



Memorandum

To: Town Council
From: Thomas Dansie, Town Manager
Date: April 3, 2026
Re: Request to Treat Juniper Trees in the Anasazi Plateau Conservation Easement

Elsewhere on this meeting agenda the Council will be considering adopting the Wildland Urban Interface Code (WUI Code). Among other things, the WUI Code requires property owners to provide “defensible space” around structures on their property. This defensible space requires vegetation to be treated to mitigate wildfire spread. This treatment involves removing limbs and foliage to a height of six feet off the ground, and ensuring the crown of trees are at least 10 feet away from a structure.

The Common Area in the Anasazi Plateau subdivision is protected by a Conservation Easement (CE). The purpose of the CE is to protect the conservation value of the common area, specifically including the native vegetation. In general, conservation assets in the common area (including native vegetation) are to be left undisturbed. As the Holder of the easement, the Town is charged with ensuring the conservation values of the CE remain in place.

In many cases, native vegetation in the CE is also within the defensible space area associated with structures on individual lots required by the WUI Code.

The CE allows property owners to conduct certain activities in the CE which could have an impact on the conservation value of the property, but only after notice and approval from the Town. Specifically, sections 4.1(b) and 4.1(c) of the CE allow owners to maintain native vegetation, and to remove hazardous flora from the CE property. These sections could allow modification of natural vegetation necessary to comply with the WUI defensible space requirements. A property owner would first need to request approval from the Town to conduct such actions. The CE requires 30 days advance notice prior to the proposed action.

To comply with the WUI code defensible space requirements, the many (perhaps the majority of) property owners in Anasazi Plateau will need to modify native vegetation in the CE. It would be cumbersome and inefficient for each of these property owners to make individual requests to modify native vegetation in the CE near their homes for the purpose of compliance with WUI code defensible space. The HOA has suggested the Council could make a blanket approval for homeowners to perform defensible space vegetation modification.

The Council should consider whether or not making a blanket approval to modify vegetation in the CE for compliance with defensible space requirements is appropriate. If the Council decides to do so, staff recommends the following conditions be attached to the approval:

- All vegetation modification must be performed by a licensed arborist or other qualified tree professional who has been briefed on WUI code defensible space requirements.
- Only vegetation modification necessary for compliance with WUI code defensible space requirements is allowed. No other impact, modification, removal, or destruction of vegetation, whether deliberate or incidental, is permitted.
- Prior to modifying any vegetation in the CE, a property owner must first submit a sketch plan of the proposed vegetation modification to the Community Development Department. The sketch plan must be of sufficient detail, clarity, and accuracy for the Community Development Department staff to determine which specific vegetation is proposed to be modified, and whether such modification is necessary for WUI code defensible space compliance.

Staff notes some homeowners have already performed vegetation modification in the CE for fire mitigation purposes. At least one of these homeowners did so under threat of loss of homeowner's insurance coverage. The homeowner's insurance carrier gave a mandate and a deadline to modify vegetation for wildfire mitigation or the policy would have been cancelled. In order to comply with this deadline and maintain insurance coverage the homeowner could not give the required 30 day notice, nor wait for a Town Council meeting to present the request. As Town Manager, I approved this request, and granted an exemption from the required 30 day notice period (as is allowed by section 5.1 of the CE).

The Town's past practice for approving requests for disturbance in the CE has been for the Town Council to review and approve them. The Town Council review has been the Town's practice, but the Conservation Easement does not require it. Because the CE is a significant conservation resource the Town Council review is appropriate and important, but not legally required. Given the urgent nature of the request to modify vegetation or lose homeowner's insurance coverage, that practice was not practical in this case. Under these circumstances I approved the request to trim trees in the conservation easement for wildfire mitigation, to comply with the requirements of the wildland urban interface code, and to preserve homeowner's insurance coverage. However, to be consistent with previous approvals to disturb the CE, I suggest the Council formally ratify this action.

Council Action

The Council should decide the following:

1. Whether or not to grant a blanket approval to allow modification of native vegetation in the conservation easement for the purposes of WUI code defensible space compliance. If so, staff suggests the Council attach the conditions presented earlier in this report.
2. Whether or not to formally ratify the Town Manager's early approval of emergency vegetation modification to preserve homeowner's insurance coverage.

