

WHEN RECORDED, MAIL TO:

Pivotal Promontory, L.L.C.
c/o J. Jahm Najafi
2415 East Camelback Road, Suite 960
Phoenix, AZ 85016

00583271 Bk01355 Pg0141-01153

ALAN SPRIGGS, SUMMIT CO RECORDER
2001 FEB 27 13:18 PM FEE \$1.00 BY DMG
REQUEST: SUMMIT COUNTY CLERK

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this 15th day of February 2001, by PIVOTAL PROMONTORY, L.L.C., an Arizona limited liability company, whose mailing address is 2415 East Camelback Road, Suite 960, Phoenix, AZ 85016 (the "Grantor") in favor of SUMMIT COUNTY, a Utah governmental entity, whose mailing address is P.O. Box 128 Coalville, UT 84017 (the "County").

RECITALS:

- A. Grantor owns certain real property located in Summit County, Utah (the "Property") more particularly described on Exhibit A attached hereto.
- B. The Property possesses scenic and open space values, and may be used for recreational purposes (collectively, "conservation values") of great importance to the people of Summit County and the people of the State of Utah.
- C. Grantor intends that the scenic and open space values of the Property be preserved and maintained in certain areas by the continuation of existing land use patterns, including, without limitation, those existing at the time of the recording of this Easement, that do not significantly impair or interfere with those values and, in certain other areas, by the development of low impact recreational uses that are consistent with the preservation of open space and scenic values.
- D. Grantor further intends, by the recording of this Easement, to preserve and protect the scenic and open space values of the Property in perpetuity.
- E. County is a governmental entity and a "qualified organization" under Section 170(h)(3) of the Internal Revenue Code for purposes of receiving tax deductible contributions of conservation easements for the purpose of the preservation, protection, or enhancement of land in its scenic and/or open space condition and, in certain cases, as improved by low impact recreational facilities.

GRANT OF EASEMENT:

IN CONSIDERATION of the above and the covenants, terms, conditions, and

restrictions contained herein, and pursuant to the laws of the State of Utah and in particular Utah Code Ann. § 57-18-1, et seq. (1985), with the intention of making an irrevocable easement in perpetuity. Grantor hereby grants to County a conservation easement, as hereinafter defined, (the "Easement") over and across all the Property to preserve and protect the open space and scenic values present on the Property, and shall bind Grantor and Grantor's successors in ownership and/or use of the Property forever. The Easement shall be perpetual and shall not be subject to any mortgage, lien or other encumbrance other than encumbrances of sight or record existing at the time this instrument is signed or encumbrances or rights referred to herein.

1. **Purpose.** It is the purpose of this Easement to assure that the Property will be retained forever in its natural, scenic and open space condition and to prevent any use of the Property that will significantly impair or interfere with those conservation values of the Property. Subject to the retained right of Grantor and its successors to engage in certain construction activities, the use of the Property shall be limited to such activities, including, without limitation, those involving hiking and related trail uses, other low impact recreation uses, viewing and education, as are consistent with the maintaining the scenic and open space character of the land.

2. **Rights of County.** To accomplish the purpose of this Easement, the following rights are granted to County by this Easement:

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

(b) To enter upon the Property to inspect and enforce the rights herein granted in a manner and at any time that will not unreasonably interfere with the proper uses being made of the Property at the time of such entry and upon reasonable prior notice given by or on behalf of County to one or more of the then owners of the Property (the "Owners"), provided that no such notice shall be required where County reasonably determines that immediate entry upon the Property is essential to prevent or mitigate a significant violation of the Easement; and

(c) To enjoin any activity on or use of the Property that is inconsistent with the purpose of this Easement or which may be reasonably expected to have a significant adverse impact on the conservation interests associated with the Property, and to enforce the restoration of such areas or features of the Property that may be damaged by any such inconsistent activity or use, pursuant to Paragraph 5.

3. **Permitted Uses and Practices.** The following uses and practices, though not an exhaustive recital of consistent uses and practices, are consistent with the Easement, provided that each such use or practice is effected in a manner that is not inconsistent with the purpose of the Easement as specified in Paragraph 1 and that each such use or practice shall neither significantly impair the public's view of and over the Property nor, in general, result in significant injury to or the destruction of the open space conservation value of the Property:

(a) To plant and maintain native trees and bushes and grasses (and exotic species thereof if first approved in writing by County) to protect, preserve and enhance the aesthetic, wetland and wildlife habitat values of the Property;

(b) To hunt or trap animals and to control predatory or problem animals by the use of selective control measures and techniques;

(c) To remove such trees and other flora that the Owner reasonably determines to be hazardous to the uses and practices herein reserved;

(d) To build, maintain and repair fences and cattle guards reasonably appropriate for wildlife and agricultural protection purposes, for the protection of natural and planted vegetation, or for the separation of areas on which buildings are located;

(e) To engage in grazing and other agricultural activities;

(f) To use the Property for educational and recreational purposes consistent with the purpose of the Easement, including the limited use of snowmobiles and small off-road recreational vehicles;

(g) To use the Property for commercial or noncommercial photography consistent with the purpose of the Easement;

(h) To construct and maintain natural and man-made ponds; and

(i) To construct roads, trails, related informational signs not containing advertising and other improvements with minimal visual impact on the scenic quality of the Property as permitted by Paragraph 6.

