

WHEN RECORDED, MAIL TO:

David H. Shawcroft, Esq.
Deputy Utah County Attorney
Civil Division
Office of the Utah County Attorney
100 East Center Street, Suite 2400
Provo, UT 84606

ENT 124109 BK 5284 PG 127
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1999 Nov 29 12:24 pm FEE 65.00 BY SS
RECORDED FOR T & M DEVELOPMENT

Space Above for Recorder's Use Only

MAINTENANCE AND OPEN SPACE PRESERVATION AGREEMENT

THIS AGREEMENT is among the undersigned developer, with a mailing address of 274 Hubble Creek Canyon, Springville, UT 84603, herein referred to as the "Developer," the undersigned owners association with a mailing address of 274 Hubble Creek Canyon, Springville, UT 84603, herein referred to as the "Association," and Utah County, with a mailing address of Utah County Commission Office, 100 East Center Street, Suite 2300, Provo, Utah 84606, herein referred to as the "County."

WHEREAS, the Developer owns certain real property in the unincorporated area of Utah County, which real property is more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof; and

WHEREAS, the Developer is desirous of establishing on said property a mountain home development (herein referred to as the "development") in conformity with the ordinances of Utah County, and also intends to provide for the benefit of subsequent owners certain open spaces, common areas, common facilities, and streets to be maintained and operated by the Association; and

WHEREAS, it is necessary and proper in connection with said development that an agreement be entered into between the Developer, and the Association and Utah County for the purpose of guaranteeing the integrity, proper management and upkeep of the development and the furnishing of necessary services to subsequent owners, and for the purpose of assuring that existing taxpayers are not burdened with the expenses of providing new residents with capital improvements and needed or desired services not common to the entire county or provided on a county-wide basis; now, therefore

IN CONSIDERATION of the necessary approvals, consents and authorizations to be given by Utah County for the purpose of allowing the Developer and Association to establish and operate said development, and for the purpose of complying with the ordinances of Utah County in such cases made and provided, the Developer and Association covenant and agree with the County, as follows:

1. The County shall have no obligation to construct or provide capital improvements or extended services for said development which are not common to the entire county and which are not provided on a county-wide basis to developments of this type. The County shall have the right,

however, to enter upon the premises of the development for inspection and for enforcement of all applicable laws, ordinances, rules, regulations, agreements and covenants relating to the development, the operation of the development, and the furnishing of all necessary services for the development.

2. The Developer agrees to construct and provide, at its expense, the following improvements for said development.

- (a) Open spaces and common areas as required by Utah County Ordinances.
- (b) All roadways, with necessary appurtenances, to equal or exceed Utah County standards.
- (c) A culinary water system supplying water to each dwelling to equal or exceed Utah State and Utah County standards.
- (d) Fire protection facilities to equal or exceed Utah State and Utah County standards.
- (e) Drainage facilities to equal or exceed Utah County standards.
- (f) Domestic sewage disposal facilities to equal or exceed Utah County standards or adequate property for the installation of private septic systems by individual lot purchasers.

Developer agrees that all construction in the development shall conform to the plans of said development and the documentation submitted to and approved by Utah County, and also to the requirements of all applicable laws, ordinances, rules and regulations promulgated by governmental authorities having jurisdiction.

Upon approval of the development by the County, and prior to the conveyance, sale or disposition by the Developer of any lot or interest in land within the development, the Developer shall either complete all required improvements for the development or else furnish a corporate surety bond or other security satisfactory to Utah County, in an amount equal to the cost of constructing the same as estimated by the County, to assure the proper construction and completion of such improvements. Improvements shall be commenced within 180 days after approval of the development, and shall be completed within two (2) years unless an extension is granted as provided by the ordinances of Utah County.

3. Developer agrees to provide the following water meeting all Utah State and Utah County quality requirements.

- (a) Culinary-quality water for use inside each dwelling shall be provided to each parcel at a flow rate of at least .015 cubic feet per second per dwelling unit and a quantity

of a least .45 acre-feet per year per dwelling unit. Where the quantity of a least .45 acre-feet per year is not limited to dwelling use alone, culinary-quality water shall be provided for occupied structures other than dwellings in the amount determined by the County Commission.

(b) Water for maintaining landscaping and fuel-breaks around each dwelling and occupied structures shall be provided to each dwelling and structure at the rate of at least 1 acre-foot per year per dwelling and building site, which water shall be available between April 30 to October 1 annually.