Recorded at the Request of:
Town of Springdale

When recorded return to:
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V. Lowry Snow
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St. George, UT 84770

00760894 Bk 1460 Pg 2688
RUSSELL SHIRTS * WASHINGTON CO RECORDER
2002 APR 12 16:35 PM FEE \$74.00 BY LP
FOR: SOUTHERN UTAH TITLE CO

CONSERVATION EASEMENT:

RICHARD C. JENSEN FAMILY INVESTMENTS LC ("GRANTOR")
TOWN OF SPRINGDALE ("GRANTEE")
ANASAZI PLATEAU HOMEOWNERS ASSOCIATION, INC. ("ASSOCIATION")

LAW OFFICE OF
SNOW JENSEN & REECE
A PROFESSIONAL CORPORATION

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CONSERVATION EASEMENT

This CONSERVATION EASEMENT (hereinafter "Easement") is made this _____ day of January, 2002, by RICHARD C. JENSEN FAMILY INVESTMENTS, LC, (hereinafter "Grantor"), in favor of the TOWN OF SPRINGDALE, a Utah municipal corporation (hereinafter "Grantee"). Owners referred to herein shall be members of an association of Owners known as ANASAZI PLATEAU HOMEOWNERS ASSOCIATION, INC., a Utah nonprofit corporation (hereinafter "Association"). The rights of Owners and their relationship to the Association are described in the Declaration of Covenants, Conditions, and Restrictions pertaining to Anasazi Plateau, of record in the Office of the Washington County Recorder (hereinafter "Declaration"). The Declaration incorporates this Easement by reference. The party holding the rights of this Easement, whether Grantee, its successors or assigns, shall be a Holder of this Easement (hereinafter "Holder").

RECITALS:

A. Grantor is the owner of real property in Washington County, Utah. This Property is a residential development known generally as Anasazi Plateau, which is divided into Phases I, II and III. A total of 77 lots in all phases combined are to be conveyed to owners. Development of Phase I is currently in progress. The execution of this conservation easement is a condition to the approval of the Plat for Phase II. Said plat will be recorded concurrently with, or soon after, the execution of this easement. Upon execution, this easement will apply to Phases I and II, which property ("Property") is more particularly described in Exhibit "A." This easement will also cover the property pertaining to Phase III after another baseline study and final plat approval for the same has occurred. The property pertaining to Phase III is more particularly described in Exhibit "B."

B. This Easement shall not encumber the lots, driveways, roadways, the Chinle Trail, and utility easements as described on the Plats for Phases I and II of Anasazi Plateau, on record in the office of the Washington County Recorder ("Plats")

C. Grantor shall dedicate the Property as common area to the Association as provided on the Plats. Accordingly, Association is a party to this Easement. This Easement shall be an equitable servitude running with the land. Grantor's and Association's successors and assigns shall be bound by its terms.

D. The Property possesses natural, scenic, open space, and recreational values (collectively "Conservation Values") of great importance to Grantor, Owners, the Association, the people of Springdale, the people of Washington County; and the people of the State of Utah.

E. The specific Conservation Values of the Property are further documented in an inventory of relevant features of the Property conducted, commissioned, and paid for by the Association, on file at the offices of Grantee. The inventory of relevant features is incorporated by this reference and is known as the "Baseline Documentation". The Baseline Documentation consists of reports, maps, surveys, photographs, and other documentation that the parties agree provide 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.

F. Grantor and Association intend that the Conservation Values of the Property be preserved and maintained by prohibiting those uses of and activities on the Property that materially impair or interfere with this Easement.

G. Grantor and Association further intend by the grant of this Easement, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity.

H. Grantee, as a governmental entity, is qualified under section 57-18-3 of the Utah Code to acquire this Easement.

I. Grantee has conferred with Grantor and Association at least three days prior to the granting of this Easement and made the requisite disclosures under section 57-18-4 (4) of the Utah Code. Grantor and Association have obtained legal and tax counsel regarding any possible legal and tax implications of granting this Easement. Grantor's and Association's legal and tax counsel have approved this Easement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the Utah Land Conservation Easement Act, Utah Code Ann. §§ 57-18-1 *et seq.*, Grantor conveys to Grantee a conservation easement in perpetuity over the Property. According to its terms, the Easement limits the development rights associated with the Property, of the nature and character and to the extent hereinafter set forth.

1. **Purpose.** The purpose of this Easement is to assure that the Property will be retained forever 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 and Association intend that this Easement shall confine the use of the Property to such activities, including, without limitation, those uses set forth in this Easement and those uses set forth in the Declaration insofar as such uses set forth in the Declaration are not inconsistent with the purpose of this Easement.

2. **Rights of Holder.** The Holder 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 to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Paragraph 6; provided that, except in cases where Holder determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon reasonable prior notice to the Association, and Holder shall not in any case unreasonably interfere with the use and quiet enjoyment of the Property by Owners and the Association;

(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 or remediation 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 employ or contract with individuals, agencies, or other entities for the express purpose of assisting with monitoring activities, including the preparation of all reports and data related thereto. This provision shall also include the right of the Holder to contract with the Association to assist in monitoring activities.

