

**DEVELOPMENT IMPROVEMENTS AGREEMENT
FOR
PROMONTORY INITIAL PLAT INFRASTRUCTURE
NEIGHBORHOOD OF
THE SUMMIT; PODS 85, 94, 95**

THIS AGREEMENT is made this 4 day of April, 2007, by and between **SUMMIT COUNTY**, a political subdivision of the State of Utah (the "County"), and **Pivotal Promontory Development, LLC**, an Arizona limited liability company and **Pivotal Promontory, LLC**, an Arizona limited liability company, together herein referred to as "Developer".

RECITALS

1. Developer is the owner of certain platted properties more particularly described in Exhibit A, situated in the County of Summit, State of Utah, sometimes referred to as The Summit, or PODS 85, 94, 95 and referred to herein as the "Property."
2. Developer's County-approved Development Agreement for Promontory provides that construction of road and utility infrastructure may be undertaken upon final platting, subject to execution of a Development Improvements Agreement.
3. Developer has submitted to the County the site improvements plan, more particularly described in Exhibit B attached hereto (the "Site Improvements Plan"), and has submitted construction drawings, more particularly described in Exhibit C attached hereto ("Construction Drawings") for those improvements and related landscaping being constructed by the Developer in connection with the road and utility infrastructure on the Property, pursuant to that certain Development Agreement dated as of January 16, 2001 (the "Development Agreement").
4. Construction of the roads and infrastructure covered by this Development Improvements Agreement will be subject to the requirements and conditions related to the installation and construction of utilities and the improvements shown on the attached Site Improvements Plan. These requirements and conditions conform to those which are set forth in the Development Agreement.

NOW, THEREFORE, in consideration of the premises and the terms and conditions herein stated and for other valuable consideration, the adequacy of which is acknowledged by the parties hereto, it is agreed as follows:

1. **Developer's Guarantee and Warranty.**

Developer has entered into formal commitments, including the approved Development Agreement and this Development Improvements Agreement with an appropriate bonding and installation schedule to guarantee the installation, as hereafter provided and as

ENTRY NO. 00809686

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ALAN SPRIGGS, SUMMIT COUNTY RECORDER

FEE \$ 0.00 BY SUMMIT COUNTY ENGINEER



necessary to serve the Property, and payment therefore, of all private roads and private road improvements, all utility lines, storm drainage improvements and storm sewers, and any other improvements described in the Site Improvements Plan. Developer hereby warrants all road improvements and utility improvements constructed or installed by Developer against defects in materials and workmanship for a period of two full year's normal operation after acceptance by the County Engineer or the applicable utility companies of such improvements. The County shall either retain ten percent (10%) of the bond, letter of credit or escrow total for such items, or require a bond, letter of credit or escrow equal to ten percent (10%) of the required total improvement costs for such items until twenty-four months from the date of completion of the improvements and acceptance thereof by the County, as a guarantee should the improvements prove to be defective during said 24-month period. Developer agrees to promptly correct any deficiencies in installation in order to meet the requirements of the plans and specifications applicable to such installation. In the event such installation is not completed substantially within the applicable schedules attached hereto and according to the specific plans set forth in the Site Improvements Plan, the County shall have the right to cause such work to be done as is necessary to complete the installation in such manner and Developer shall be liable for the cost of such additional work.

2. **Water Facilities and Sanitary Sewer Collection Lines.**

- (1) At the request of Developer, The Snyderville Basin Water Reclamation District (the "District") shall enter into a Line Extension Agreement to provide for the installation of all sanitary sewer collection lines on and serving the Property. The Developer shall bond for the installation of on-site sewer lines and service laterals from the border of the Property to the existing sewage collection system, in accordance with the standard specification of the District.
- (2) The Developer has entered into a Water Service Agreement with Mountain Regional Water Service District to provide for the installation of all wells, tanks, waterlines and service laterals for the Property thereby creating a complete system in accordance with the standard specifications of the Mountain Regional Water Service District ("Mountain Regional"). The Developer shall bond for the installation of all required wells, tanks, waterlines and service laterals in accordance with the standard specification of Mountain Regional.
- (3) It is anticipated that the installation of said sanitary sewer lines and waterlines will be completed within two years from the date hereof for the initial phase of construction and within two years from the date of approval of Construction Drawings for each subsequent phase of construction.
- (4) The cost of all said sanitary sewer lines shall be borne by Developer pursuant to an agreement between Developer and the District, and

Developer shall enter into a separate guarantee and warranty to the District for such facilities.

