

BOX HOUSE GIFT ASSIGNMENT AGREEMENT

This Assignment Agreement (this “Agreement”) is entered into on _____, 20____, (the “Effective Date”) by and between _____, (“Transferor”), and Winter Haven, Inc., a Montana 501(c)(3) charity (“Transferee”).

RECITALS

WHEREAS, Transferor owns a 19’ x 20’ box house used as a personal residence (the “Box House”); and

WHEREAS, the Box House is currently being leased by Zibby Finance, LLC, as “Lessee” from Transferor, as “Lessor” pursuant to that certain Box House Lease dated as of _____ (the “Lease”), which expires _____; and

WHEREAS, Transferor, as Lessor under the Lease has assigned its right to receive lease payments to Sequoia Investors, LLC (the “Assignment” and collectively with the Lease, the “Lease Encumbrances”); and

WHEREAS, Transferor desires to assign to Transferee the Box House, subject to the Lease Encumbrances, pursuant to the terms of this Agreement; and

WHEREAS, Transferee desires to accept from Transferor the Box House, subject to the Lease Encumbrances, pursuant to the terms of this Agreement.

NOW, THEREFORE, BE IT RESOLVED, the parties to this Assignment hereby agree as follows:

AGREEMENT

1. Assignment and Acceptance.
 - a. Assignment. On the terms and subject to the conditions of this Agreement, Transferor does hereby transfer and assign to Transferee, without any consideration therefor, all of Transferor’s right, title and interest in and to the Box House, and all of Transferor’s obligations under the Lease Encumbrances (the “Assignment”). In connection with the Assignment, Transferor shall execute and deliver to Transferee an Assignment and Bill of Sale in the form attached hereto as Exhibit A. It is the express intent of Transferor to have this Assignment constitute a gift to Transferee.
 - b. Acceptance. Transferee hereby accepts and assumes the Assignment, including, specifically, all obligations of the Transferor under the Lease Encumbrances.
2. Representations of Transferor. Transferor represents and warrants to Transferee that as of the Effective Date:
 - a. Authorization. Transferor has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The Assignment constitutes the valid and

legally binding obligation of Transferor, enforceable against Transferor in accordance with its terms. Transferor, if other than a natural person, has been duly organized and is validly existing in good standing under the laws of the jurisdiction of its organization as the type of entity that it purports to be and all corporate or other entity actions necessary to authorize the transactions contemplated by this Agreement have been duly taken. The person(s) executing and delivering this Agreement on behalf of Transferor are duly authorized to do so.

b. Consent. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any foreign, state or local governmental authority or other person on the part of Transferor is required in connection with the consummation of the transactions contemplated by this Agreement.

c. Conflicts. Neither the execution and delivery of this Agreement by Transferor, nor the consummation by Transferor of the transactions contemplated hereby, will violate, conflict with, result in the breach of, constitute a default under, be prohibited by, require any additional approval under, accelerate the performance provided by, or give any person a right to terminate or receive any payment or other compensation under, any (i) terms, conditions or provisions of Transferor's governing documents if Transferor is other than a natural person, (ii) any term or provision of any material mortgage, indebtedness, indenture, contract, agreement, instrument, judgment or decree to which Transferor is a party or by which he, she or it is bound, or (iii) material order, statute, rule or regulation applicable to Transferor, other than, any such violation, conflict, breach, default, prohibition, approval or acceleration that would not reasonably be expected to prevent or delay the consummation of the transactions contemplated by this Agreement.

d. Title. Transferor hereby agrees to transfer to Transferee good and marketable title to the Box House, free and clear of all liens, encumbrances, security interest, or adverse claims of any nature (collectively, "Encumbrances"), other than the Lease Encumbrances. There are no restrictions or requirements that would prevent this Agreement from becoming effective upon the execution and delivery of this Agreement by the parties. Upon the irrevocable transfer and assignment of the Box House, in accordance with the provisions of this Agreement, the Transferee will acquire valid marketable title to the Box House, subject only to the Lease Encumbrances. Transferor has held the Box House beneficially and of record for at least one year prior to the date hereof.

e. Obligations. There are no obligations or commitments under the Transferor's governing documents or any other agreements pertaining to the Transferor or the Box House that require Transferee, as owner of the Box House to: (i) make any capital contributions to the Transferor or to any of its related entities, (ii) return or refund any distributions, dividends, or other payments previously made in respect of the Box House, or (iii) make other payments of any kind with respect to the Box House.

f. No Continuing Rights. Transferor understands, acknowledges and agrees that Transferor shall have no rights with respect to any future transfer, acquisition, merger, liquidation, dissolution or other corporate event regarding the Transferor or the Transferor's assets.

g. Obligations to Sell. Transferor is not a party to any binding contract, agreement, or commitment to sell either: (i) the Box House or any portion thereof, or (ii) all or substantially all of the assets of the Transferor.

