hereinafter the "Mechanical Vehicles") on the Property, whether on or off roads, under the following conditions:

1. Said Mechanical Vehicles are used only for the non-commercial use and enjoyment of Grantor, Grantor's guests and invitees;
2. Said uses of the Mechanical Vehicles are subject to the restrictions and prohibitions set forth in the Inconsistent Uses of the Property set forth in **Exhibit F**; and
3. Said Mechanical Vehicles are used in a manner that do not harass or interfere with wildlife.

Q. Maintain, repair, replace and rebuild the existing single-family residence and associated structures, provided that such structures shall be of approximately the same square footage, shall be rebuilt in the Building Envelope (as that term is defined in Paragraph R immediately below), and shall be subject to the following limitations:

1. Prior to any construction occurring, the Building Envelope shall be

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surveyed and staked on the ground and a legal description prepared and provided to the Grantee, all at Grantor's sole cost and expense.

2. Exterior features of any building and structure permitted to be replaced and rebuilt shall be of non-reflective material (except glass and similar products for windows, doors and skylights) and painted or maintained with earth-tone colors found in the surrounding environment. No high visual contrast colors are permitted for exterior finish.
3. No building or structure replaced and rebuilt in the Building Envelope shall exceed thirty (30) feet in height from the highest point of ground occupied by said structure; all structures other than the residence must be single story and shall not be used as living quarters.
4. Grantor shall have the right to landscape the area immediately in proximity to permitted buildings and structures utilizing non-native plant species. No landscaping is permitted outside the Building Envelope.
5. Any removal or disturbance of natural vegetation related to site development, construction activities or landscaping shall require the prior written approval of the Grantee in accordance with Paragraph 7 of the Easement.
6. Prior to construction of any replacement building or structure, the Grantor shall submit to the Grantee plans and specifications of the proposed building or structure for the purpose of allowing Grantee to review said plans and specifications for conformance with the limitations set forth in this Paragraph Q. regarding location, exterior finish, height and square footage.

R. Construct, maintain, repair and replace three (3) new single-family residences (the "New Residences"); Accessory Buildings, as defined below, associated with the New Residences; utility services, water supply and wastewater disposal facilities, or driveway (no paving with hot or cold press asphalt or other similar impervious surface shall be permitted) and (hereinafter "Associated Structures"), in accordance with the following conditions:

1. The New Residences, Accessory Buildings and Associated Structures shall be located within three (3) one-acre "Building Envelopes." The Building Envelopes may be located anywhere within the shaded area depicted on **Schedule 1 to Exhibit E**. There shall be only one New Residence (with Associated Accessory Buildings and Associated Structures) per Building Envelope. Prior to any construction occurring, the Building Envelope shall be surveyed and staked on the ground and a legal description prepared and provided to the Grantee, all at Grantor's sole cost and expense.
2. For purposes of this Easement "Accessory Buildings" shall mean a pumphouse and EITHER a detached garage OR an equipment storage building.

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- a. If a detached garage is constructed, it shall be no larger than necessary to house four (4) vehicles; shall conform to the limitations set forth in Paragraph R.4. below; shall not exceed the height limitation set forth in Paragraph R.5. below; and shall have a maximum square footage of 1,000 square feet.
  - b. If an equipment storage building is constructed, it shall conform to the limitations set forth in Paragraph R. 4. below; shall not exceed the height limitation set forth in Paragraph R.5. below; and shall have a maximum square footage of 1,000 square feet.
3. The New Residences shall not exceed two (2) stories in height above ground and in no event shall exceed thirty (30) feet in height from the highest point of ground occupied by said house and shall have a maximum square footage of 2,500 square feet, which includes both stories, but excludes any attached garage, basement, breezeways, and deck/patio. The New Residences and Accessory Buildings shall be set back from the primary or main ingress and egress roadway a minimum of fifty (50) feet.
  4. Exterior features of any building and structure permitted to be constructed shall be of non-reflective material (except glass and similar products for windows, doors and skylights) and painted or maintained with earth-tone colors found in the surrounding environment. No high visual contrast colors are permitted for exterior finish.
  5. No building or structure constructed in the Building Envelope shall exceed thirty (30) feet in height from the highest point of ground occupied by said structure; other than the New Residences, no building or structure may have more than one story and shall not be used as living quarters.
  6. Grantor shall have the right to landscape the area immediately in proximity to permitted buildings and structures utilizing non-native plant species. No landscaping is permitted outside the Building Envelope.
  7. Any removal or disturbance of natural vegetation related to site development, construction activities or landscaping shall require the prior written approval of the Grantee in accordance with Paragraph 7 of the Easement.
  8. Prior to construction of any new or replacement building or structure, the Grantor shall submit to the Grantee plans and specifications of the proposed building or structure for the purpose of allowing Grantee to review said plans and specifications for conformance with the limitations set forth in this Paragraph R regarding location, exterior finish, height and square footage.