- (5) The Developer has agreed to construct and pay for culinary and fire protection waterlines to serve the Property, and to transfer maintenance and ownership of said waterlines and other water improvements to Mountain Regional after acceptance and approval of the improvements by Mountain Regional. The cost of all said waterlines and water improvements shall be borne as determined by Developer's Water Service Agreement with Mountain Regional and construction is guaranteed by the Developer pursuant to this Development Improvements Agreement.

3. Electric, Gas, Telephone and Cable TV Facilities.

- (1) At the request of the Developer, Utah Power shall engineer and provide for the installation of all electric distribution lines and facilities required for the Property, and Developer shall pay for such work in accordance with the established charges of Utah Power.
- (2) At the request of Developer, Questar Gas Company shall engineer and provide for the installation of all required gas lines and facilities required, and Developer shall pay for such work in accordance with the established charges of Questar Gas Company. Alternatively, Developer may choose to allow each home site owner to install an individual propane storage tank and lines to serve their home.
- (3) At the request of Developer, Allwest shall engineer and provide for the installation of all required telephone lines and facilities and broadband and cable television lines and facilities, utilizing conduit installed by Developer, and Developer shall make any required payment for such work in accordance with the terms of its agreement with such service provider.
- (4) The installation of the electric, gas, telephone and cable television facilities is anticipated to be completed within two years from the date hereof for the initial phase of construction and within two years from the date of approval of Construction Drawings for each subsequent phase of construction.

4. Storm Drainage Improvements.

- (1) The Developer shall install any storm sewer lines and drainage facilities described in the Site Improvement Plan.
- (2) Developer anticipates completing the installation of said lines and facilities within two years from the date hereof for the initial phase of

construction and within two years from the date of approval of Construction Drawings for each subsequent phase of construction.

5. **Trails.**

Private community trails through the Property (as designated in the Site Improvement Plan) will be owned and maintained by the Promontory Conservancy, will be initially constructed by Developer in connection with installation of the site improvements and need not be bonded for with the County. There are no public trails associated with the Property.

6. **Roads.**

Developer agrees to construct, at Developer's cost, all private roads and private road improvements listed on the Site Improvements Plan, in accordance with the Construction Drawings and the Site Improvements Plan. Developer anticipates completing the roads and road improvements and associated utilities within two years from the date Construction Drawings are approved for the phase. Developer agrees to install any traffic control signs and street name signs as required by the County (in either standard form or to specific standards approved by the County for Promontory prior to any installation) and to re-vegetate all cuts and fills resulting from construction in a manner which will prevent erosion. The construction of such roads shall be subject to inspection and approval by the County Engineer and the cost of such inspection shall be paid by the Developer.

7. **Landscaping and Weed Control.**

Developer shall install roadway landscaping in accordance with the Site Improvements Plan, at Developer's expense within two years from the date hereof. The Developer agrees to comply with Summit County Ordinance 484 relative to control and elimination of all noxious species of plants as identified within the project boundaries. The Developer further agrees to coordinate with the Summit County weed department, prior to commencement of work, relative to inspections and importations of weed free project materials.

8. **Road Cuts.**

Developer acknowledges that the County has adopted a road cut ordinance, the provisions of which shall apply to the alteration of any County road necessitated by the installation of any utilities described in this Agreement.

9. **Traffic Control.**

During the construction of any utilities or improvements described herein, Developer shall be responsible for controlling and expediting the movement of vehicular and pedestrian traffic through and around all construction sites and activity. Such control shall be according to the latest version of the Manual on Uniform Traffic Control Devices.

