

A.P.N. _____

Douglas County - NV
Werner Christen - Recorder
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BK-0307 PG-4534 RPTT: 0.00



After recording, return to:
Peak Consulting Engineers, LLC
591 S. Saliman Rd. Suite 2
Carson City, NV 89701

Space above line is exclusively for the Recorder's use

GRANT OF CONSERVATION EASEMENT

This Grant of Conservation Easement ("this Grant") is granted and made as of March 15, 2007 by JAMES CANYON, LLC, a Nevada limited liability company ("Grantor") in favor of Douglas County ("Grantee"), a political subdivision of the State of Nevada.

RECITALS

A. Grantor is the sole owner in fee simple of the parcels of real Property (collectively the Protected Property") located in Douglas County. The Protected Parcels are more particularly described as follows:

Open Space Parcels A, B, C, D, E, F and G as shown on the Final Subdivision Map for Canyon Creek Estates Phase 2. recorded in the Official Records of Douglas County, Nevada on March 15 2007 in Book 0307, at Page 4530, as a Document No. 0697065.

Open Spaces Parcels A, B and G are located within a flood plain. The Final Subdivision Map (the "Map") referenced in the foregoing legal description designates them as a "floodplain and conservation area".

B. The purpose of this Grant is to create a conservation easement (the "Conservation Easement") in order to provide a significant public benefit by protecting and preserving in perpetuity scenic and open views across the Protected Property for the benefit of the residents of the Canyon Creek Estates Phase 1 and 2 subdivisions as well as for members of the general public who visit or transverse said subdivisions as guests of the subdivision residents and to preserve the existing natural condition of the Protected Property including, with limitation, existing native flora and fauna and the governmental policies of Douglas County, Nevada, delineated in its 1996 master plan.

C. Grantor intends that the aforesaid conservation and environmental values of the Protected Property be preserved and maintained by the designation of the Protected Property as "open space" on the Map and by the restriction of the Protected Property to only such uses as are consistent with open space and conservation areas. Grantor desires

to convey this Grant to Grantee in order to vest the Grantee the right to preserve and protect the conservation values of the Protected Property.

- D. Grantee agrees, by accepting this Grant that Grantee shall honor the intentions of Grantor stated in Recital C above and shall preserve and protect, in perpetuity, the open space use and conservation and environmental values of the Protected Property for the benefit of this generation and of generations to come.
- E. The Conservation Easement is created pursuant to the Uniform Conservation Act provided for in NRS 111.390 - 111.440. The Conservation Easement is also created pursuant to the Internal Revenue Code, as amended ("Code") at Title 26, U.S.C.A. Section 170(h) (l)-(6), 2031 © and 2055 and 2522. Grantee is a political subdivision of the State of Nevada and a "Holder" within the meaning of NRS 111.410 (2) (a). The Holder is qualified to hold conservation easements pursuant to NRS 111.410 (2) (a) and is a Qualified Organization under Code Section 170(h) (3), to wit: a governmental unit.
- F. Grantor and Grantee jointly recognize the importance of conserving the Protected Property, as demonstrated in the foregoing Recitals, and share the same purpose and interest in providing for conservation of the Protected Parcels. Grantor and Grantee therefore mutually approve and desire to implement the grant and conveyance of the Conservation Easement in favor of Grantee on, over and across the Protected Property.

NOW, THEREFORE, in consideration of the foregoing Recitals and of the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the State of Nevada, in particular NRS 111.440, Grantors and Grantee hereby agree and covenant as follows:

1. Grant of Easement. Grantor hereby voluntarily grants and conveys the Conservation Easement to Grantee, in perpetuity, on, over and across the Protected Property, the Conservation Easement to be of the nature, character and extent set forth in this Grant, TO HAVE AND TO HOLD unto Grantee, its successors and assigns, forever.
2. Use of Property. Grantor reserves the right to construct within the Protected Property any physical improvements and to make any accessory uses which the provisions of this Grant may expressly allow and/or which serve to implement the purposes of the Conservation Easement. Grantor agrees that the primary use, and so far as practically feasible the exclusive use, of the protected Property shall be restricted to scenic and open space uses that are consistent with the protection of the natural and scenic qualities of the Protected Property and with Douglas County Codes, but specifically excluding any uses in Douglas County Code, Section 20.654.020 (as in effect on the date of execution of this Grant of Conservation Easement) which would require a Design Review approval or the issuance of a Special Use Permit. Grantor desires to convey to Grantee the right to preserve and protect the conservation values of the Protected Property in perpetuity. Grantor reserves the right to construct and maintain public utilities, together with requisite easements for utility purposes including access for the purpose of installing, maintaining, repairing and replacing utilities, through the Protected Property.