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) The legal or *de facto* division, subdivision, or partitioning of the Property for any purpose, except as may be required by law for the uses permitted in this Easement after Notice and Approval as required in Paragraph 5;

(b) Any agricultural, residential, commercial, or industrial use of or activity on the Property;

(c) The placement, construction, or maintenance of any building, structure, or improvement of any kind, except as may be necessary for flood control, drainage management, and repair or remediation activities including without limitation road and rock wall maintenance and improvement, but only after Notice and Approval as required in Paragraph 5, except that routine maintenance shall not require Approval;

(d) Use of any motorized vehicle, except as may be necessary for repairs or remediation activities but only after Notice and Approval as required in Paragraph 5 (except that routine maintenance shall not require Approval) or for fire and other emergency vehicle use;

(e) Camping on the Property;

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

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

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

(i) 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;

(j) Burning of any materials on the Property;

(k) Any use or activity that causes or is likely to cause significant soil quality degradation or soil erosion, interference with natural drainages, and depletion or pollution of any surface or subsurface waters;

(l) Hunting or trapping for any purpose except as approved in advance by Holder and the Association for scientific research or problem or predatory animal control on the Property; and

(m) The placement or maintenance of signs, billboards, or any other outdoor advertising of any kind or nature on the Property except for the following:

(i) signs relating to the use or limitations on use applicable to the Property;

(ii) directional and regulatory signs relating to the Property;

(iii) signs used in the marketing of the lots in Anasazi Plateau; and

(iv) signs of an informational or educational nature relating to the Property, the Conservation Values and the purposes of this Easement.

(n) Random trailing and overuse of multiple paths on the Property, provided that the Association may designate trails on the Property and prohibit other walking or horse riding routes.

4. Reserved Rights.

The following rights are specifically reserved as indicated to Owners, the Association, and Grantor. All private lots, driveways, roadways, the Chinle Trail and Parking Lot, and utility easements as shown on the Plats, or as referred to on the Plats, are not subject to this Easement. Activities permitted under this Paragraph may, under the Declaration, require approval by the Architectural Control Committee of the Association.

4.1 **Rights of Owners.** Each Owner and the Owner's heirs, successors and assigns (and Grantor as an Owner), shall have all rights accruing from membership in the Association, 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 each Owner's right on the Association's land:

(a) To relocate or enlarge driveways and utility easements as may be necessary by reason of natural phenomenon, weather, or governmental regulation, but only 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 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;

(c) To plant and maintain native trees, bushes, and grasses to protect, preserve, and enhance the aesthetic and wildlife habitat values of the Property, but only after Notice as provided in Paragraph 5;

(d) To walk, ride horses, cross-country ski or picnic, and to make other similar uses and perform other similar activities that will not result in impact inconsistent with the intent of this Easement and the values expressed herein; and

(e) To maintain and restore watercourses, ditches and other drainage improvements, but only after Notice as provided in Paragraph 5.

4.2 Rights of the Association. The Association shall have the following rights for permitted uses and activities on the Property:

(a) To relocate or enlarge the roadway and utility easements as may be necessary by reason of natural phenomenon, weather, or governmental regulation, but only 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 maintain roads and bridges including shoulders to a distance of 30 feet on either side of the centerline of the road/bridge without the Notice provided for in Paragraph 5;
- (c) 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;
- (d) To maintain and restore watercourses, ditches and other drainage improvements, but only after Notice as provided in Paragraph 5; and
- (e) To build, maintain, and repair fences and cattle guards reasonably appropriate for wildlife protection purposes and to exclude stock, but only after Notice as provided in Paragraph 5.

4.3 Rights of Grantor Grantor (and those developing Anasazi Plateau as permitted by Grantor) shall have the following rights for permitted uses and activities on the Property:

- (a) To construct and maintain hand and machine stacked rock walls at the entrances to Anasazi Plateau and at other locations where deemed appropriate by Grantor, the developer or the Association near the roadways and driveway entrances to the homes.
- (b) To place signs in various locations for the marketing of Anasazi Plateau. Marketing signs shall be eliminated upon sellout of Anasazi Plateau.
- (c) To build and maintain drainage diversions which may be required within a 100 foot distance of structures and roads.

(d) To modify the Chinle Trail to provide biking access to the BLM parcel to the west of the Property *(only in the event that the BLM allows biking as a use)*, subject to the approval of the relocation by the National Park Service; and

(e) Access to the water pump house now located near the entrance of Anasazi Plateau and the clear area surrounding it for maintenance and erosion control.

(f) Access to the water tank and distribution system located on the hill on the north of phase 1 and the clear area surrounding it for maintenance and erosion control.

(g) To modify areas within utility easements as required by the easement holder and the areas adjacent to said easements to a distance of 30 feet on either side of the centerline of the easement for maintenance and erosion control, including, but not limited to; removal of the telephone pole line crossing the property from east to west and burial of the same line which will require disturbance of the land from the point where the line leaves the above ground pole to the point where the line enters the conduits installed beneath the roads within the project, and extension of the water line to the Ruch property to the east of lot #5 along an easement line that is yet to be identified.