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S. Construct, maintain, repair and replace a barn, tack shed, and corral (the "Agricultural Structures"), so long as the Agricultural Structures are contained within the Building Envelope and comply with the following conditions:

1. Only one (1) barn, one (1) tack shed, and one (1) corral may be constructed regardless of the number of single-family residences constructed in the Building Envelope.
2. The barn shall conform to the limitations set forth in Paragraph R. 4. above; shall not exceed the height limitation set forth in Paragraph R.5. above; shall have a maximum square footage of 4,000 square feet; and shall be set back from the ingress and egress roadway a minimum of fifty (50) feet.
3. The tack shed shall conform to the limitations set forth in Paragraph R.4. above; shall not exceed the height limitation set forth in Paragraph R.4. above; and shall have a maximum square footage of 400 square feet.
4. Grantor shall have the right to landscape the area immediately in proximity to permitted buildings and structures utilizing non-native plant species. No landscaping is permitted outside the Building Envelope.
5. Any removal or disturbance of natural vegetation related to site development, construction activities or landscaping shall require the prior written approval of the Grantee in accordance with Paragraph 6 of the Easement.
6. Prior to construction of any new or replacement building or structure, the Grantor shall submit to the Grantee plans and specifications of the proposed building or structure for the purpose of allowing Grantee to review said plans and specifications for conformance with the limitations set forth in this Paragraph S regarding location, exterior finish, height and square footage.

T. Any existing or new structure will require vegetation management to reduce fire intensities. The recommended treatment of vegetation is dependent on fuel type (kinds of trees/shrubs/grass) and slope. Refer to "Living With Fire, A Guide for the Homeowner" for detail in creating and maintaining defensible space (available from the Division of Forestry, Fire and State Lands) or contact a resource management professional. Grantor will take reasonable precautions to prevent wildfire as described in the above-referenced Guide. Grantor will allow unrestricted access and entry to fire crews to suppress wildfires or pre-treat land or vegetation in advance of approaching wildfire.

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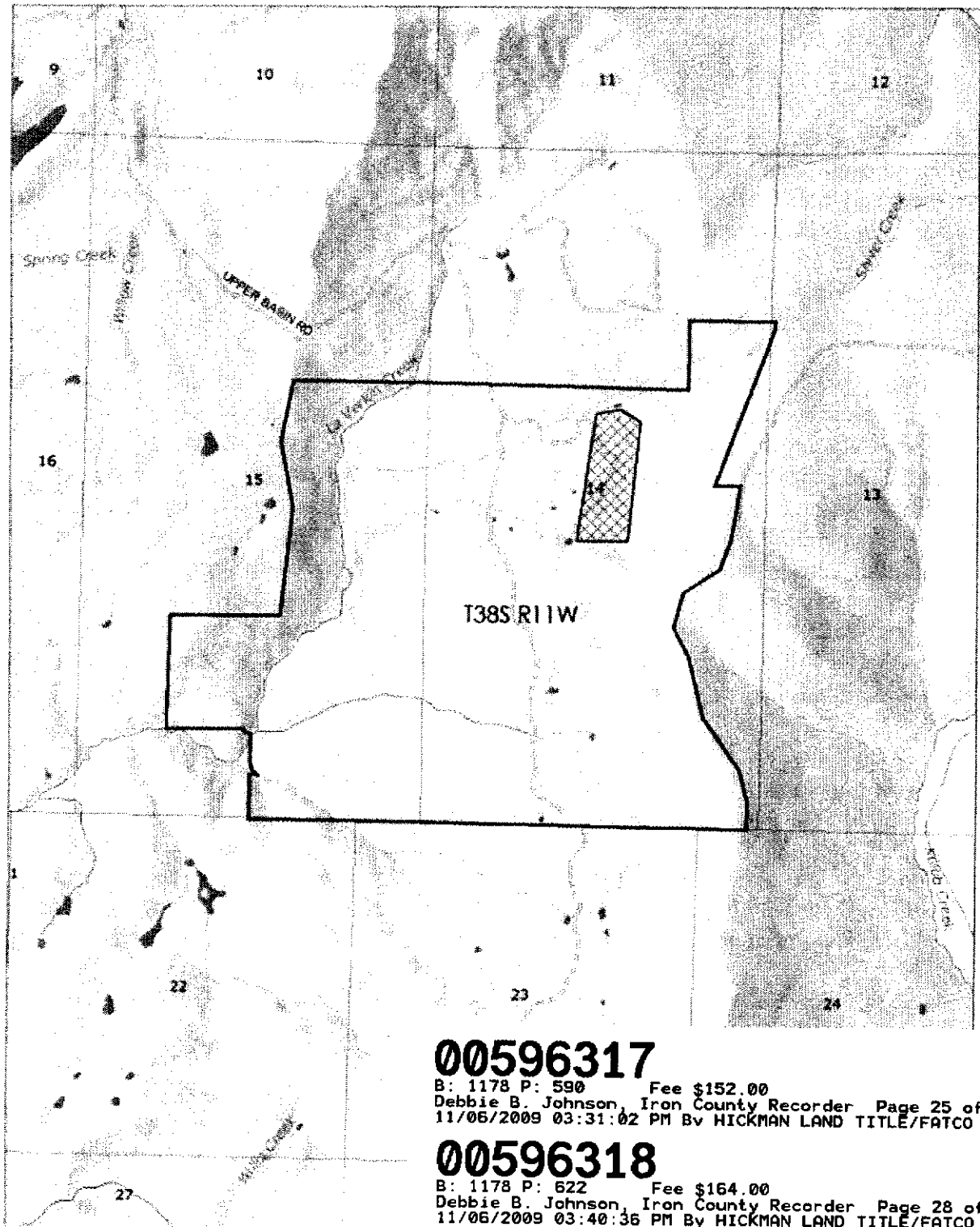
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Schedule 1 to Exhibit E  
Building Envelope