h. Taxes. Transferor acknowledges and agrees that neither Transferee nor any of its agents or advisors have ever provided, nor shall any of the foregoing provide, Transferor with any advice regarding the tax consequences of this Agreement. Transferor has retained Transferor's own tax professionals, upon whose advice Transferor has and is relying upon in determining whether to enter into this Agreement and effectuate the assignment of the Box House. Transferor shall be solely responsible for the payment of any and all income, transfer and other taxes, filing and recording fees and similar charges relating to the Box House and this Agreement.

i. Litigation. There is no action, suit, proceeding or investigation pending or, to Transferor's knowledge, currently threatened against Transferor that questions the validity of this Agreement or the right of Transferor to enter into this Agreement, or to consummate the transactions contemplated hereby. There is no judgment, decree, or order against the Transferor that prevents or enjoins the Agreement.

3. Representations of Transferee. Transferee represents and warrants to Transferor that as of the Effective Date:

a. Exempt Status. Transferee has been and continues to be recognized by the Internal Revenue Service and currently maintains its status as a publicly supported charity described in Sections 501(c)(3) and 509(a)(1) of the Code.

b. Authorization. Transferee has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and binding obligation of Transferee, enforceable against Transferee in accordance with its terms.

4. Indemnification.

a. Transferor shall defend, indemnify, and hold harmless Transferee and its affiliates, as well as their respective officers, directors, members, employees, agents, successors, and permitted assigns (collectively, the "Transferor Indemnified Parties"), on demand from and against any and all suits, actions, claims, losses, liabilities, obligations, judgments (at equity or at law, including statutory and common), awards, expenses, penalties, fines, and costs (including amounts paid in settlement, costs of investigation, and reasonable legal fees and expenses) incurred by, borne by, or asserted by a person or entity against any of the Transferor Indemnified Parties in any way relating to, arising out of, or resulting from the Box House, including, without limitation, a breach of representation or warranty in Section 2, or a breach of any representation, warranty, covenant, or indemnification that the Transferee may be required to make with respect to the Box House.

b. Transferee shall defend, indemnify, and hold harmless Transferor and its affiliates, as well as their respective officers, directors, members, employees, agents, successors, and permitted assigns (collectively, the "Transferee Indemnified Parties"), on demand from and against any and all suits, actions, claims, losses, liabilities, obligations, judgments (at equity or at law, including statutory and common), awards, expenses, penalties, fines, and costs (including amounts paid in settlement, costs of investigation, and reasonable legal fees and expenses) incurred by, borne by, or asserted by a person or entity against any of the Transferee Indemnified Parties in any way relating to, arising out of, or resulting from the Lease Encumbrances from and after the Effective Date.

5. Carrying Charges. It is the intent and expectation of the parties that the cash or other liquid assets held at any time in the donor advised fund established by the donation of the Box House and maintained by Transferee (the “DAF”) shall be sufficient to fully satisfy any costs, expenses, fees, capital commitments, claw backs, taxes, liabilities, or other obligations arising during the duration of the DAF (collectively, the “Carrying Costs”). In the event that there is insufficient cash or liquid assets immediately available to fully satisfy and discharge the Carrying Costs, Transferor shall, in the sole discretion of Transferee, either contribute cash to the DAF in an amount sufficient to satisfy, pay, or discharge such Carrying Costs, or to reimburse Transferee for such Carrying Costs. Transferor shall make all payments to the DAF or to Transferor required under this Section within 15 days of notice of such payment by Transferor.

6. Survival of Representations and Warranties. The warranties, representations, and indemnities of Transferor and Transferee contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement.

7. Governing Law. This Agreement shall be governed by the laws of the State of Utah without respect to its conflict of law principles.

8. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns.

9. Dispute Resolution. The parties (i) hereby irrevocably and unconditionally submit to the jurisdiction of the federal or state courts located in the State of Utah for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (ii) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the federal or state courts located in the State of Utah, and (iii) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

10. Amendments and Waivers. This Agreement may be amended only by a written agreement executed by each of the parties hereto. No amendment of or waiver of, or modification of any obligation under this Agreement will be enforceable unless set forth in a writing signed by the party against which enforcement is sought. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. No waiver granted under this Agreement as to any one provision herein shall constitute a subsequent waiver of such provision or of any other provision herein, nor shall it constitute the waiver of any performance other than the actual performance specifically waived.

11. Further Assurances. Transferor shall provide Transferee with a Schedule K-1 and any other information reasonably necessary to permit Transferee to comply with its U.S. federal and state tax obligations. Transferor shall cooperate with Transferee to duly execute, acknowledge, and deliver all such further assignments, transfers, conveyances, and powers of attorney and take such other actions and give such assurances as may be reasonably required to consummate the Assignment

of the Box House and the purposes and intent of this Agreement.

12. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail or electronic signature, or any other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

13. Headings. Section headings or titles contained in this Agreement are inserted as a matter of convenience and reference. Such headings and titles in no way define, limit or extend the scope of this Agreement or the intent of any provision hereof.

14. Entire Agreement. This Agreement and the documents referred to herein constitute the entire agreement and understanding of the parties with respect to the subject matter of this Agreement, and supersede all prior understandings and agreements, whether oral or written, between or among the parties hereto with respect to the specific subject matter hereof. This Agreement shall not be effective until signed by both parties hereto.

15. Severability. If any provision of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision will be enforced to the maximum extent possible given the intent of the parties hereto. If such clause or provision cannot be so enforced, such provision shall be stricken from this Agreement and the remainder of this Agreement shall be enforced as if such invalid, illegal or unenforceable clause or provision had (to the extent not enforceable) never been contained in this Agreement.

16. Specific Enforcement. Unless this Agreement has been terminated, each party to this Agreement acknowledges and agrees that any breach by it of this Agreement shall cause any (or either) of the other parties irreparable harm which may not be adequately compensable by money damages. Accordingly, except in the case of termination, in the event of a breach or threatened breach by a party of any provision of this Agreement, each party shall be entitled to seek the remedies of specific performance, injunction or other preliminary or equitable relief, without having to prove irreparable harm or actual damages. The foregoing right shall be in addition to such other rights or remedies as may be available to any party for such breach or threatened breach, including but not limited to the recovery of money damages.

[Remainder of Page Intentionally Blank; Signature Page to Follow]

IN WITNESS WHEREOF, Transferor has executed this Agreement as of the date first set out above.

TRANSFEROR:

By: _____
Its: _____

TRANSFeree:

WINTER HAVEN, INC., A MONTANA
501 (c)(3) CHARITY

By: _____
Its: _____

Exhibit A

ASSIGNMENT AND BILL OF SALE

Pursuant to that certain Box House Gift Assignment Agreement (the "Purchase Agreement") of even date herewith, by and between _____, ("Transferor"), and Winter Haven, Inc., a Montana 501(c)(3) charity ("Transferee"), Transferor does hereby gift, assign, transfer, and convey to Transferee a 19' x 20' Box House (the "Box House").

The provisions of this Assignment and Bill of Sale are subject, in all respects, to the terms and conditions of the Purchase Agreement between Transferor and Transferee, and all of the representations and warranties, covenants and agreements of the parties thereto contained therein. Transferee acknowledges that Transferor makes no representation or warranty with respect to the assets being conveyed hereby except as specifically set forth in the Purchase Agreement.

The Transferor hereby further undertakes that it will execute such additional documents and take such further actions as may be reasonably required in order to confirm and further effectuate the sale and assignment of the Property to the Transferee.

IN WITNESS WHEREOF, the Transferor has executed this Assignment and Bill of Sale to be effective as of the __ day of _____, 2024.

TRANSFEROR:

[TRANSFEROR NAME]

By: _____
Its: _____

TRANSFEEE:

WINTER HAVEN, INC.
A MONTANA 501(C)(3) CHARITY

By: _____
Its: _____

UBIT ACKNOWLEDGEMENT STATEMENT

By signature hereto, the undersigned, as “Transferor” under that certain Box House Gift Assignment Agreement (the “**Assignment**”) entered into as of _____, 2024 by and between Transferor and Winter Haven, Inc., a Montana 501(c)(3) charity (“**Winter Haven**”), acknowledges that a sale of the Box House (as defined in the Assignment) by Winter Haven will result in the recognition by Winter Haven of unrelated business income tax (“**UBIT**”). Based upon the information provided by Transferor to Winter Haven prior to the date hereof, Winter Haven estimates that its UBIT obligations with respect to the Box House is estimated to be in the amount indicated below (the “**Estimated UBIT Amount**”).

Transferor acknowledges that (i) the Estimated UBIT Amount will be held in escrow by Winter Haven and paid to the Internal Revenue Service in accordance with Winter Haven’s tax filing and payment procedures and obligations, (ii) the Estimated UBIT Amount may be adjusted, upwards or downwards, when Winter Haven receives final financial information related to the sale of the Box House, including its Schedule K-1, (iii) the Estimated UBIT Amount will be unavailable for distribution by Winter Haven, provided, however, that if the Estimated UBIT Amount is higher than the actual UBIT owed by Winter Haven then the difference will be available for distribution and (iv) the Estimated UBIT Amount assumes that the Transferor advises in the year of the donation qualifying charitable distributions from the Winter Haven Donor Advised Fund of at least 60% of the proceeds from the disposition of the Box House and if such distributions total less than 60% of the proceeds than the actual UBIT amount will be greater than the Estimated UBIT Amount.

Estimated UBIT Amount: \$ _____

Acknowledged by:

[Transferor Name]

By: _____

Name: _____

Its: _____