10. **Maintenance and Repair.**

- (1) Developer shall repair or pay for any damage to any existing public improvements damaged during the construction of new improvements. The County shall notify Developer within a reasonable time after discovery of any claim hereunder, and Developer shall have a reasonable period of time within which to repair said damage.
- (2) Pursuant to the Declaration of Covenants, Conditions and Restrictions for the Promontory Conservancy, as amended and supplemented, as recorded in the office of the Recorder of Summit County, Utah, the Promontory Conservancy shall provide for the maintenance of any private roads and trails within the Property and the Developer shall be released from any obligation and liability to maintain such private roads or to be responsible for the cost of such maintenance upon acceptance of such roads and trails by the Conservancy and expiration of any applicable warranty period.

11. Financial Assurances.

To insure Developer's performance under this Agreement (except for the installation of the Sanitary Sewer Collection Lines and water lines and dry utilities described in Paragraph 2 above which are to be directly guaranteed, where applicable, with separate financial assurances from Developer, and private trails which need not be publicly bonded), the Developer shall, prior to the commencement of construction of any improvements, provide the County with sufficient security, to ensure completion of the required improvements, in the amount of 120% of the cost of construction, determined in accordance with the contract unit prices reflected in the schedule in Exhibit C. The security shall be in the form of either: A) a Letter of Credit drawn upon a state or national bank. Said Letter of Credit shall: (1) be irrevocable, (2) be of a term sufficient to cover the completion and warranty periods according to the values required herein, and (3) require only that the County present the issuer with a signed draft and a certificate signed by an authorized representative of the County certifying to the County's right to draw funds under the Letter of Credit; or B) Establishment of an Escrow Account or Completion Bond with the guarantee that all improvements shall be installed within two years of the effective date of the account or bond or the account or bond will be called by the County to complete the improvements. Acceptable escrow agents shall be the Summit County Treasurer's Office, or banks or savings institutions which are federally insured. This two-year deadline may be extended by the County upon showing of sufficient cause, but no additional phase of the development shall be permitted during such an extension. As portions of the improvements are completed in accordance with this Development Improvements Agreement, County regulations, and the approved Site Improvements Plan, the Developer may make application to the County Engineer to reduce the amount of the original letter of credit, cash escrow or completion bond. If the Board of County Commissioners is satisfied that such portion of the improvements has been completed in accordance with County standards, they may cause the amount of the letter of credit, cash escrow or completion bond to be reduced by such amount that they deem appropriate, so that the remaining amount of the letter of credit, cash escrow or completion bond adequately insures the completion of the remaining improvements. Developer may, from time to time, substitute one form of security for another, or substitute sureties or letter of credit issuers,

provided the same shall be reasonably acceptable to the County according to the standards set forth above.

12. Conditions of Approval.

Developer pledges to remain in compliance with all of the Conditions of Approval imposed by the Board of County Commissioners and included in the Development Agreement.

13. Default.

If Developer shall default in the performance of Developer's obligation hereunder and shall fail to cure such default within thirty (30) days after receipt of written notice from the County specifying the nature of such default (or if such default cannot be cured within the aforesaid period of time, if the Developer shall fail to promptly commence to cure the same and to thereafter diligently proceed with such cure), then the County shall be entitled to undertake such work as may be necessary and appropriate to cure such default and the County shall be reimbursed for the reasonable costs thereof either by payment of such costs to cure the default within 30 days of delivery of an invoice to Developer or by obtaining funds under the security.

14. Limitation of Liability.

No recourse shall be had for any obligation of or default by Developer under this Agreement or for any claim with respect to this Agreement against any partner or joint venturer of Developer or purchaser of lots within the Property or any other creditor or lender of Developer under any rule of law (including, without limitation, the rule of law that general partners and joint venturers are jointly and severally liable for the indebtedness of a partnership or joint venture, as applicable), contractual provision, statute or constitution or otherwise, it being understood that all such liabilities of the partners or joint ventures of Developer are to be, by the execution of this Agreement by the County, expressly waived and released as a condition of, and in consideration for, the execution and delivery of this Agreement. Nothing contained herein shall constitute a waiver of any obligation of Developer to the County under this Agreement or shall be taken to prevent recourse to or of the enforcement of any rights of the County as against the security posted by the Developer pursuant to this Development Improvements Agreement.