The activities permitted under this Paragraph may, if the Declaration so states, require approval by the Architectural Control Committee of the Association.

5. Notice and Approval Provisions

5.1 **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring notice to Holder prior to undertaking certain permitted activities, as provided in Paragraphs 3 and 4 is to afford Holder 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, Holder shall be notified in writing by the person proposing to take such action, whether an individual Owner, the Association, or Grantor, not less than thirty (30) days prior to the date proposed for the activity in question, unless an emergency posing a threat of loss of life, injury to persons, or imminent and substantial property damage exists, in which case such notice as is reasonable shall be given. In such written notice, any proposed remediation of the Property shall be specified, in order that impacts from such activities or uses are minimized consistent with the purposes of the Easement, and that restoration of surface and appearance is made to the extent reasonably possible.

The notice described in this Paragraph is supplemental to and not in substitution of any notice and approval required under the Declaration for approvals required by the Architectural Control Committee of the Association.

5.2 Holder's Approval. Where the Holder's Approval is required, as set forth in Paragraphs 3 and 4, Holder shall grant or withhold its approval in writing with sixty (60) days of receipt of written request therefor. Holder's approval may be withheld only upon a reasonable determination by Holder that the action as proposed would be inconsistent with the purpose of this Easement. Failure of Holder to act within the time permitted shall be deemed Approval of the proposed activity or use.

6. Remedies.

The remedies under this Easement are available to the Association when an act in violation of the Easement is committed by a third party or Owner. The remedies are available to Holder in all events.

6.1 Notice of Violation; Corrective Action. If a violation of the terms of this Easement has occurred or is threatened, the enforcing party shall give written notice to the person responsible for such violation and to the Association. The Notice shall specify:

- (a) the corrective action sufficient to cure the violation; and
- (b) where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, action sufficient to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Holder.

If circumstances reasonably require immediate action to prevent or mitigate significant damage to the Conservation Value of the Property, the enforcing party shall only be required to give such notice as is reasonable under the circumstances, and may pursue remedies under this Paragraph 6 after such reasonable notice, and if reasonable, without waiting for the period provided for cure to expire.

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 (30) days after receipt of notice thereof (or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, the cure of such violation has not commenced within the thirty (30) day period), the matter shall be referred to mediation as provided below, or, if immediate and irreparable action is threatened, the enforcing party may bring an action in equity in the District Court of Washington County, State of Utah to enjoin the violation.

6.3 Dispute Resolution. If any dispute arises concerning this Easement, the disputed matter shall be referred to mediation by request made in writing to the other party to the dispute. The other party(s) to the dispute shall be obligated to participate in and complete such mediation.

Within thirty (30) days of the receipt of a request for mediation, the parties shall select a single mediator to hear the matter. Costs of such mediation shall be shared equally between the parties.

In the event mediation is unsuccessful, the parties shall submit their dispute to arbitration.

Within thirty (30) days of unsuccessful mediation, the parties shall select a single arbitrator to hear the matter according to the rules of the American Arbitration Association or other standards as may be agreed upon. A judgment on any arbitration award may be entered in any court having jurisdiction thereof. The prevailing party in arbitration 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 for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrator and attorney fees, which shall be determined by the arbitrator and any court of competent jurisdiction that may be called upon to enforce or review the award.

No suit, except for injunctive relief necessitated by immediate harm, may be brought by any party regarding a dispute under this Easement, without the completion of mediation and arbitration as provided in this Paragraph.

6.4 Damages. In the process of arbitration as outlined above, damages may be recovered for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including reasonable damages for the remediation of lost scenic, aesthetic, environmental, or Conservation Values. Any damages recovered shall be applied to the cost of undertaking any corrective or remedial action on the Property. Any costs of restoration or remediation necessitated by violation of the terms of this Easement shall be borne by the party causing such violation.

6.5 **Scope of Relief.** Rights under this Paragraph 6 apply equally in the event of either actual or threatened violations of the terms of this Easement. Remedies at law for any violation of the terms of this Easement may be inadequate, and, in such event, injunctive relief, both prohibitive and mandatory, shall be appropriate in addition to such other relief to which the enforcing party may be entitled, including specific performance of the terms of this Easement. Remedies described in this Paragraph 6 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6.6 **Costs of Enforcement.** A successful party shall recover all reasonable costs incurred in an action to enforce, recover damages under, or obtain declaratory relief regarding the terms of this Easement, including, without limitation, costs of expenses of suit or dispute resolution methods and reasonable attorney fees.

6.7 **Forbearance by Holder.** Forbearance by Holder (without written affirmation or waiver) 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 Holder 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.

6.8 **Acts Beyond Control.** Nothing contained in this Easement shall be construed to entitle Holder 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.

7. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement. The Easement, however, is subject to an easement for public use of the Chinle Trail.

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, maintenance, regrading, remediation, replacement, re-planting, and otherwise repairing or restoring the Property as a result of damage occurring from any source, except as provided in Paragraph 6, and maintenance of adequate liability insurance coverage, naming Holder as an additional insured, shall be the sole responsibility of Association, subject to such claims against or rights of contribution or assessment as it may have against its members or third parties. In addition, the Association shall be responsible for prompt payment of reasonable attorney fees incurred by Holder related to all reasonable enforcement and monitoring activities. In the event of damage to the Property or loss of scenic, aesthetic, environmental or Conservation Values, caused by a third party, where remediation is financially or technically impractical, such mitigation as is reasonably achievable in consideration of practical circumstances and financial resources and costs shall be made.

Nothing contained herein shall require the Holder to pay for, advance or contract for substantial repairs or remediation of the Property until a sufficient sum is paid over to Holder to be used for that purpose, or sufficient security, in a form acceptable to Holder, is delivered to Holder for that purpose. Generally, a sufficient sum shall be equal to one hundred twenty-five percent (125%) of any bid or estimate approved by Holder for such repair or remediation. That amount shall be held

by Holder in an interest bearing account pending completion of work and payment. Any unused portion shall be returned to Association.

Association is 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, except as provided below, arising out of any work performed for, materials furnished to, or obligations incurred by Grantor and the Association.

(a) Lien for payment. Holder, in order to secure payment and reimbursement of all necessary fees expended as provided above, shall be entitled at the conclusion of any arbitration proceeding to a lien against the Property for any sum adjudged due from the Association. Any amounts unpaid after thirty (30) days, and after written notice by Holder to the Association, shall thereafter accrue interest at twelve percent (12.0%) per annum from the date said expenses were incurred. Holder may record its notice of lien in the Office of the Washington County Recorder. Holder may foreclose its lien as a mortgage as provided by Utah law, or in the alternative, may bring an action to recover all amounts owing from Association without first foreclosing any security interest in favor of Holder. In any event, Association shall be responsible for all costs and a reasonable attorneys fee incurred in collection of any amounts evidenced by such a lien, and owing and unpaid, whether by judicial process or by demand.

(b) Monitoring Costs. The Association shall pay to Holder on or before September 1st of each year a sum sufficient to defray the costs of monitoring compliance

with the purpose of this Easement, estimated not to exceed Five Hundred Dollars (\$500.00) per year. Holder and Association mutually shall renegotiate and determine the annual payment amount for monitoring at least every five (5) years. The annual payment to Holder shall be included in the Association's annual budget and shall be assessed by Association to Owners as provided in the Declaration.

8.2 Taxes. The Association 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 Holder with satisfactory evidence of payment upon request.

8.3 Representations and Warranties. Grantor and Association represent and warrant that, after reasonable investigation and to the best of their 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 closed, 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 threatening 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, Association 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 Holder 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").

8.6 **Hold Harmless and Indemnification.** Grantor, Owners, and the Association hereby release and agree to hold harmless, indemnify, and defend Grantee or Holder and its officials, employees, agents and contractors and the heirs, personal representatives, successors, and assigns of

each of them (collectively, "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorney fees, arising from or in any way connected with the following: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to trespassers, Grantor, Association, or Owners, including their guests and invitees; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and the Utah Environmental Quality Code, by any person, in any way affecting, involving, or relating to the Property; (3) the presence or release in, on, from, or about the Property, at any time, 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; and (4) the obligations, covenants, representations, and warranties of Paragraphs 8.1 through 8.5.

9. Extinguishment and Condemnation.

9.1 Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part of, by judicial proceedings in a court of competent jurisdiction. Holder shall not be entitled to any compensation for value of the Easement or Property.

9.2 Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Association and Holder shall

act jointly if necessary to recover the full value of the interests in the Property subject to the taking of in lieu purchase shall be paid out of the amount recovered. Holder shall not be entitled to any of the compensation paid for the value of the Property.

10. **Assignment of Easement.** This Easement is transferable, but Holder may assign its rights and obligations under this Easement only to an organization that is 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, Holder shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Holder agrees to give written notice to Owners and Association of an assignment at least thirty (30) days prior to the date of such assignment.

11. **Subsequent Transfers of Fee Interest.** Grantor and Association agree to incorporate the terms of this Easement by reference 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.

12. **Estoppel Certificates.** Upon request by Holder, Grantor, Association, or an Owner, the requested party shall within twenty (20) 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:

- (a) personally; or
- (b) by facsimile transmission; or

(c) by first class mail, postage prepaid, to the last known address of that party or to the address as stated on the records of Washington County or to such other address as the parties from time to time shall designate by written notice to each other.

