

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT
FOR THE PROMONTORY SPECIALLY PLANNED AREA**

THIS AMENDMENT TO THE PROMONTORY DEVELOPMENT AGREEMENT (herein referred to as the "First Amendment") is made and executed this 31st day of December, 2004, by PIVOTAL PROMONTORY DEVELOPMENT, L.L.C., an Arizona limited liability company (hereinafter "Developer") and SUMMIT COUNTY, a political division of the state of Utah, by and through its Board of County Commissioners (hereinafter the "County").

WHEREAS, the parties executed and recorded a certain Development Agreement for The Promontory Specially Planned Area (hereinafter designated the "Agreement") on January 2, 2001, which Agreement was recorded as Entry No. 583272, in Book 1355, Pages 1154 to 1247, records of Summit County, Utah, and

WHEREAS, it is the parties desire to amend the Agreement in order to promote sustainable development that provides a public benefit.

NOW THEREFORE, Developer and the County, as the parties under the Agreement, do hereby make the following revisions:

1. Section 4.4.1 and Section 4.4.1.1 of the Agreement are hereby amended so as to delete said Section 4.4.1 and its subsections as they presently appear and to substitute therefor the following:

4.4.1 Resort Units. 300 Resort Units, tightly clustered and either single family attached, detached, zero lot line or condominium setup on lots less than or equal to one half acre. The Board of County Commissioners may, at its sole discretion, allow Resort Unit lots that are larger than one half acre. Resort Units shall have a maximum Floor Area of 2,500 square feet. A plat note shall be required stating the maximum Floor Area.

4.4.1.1 Maximum Dwelling Unit Size Restriction. 2,500 square feet is the maximum Floor Area for a Resort Unit. A lot owner shall not be allowed to purchase an adjoining lot and combine two lots under the rules, to be established in the Supplemental Master Declaration, for the purpose of increasing the maximum Floor Area. A plat note shall be required setting forth this restriction.

4.4.1.2 Preservation and Ridgeline Prohibition. No Resort Unit or related structure shall be situated in any Preserve Area or Ridgeline Area designated in the SPA Plan.

4.4.1.3 Retention Area Restrictions. All structures which are built within a Retention Area viewshed, as defined herein, shall comply with the Design Guidelines and Supplemental Design Guidelines for retention areas contained in the SPA Plan.

4.4.1.4 Exterior Change to Unit and Landscaping Restriction. Exterior changes to Resort Units will be prohibited by the Promontory Supplemental Design Guidelines. In addition, the

BK1671 PC0876

Promontory Supplemental Design Guidelines will impose a uniform landscaping scheme and require common landscaping maintenance in all resort areas.

4.4.1.4 **Owner Lock-off Area.** Owners of Resort Units will be provided a permanent storage facility, either central to the resort cluster or within the premises of each Resort Unit, in which to store their personal possessions while the dwelling is being rented.

4.4.1.5 **Covenant to Allow Nightly and Short-Term Rentals.** The Supplemental Master Declaration for each resort cluster shall allow overnight and short-term rentals.

4.4.1.6 **Limited Occupancy.** Resort Units shall be used for short-term occupancy not to exceed six (6) months by any resident in a single calendar year period. Resort Unit owners are ineligible to qualify for permanent resident status based upon the Resort Unit ownership. A plat note shall be required setting forth this restriction. The Supplemental Declaration of CC&Rs for each cluster of Resort Units will contain a prohibition against owner-occupancy of more than six (6) months in any calendar year.

4.4.1.7 **Club Membership.** A golf membership will be offered for purchase with each Resort Unit.

4.4.1.8 **Location.** Resort Units shall be allowed in the following locations:

- **Resort Village/Resort Highlands.** Up to 150 Resort Units in the Resort Village/Resort Highlands phase of Promontory. POD 76 is designated as meeting the location criteria. The development of Resort Units in POD 93 will be subject to the adjacency criteria outlined below.
- **Jack Nicklaus Valley (Middle Valley).** Up to 100 Resort Units in the Jack Nicklaus Valley phase of Promontory. PODs 48, 47, 45, 40, 34, 33 and 27 are designated as meeting the location criteria.
- **South Point.** Up to 50 Resort Units in the South Point phase of Promontory adjacent to the proposed golf course location. PODs 9, 10A, 10B, and 10C are designated as meeting the location criteria. Other appropriate PODs for resort development may be administratively approved by the Planning Director based on the adjacency criteria stated below.
- **West View.** Any Resort Units not previously approved for construction in the above-listed phases of Promontory pursuant to this section 4.4.1.8 (but no more than 75 Resort Units) may be constructed in the West View phase of Promontory. PODs 124, 125, 126, and 127 are designated as meeting the location criteria subject to the adjacency criteria outlined below. Other appropriate PODs for resort development may be administratively approved by the Planning Director based on the adjacency criteria stated below.

4.4.1.9 **Administrative Designation for Future Phases.** In future phases of Promontory, PODs eligible for construction of Resort Units (in addition to those specifically enumerated in section 4.4.1.8 above) may be designated administratively by the Planning Director based on the adjacency criteria outlined below.

4.4.1.10 **Adjacency Criteria.** Resort Units not located in the aforementioned qualified locations will be adjacent to or across the street from a club or resort amenity such as a clubhouse, spa,

BK1671-PG0877

swimming pool, tennis court, equestrian center or golf course fairway. Resort Units will be sited in such a way as to orient toward the adjacent amenity or receive resort services from a nearby Promontory Club facility or other amenity. Other criteria for appropriate location of Resort Units may include walking distance to an adjacent or nearby amenity, line of sight to the amenity or ability to reach the amenity by short golf cart ride.