3. Rights of Grantee. To accomplish the purpose of the Conservation Easement, Grantee hereby expressly grants and conveys the following rights to Grantee, namely, the rights:
 - (a) To preserve and protect the conservation values of the Protected Property;
 - (b) To enter upon the Protected Property at reasonable times in order to monitor Grantors' compliance with and to enforce the terms of the Conservation Easement; provided, that the entry shall be upon prior reasonable notice to Grantor and that Grantee shall not unreasonably interfere with the Grantor's use and quiet enjoyment of the Protected Property;
 - (c) To prevent any activity on or use of the Protected Property that is inconsistent with the purpose of the Conservation Easement; and
 - (d) To require the restoration of any areas or features of the Protected Property that may be damaged by an inconsistent activity or use.
4. Prohibited Uses. Any activity on or use of the Protected Property inconsistent with the purpose of the Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
 - (a) Subdivision or development of the Protected Property; and
 - (b) No-agricultural commercial or industrial uses except as this Grant may expressly allow.
5. Reserved Rights. Grantor reserves to itself, and to its representatives, heirs, successors and assigns, all rights arising from or incidental to its ownership of the Protected Property, including the right to engage in all uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Grant.
6. Grantee's Remedies. If Grantee determines, through its Board of County Commissioners, after reasonable notice to Grantor and hearing having been given to Grantor, that Grantor is in violation of the terms of this Grant or that a violation is threatened, Grantee shall give written notice to the Grantor of such violation and demand corrective action sufficient to cure the violation, and where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of this Grant, to restore the portion of the Protected Property so injured. If Grantor fails to cure the violation within the thirty (30) day period, or fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Grant to enjoin the violation, *ex parte* as necessary, temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Grant or injury to any



conservation values protected by this Grant, including damages for the loss of scenic, aesthetic or environmental values, and to require the restoration of Protected Property to the condition that existed prior to any such injury.

Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Grant. Grantor agrees that Grantee's remedies at law for any violation of the term of this Grant are inadequate and that Grantee shall be entitled to the injunctive relief described under this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Grant, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

7. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Grant against Grantor in the case of a violation of the terms of this Grant by Grantor, including, without limitation, costs of suit and attorneys fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Grant, shall be borne by Grantor. If either party prevails in any action to enforce the terms of this Grant, the prevailing party's costs of suit, including, without limitation, attorney's fees, shall be borne by the other party.
8. Grantee's Discretion. Enforcement of the terms of this Grant shall be at the discretion of Grantee and any forbearance by Grantee to exercise its rights under this Grant against Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent rights under this Grant. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.
9. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel or prescription.
10. Acts Beyond Grantor's Control. Nothing contained in this Grant shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, drought, changes in prevailing weather patterns, and/or earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Protected Property resulting from such causes.
11. No Public Access. No right of access by the general public to any portion of the Protected Property is conveyed by this Grant.
12. Hold Harmless. Grantor shall hold harmless, indemnify and defend Grantee and its members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively, "Indemnified Parties") from and against all liabilities, penalties, costs, losses,



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damages, expenses, causes of action, claims, demands or judgments, including, with out limitation, reasonable attorneys' fees arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, or other matters related to or occurring on or about the Protected Property, regardless of cause, unless due solely to the negligence of the Indemnified Parties; and (b) the exercise of the remedies specified in paragraph 7.

13. Extinguishment. If circumstances arise in the future which render the purpose of this Grant and the Conservation Easement impractical or impossible to accomplish, this Grant and the Conservation Easement may be extinguished only in one of the two following ways: (a) after public hearing and approval by (i) the Planning Commission of Douglas County, Nevada, and (ii) the Board of County Commissioners of Douglas County, Nevada, or (b) by a court of competent jurisdiction.
14. Assignment of Conservation Easement. The Conservation Easement is transferable, but Grantee may assign its rights and obligations under the Conservation Easement only to another governmental body or any organization that is a qualified organization at the time of transfer under Section 170 (h) of the Internal Revenue Code of 1954, as amended (any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purposes for which this Grant is intended continue to be carried out.
15. Subsequent Transfers. Grantor agrees to incorporate the terms of this Grant in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, any lease hold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any action required by this paragraph shall not impair the validity of this Grant or limit its enforceability in any way.
16. Estoppel Certificate. Upon written request made by Grantor not more frequently than once in any calendar year, Grantee shall, within twenty (20) days of such request, execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Grant and otherwise evidences the status of this Grant as may be requested by Grantor.
17. Notices. Any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, address as follows:

To Grantor: James Canyon, LLC
P.O. Box 586
Genoa, NV 89411

To Grantee: Douglas County
c/o District Attorney's Office
P.O. Box 218
Minden, Nevada 89423



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Or to such other address as either party from time to time shall designate by written notice to the other.

18. Recordation. Grantee shall record this instrument and acceptance in timely fashion in the Official Records of Douglas County, Nevada and may re-record it at any time as may be required to preserve its rights in this Grant.

19. General Provisions.

19.1 Controlling Law. The interpretation and performance of this Grant shall be governed by the laws of the State of Nevada.

19.2 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Grant shall be liberally construed in favor of the Grant to effect the purpose of the Conservation Easement and the policy and purpose of NRS 111.390 to 111.440. If any provision of this Grant is found to be ambiguous, an interpretation consistent with the purpose of this Grant that would render the provision valid shall be favored over any interpretation that would render it invalid.

19.3 Severability. If any provision of this Grant, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Grant, 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.

19.4 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Grant, and supersedes all prior discussion, negotiations, understandings or agreements relating to the Grant, all of which are merged herein.

19.5 No forfeiture. Nothing contained herein will result in forfeiture or reversion of Grantor's title in any respect.

19.6 Joint Obligation. The obligations imposed by this Grant upon Grantor shall be joint and several.

19.7 Successors. The covenants, terms conditions and restrictions of this Grant shall be binding upon, and inure to the benefit of, the parties hereto and their respective representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

19.8 Termination of Rights and Obligations. A party's rights and obligations under this Grant terminate upon transfer of the party's interest in the Conservation Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

19.9 Captions. The captions of this Grant have been inserted solely for the convenience of reference and are not a part of this instrument and shall not effect upon construction of interpretation.