(c) Water for irrigation shall be provided at a rate of at least 1.5 acre feet per acre per year for the area of each lot beyond the first 10,000 square feet, which quantity shall be available from April 30 to October 1 annually.

Developer agrees that no charge for providing any of the above described water shall be made by the Developer to either the owner or occupant of said lot or the Association. It is understood, however, that the Association or the water company providing the water, may make a reasonable operation, usage, and maintenance charge for the use of such water, either by assessment or a service fee.

4. Developer agrees that it will make no user fee or charge to the owner or occupant of any lot or to the Association for any service, facility, business or enterprise which owners or occupants of the development need to subscribe to or patronize in order to have full use and enjoyment of their property or the common areas or facilities within the development. It is understood, however, that the Association may make a reasonable charge, by assessment or otherwise, for the use of services and facilities provided for occupants of the development, or which may be necessary for the operation and maintenance thereof.

5. Developer agrees that prior to the conveyance, sale or other disposition of any lot within the development, and before the right to possession of any lot is transferred to any person, the Developer shall convey to and transfer control of all roadways, designated open spaces, and all common areas or facilities, excepting therefrom the central water system, to the Association, without charge or the assumption of any obligation for the cost of construction of improvements thereon or thereto. All designated open spaces required by the County ordinances shall be transferred subject to a covenant and restriction running with the land prohibiting any future dwellings thereon and prohibiting all other buildings, except those approved by Utah County as provided by ordinance.

6. Developer and Association warrant to County that the Association has been duly incorporated as a non-profit corporation under the laws of the State of Utah in accordance with the documentation heretofore submitted to and approved by Utah County for such purpose, and said Association is fully organized.

7. The Association agrees to furnish and provide, at its expense, maintenance and services as follows:

- (a) All necessary maintenance for the open spaces, common areas, and common facilities.
- (b) All necessary maintenance and improvements for roadways and their appurtenances to meet Utah County requirements.
- (c) Fire protection services, fire protection facilities and fuel breaks, and the operation and maintenance of the same to meet Utah County requirements.
- (d) All necessary maintenance and improvements for drainage facilities necessary to meet Utah County requirements.
- (e) Garbage and trash removal services that will meet Utah County requirements.

8. For the purpose of providing funds for the operation and maintenance of the development and the furnishing of necessary services to the occupants thereof, the Developer and the Association shall require an annual assessment to be made on each lot, and may also provide for special assessments for capital improvements which the Association may desire to make. The annual assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the development, and for the improvement and maintenance of the common areas and facilities, and for the furnishing of all required services thereto. The annual assessment for the first calendar year shall be one hundred twenty Dollars (\$120.00) per lot, and shall be adjusted according to the number of months remaining in the calendar year. The amount of the annual assessments may be increased by the Association, but the same shall not be decreased at any time without the consent and approval of Utah County. The annual assessments shall commence as to all lots on the first day of the month following conveyance of the open space and common areas and facilities to the Association, or on the first day of the month next following the recording of the development plat, whichever event first occurs. It is understood that no lot shall be conveyed, sold or otherwise disposed of within the development, nor shall the right to possession of any lot be transferred to any person, until the open space, common areas and facilities have been conveyed to the Association. It is further understood that lots owned by the Developer shall not be exempt from assessment. If assessments are not paid, the Association shall

bring an action at law against the owner personally obligated to pay the same, or shall foreclose the lien against the property assessed. No owner of any lot may waive or otherwise escape liability for the assessment by non use of the common area or facilities or the abandonment of his lot.

9. The Developer and the Association agree to establish and record in the office of the Utah County Recorder prior to any conveyance, sale, transfer, disposition or creation of any interest in or encumbrance on the land of the development described in Exhibit "A" attached hereto and by referenced made a part hereof, a declaration of protective covenants and restrictions and management policies which shall have first been submitted to and approved by Utah County. Said covenants and restrictions and management policies shall run with the land and be binding upon all parties and persons residing on the land or claiming any ownership or interest in the premises under or through the Developer and the same shall not be modified or changed thereafter without the prior written approval of Utah County. All of the covenants and provisions of this agreement, and such provisions as the zoning ordinances of Utah County require to be set forth in such declaration, shall be set forth in and made part of said declaration of protective covenants and restrictions and management policies, together with such other provisions as the Developer and Association deem necessary for their purposes. Among other required restrictions, said declaration shall provide that no lot within the development shall be used for human occupancy, either temporarily or permanently, until culinary water and sewage and waste disposal facilities approved by Utah County are provided and available for use on said lot; and thereafter, no such lot shall be used for human occupancy at any time the culinary water or sewage and waste disposal facilities are not in compliance with the statutes of the State of Utah, ordinances of Utah County, and rules and regulations promulgated thereunder.