4.4.1.11 Check-In. All Resort Units will have centralized check-in within an adjacent Promontory Club facility or other adjacent amenity facility or shall have a separate Hospitality Center facility within a resort cluster specifically built for the Resort Units.

4.4.1.12 Standardized Furnishings/Décor. Resort Units will be offered with a standardized furnishings and décor package to facilitate centralized maintenance and housekeeping.

4.4.1.13 Centralized Rental Management Available. A standard agreement for nightly short term rental and management services (including housekeeping) will be offered through Promontory Club or an adjacent boutique hotel or destination spa facility in conjunction with Promontory Realty, L.L.C. or another licensed real estate brokerage. This rental arrangement will not be mandatory.

4.4.1.14 Conversion Fee. In the event that a court or similar official government decision making body determines that Section 4.4.1.6 herein is not enforceable and after such determination an owner of a Resort Unit is violating said Section by using such unit for permanent occupancy, an impact fee in the amount of \$10,000 will be payable to the County by the Resort Unit Owner. Such Conversion Fee shall be payable regardless of whether the Occupancy Limitation in Section 4.4.1.6 is held to be legal unenforceable by a court of competent jurisdiction. A plat note shall be required setting forth this requirement.

4.4.1.15 Subdivision Plat Submittals. Since Resort Unit plats are more dense, smaller and theoretically less valuable than second home units, and can be located in critical viewsheds as designated in Exhibit E of the Agreement and the Eastern Summit County Development Code, additional application materials shall be required in subdivision plat submittals for resort units. Landscape Plans, Architectural Elevations, Site Plans that include unit placements and site contours, and such other materials reasonably deemed to be necessary to evaluate Resort Unit Subdivision Plats for consistency with the Promontory Global Principles shall be submitted.

2. Section 4.6 of the Agreement is hereby supplemented by the addition at the end of said Section as it presently appears with the following:

4.6.4 Extension of Time Limit. In order to allow Developer to master plan the community, the Planning Director may grant one (1) year extensions to the recordation deadlines for any approved final plats, provided the Developer is in compliance with the Promontory SPA Plan at the time it requests any such extension.

3. Section 4.8.3.1.1.2 of the Agreement is hereby amended so as to delete said Section 4.8.3.1.1.2 as it presently appears and to substitute therefor the following:

4.8.3.1.1.2 Notwithstanding the fact that the Permanent Occupancy percentage stated in section 4.8.3.1.1.1 above may not be satisfied, Developer shall still be entitled to continue platting incentive density units in any phase of Promontory until such time as certificates of occupancy have been issued for 25% of the units permitted in such phase pursuant to the Land Use Density Matrix and so long thereafter as no more than 25% of the constructed Residential Units in such phase shall have fair market values, as determined by assessors records, short form appraisal or other source of market data, less than the then applicable Value Threshold Amount. For purposes of this test, the Value Threshold Amount is equal to \$800,000, adjusted beginning on January 1, 2003 and on January 1 of each year thereafter by the Price Level Adjustment, provided; however, that no increase shall be applied in any year in which the developer can demonstrate with reasonable

BK1671 PG0878

evidence that resort housing prices generally declined in the Market during the preceding calendar year. The intent of this provision is that during periods of declining housing prices there would be no short term Price Level Adjustment. However, when the price levels for housing begin to increase, the Price Level Adjustment shall apply and shall be cumulative as if the Price Level Adjustment had not been abated in any prior period of declining housing prices.

4. All terms defined in the Agreement shall have the defined meaning when used herein.

5. This First Amendment to Agreement shall be deemed effective upon recording hereof in the offices of the County Recorder of Summit County, State of Utah.

6. This First Amendment to Agreement shall not be deemed to amend or modify the Agreement except as herein specifically provided. Except as specifically set forth herein, the Agreement shall remain in full force and effect and is unaffected hereby.

IN WITNESS WHEREOF, the undersigned have executed this First Amendment the day and year first above written.

DEVELOPER:

**PIVOTAL PROMONTORY DEVELOPMENT,
L.L.C.**, an Arizona limited liability company

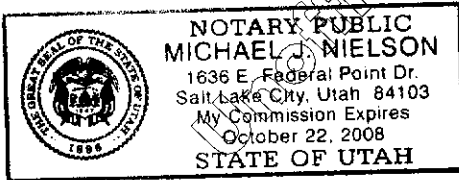
By: Pivotal Group X, LLC, an Arizona limited liability company
Its: Administrative Member


By: F. Francis Najafi as Trustee of the F. Francis Najafi Family Trust
Its: Administrative Member

By: 
F. Francis Najafi, Trustee

State of Utah)
County of Summit) :ss

The foregoing was acknowledged before me this 28th day of December, 2004 by F. Francis Najafi, Trustee of the F. Francis Najafi Family Trust, Administrative Member of Pivotal Group X, LLC, Administrative Member of Pivotal Promontory Development, L.L.C.




Notary Public
Residing at: Salt Lake City, Utah

My Commission Expires:

10-22-08

BK1671 PG0879

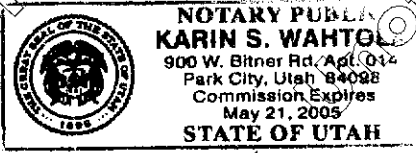
COUNTY:

BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY, STATE OF UTAH

By: Kenneth E. Woolstenhulme
Kenneth E. Woolstenhulme, Chairman

State of Utah)
County of Summit) :ss

The foregoing was acknowledged before me this 31st day of December, 2004 by Kenneth E. Woolstenhulme, Chairman of the Board of County Commissioners of Summit County, State of Utah.



Karin Wahtol
Notary Public
Residing at: Park City, UT

My Commission Expires:
5/21/05

BK1671 PG0880