



Appendix Part III

Conservation Easement

Property Owner's Association

CONSERVATION EASEMENT

This CONSERVATION EASEMENT (hereinafter the "Easement") is executed this ____ day of November 2004, by THE BLACK BOULDER MESA PROPERTIES, LLC, (hereinafter "Grantor"). The Easement is executed in contemplation of one or more conveyances of land by Grantor to owner (the "Owner") of the specific parcels described on Exhibit "A." In those conveyances, this Easement shall be reserved. The Owner shall be a member of and the Owner's land shall be associated with an association of Owners known as The Black Boulder Mesa Property Owners Association, Inc., (the "Association").

The Easement may, in the sole discretion of Grantor, at some future date, be conveyed to an organization qualified under Utah Code Ann. § 57-18-1 et. seq. to hold and administer the Easement. The party holding the rights of this Easement, whether reserved, conveyed or assigned, shall be the "Grantee."

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property (the "Property") in Garfield County, Utah, which is described in the documents attached hereto as Exhibit "A"; and

WHEREAS, in the contemplated conveyance to third parties this Easement shall not encumber the Development and Transition Envelopes, driveway, and roadway, trail and utility easements, including septic tanks and drainage fields, as described in the deeds to such third parties, or in survey plats or other documents of record in the office of the Garfield County Recorder; and

WHEREAS, the balance of the real property conveyed to third parties, less and excepting the Development and Transition Envelopes, driveway, roadway, trail and utility easements, including septic tanks and drainage fields, shall be the Property subjected to this Easement; and

WHEREAS, the Property possesses natural, scenic, open space, or recreational values (collectively, "conservation values") of great importance to Grantor, the people of Garfield County, the people of the State of Utah, and the people of the United States of America; and

WHEREAS, the specific conservation values of the Property and adjacent land are further documented in an inventory of relevant features of the Property, dated December 15, 1998, on file at the offices of Utah Open Lands, authenticated by the signatures of Grantor and Utah Open Lands, and incorporated by this reference ("Baseline Documentation"), which consists of reports; maps; photographs; legal descriptions, including roadways, access rights-of-way, well easements, trails and drainage easements; and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective, though non-exclusive, information baseline for monitoring compliance with the terms of this grant constituting the minimum level at which the parties expect the Property shall be maintained; and

WHEREAS, Grantor intends that the conservation values of the Property be preserved and maintained by permitting only those land uses on the Property that do not significantly impair or interfere with the conservation values of the Property and as may be consistent with this document; and

WHEREAS, the Governor of the State of Utah, by Executive Order on May 24, 1996 established the Critical Lands Committee articulating the importance of communities to maintain agricultural land in order to protect self-sufficiency and self-reliance as well as the protection of these areas as open space; and

WHEREAS, Grantor further intends, as owner of the Property, to reserve the right to preserve and protect the conservation values of the Property in perpetuity;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Utah and in particular in contemplation of the Utah Land Conservation Easement Act, Utah Code Ann. § 57-18-1 et. seq. Grantor hereby reserves a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the "Easement").

1. Purpose. It is the purpose of this Easement to assure that the Property will be retained forever predominantly in its natural, scenic, open space condition and to prevent any use of the Property that will impair or

interfere with the conservation values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities, including, without limitation, those uses set forth in the restrictive covenants and exceptions thereto and this Easement, as are not inconsistent with the purpose of this Easement.

2. Rights of Grantee. The Grantee of this Easement shall have the following rights:

(a) To preserve and protect the conservation values of the Property;

(b) To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Paragraph 6; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to the Association, and Grantee shall not in any case unreasonably interfere with use and quiet enjoyment of the Property by the Owner thereof;

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Paragraph 6; and

(d) To place a sign as may be customarily used by Grantee relating to the Property, the conservation values and the purposes of this Easement, which shall not exceed 24 inches by 24 inches in size, identifying Grantee as the holder of this Easement and the terms of this Easement.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) Construction of any structure;

(b) Use of motorized vehicles, other than on improved and designated roadways and driveways, except as necessary to take action under Paragraphs 4(c) and 4(d);

(c) Exploration and drilling for and extraction of oil and gas from any site on the Property;

(d) Dumping or storing of ashes, trash, garbage or junk on the Property;

(e) Quarrying, mining, excavation, depositing or extraction of sand, gravel, soil and rocks and/or, without limitation, any mineral or similar materials from the Property;

(f) Dumping, depositing, discharging, releasing or abandoning any solid or hazardous wastes, hazardous substances or material, pollutant or debris in, on or under the Property or into the surface or groundwater on or under the Property;

(g) Burning of any materials on the Property;

(h) Hunting or trapping for any purpose other than as approved in advance by the Grantee for problem or diseased animal control on the Property;

(i) Any agricultural, commercial, recreational, or industrial use of the Property; and

(j) The placement or maintenance of signs, billboards or any other outdoor advertising of any kind or nature on the Property except for signs relating to the use or limitations on use applicable to the Property and directional and regulatory signs relating to the Property.