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**Exhibit F**  
**To Deed of Conservation Easement**  
(Kanarra Mountain/Virgin River Headwaters – Ence) UT

**Inconsistent Uses Of The Property**

Though not an exhaustive list of prohibited uses, none of the uses described below shall be made of the Property. The following are set forth both to list specific prohibited activities and to provide guidance in determining whether other activities are inconsistent with the Conservation Purposes of this Conservation Easement:

- A. Division, subdivision, partition, or de facto subdivision of the Property, or the transfer of title to the Property except as a single parcel.
- B. Except as expressly provided for herein, there shall be no building, structure, or other improvements of any kind, temporary or permanent, constructed or maintained on the Property including, but not limited to, houses, towers, satellite dishes, sheds, tanks, mobile homes, dams, impoundments, septic systems, tennis courts, swimming pools, docks, aircraft landing strips, and communication equipment. Maintenance and improvements of existing roads and trails is permitted, provided that Grantor shall not have the right to pave any such existing road or trail with pavement, concrete, hot or cold press asphalt, or any other hard impervious material unless approved by the Grantee. Notwithstanding anything to the contrary in the foregoing sentence, if Grantor constructs a solar or wind power system for generation of power to be used on the Property and not for generating power for sale, said solar panels or structures to capture the wind shall be allowed on the Property.
- C. Subject to existing rights of record, no surface mining shall be permitted. The prospecting, mining, and removal of any subsurface resources, including oil, gas, geothermal, and minerals are subject to the following terms and conditions:
1. Such removal does not violate the prohibition on surface mining (within the meaning of Section 170(h)(5)(B) of the Internal Revenue Code and regulations promulgated thereunder);
  2. Such removal does not damage any significant conservation value protected under this Conservation Easement;
  3. Only minimal surface occupancy shall be allowed;
  4. ~~All improvements and materials shall~~ be removed from the lands within one year after the date of termination of the operations;
  5. Operations shall prevent obstruction, pollution, or deterioration of surface or

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6. Upon completion of operations, the land, including but not limited to the surface of the Property, shall be reclaimed to its original contours and re-vegetated; and

7. The Grantor shall either provide a bond in sufficient amount as determined necessary by the State of Utah to guarantee compliance with the requirements of this section, or the Grantor shall require the mineral developer to provide such bond.

D. Establishment of any commercial, industrial or residential business activity requiring access or visitation by the general public, with the exception of permitted activities allowed in the Easement. Notwithstanding anything to the contrary in the foregoing sentence, the allowance under this Easement of generation of power by solar or wind shall not be construed as allowing the generation of power for sale; it being agreed that the generation of power for sale is specifically prohibited under this Easement. Grantor and Grantee also agree that the sale of hunting permits or tags issued by the Utah Wildlife Resource Division does not constitute a commercial activity prohibited under this provision.

E. To change, disturb, alter, or impair the significant relatively natural ecological features and values; or the destruction of other significant conservation interests on the Property, unless such changes were caused by the force of nature; to change the topography of the Property by plowing, tilling or placing on it any soil, dredging spoils, land fill, or other material, except as necessary to conduct specific agricultural purposes permitted in the Easement.

