

OPEN SPACE USE AND MAINTENANCE
AGREEMENT

THIS OPEN SPACE USE AND MAINTENANCE AGREEMENT (this "Agreement") made and entered into this 28th day of August, 1996, by and between THE RESERVE AT FRISCO LLC, a Delaware limited liability company (the "Reserve") and THE TOWN OF FRISCO (the "Town"), WITNESSETH:

WHEREAS, the Reserve is the owner of certain real property located in the Town of Frisco, State of Colorado, which property is described on the plat of The Reserve at Frisco, Filing No. 1 recorded as Reception No. 522721, in the records of the Office of the Clerk and Recorder of Summit County, Colorado (the "Reserve Property");

WHEREAS, in connection with the planned unit development to be located on the Reserve Property, the Town has required the conveyance of a portion of the Reserve Property and certain other Property to the Town as public open space, which property to be conveyed is more fully described on Exhibit A attached hereto and incorporated herein by reference (the "Public Open Space");

WHEREAS, in connection with the conveyance of the Public Open Space, the Town has agreed that the Public Open Space shall be used for certain passive recreational uses as further described below; and

WHEREAS, in consideration of the foregoing, the Reserve (and the homeowners' association formed to represent the owners of the Reserve Property and which, for purposes of this Agreement, shall be included within the definition of the "Reserve") shall maintain the Public Open Space subject to the terms and provisions hereof.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Use and Maintenance of Public Open Space. The Public Open Space shall be used only for passive recreational uses, including, without limitation, paths or trails for walking, jogging, rollerblading, hiking, biking, snowshoeing, or cross-country skiing, and for pocket parks. The Reserve shall be responsible for developing all paths and trails on the Public Open Space, including a paved bike path and one or more unpaved, natural foot paths. The Reserve shall assume the specific maintenance obligations described herein and liability for the all path(s) or trail(s), except for

the paved bike path, and for all other portions of the Public Open Space. The Town shall assume responsibility for all maintenance obligations and liability for the paved bike path, as well as any other obligations not assumed by the Reserve hereunder. To the extent not otherwise improved by the Reserve or the Town as expressly contemplated hereby, the Public Open Space shall be left undisturbed in its natural state, with native vegetation and trees left intact. The Reserve shall maintain the Public Open Space, except for the paved bike path as follows: (a) the Reserve shall keep all vegetated and treed areas in a slightly condition consistent with the natural landscape, the Reserve being under no obligation to assure the health or growth of such vegetation or trees but having the right to maintain or replant such native vegetation and trees as the Reserve deems necessary to maintain the Public Open Space in an attractive condition consistent with the Reserve Property; (b) to the extent practicable, the natural trails and paths shall be kept reasonably free of obstacles or debris so that access through such trails and paths remains during the periods in which snow does not cover such trails and paths; and (c) the Public Open Space shall be kept free of litter and trash. If the Town wishes to further improve the Public Open Space, it may make such improvements as are consistent with the permitted uses described herein, including, without limitation, playground or exercise equipment, picnic tables, park benches, trash receptacles, sidewalks and landscaping. No mechanized equipment or lighting (except as may be necessary for safety purposes) will be installed on the Public Open Space, and no motorized vehicles shall be permitted thereon except to the extent necessary to maintain Public Open Space. To the extent the Town improves the Public Open Space with permitted improvements, the Town shall be responsible for the cost of installing, maintaining, repairing and replacing such improvements. In addition, the Town shall be responsible for any increase in maintenance obligations arising from or caused by the improvements installed by the Town. All claims, damages, losses, costs or expenses arising or resulting from the installation or construction of additional improvements shall be the responsibility of the Town.

2. Duration. All of the rights and obligations hereof shall be perpetual from the date hereof.

3. Successors and Assigns. The benefits and burdens of this Agreement will bind and benefit the Reserve and the Town and their respective successors and assigns; provided, however, the obligations and rights granted herein may not be transferred or assigned except in the case of a transfer of the Reserve Property or the Public Open Space, as applicable. In addition, the Town hereby expressly agrees to include in any contract for sale or deed with a third party of any portion of the Public Open Space a provision subjecting any such transfer to the terms of this

Agreement and in which the third party assumes the obligations of the Town hereunder.

4. Modification or Termination. This Agreement may be modified, amended, cancelled or terminated only upon the written consent of both parties hereto.

5. Severability. The invalidity or unenforceability of any provision of this Agreement in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Agreement which shall remain in full force and effect.

6. Counterparts. This Agreement may be executed in counterpart copies which when taken together will evidence the agreement of the parties and shall constitute only one Agreement.

7. Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Colorado.

IN WITNESS WHEREOF, the undersigned have caused this Open Space Use and Maintenance Agreement to be executed as of the day and year first set forth above.

TOWN OF FRISCO

By: 

Name: M.L. Ette

Title: MAYOR

THE RESERVE AT FRISCO LLC

By: East West Partners, Inc.,
a Colorado corporation, its
Sub-Manager

By: 

Jack Wolfe,
Vice President

THE RESERVE AT FRISCO ASSOCIATION

By: 

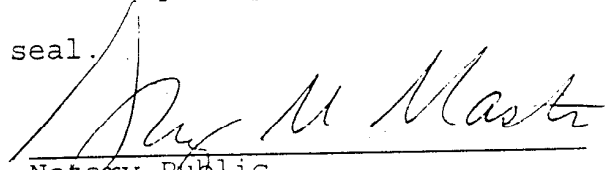
Robert L. Knous, Jr.
President

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 28th day of August, 1996, by Jack Wolfe, as Vice President of East West Partners, Inc, a Colorado corporation, Sub-Manager of THE RESERVE AT FRISCO LLC, a Delaware limited liability company.

Witness my hand and official seal.

[SEAL] AMY M. MASTIN
NOTARY PUBLIC
STATE OF COLORADO



Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

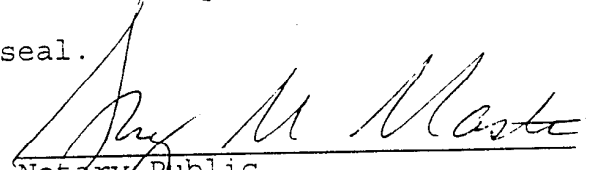
The foregoing instrument was acknowledged before me this 28th day of August, 1996, by Robert L. Knous, Jr., as President of THE RESERVE AT FRISCO ASSOCIATION, a Colorado nonprofit corporation.

Witness my hand and official seal.

[SEAL]

AMY M. MASTIN
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires 7/28/99



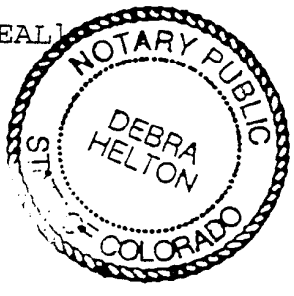
Notary Public

STATE OF COLORADO)
COUNTY OF SUMMIT) ss.

The foregoing instrument was acknowledged before me this 30th
day of August, 1996, by M.L. "Tex" Etie
as Mayor of THE TOWN OF FRISCO.

Witness my hand and official seal.

[SEAL]



[Signature]
Notary Public

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EXHIBIT A

1. Tracts 1, 2, 3, 4, 5, 6, 7 and 15, The Reserve at Frisco, Filing No. 1, according to the plat thereof recorded on 8-30-96, 1996 at Reception No. 5272 in the records of the Clerk and Recorder for the County of Summit, State of Colorado.
2. Lot 7, Block 2, Meadow Creek Subdivision, as shown on the Plat recorded August 1, 1987 under Reception No. 178502, County of Summit, State of Colorado.