10. At the request of Utah County, the Association agrees to enforce all protective covenants, restrictions and management policies set forth in the declaration of protective covenants, restrictions and management policies recorded in the office of the Utah County Recorder. Upon failure of the Association to enforce said covenants and restrictions and management policies, the County may, in County's sole discretion and following at least thirty (30) days prior written notice to the Association, cause suit to be brought against the Association for the purpose of requiring it to enforce the same, or may, in County's sole discretion, itself bring and prosecute a suit in the name of the Association for the purpose of enforcing said covenants, restrictions and management policies. The Association agrees to indemnify and hold the County and its agents harmless from all costs, expenses (including attorney's fees) and liabilities resulting from or related to, directly or indirectly, an such action taken by the County. If the Association becomes disorganized, fails to function properly, or fails to maintain its corporate entity in good standing, or if it fails to perform its obligations hereunder and under the aforesaid declaration of protective covenants and restrictions and management policies, Utah County is hereby given the right to close the development to human occupancy, and may obtain or enforce such closure by injunction or other appropriate legal action; and said development shall remain closed to human occupancy until such time as the Association is properly organized and functioning and performing its obligations hereunder. The provisions of this paragraph shall be clearly set forth in the declaration of protective covenants, restrictions and management policies of the development hereinabove referred to.

11. Wherever in this agreement Utah County is referred to, it is understood that the reference is to the appropriate board, commission, department or person to whom authority shall have been delegated by law or ordinance or appropriate action of the Board of County Commissioners; and where no such delegation has been or can lawfully be made, the reference is to the Board of County Commissioners.

12. In the event it becomes necessary to bring legal action to enforce the provisions of this Agreement, the prevailing party shall be entitled to a reasonable attorney's fee and associated court costs, as determined by the court.

13. This Agreement shall be interpreted pursuant to the law of the State of Utah. Time shall be of the essence of this Agreement. The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other gender. The paragraph and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

14. No oral modifications or amendments to this Agreement shall be effective, but this Agreement may be modified or amended by written agreement signed by the parties. Should any provision of this Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against the party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepare the same, it being acknowledged that all parties have participated in the preparation hereof.

15. The parties to this Agreement shall not assign this Agreement, or any part hereof, without the prior written consent of all parties to this Agreement. No assignment shall relieve the original parties from any liability hereunder. Without waiving the requirement for written consents prior to any assignment, this Agreement shall be binding upon the heirs, successors, administrators, and assigns of each of the parties hereto.

16. All notices, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given if delivered by hand or by certified mail, return receipt requested, postage prepaid, to the parties at their addresses first above written, or at such other addresses may be designated by notice given hereunder. The provisions of this Agreement shall not merge in any license, permit, plat, conveyance, or any other document. The individuals signing this Agreement on behalf of Developer and Association, personally warrant to County that they are authorized to sign on behalf of and bind Developer and Association to the terms of this Agreement and that all requisite approvals, resolutions, authorizations, etc., have been obtained.

IN WITNESS WHEREOF, the parties to this agreement have caused the same to be executed by their proper officers thereunto duly authorized this _____ day of _____, 1999.

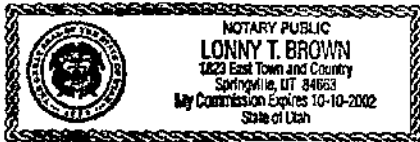
DEVELOPER

T&M Development, L.C.
Name of Developer

Tracy McDonald
By: Tracy McDonald
Its: Managing Member

STATE OF UTAH)
) :SS
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me on this 27th day of Sept, 1999, by Tracy McDonald, the managing member of T&M Development, L.C.
(Developer)



Lonny T. Brown
NOTARY PUBLIC
Residing at: Springville, Ut.