4. Reserved Rights.

4.1 Rights Reserved to the Grantor and the Owner of the Property.

Grantor, while the owner of the Property, and, upon conveyance to the Owner, the Owner and their heirs, successors and assigns in ownership of the Property, shall have all rights accruing from ownership of land and rights in land, including easements, 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. The following are among these rights which pertain to the Property.

- (a) To hike, walk, ride horses, cross-country ski or picnic, and to make other uses and perform other activities that will not result in impact inconsistent with the intent of this Easement and the values expressed herein;
- (b) To drill and locate water wells, and the associated underground power line and underground pipeline, after Notice as required in Paragraph 5;
- (c) To relocate the roadways and utility lines and roadway and utility easements as may be necessary by reason of natural phenomenon, weather, or governmental regulation, after Notice as required in Paragraph 5. In the event of such relocation, the area used by the former location shall be restored as much as reasonably possible to its former natural condition;
- (d) To plant and maintain native trees, bushes and grasses to protect, preserve and enhance the aesthetic and wildlife habitat values of the Property;
- (e) To remove such weeds and other flora that are hazardous to the uses and practices herein reserved, but only after Notice as provided in Paragraph 5;
- (f) To maintain and restore watercourses, ditches and other drainage improvements, and stabilize slopes after Notice as provided in Paragraph 5; and
- (g) To build, maintain and repair fences and cattle guards reasonably appropriate for wildlife protection purposes and to exclude stock.

4.2 Rights of the Association. The Association shall have the right:

- (a) To relocate or enlarge the roadway and utility easements as may be necessary by reason of natural phenomenon, weather, or governmental regulation, after Notice as required in Paragraph 5. In the event of such relocation, the area used by the former location shall be restored as much as reasonably possible to its former natural condition;
- (b) To adopt and enforce rules concerning the control and use of the private streets, roadways, and common parking areas located upon roadways, including the right to regulate the kind of vehicles and their speed and the parking of vehicles upon such private streets and roadways, including the right to delegate to a municipality or other governmental entity or to contract with any private security patrol company to exercise its authorized right in connection with such private streets, roadways, and parking areas;
- (c) To grant emergency vehicle access across the roadways, and other areas, except that the areas outside the roadways shall be so breached only in extreme emergencies;
- (d) To install, repair, maintain and operate all easements, including without limitation those for
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the areas of facilities and easements as they now exist or are shown on documents or plats of record;
- (e) To dedicate existing roadway and/or utility easements to a governmental entity;
- (f) To make any use of the Property as may be permitted by the Declaration of Covenants, Conditions and Restrictions for The Black Boulder Mesa;
- (g) To remove such weeds and other flora that are hazardous to the uses and practices herein reserved, but only after Notice as provided in Paragraph 5;
- (h) To build, maintain and repair fences and cattle guards reasonably appropriate for wildlife protection purposes and to exclude stock;
- (i) To replace injured and diseased trees and shrubs or other vegetation and plant trees, shrubs and ground cover; and

(j) To place and maintain upon any roadways, such signs and markers as the Association may deem appropriate for the proper identification, use and regulation thereof.

4.3 Property Not Subject to Easement. The Development and Transition Envelopes, if applicable, driveways and roadways, trail and utility easements for ingress, egress and utilities, including septic tanks and drainage fields, affecting the Property are not Property subject to this Easement.

4.4 Other Permission May Be Required. The activities permitted under this Paragraph may, under the Declaration, require approval by the Architectural Control Committee of the Association.

5. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring notice to the Grantee prior to undertaking certain permitted activities is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required the Grantee shall be notified in writing by the person proposing to take such action not less than thirty days prior to the date proposed for the activity in question, unless an emergency situation exists, in which case such notice as is reasonable shall be given. In such notice, the methods of remediation of the Property shall be specified, in order that impacts from such uses are minimized, consistent with the purposes of the Easement, and that restoration of surface and appearance is made to the extent reasonably possible.

6. Grantee*s Remedies.

6.1 Notice of Violation; Corrective Action. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to the person responsible for such violation, Grantor, his heirs, successors and assigns and the Association. The Notice shall specify the 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 Grantee.

6.2 Injunctive Relief. If the violation is not cured by the party responsible for the condition or activity which is alleged to be a violation within thirty days after receipt of notice thereof from Grantee (or under circumstances where the violation cannot reasonably be cured within a thirty day period, the cure of such violation has not commenced within the thirty day period), Grantee shall refer the matter to arbitration or if immediate and irreparable action is threatened, may bring an action in equity in a court of competent jurisdiction to enjoin the violation.

6.3 Costs of Enforcement All reasonable costs incurred by Grantee in a successful action to enforce the terms of this Easement, including, without limitation, costs and expenses of suit or arbitration and reasonable attorneys' fees, and any costs of restoration necessitated by violation of the terms of this Easement shall be borne by the party causing such violation.