The parties presently designate the following addresses and fax numbers:

Holder	Association	Grantor
Town of Springdale P.O. Box 118 Springdale, UT 84767 (435) 772 3434 (fax) 772-3952	Anasazi Plateau Homeowners Assn 113 E. 200 N. Suite A1141 St. George, UT 84790 (435) 674 1444 (fax) 674-2444	Richard C. Jensen Family Investments, LC 1252 Lorien Dr. Bountiful, Utah

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

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. Activities prohibited by local ordinances are not permitted by this document.

15.2 **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be construed liberally to effect the purpose of this Easement and the policy and purpose of the Utah Land Conservation Easement Act. 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.

15.3 **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.

15.4 Entire Agreement. This instrument sets forth the entire agreement of the parties 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 Washington County Recorder.

15.5 Joint Obligation. The obligations imposed by this Easement upon Grantor, Owners and Association shall be joint and several.

15.6 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.

15.7 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.

15.8 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.

15.9 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be

deemed an original instrument as against any of the parties. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have executed this CONSERVATION EASEMENT on the day and year first written above.

Grantee: TOWN OF SPRINGDALE, L.C.

Grantor: RICHARD C. JENSEN FAMILY INVESTMENTS, LC

BRUCE VANDERWERFF, MAYOR


RICHARD C. JENSEN, MANAGER



ATTEST: TERI HATCH,
TOWN CLERK

MARK JENSEN, MANAGER

Association: ANASAZI PLATEAU ASSOCIATION, INC.

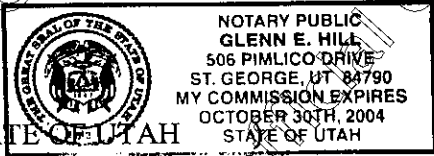


MILO P. MCCOWAN, PRESIDENT

STATE OF UTAH)

County of Washington)

On the 9th day of January 2002, personally appeared before me Bruce Vanderwerff, Mayor of the Town of Springdale and who being first by me duly sworn did say that he executed the foregoing instrument for and on behalf of said Town and Teri Hatch, Town Clerk of the Town of Springdale, who attested that the foregoing instrument was executed by the Mayor pursuant to resolution adopted by the Town.



Glenn E. Hill
Notary Public

STATE OF UTAH)
: ss
County of Salt Lake)

On this _____ day of January 2002, personally appeared before me RICHARD JENSEN, who being duly sworn did say that he is a Manager of RICHARD C. JENSEN FAMILY INVESTMENTS, LC, a Utah company, and that he executed the foregoing CONSERVATION EASEMENT in behalf of said limited liability company being authorized and empowered to do so by the operating agreement of said limited liability company, and he did duly acknowledge to me that said limited liability company executed the CONSERVATION EASEMENT for the uses and purposes stated therein.

Notary Public

STATE OF ARIZONA)
: ss
County of Coconino)

On this _____ day of January 2002, personally appeared before me MARK JENSEN, who being duly sworn did say that he is a Manager of RICHARD C. JENSEN FAMILY INVESTMENTS, LC, a Utah company, and that he executed the foregoing CONSERVATION EASEMENT in behalf of said limited liability company being authorized and empowered to do so by the operating agreement of said limited liability company, and he did duly acknowledge to me that said limited liability company executed the CONSERVATION EASEMENT for the uses and purposes stated therein.

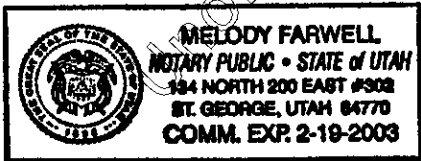
Notary Public

STATE OF UTAH

: ss

County of Washington)

On this 18th day of January 2002, personally appeared before me MILO P. MCCOWAN, who being duly sworn did say that he is the President of ANASAZI PLATEAU HOMEOWNERS ASSOCIATION, INC., a Utah nonprofit corporation, and that he executed the foregoing CONSERVATION EASEMENT in behalf of said corporation by authority of a resolution of its board of trustees, and he did duly acknowledge to me that said corporation executed the CONSERVATION EASEMENT for the uses and purposes stated therein.



Melody Farwell
Notary Public

deemed an original instrument as against any of the parties. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have executed this CONSERVATION EASEMENT on the day and year first written above.

Grantee: TOWN OF SPRINGDALE, L.C.

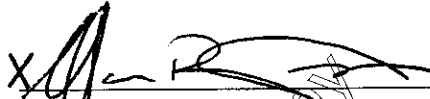
Grantor: RICHARD C. JENSEN FAMILY INVESTMENTS, LC

BRUCE VANDERWERFF, MAYOR

RICHARD C. JENSEN, MANAGER



ATTEST: DERI HATCH,
TOWN CLERK



MARK JENSEN, MANAGER

Association: ANASAZI PLATEAU ASSOCIATION, INC.