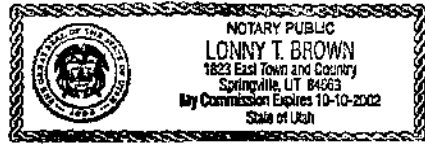
My Commission Expires: 10-10-2002

ASSOCIATION
The Colleges Community Association
Name of Association

Tracy McDonald
By: Tracy McDonald
Its: President

STATE OF UTAH)
)
:SS
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me on this 27th day of Sept, 1999, by Tracy MacDonald, the president of The Cottages Community Association
(Name of Homeowner's Association)



Lonny T. Brown
NOTARY PUBLIC
Residing at: Springville, ut

My Commission Expires: 10-10-2002

UTAH COUNTY

Jerry D. Grover, Chairman
Board of Utah County Commissioners

STATE OF UTAH)
)
:SS
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me on this ___ day of _____, 1999, by Jerry D. Grover, the chairman of the Board of Utah County Commissioners.

NOTARY PUBLIC
Residing at: _____

My Commission Expires: _____

ATTEST:
ARLIN V. KUHN
Utah County Clerk/Auditor

ENT 124109 BK 5284 PG 135

By: _____
Deputy

L:\PLANNING\SUBDIVISION\Main-Open Space.apr

LEGAL DESCRIPTION
EXHIBIT A

ENT 124109 BK 5284 PG 136

Commencing at a point located North 02° 47' 53" East along the Section line 1828.94 feet from the Southwest corner of Section 3, Township 7 South, Range 4 East, Salt Lake Base and Meridian; thence North 02° 47' 53" East 880.36 feet; thence North 02° 16' 00" West 396.83 feet; thence South 29° 47' 00" East 3114.41 feet; thence South 63° 00' 00" West 334.63 feet; thence South 20° 22' 48" East 529.67 feet; thence South 06° 45' 24" East 309.67 feet; thence South 19° 57' 37" East 107.58 feet; thence South 06° 45' 55" East 191.43 feet; thence South 34° 58' 07" East 226.07 feet; thence South 39° 46' 05" East 288.74 feet; thence South 51° 43' 03" East 132.17 feet; thence South 28° 41' 10" East 59.75 feet; thence South 53° 03' 16" East 236.27 feet; thence South 78° 55' 45" East 24.56 feet; thence South 87° 43' 35" East 75.89 feet; thence South 58° 34' 14" East 214.49 feet; thence South 04° 15' 24" West 110.67 feet; thence along the arc of a 341.00 foot radius curve to the right 27.43 feet (chord bears North 60° 55' 50" East 27.42 feet); thence North 63° 14' 06" East 109.50 feet; thence along the arc of a 241.00 foot radius curve to the right 29.98 feet (chord bears North 66° 47' 55" East 29.96 feet); thence South 24° 54' 28" East 56.31 feet; thence along the arc of a 185.00 foot radius curve to the left 28.19 feet (chord bears South 67° 35' 59" West 28.16 feet); thence South 63° 14' 06" West 109.50 feet; thence along the arc of a 285.00 foot radius curve to the left 92.80 feet (chord bears South 53° 54' 24" West 92.39 feet); thence South 14° 40' 04" West 497.30 feet; thence North 89° 36' 27" West 295.42 feet; thence South 63° 39' 24" West 84.36 feet; thence South 54° 31' 14" West 127.72 feet; thence South 79° 30' 21" West 88.09 feet; thence South 66° 42' 47" West 198.61 feet; thence South 63° 34' 06" West 203.12 feet; thence South 56° 55' 26" West 272.12 feet; thence North 29° 20' 44" West 320.68 feet; thence North 23° 58' 58" East 156.65 feet; thence South 55° 22' 05" West 37.94 feet; thence along the arc of a 122.00 foot radius curve to the left 120.60 feet (chord bears South 27° 07' 22" West 115.75 feet); thence South 01° 11' 42" East 75.24 feet; thence along the arc of a 527.98 foot radius curve to the right 66.93 feet (chord bears South 02° 26' 12" West 66.89 feet); thence South 06° 04' 06" West 105.88 feet; thence along the arc of a 472.08 foot radius curve to the left 61.29 feet (chord bears South 02° 20' 55" West 61.25 feet); thence South 01° 22' 15" East 123.83 feet; thence along the arc of a 528.00 foot radius curve to the right 151.23 feet (chord bears South 06° 50' 02" West 150.71 feet); thence South 15° 02' 20" West 123.80 feet; thence along the arc of a 178.00 foot radius curve to the right 118.66 feet (chord bears South 34° 08' 10" West 116.47 feet); thence South 53° 14' 00" West 160.25 feet; thence along the arc of a 122.00 foot radius curve to the left 137.13 feet (chord bears South 21° 06' 20" West 130.02 feet); thence South 11° 02' 51" East 125.88 feet; thence along the arc of a 124.00 foot radius curve to the left 42.10 feet (chord bears South 20° 46' 25" East 41.90 feet); thence South 30° 30' 00" East 83.26 feet; thence South 60° 15' 02" West 39.94 feet; thence along the arc of a 597.28 foot radius curve to the left 16.06 feet (chord bears South 59° 56' 14" West 16.06 feet); thence North 30° 30' 00" West 82.62 feet; thence along the arc of a 180.00 foot radius curve to the right 61.11 feet (chord bears North 20° 46' 25" West 60.82 feet); thence North 11° 02' 51" West 125.83 feet; thence along the arc of a 178.00 foot radius curve to the right 200.07 feet (chord bears North 21° 06' 20" East 189.70 feet); thence North 53° 14' 00" East 160.17 feet; thence along the arc of a 122.00 foot radius curve to the left 81.33 feet (chord bears North 34° 08' 10" East 79.83 feet); thence North 15° 02' 20" East 123.80 feet; thence along the arc of a 472.00 foot radius curve to the left 135.19 feet (chord bears North 06° 50' 02" East 134.72 feet); thence North 01° 22' 15" West 123.83 feet; thence along the arc of a 528.08 foot radius curve to the right 68.56 feet (chord bears North 02° 20' 55" East 68.52 feet); thence North 06° 04' 06" East 105.88 feet; thence along the arc of a 471.98 foot radius curve to the left 59.83 feet (chord bears North 02° 26' 12" East 59.79 feet); thence North 01° 11' 42" West 75.24 feet; thence along the arc of a 178.00 foot radius curve to the right 175.95 feet (chord bears North 27° 07' 22" East 168.87 feet); thence North 55° 22' 05" East 107.48 feet; thence