4. **Prohibited Uses and Practices.** Any activity on or use of the Property inconsistent with the scenic and open space value of the Property is prohibited unless expressly approved in this Agreement. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) Division, subdivision or de facto subdivision (through long-term leasing or otherwise) of any parcel of the Property into more than two (2) separately owned parcels of real property intended for the construction and occupancy of a residential or commercial use; provided, however, that inclusion of portions of the Property in the open space portion of residential lots whose building areas are located outside of the Property shall not violate this prohibition;

(b) Except as provided in Paragraphs 3 or 6, construction or location of any structure or other improvement except for structures or improvements which are reasonably appropriate to a use permitted under this Easement;

- (c) Drilling and exploration for and extraction of oil and gas from any site on the Property;
- (d) Dumping or storing of ashes, trash, garbage or junk;
- (e) Manipulation or alteration of natural watercourses or riparian communities except as permitted by Paragraph 6 or as necessary for the use of the Property and then, in any event, only to the extent that such manipulation or alteration shall not result in a significant injury to or the destruction of the scenic or open space character of the Property;
- (f) Burning of any materials;
- (g) The use of vehicles, other than snowmobiles and other recreational vehicles, except as may be necessary to maintain the Property and to maintain utility lines running through the Property;
- (h) Hunting or trapping for any purpose other than predatory or problem animal control;
- (i) Establishment or maintenance of any livestock feedlots (but not prohibiting livestock grazing);
- (j) Any industrial use not expressly permitted;
- (k) Advertising of any kind or nature on the Property (but not prohibiting informational signage);
- (l) Subject to the provisions of Paragraph 6, the establishment of irrigation ditches or watercourses not in place at the time of this Easement, without the express written consent of County; and
- (m) All other uses and practices inconsistent with and significantly detrimental to the stated objectives and purpose of the Easement.

5. Enforcement of Easement.

(a) All Owners of the Property shall notify County in writing before exercising any right reserved by Grantor, expressly or impliedly, with respect to the Property, the exercise of which may have a significant adverse impact on any of the above-specified conservation interests associated with the Property. The notice shall inform County of all aspects of the proposed activity including, but not limited to, the nature, siting, magnitude, and anticipated effect of the proposed activity or use with respect to the purpose of the Easement. Such notice shall be sent as provided below.

(b) County shall have sixty (60) days from the mailing of such notice to review the proposed activity and notify the other of any objections thereto. Such objections, if any, shall be based upon County's opinion that the proposed activity is inconsistent with this instrument, and shall inform the Owners of the manner, if any, in which the proposed activity can be modified to be consistent with the terms thereof. County shall have the right to prevent any proposed activity which is incompatible with the purpose or intent of this instrument or with the authorized uses or prohibitions specified herein.

(c) Any violation of the Easement shall be subject to termination through injunctive proceedings with the imposition of temporary restraining orders or through any other legal means, it being recognized that monetary damages and/or other non-injunctive relief would not adequately remedy the violation of the covenants and restrictions of the Easement. In addition, subject to the provisions of Paragraph 6, County shall have the right to enforce the restoration of the portions of the Property affected by activities in violation of the Easement to the condition which existed at the time of the signing of this instrument.

(d) Failure by County to exercise its rights under this instrument in the event of any breach by the Owners shall not be deemed or construed to be a waiver of County's rights hereunder as to that breach or any subsequent breach.

6. Permitted Construction and Maintenance Activities. Grantor hereby reserves the right to enter upon the Property to conduct the following activities:

(a) Construction of watercourses and the change of certain portions of the Property to the extent approved or required by the Army Corps of Engineers through a 404 Permit applicable to the Property in mitigation of the impacts of other construction on nearby wetland areas and the construction of ponds;

(b) Construction, installation, maintenance and operation of underground utilities and any related above surface structures or other similar utility improvements in such locations as grantor or its successors have reserved or may reserve on the recorded Subdivision plat or in an easement or deed affecting the Property and recorded subsequent to this Easement.

(c) Construction and maintenance of roads and recreational trails (together with related landscaping and irrigation) over portions of the Property as shown on any recorded plat or document affecting the Property or as approved by County.