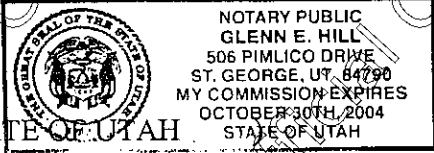


MILO P. MCCOWAN, PRESIDENT

STATE OF UTAH

County of Washington)

On the 9th day of January 2002, personally appeared before me Bruce Vanderwerff, Mayor of the Town of Springdale and who being first by me duly sworn did say that he executed the foregoing instrument for and on behalf of said Town and Teri Hatch, Town Clerk of the Town of Springdale, who attested that the foregoing instrument was executed by the Mayor pursuant to resolution adopted by the Town.



Glenn E. Hill
Notary Public

County of Salt Lake

On this _____ day of January 2002, personally appeared before me RICHARD JENSEN, who being duly sworn did say that he is a Manager of RICHARD C. JENSEN FAMILY INVESTMENTS, LC, a Utah company, and that he executed the foregoing CONSERVATION EASEMENT in behalf of said limited liability company being authorized and empowered to do so by the operating agreement of said limited liability company, and he did duly acknowledge to me that said limited liability company executed the CONSERVATION EASEMENT for the uses and purposes stated therein.

Notary Public

STATE OF ARIZONA)

County of Maricopa : ss
~~Cocconino~~)

On this 3 day of April ~~January~~ 2002, personally appeared before me MARK JENSEN, who being duly sworn did say that he is a Manager of RICHARD C. JENSEN FAMILY INVESTMENTS, LC, a Utah company, and that he executed the foregoing CONSERVATION EASEMENT in behalf of said limited liability company being authorized and empowered to do so by the operating agreement of said limited liability company, and he did duly acknowledge to me that said limited liability company executed the CONSERVATION EASEMENT for the uses and purposes stated therein.



Ann VonHagen
Notary Public

deemed an original instrument as against any of the parties. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have executed this CONSERVATION EASEMENT on the day and year first written above.

Grantee: TOWN OF SPRINGDALE, L.C.

Grantor: RICHARD C. JENSEN FAMILY INVESTMENTS, LC

BRUCE VANDERWERFF, MAYOR

Richard C. Jensen

RICHARD C. JENSEN, MANAGER

Teri Hatch

ATTEST TERI HATCH,
TOWN CLERK

MARK JENSEN, MANAGER

Association: ANASAZI PLATEAU ASSOCIATION, INC.

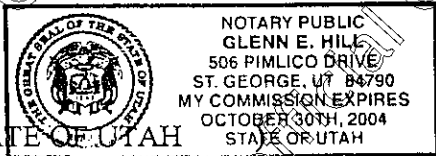
Milo P. McCowan

MILO P. MCCOWAN, PRESIDENT

STATE OF UTAH

County of Washington)

On the 9th day of January 2002, personally appeared before me Bruce Vanderwerff, Mayor of the Town of Springdale and who being first by me duly sworn did say that he executed the foregoing instrument for and on behalf of said Town and Teri Hatch, Town Clerk of the Town of Springdale, who attested that the foregoing instrument was executed by the Mayor pursuant to resolution adopted by the Town.

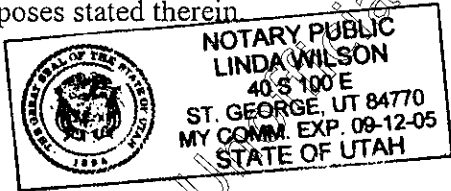


Glenn E. Hill
Notary Public

STATE OF UTAH

County of Salt Lake)

On this 2nd day of April 2002, personally appeared before me RICHARD JENSEN, who being duly sworn did say that he is a Manager of RICHARD C. JENSEN FAMILY INVESTMENTS, LC, a Utah company, and that he executed the foregoing CONSERVATION EASEMENT in behalf of said limited liability company being authorized and empowered to do so by the operating agreement of said limited liability company, and he did duly acknowledge to me that said limited liability company executed the CONSERVATION EASEMENT for the uses and purposes stated therein.



Linda Wilson
Notary Public

STATE OF ARIZONA)

: ss

County of Coconino)

On this _____ day of January 2002, personally appeared before me MARK JENSEN, who being duly sworn did say that he is a Manager of RICHARD C. JENSEN FAMILY INVESTMENTS, LC, a Utah company, and that he executed the foregoing CONSERVATION EASEMENT in behalf of said limited liability company being authorized and empowered to do so by the operating agreement of said limited liability company, and he did duly acknowledge to me that said limited liability company executed the CONSERVATION EASEMENT for the uses and purposes stated therein.