STEWART TITLE

along the arc of a 222.00 foot radius curve to the left 52.76 feet (chord bears North 48° 33' 36" East 52.63 feet); thence along the arc of a 35.00 foot radius curve to the left 30.73 feet (chord bears North 16° 36' 06" East 29.75 feet); thence along the arc of a 50.00 foot radius curve to the right 50.59 feet (chord bears North 20° 26' 09" East 48.46 feet); thence along the arc of a 35.00 foot radius curve to the left 17.24 feet (chord bears North 35° 18' 21" East 17.07 feet); thence North 21° 11' 28" East 49.79 feet; thence along the arc of a 1040.95 foot radius curve to the right 147.57 feet (chord bears North 25° 15' 08" East 147.45 feet); thence along the arc of a 35.00 foot radius curve to the left 36.25 feet (chord bears North 00° 21' 36" West 34.65 feet); thence along the arc of a 50.00 foot radius curve to the right 123.90 feet (chord bears North 40° 57' 14" East 94.54 feet); thence along the arc of a 35.00 foot radius curve to the left 48.77 feet (chord bears North 72° 01' 25" East 44.92 feet); thence North 32° 06' 21" East 190.51 feet; thence along the arc of a 260.00 foot radius curve to the left 309.97 feet (chord bears North 02° 02' 40" West 291.93 feet); thence North 36° 11' 48" West 299.23 feet; thence along the arc of a 1515.01 foot radius curve to the right 309.85 feet (chord bears North 30° 20' 21" West 309.31 feet); thence South 73° 56' 00" West 7.74 feet; thence North 16° 04' 00" West 378.27 feet; thence North 03° 30' 45" West 126.36 feet; thence North 26° 56' 20" West 288.33 feet; thence North 10° 42' 18" West 314.43 feet; thence North 28° 06' 28" West 658.75 feet; thence North 19° 41' 37" West 288.61 feet; thence North 63° 33' 25" West 217.13 feet; thence North 44° 36' 47" East 34.85 feet; thence North 44° 54' 34" West 100.02 feet; thence North 09° 23' 45" West 138.16 feet; thence North 50° 19' 01" East 215.67 feet; thence North 41° 20' 20" West 450.43 feet to the point of beginning.