(d) Construction and maintenance of minor recreational improvements with minimal visual impact on the scenic quality of the Property. Such improvements may include small structures such as wood or stone cabins and shelters to be used for recreational purposes and not for housing or commercial purposes to the extent such structures do not adversely affect the scenic values of the Property when viewed from a significant public roadway.

Further, this Easement is subject to the rights of Summit County, the Snyderville Basin Sewer

Improvement District, Mountain Regional Water Service District or any other agency or utility to enter upon the Property for the construction, installation, operation and maintenance of subsurface utilities and related above surface facilities such as well houses. After exercise of Grantor's rights in this Paragraph, Grantor or its successor shall take reasonable actions to restore the Property to its natural condition prior to the conduct of any of the foregoing activities.

7. Transfer of Easement. If County determines that it no longer is able to enforce its rights under this instrument or that it no longer desires to enforce the rights, or desires to assign enforcement rights to a qualified organization under Section 170(h)(3) of the Code or a comparable provision in any subsequent revision of the Code, County shall be entitled to convey in whole or in part all its rights under this instrument and deliver a copy of this instrument to an organization designated by County and described in or contemplated by Section 170(h)(3) of the Code or the comparable provision in any subsequent revision of the Code to ensure that the Easement is enforced. Furthermore, County is hereby expressly prohibited from subsequently transferring the Easement, whether or not for consideration, unless (a) County, as a condition of the subsequent transfer, requires that the conservation purposes which the Easement is intended to advance continue to be carried out and (b) the transferee is an organization qualifying at the time of the transfer as an eligible donee under Section 170(h)(3) of the Code (or the comparable provision in any subsequent revision of the Code and regulations promulgated thereunder.)

8. Termination of the Easement. The fact that County or its successor may have title to the Property and therefore may become an Owner for purposes of this Easement shall not cause a termination of this Easement by operation of the doctrine of merger or otherwise. County shall not voluntarily or willingly allow the termination of any of the restrictions of this instrument, and if any or all of the restrictions of the Easement are nevertheless terminated by a judicial or other governmental proceeding, any and all compensation received by County as a result of the termination shall be used by County in a manner consistent with the conservation purposes of the Easement.

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

10. Subsequent Transfers. The Owners shall incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. The failure of the Owners to perform any act required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way. Upon conveyance of title to the Property, the Owners shall be released from their obligations under this Easement.

11. Notices. Any notice, demand, request, consent, approval, or communication shall be in writing and served personally or sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the following:

To County: Summit County Director of Community Development
P.O. Box 128
Coalville, UT 84017

or to such other address as County from time to time shall designate by written notice to the current Owner of record of the Property. The required address for notice to the Owner shall be the address of the most recent grantee of title to the Property as shown on the tax records of Summit County, or to such other address as the current Owner from time to time shall designate by written notice to County.

12. Recordation. County shall record this instrument in timely fashion in the official records of Summit County, Utah and may re-record it at any time as may be required to preserve its rights in this Easement.

13. General Provisions.

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

(b) Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the Easement to effect the purpose of this Easement and the policy and purpose of Utah Code Ann. § 57-18-1 et seq. (1985) and related provisions. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement, or the application thereof to any person or circumstance, if 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.

(d) Joint Obligation. Subject to the provisions of paragraph 10, the obligations imposed by this Easement upon any Owners shall be joint and several.

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

(f) 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.

IN WITNESS WHEREOF Grantor has executed this instrument on the day and year first above written.

PIVOTAL PROMONTORY, L.L.C.

By: PIVOTAL GROUP X, LLC., an Arizona limited liability company
Its: Member

By: J. Jahm Najafi, Trustee of the Jahm Najafi Trust dated July 30, 1996
Its: Administrative Member

By: Jahm Najafi
Name: J. Jahm Najafi
Its: Trustee

STATE OF ARIZONA

)ss.

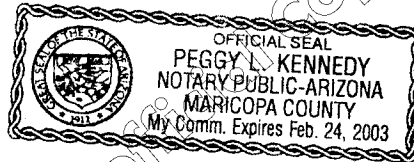
County of Maricopa)

The foregoing was acknowledged before me this 13 day of February, 2001 by J. Jahm Najafi, Trustee of the Jahm Najafi Trust dated July 30, 1996, Administrative Member of Pivotal Group X, LLC, Member of Pivotal Promontory, LLC.