F. The manipulation, diversion, or other alteration of natural water courses, wetlands, or other natural bodies of water or any practice that degrades or destabilizes their natural banks or shorelines, or the degradation, pollution, or drainage of any surface or sub-surface water. Grantor shall not transfer or otherwise sever the title to the Water Rights from the Property, unless the Conservation Values can be maintained after such transfer or severance of title, as determined by the Grantee in its sole and reasonable discretion.

G. The dumping, storage, or other disposal of toxic or Hazardous Materials, as that term is defined in **Paragraph 19**, or agrichemicals, except that (i) fertilizers, pesticides, biocides, and herbicides permitted under **Exhibit E** may be stored on the Property provided that such storage is in compliance with applicable health, safety and Environmental Laws, as that term is defined in **Paragraph 19**, and regulations, (ii) commonly used household chemicals may be stored on the Property provided that such storage is in compliance with applicable health, safety and Environmental Laws, as that term is defined in **Paragraph 19**, and regulations, and (iii) propane may be stored on the Property in appropriate tanks, provided that it is done in accordance with applicable laws, regulations, permits and governmental approvals.

Notwithstanding anything in this Easement to the contrary, this prohibition does not make Grantee an owner of the Property, nor does it permit Grantee to control any use of the Property by the Grantor which may result in the storage, dumping or disposal of hazardous or toxic materials; provided, however, that Grantee may bring an action to protect the Conservation Values of the Property as described in this Easement. (This prohibition does not impose liability

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on Grantee, nor shall Grantee be construed as having liability as a "potentially responsible party" under CERCLA or similar federal or state statutes.)

Dumping or other disposal of non-compostable refuse, animal carcasses, wildlife-attracting materials, or any other material which could reasonably be considered debris. Refuse shall be stored in a manner so as not to present an attractive nuisance to wildlife. When a domestic animal or wildlife dies, the Grantor does not have a duty to move the isolated carcass off the Property.

H. Introduction or release of non-native or non-naturalized plant species, with the exception of agricultural crops identified in the Report, as prescribed in the Forest Stewardship Plan (FSP), or as needed to maintain Conservation Values. Desirable non-native plant species needed to improve the range may be introduced, but should comply with recommendations in the FSP.

I. Introduction or release of nonnative or non-naturalized animal species, provided however, that Grantor may release sage grouse, wild turkeys, or trout, consistent with all applicable laws and written approval of Utah Division of Wildlife Resources.

J. Establishment and operation of a commercial livestock feedlot, which shall be defined for purposes of this Easement as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, for purposes of engaging in the business of the reception and feeding of livestock for hire.

K. Establishment and operation of a commercial farming operation, including but not limited to, dairy farm, hog farm, poultry farm, ostrich or emu farm, or any wild game farming or ranching facilities, except as permitted in Exhibit E, Section A. Grantor and Grantee agree that the sale of hunting permits or tags issued by the Utah Wildlife Resource Division does not constitute a wild game farming or ranching facility prohibited under this provision.

L. Animal trapping for purposes other than control of nuisance or predatory animals which demonstrably have caused damage to livestock, fruit trees, pets or property. Trapping methods employed must be selective for the target species and administered as humanely as is possible. However, nothing in this provision shall prohibit or prevent the Federal Government or the Utah Division of Wildlife Resources from trapping and relocating wildlife pursuant to statutory authority or a Cooperative Wildlife Unit Management Plan.

M. Cutting, removing, or destruction of native vegetation, except by grazing, haying, FSP authorized harvest of timber, herbicide application, pond and water system management, or road and trail maintenance. Removal of dead and fallen trees for firewood is authorized except as limited under the FSP. Application of biocides, herbicides, defoliants, chemical fertilizers, or other chemicals with the exception of those specifically permitted in the Easement

N. Construction of roads or vehicle trails, with the exception of those planned and described in the Report, shown on the Property Map and subject to the restrictions of Exhibit E.

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O. Use of all-terrain vehicles, motorcycles, or other motorized vehicles off of roads or travelways, except for agricultural or property-maintenance purposes or to retrieve downed game during hunting season or for human or livestock rescue operations, and except for the permitted uses of Mechanical Vehicles set forth in the Consistent Uses of the Property listed in **Exhibit E**.

P. Keeping or storage of any automobiles, trucks, campers, boats, heavy equipment, or other type of machinery owned by parties other than Grantor; provided however that this provision shall not prohibit Grantor from keeping or storing any automobiles, trucks, campers, boats, heavy equipment, or other type of machinery which Grantor is leasing for Grantor's use. Keeping or storage of heavy equipment or other machinery except those utilized by Grantor on the Property for agricultural and maintenance purposes.

Q. Any activity or use on the Property that violates any applicable federal, state, county, or local law, rule, ordinance, or regulation.

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