Notary Public

Exhibit "A"
Legal Description

PHASE I:

Beginning at a point North 89°43'00" East, 446.96 feet along the Center Section Line from the Center Quarter Corner of Section 6, Township 42 South, Range 10 West, Salt Lake Base and Meridian; and running thence North 00°24'58" West, 2023.42 feet; thence North 89°39'43" East, 872.47 feet to the East Line of Sectional Lot 2 of Said Section 6; thence South 00°20'17" East, 2024.18 feet along the East Line of said Section Lot 2 to the Center East Sixteenth Corner; thence South 00°20'20" East, 1210.09 feet (1192.85 feet by record) along the Sixteenth Line to a point on the North Right-of-way Line of State Highway No. 9; thence Southwesterly and Northwesterly along the said right-of-way line in the following five (5) courses: South 87°30'32" West 2.19 feet (26.88 feet by record) to the point of curvature of a 300.00 foot radius curve concave to the Northeast; thence Northeasterly 312.76 feet along the arc of said curve through a central angle of 59°44'00" to the point of tangency; thence North 32°45'31" West 438.30 feet to the point of curvature of a 500.00 foot radius curve concave to the southwest; thence Northwesterly 260.20 feet along the arc of said curve through a central angle of 29°49'00" to the point of tangency; thence North 62°34'31" West 201.50 feet; thence leaving said right-of-way line north 00°24'58" West 433.76 feet to the point of beginning. Anasazi Plateau Phase 1 contains 57.00 acres and is subject to an easement for the Chinle Trail,

PHASE II:

Beginning at the center quarter corner of Section 6, Township 42 South, Range 10 West of the Salt Lake Base and Meridian and running thence South 89° 43' 11" West 1357.79 feet along the center section line of said section to a point on the west sixteenth line of said section, said point being the center west sixteenth corner; thence along said west sixteenth line South 00° 12' 42" East 1020.00 feet; thence South 89° 46' 29" West 85.86 feet; thence North 50° 13' 31" West 300.00 feet; thence North 55° 13' 31" West 530.00 feet; thence North 28° 13' 31" West 150 feet; thence South 89° 46' 29" West 137.78 feet; thence North 00° 13' 31" West 389.805 feet to a point on said center section line; thence along said center section line South 89° 43' 11" West 399.53 feet to the west quarter corner of said section; thence North 00° 01' 59" East 367.14 feet along the west line of said section; thence leaving said west section line North 89° 43' 11" East 1001.43 feet; thence North 40° 32' 43" East 630.65 feet; thence South 89° 55' 06" East 393.33 feet; thence North 00° 06' 08" East 953.70 feet; thence North 90° 00' 00" East 1362.78 feet to a point on the westerly boundary line of the Anasazi Plateau – Phase 1 subdivision; thence along the said westerly boundary line South 00° 24' 58" East 2222.755 feet to a point on the northerly right-of-way line of Utah State Highway No. 9, said point being the point of curvature of a 550.00 foot radius curve concave to the south, the radius point of which bears South 27° 25' 29" West; thence westerly 482.67 feet along the arc of said curve and said northerly right-of-way line through a central angle of 50° 16' 54" to a point on the center section line of said section; thence leaving said northerly right-of-way line North 00° 25' 09" West 412.97 feet along said center section line to the center quarter corner and point of beginning. Contains 97.93 acres.

Exhibit "B"

Legal Description
for
Anasazi Plateau - Phase 3

Beginning at a point which is North $00^{\circ} 01' 59''$ East 367.14 feet along the west line from the west quarter corner of Section 6, Township 42 South, Range 10 West of the Salt Lake Base and Meridian and running thence along said west line North $00^{\circ} 01' 59''$ East 2174.48 feet to the northwest corner of said section; thence along the north line of said section North $87^{\circ} 43' 53''$ East 2696.93 feet to the north quarter corner; thence along the north line of said section North $88^{\circ} 09' 59''$ East 1340.74 feet to the east sixteenth line of said section, said point being the north east sixteenth corner; thence along said east sixteenth line South $00^{\circ} 20' 17''$ East 647.31 feet to the northeast boundary corner of the Anasazi Plateau - Phase 1 subdivision; thence along the north boundary line of said subdivision South $89^{\circ} 39' 43''$ West 872.47 feet to the northwest boundary corner of said Anasazi Plateau - Phase 1 subdivision; thence along the west line of said subdivision South $00^{\circ} 24' 58''$ East 234.43 feet to the northeast boundary corner of Anasazi Plateau - Phase 2 subdivision; thence along the north boundary line of said Anasazi Plateau - Phase 2 subdivision in the following five (5) courses: South $90^{\circ} 00' 00''$ West 1362.78 feet ; thence South $00^{\circ} 06' 08''$ West 953.70 feet; thence North $89^{\circ} 55' 06''$ West 393.33 feet; thence South $40^{\circ} 32' 43''$ West 630.65 feet; thence South $89^{\circ} 43' 11''$ West 1001.43 feet; to the point of beginning. Contains 123.67 acres.