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

6.5 Acts Beyond Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action for any injury to or change in the Property resulting from extraordinary causes, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Nothing herein shall create a liability of the owner of the Property, the Grantor, Owners, or the Association for actions of third parties over which they exercise no control or authority.

6.6 Arbitration. If a dispute arises under this Easement, the disputed matter shall be referred to non-binding arbitration by request made in writing to the other party to the dispute. The other party shall be obligated to participate in and complete such arbitration. No suit, except for injunctive relief necessitated by immediate and irreparable harm, may be brought by any party regarding a dispute under this Easement, without the completion of such arbitration. Within thirty days of the receipt of such a request, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator; provided, however, if either party fails to select an arbitrator, or if the two arbitrators

selected by the parties fail to select the third arbitrator within fourteen days after the appointment of the second arbitrator, then in each such instance a proper court, on petition of a party, shall appoint the second or third arbitrator or both, as the case may be. A judgment on the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, including orders of restoration or permanent injunctive relief, to a reasonable sum as and for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrators and attorneys* fees, which shall be determined by the arbitrators and any court of competent jurisdiction that may be called upon to enforce or review the award.

6.7 Mediation. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, the parties may agree to mediate the dispute.

6.8 Rules. Arbitration and Mediation shall be conducted by and under the Rules of the American Arbitration Association in Salt Lake City, Utah.

6.9 Documentation of Use and Condition of the Property. If a controversy arises with respect to the nature a instrument, the Parties shall refer to the Baseline Documentation but shall not be foreclosed from utilizing all relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy.

7. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

8. Costs, Liabilities, Taxes, and Environmental Compliance.

8.1 Costs, Legal Requirements, and Liabilities. All responsibilities and all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage shall be the responsibility of the fee owner of the Property. The Association and any other owner of the Property are solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. The Property shall be kept free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

8.2 Taxes. The Owner of the Property shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

8.3 Representations and Warranties. Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

(a) No substance defined, listed or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

(b) There are not now any underground storage tanks located on the Property, whether presently in service or dosed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;

(c) The Property is in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use;

(d) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

(e) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that might reasonably be expected to form the basis for any such

proceedings, investigations, notices, claims, demands, or orders.

8.4 Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, the Owner of such Property agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required.

8.5 Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

9. Limitations on Extinguishment. If circumstances arise in the future that render the purpose of the Easement impossible to accomplish, the Easement can only be terminated or extinguished, whether with respect to all or part of the Property 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 values of improvements made by Grantor after the date of the conveyance of the Easement to Grantee, which amount is reserved to Grantor) in accordance with their respective percentage interests in the fair market values of the Property, to reflect a partial termination or extinguishment of the Easement. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with Grantee's conservation purposes.

10. Assignment of Easement. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization authorized to acquire and hold conservation easements under the Utah Land Conservation Easement Act, Utah Code Ann. §57-18-1 et. seq., (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purpose which this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to the Grantor, his heirs, successors or assigns and the Association of an assignment at least thirty days prior to the date of such assignment.

11. Subsequent Transfers of Fee Interest. Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest.

12. Estoppel Certificates. Upon request by Grantor, Grantee, or the Association, the requested party shall within twenty days execute and deliver to the requesting party, any document, including an estoppel certificate, which certifies, to the best of the certifying party's knowledge, compliance with any obligation contained in this Easement.

13. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to another shall be in writing and either served personally or sent by first class mail, postage prepaid, to the last known address of that party or to the address as stated on the records of Garfield County or to such other address as either party from time to time shall designate by written notice to the other.

14. Recordation. This instrument shall be recorded in the official records of Garfield County, Utah.

15. General Provisions.

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

15.2 Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

15.3 Entire Agreement. This instrument sets forth the entire relationship, rights and duties of the Grantor and Grantee with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding

unless in writing and recorded in the office of the Garfield County Recorder. Until such time as the Easement is conveyed to Grantee, the Easement may be amended or revoked by the written act of Grantor acting with the Owner of any interest in the Property.

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

15.5 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.

15.6 Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

16. Limitations on Amendments. If circumstances arise under which an amendment to or modification of the Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend the Easement; provided that no amendment shall be made that will adversely affect the qualification of the Easement or the status of grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the State of Utah. Any such amendment shall be consistent with the purpose of the Easement, shall not affect its perpetual duration, and shall not permit any impairment of the significant conservation values of the Property. Any such amendment shall be filed in the County Recorder's Office of Garfield County, Utah. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

Grantor:

THE BLACK BOULDER MESA PROPERTIES, LLC

By _____
Curtis K. Oberhansly, Its Member

By _____
Mark M. Austin, Its Member

STATE OF _____)
) ss.
COUNTY OF _____)

On November ____, 2004, personally appeared before me CURTIS K. OBERHANSLY, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal. _____
NOTARY PUBLIC

STATE OF UTAH)
) ss.
COUNTY OF GARFIELD)

On November ____, 2004, personally appeared before me MARK M. AUSTIN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal. _____
NOTARY PUBLIC