15. Amendment.

This Agreement, Exhibit A, Exhibit B, and Exhibit C hereto, and any County-approved Construction Drawings referred to herein, may only be amended by written instrument signed by the County and the Developer.

16. Binding Effect.

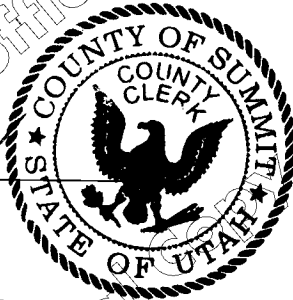
This Agreement and the covenants contained herein shall run with the land and shall be binding upon and shall inure to the benefit of the parties hereto and their successors, heirs and assigns of the property owners; provided that, except as provided in Paragraph 10(b) above, purchasers of residential lots within the Property or any homeowner's association that

receives title to any portion of the Property shall not incur any liability hereunder and no person or entity, including any homeowner's association that receives title to any portion of the Property, may claim to be a third party beneficiary of the terms, conditions, or covenants of this Agreement. This Agreement shall be recorded in the Office of the Summit County Recorder and on file with the Department of Community Development. All existing lien holders shall be required to subordinate their liens to the covenants contained in this Development Improvements Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed the date and first year written above.


ATTEST:


Summit County Clerk




APPROVED:

COUNTY OF SUMMIT, UTAH

By: 
Board of Summit County Commissioners
County Commission Chairman

APPROVED AS TO FORM:

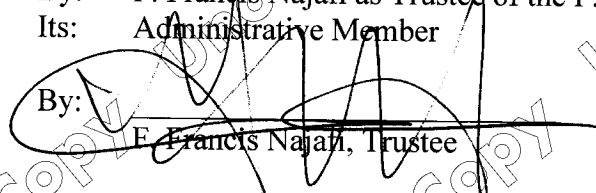

Dave Thomas,
Deputy County Attorney

ACCEPTED:

Pivotal Promontory Development, LLC, 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

Pivotal Promontory, LLC, 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

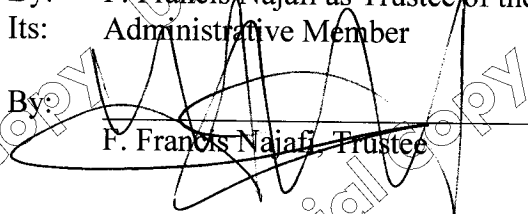
By: 
F. Francis Najafi, Trustee

Exhibit A

**Pods 85, 94, 95, The Summit
Legal Description**

A parcel of land located in Section 1, Township 1 South, Range 4 East, Salt Lake Base and Meridian; and being more particularly described as follows:

Beginning at a point which bears North 89°56'06" East along the Section Line 154.69 feet and South 327.46 feet from the Northwest Corner of Section 1, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being North 89°56'06" East 267.68 feet between the Northwest Corner of said Section 1 and the Southwest Corner of Section 36, Township 1 North, Range 4 East, Salt Lake Base and Meridian, both corners being found monuments) and running thence North 49°38'13" East 264.15 feet; thence South 84°40'45" East 420.18 feet; thence South 78°40'36" East 219.52 feet to a point of curvature of a 225.00 foot radius curve to the right, the center of which bears South 05°57'46" East, thence along the arc of said curve 146.63 feet through a central angle of 37°20'19"; thence North 84°02'14" East 37.96 feet to a point of curvature of a 135.00 foot radius curve to the left, the center of which bears South 88°48'36" West, thence along the arc of said curve 200.81 feet through a central angle of 85°13'38"; thence North 01°11'24" West 58.53 feet; thence North 88°48'36" East 50.00 feet; thence South 01°11'24" East 58.53 feet to a point of curvature of a 185.00 foot radius curve to the right, the center of which bears North 05°57'46" West, thence along the arc of said curve 275.19 feet through a central angle of 5°13'38"; thence South 84°02'14" West 37.96 feet to a point of curvature of a 175.00 foot radius curve to the left, the center of which bears South 56°18'36" East, thence along the arc of said curve 153.78 feet through a central angle of 50°20'50"; thence South 33°41'24" West 25.01 feet to a point of curvature of a 475.00 foot radius curve to the left, the center of which bears South 72°06'54" East, thence along the arc of said curve 131.03 feet through a central angle of 15°48'18"; thence South 17°53'06" West 214.02 feet to a point of curvature of a 475.00 foot radius curve to the left, the center of which bears South 72°06'54" East, thence along the arc of said curve 146.89 feet through a central angle of 17°43'07"; thence South 79°54'44" East 428.62 feet; thence North 04°50'58" East 575.81 feet; thence North 74°21'41" East 299.55 feet; thence South 41°10'35" East 176.82 feet; thence North 67°04'22" East 396.40 feet; thence South 27°23'27" East 96.50 feet; thence North 54°13'00" East 35.51 feet; thence North 07°48'09" East 119.616 feet; thence South 82°11'51" East 70.00 feet; thence South 07°48'09" West 53.04 feet; thence North 54°13'00" East 325.37 feet; thence South 02°15'10" West 878.05 feet; thence North 56°13'50" West 313.38 feet; thence South 33°46'10" West 30.00 feet; thence North 56°13'50" West 20.58 feet to a point of curvature of a 140.00 foot radius curve to the right, the center of which bears North 33°46'10" East, thence along the arc of said curve 35.53 feet through a central angle of 14°32'20"; thence North 41°41'30" West 39.34 feet to a point of curvature of a 140.00 foot radius curve to the right, the center of which bears North 48°18'30" East, thence along the arc of said curve 65.31 feet through a central angle of 26°43'42"; thence North 14°57'48" West 68.47 feet to a point of curvature of a 75.00 foot radius curve to the left, the center of which bears South 75°02'12" West, thence along the arc of said curve 59.10 feet through a central angle of 45°08'46"; thence South 08°53'34" West 511.59 feet;

thence South 05°42'45" East 246.86 feet; thence South 38°30'43" East 717.70 feet; thence South 12°41'57" West 681.90 feet; thence South 10°41'41" East 499.18 feet; thence South 39°25'07" East 533.70 feet; thence South 65°38'44" West 396.93 feet to a point on a curve with a 475.00 foot radius that curves to the left, the center of which bears South 65°38'44" West, thence along the arc of said curve 332.21 feet through a central angle of 40°04'20"; thence North 64°25'36" West 226.18 feet to a point of curvature of a 800.00 foot radius curve to the right, the center of which bears North 25°34'24" East, thence along the arc of said curve 548.33 feet through a central angle of 39°16'17"; thence North 25°09'19" West 210.56 feet to a point of curvature of a 625.00 foot radius curve to the left, the center of which bears South 64°50'41" West, thence along the arc of said curve 790.81 feet through a central angle of 72°29'46"; thence South 82°20'56" West 132.86 feet; thence North 07°39'04" West 184.37 feet; thence North 01°04'42" East 159.75 feet; thence North 14°38'26" West 122.57 feet; thence North 46°15'07" West 122.57 feet; thence North 77°21'26" West 118.74 feet; thence South 83°04'53" West 102.21 feet; thence North 13°57'12" West 189.62 feet; thence North 11°51'30" East 462.19 feet; thence North 01°38'11" East 430.17 feet; thence North 23°41'31" West 421.47 feet to the POINT OF BEGINNING.

Containing 106.71 acres, more or less.

Parcel B:

A parcel of land located in Section 1, Township 1 South, Range 4 East, Salt Lake Base and Meridian; and being more particularly described as follows:

Beginning at a point on the northerly right of way of Promontory Ranch Road (a.k.a. Access Easement No. 1) which bears South 89°20'39" East along the Section Line 2615.51 feet and North 380.65 feet from the Southwest Corner of Section 1, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being South 89°20'39" East 5361.90 feet between the Southwest Corner and Southeast Corner of said Section 1, Township 1 North, Range 4 East, Salt Lake Base and Meridian) and running thence North 24°19'11" East 205.89 feet to a point of curvature of a 35.00 foot radius curve to the left, the center of which bears North 65°40'49" West, thence along the arc of said curve 25.35 feet through a central angle of 41°29'43"; thence North 17°10'33" West 493.23 feet; thence North 65°01'19" East 416.73 feet; thence South 33°39'05" East 440.01 feet; thence South 70°38'09" West 250.33 feet; thence South 35°37'13" East 661.90 feet; thence South 44°17'23" West 139.14 feet; thence North 47°18'38" West 419.88 feet; thence North 10°56'07" West 38.71 feet; thence North 65°40'11" West 172.71 feet to a point of curvature of a 30.00 foot radius curve to the left, the center of which bears South 24°19'49" West, thence along the arc of said curve 47.13 feet through a central angle of 90°00'38"; thence South 24°19'11" West 179.82 feet to a point on a curve with a 675.00 foot radius that curves to the right, the center of which bears North 23°02'47" West, said point being on the northerly right of way of Promontory Ranch Road, thence along said Promontory Ranch Road right of way and along the arc of said curve 30.00 feet through a central angle of 2°32'48" to the POINT OF BEGINNING.

Containing 8.22 acres, more or less.

Exhibit B

**Pods 84, 94, 95, The Summit
Site Improvements Plan**

THE SUMMIT					
Cost Code	Description	Contract Totals			
		Quantity	Unit Measure	Unit Price	Scheduled Value
THE SUMMIT BID DRAWINGS DATED JANUARY 12, 2007					
EARTHWORK					
	Clearing and Grubbing	15.4	ac	\$ 1,027.00	\$ 15,815.80
	Erosion Control	8,100	lf	\$ 2.69	\$ 21,789.00
	Strip & Stockpile Topsoil (12" avg.) w/ Scrapers	24,860	cy	\$ 1.76	\$ 43,753.60
	Common Exc - Haul w/ Scrapers (1300 ft. haul)	2,021	cy	\$ 1.64	\$ 3,314.44
	Common Exc - Sliver Cuts w/ Scrapers (2200 ft. haul)	1,315	cy	\$ 2.12	\$ 2,787.80
	Rock Exc. - Rip, Dozer Push (300 ft.) to fills	2,206	cy	\$ 2.94	\$ 6,485.64
	Rock Exc. - Rip, Haul w/ Scrapers (2200 ft. haul)	12,822	cy	\$ 3.17	\$ 40,645.74
	Rock Exc. - Rip, Load, Truck Haul & Place (4500 ft. haul)	700	cy	\$ 4.01	\$ 2,807.00
	Install 8 ft. Stacked Rock Retaining Wall (single tier)	13,350	sf	\$ 4.98	\$ 66,483.00
	Rock retaining wall - import material	4,673	tn	\$ 22.00	\$ 102,795.00
	6" Aggregate Base Course	11,050	tn	\$ 12.50	\$ 138,125.00
	10" Select Sub-Base	18,340	tn	\$ 10.00	\$ 183,400.00
	GPS Road Finishing	1	ls	\$ 17,210.00	\$ 17,210.00
	High survivability geotextile	35,833	sy	\$ 1.57	\$ 56,257.81
	4" Bituminous Surface Course	231,100	sf	\$ 1.34	\$ 308,980.70
	Topsoil spreading - 6" depth	6,800	cy	\$ 3.33	\$ 22,644.00
	Revegetation	11.0	ac	\$ 2,210.00	\$ 24,310.00
STORM DRAIN					
	18" RCP Storm Drain	580	lf	\$ 24.87	\$ 14,424.60
	48" Storm Drain Inlet	3	ea	\$ 2,250.00	\$ 6,750.00
	Rip-rap, Machine placed	990	tn	\$ 9.91	\$ 9,810.90
TOTAL SCHEDULE OF VALUES					\$ 1,088,590.03
BOND VALUE @120%					\$ 1,306,308.00

Exhibit C

**Pods 85, 94, 95, The Summit
Construction Drawings**

Construction Drawings entitled Promontory, The Summit, submitted the 27th day of November, 2006 prepared for Pivotal Promontory Development L.L.C., 8578 N. Promontory Ranch Road, Park City, Utah, 84098, by Jack Johnson Company, 1777 Sun Peak Drive, Park City, Utah, 84098.