Peggy L. Kennedy
Notary Public
Residing at: Maricopa County

My Commission Expires:

2/24/03



**PARCEL 1
LEGAL DESCRIPTION**

LOCATED IN TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN
CONTAINING PARTS OF:

SECTION 36

the SOUTHWEST QUARTER of the SOUTHWEST QUARTER of the SOUTHWEST QUARTER and
the SOUTH HALF of the SOUTHWEST QUARTER and
the WEST HALF of the NORTHWEST QUARTER of the SOUTHWEST QUARTER and
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SECTION 25

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SECTION 26

the EAST HALF of the SOUTHWEST QUARTER and
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SECTION 24

the WEST HALF of the WEST HALF of the NORTHWEST QUARTER

SECTION 23

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the EAST HALF of the WEST HALF of the SOUTHWEST QUARTER of the SOUTHWEST QUARTER and
the EAST HALF of the SOUTHWEST QUARTER of the NORTHWEST QUARTER of the SOUTHWEST QUARTER

SECTION 13

the WEST HALF of the SOUTHWEST QUARTER of the SOUTHWEST QUARTER and
the EAST HALF and SOUTHWEST QUARTER of the NORTHWEST QUARTER of the SOUTHWEST QUARTER

CONTAINING 530.88 ACRES MORE OR LESS

**PARCEL 2
LEGAL DESCRIPTION**

LOCATED IN TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN
CONTAINING PARTS OF:

SECTION 11

the SOUTHWEST QUARTER of the NORTHEAST QUARTER of the NORTHEAST QUARTER and
the WEST HALF and SOUTHEAST QUARTER of the NORTHWEST QUARTER of the NORTHEAST QUARTER
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the WEST HALF of the EAST HALF of the WEST HALF and
the EAST HALF of the NORTHEAST QUARTER of the NORTHWEST QUARTER and
ALL the LAND EAST of the EASTERN ROAD RIGHT-OF-WAY LINE (UDOT PROJECT I-80-4(4)) in the WEST
HALF of the WEST HALF

SECTION 2

the SOUTHWEST QUARTER of the SOUTHWEST QUARTER of the SOUTHEAST QUARTER and
ALL the LAND EAST of the EASTERN ROAD RIGHT-OF-WAY LINE (UDOT PROJECT I-80-4(4)) in the SOUTH
HALF of the SOUTH HALF of the SOUTHWEST QUARTER

CONTAINING 266.84 ACRES MORE OR LESS.

**PARCEL 3
LEGAL DESCRIPTION**

LOCATED IN TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN
CONTAINING PARTS OF:

SECTION 2

the WEST HALF of the WEST HALF of the NORTHEAST QUARTER and
the NORTHWEST QUARTER of the NORTHWEST QUARTER of the SOUTHEAST QUARTER and
the EAST HALF of the EAST HALF of the NORTHWEST QUARTER and
ALL the LAND EAST of the EASTERN ROAD RIGHT-OF-WAY LINE (UDOT PROJECT I-80-4(4)) in the WEST
HALF of the NORTHEAST QUARTER of the NORTHWEST QUARTER

ALSO LOCATED IN TOWNSHIP 1 NORTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN
CONTAINING PARTS OF:

SECTION 35

the WEST HALF of the SOUTHEAST QUARTER of the SOUTHWEST QUARTER and
ALL the LAND EAST of the EASTERN ROAD RIGHT-OF-WAY LINE (UDOT PROJECT I-80-4(4)) in the
SOUTHWEST QUARTER of the SOUTHWEST QUARTER

CONTAINING 126.91 ACRES MORE OR LESS.

**PARCEL 4
LEGAL DESCRIPTION**

LOCATED IN TOWNSHIP 1 NORTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN
CONTAINING PARTS OF:

SECTION 35

The EAST HALF of the EAST HALF of the SOUTHEAST QUARTER and
The EAST HALF and the NORTHWEST QUARTER of the SOUTHEAST QUARTER of the NORTHEAST
QUARTER and

ALL the LAND EAST of the EASTERN ROAD RIGHT-OF-WAY LINE (UDOT PROJECT I-80-4(4)) in the NORTH
HALF of the NORTHEAST QUARTER and

ALL the LAND EAST of the EASTERN ROAD RIGHT-OF-WAY LINE (UDOT PROJECT I-80-4(4)) in the NORTH
HALF of the SOUTHWEST QUARTER of the NORTHEAST QUARTER

CONTAINING 121.60 ACRES MORE OR LESS

**PARCEL 5
LEGAL DESCRIPTION**

LOCATED IN TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN
CONTAINING PARTS OF:

SECTION 1

the NORTHEAST QUARTER of the SOUTHEAST QUARTER and
the NORTH HALF of the NORTH HALF of the SOUTHEAST QUARTER of the SOUTHEAST QUARTER and
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the EAST HALF of the SOUTHWEST QUARTER of the NORTHWEST QUARTER of the SOUTHEAST QUARTER
and
the NORTHEAST QUARTER of the NORTHEAST QUARTER of the SOUTHWEST QUARTER and
the EAST HALF of the SOUTHEAST QUARTER of the NORTHWEST QUARTER and
the EAST HALF of the EAST HALF of the NORTHEAST QUARTER of the NORTHWEST QUARTER

CONTAINING 140.81 ACRES MORE OR LESS