

MAINTENANCE AGREEMENT

AGREEMENT AMONG TIMBER LAKES CORPORATION, a Utah corporation, and TIMBER LAKES PROPERTY OWNERS ASSOCIATION, a Utah non profit corporation, herein referred to as the "Developer" and the "Association" respectively, and WASATCH COUNTY, herein referred to as the "County."

WHEREAS, the Developer has previously developed certain real property in the unincorporated area of Wasatch County known as Timber Lakes Estates, Plats 1-14, 16, 18 and 18A (hereinafter: Plats 1-14, 16, 18, and 18A) which plats have been previously approved and filed in the Office of the Wasatch County Recorder; and

WHEREAS, the purchasers of the Lots described on Plats 1-14, 16, 18, and 18A have previously agreed by contract to be subject to all restrictive covenants and conditions applicable to said plats, which covenants provide in part that all Lot purchasers shall be members of a property owners association; and

WHEREAS, pursuant to said covenants and restrictions, a property owners association has been established known as the Timber Lakes Property Owners Association, a Utah nonprofit corporation, with the authority to bind said Lot Owners by action of its authorized representatives; and

WHEREAS, the Developer owns certain real property in the County contiguous and adjacent to Plats 1-14, 16, 18, and 18A which real property is more particularly described in Exhibit A attached hereto and by reference made a part hereof and which is also described in documents relating to Timber Lakes Estates Plat 19 (hereinafter: Plat 19) filed in the Office of the Wasatch County Recorder; and

WHEREAS, the Developer is desirous of developing on said Plat 19, a planned recreation development in conformity with the ordinances of the County to be an addition to and a continuing part of Plats 1-14, 16, 18, and 18A (the entire Timber Lakes Estates Plats 1-14, 16, 18, 18A, and Plat 19 to be herein referred to as "the Development") and also intends to provide for the benefit of present and subsequent Owners certain open spaces, streets and other common facilities and services to be owned, maintained and operated in part by the Association; and

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

ENTRY NO. 148710 DATE 8-28-89 TIME 2:40 FEE 754.00
RECORDED FOR KEIGH CUMMINGS BOOK 211 PAGE 505-514
RECORDER JOE DEAN HUBER BY BRUCE BAILEY

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WHEREAS, the Association has, through its authorized representatives, reviewed this Maintenance Agreement and determined that it is in the best interests of the Association and the individual Lot Owners that this agreement be approved and adopted by the Association;

NOW, THEREFORE, in consideration of the necessary approvals, consents and authorizations to be given by the County for the purpose of allowing the Developer and Association to continue and operate said development and for the purpose of complying with the ordinances of the County in such cases made and provided, the Developer and Association covenant and agree with the County as hereinafter set forth.

Wherever in this agreement the 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. The terms: "Lot," "Owner," "Member," and "Common Area," shall have the meanings assigned in the Declaration of Covenants, Conditions, Restrictions and Management Policies for Timber Lakes Estates ("the Declaration") which is executed concurrently with this agreement.

1. The County shall have no obligation to construct or provide capital improvements or extended services for the Development which are not common to the entire county and which are not provided on a county-wide basis. 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, covenants, conditions, restrictions, management policies and agreements relating to the Development, the operation of the Development, the construction of improvements and their maintenance within the Development and the furnishing of all necessary services for the Development.

2. The Developer has either previously provided or agrees to construct and provide at its expense the following improvements for the Development:

(a) Open spaces and Common Areas as shown on the approved plans for the Development.

(b) All roadways, with necessary appurtenances, to equal or exceed applicable County standards.

(c) A culinary water system supplying water to each Lot to equal or exceed applicable State and County standards.

(d) Fire protection facilities to equal or exceed applicable State and County standards.

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(e) Drainage facilities to equal or exceed County standards.

(f) Reseed cut and fill slopes with the following seed mixture or as approved by Wasatch County:

Orchard Grass	25%
Smooth Brome	10%
Kentucky Blue Grass	10%
Creeping Red Fescue	5%
Red Clover	5%
White Clover	5%
Intermediate Wheat Grass	25%
Perennial Rye Grass	15%

g) All other facilities and services as shown on the approved plans.

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

Upon approval of Plat 19 by the County and prior to the conveyance, sale or disposition by the Developer of any land or interest in land within said plat, the Developer shall either complete all required improvements for said Plat 19 or else furnish a corporate surety bond or other security satisfactory to the 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 preliminary plan of said Plat 19 and shall be completed within two years unless an extension is granted as provided by the ordinance of the County.

3. The Developer agrees to provide not less than the amount of culinary water per day to each Lot as is required to meet the standards of the State and County Health Departments, whichever meet County standards with respect to the supplying of water for culinary purposes and fire protection. The Developer shall also furnish maintenance and service to the water distribution system. Developer agrees that to the extent it is required to do so by law, it will apply to the Public Service Commission of Utah to be certified by said Commission as a public utility with respect to the operation of said water system. Application, if necessary, will be made by the Developer within three months after recordation of Plat 19 with the Wasatch County Recorder. Subject to approval of the appropriate state agencies, if any, Developer may make a reasonable charge for the water used by each Lot owner, including a minimum service charge for operation and maintenance of the system.

The Association is hereby granted the authority to require the Developer to qualify as a public utility with respect to the operation of said water system if, in the opinion of the Association, said system is not operated by the Developer in the best interests of the Members of the Association.

4. The Developer represents and declares that except as permitted in this paragraph or as described in paragraph 3 hereof, 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. 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. Immediately upon approval of Plat 19 by the County, the Developer will convey all roadways and all areas designated as open space on Plats 1-14, 16, 18, 18A, and 19 and all improvements located thereon to the Association, excepting therefrom all water pipes, lines, valves, fire hydrants, storage tanks and other improvements appurtenant to, connected to or otherwise a part of the culinary water distribution system of the Development. The designated open spaces and Common Areas or facilities on Plats 1-14, 16, 18, 18A and 19 shall be conveyed without charge or the assumption by the Association of any obligation for the cost of construction of improvements thereon or thereto. All open spaces transferred to the Association shall be subject to a covenant and restriction running with the land prohibiting any future dwellings, convenience establishments or other buildings thereon, except those approved by the County.

6. The Association has been duly incorporated as a nonprofit corporation under the laws of the State of Utah in accordance with the documentation heretofore submitted to and approved by the County for such purpose, and said Association is fully organized and will hold elections for board of directors after due notice and said Board has approved this document.

7. The Association shall furnish and provide at its expense maintenance and service to the Development as follows:

(a) All necessary maintenance for the open spaces and other Common Area.

(b) All necessary maintenance and improvements for roadways and their appurtenances to meet County standards and conditions.

(c) All necessary maintenance and improvements for drainage facilities necessary to meet County standards and conditions.

(d) All maintenance of covenants, conditions, restrictions and management policies set forth in the documents submitted in connection with approval of Plat 19.

(e) Garbage and trash removal services to meet the County standards and conditions provided in Wasatch County Ordinance 74-4 and/or such subsequent ordinances as may be adopted by Wasatch County relative to such services.

(f) All maintenance necessary to maintain the reseeded area referred to in the foregoing paragraph 2(f).

8. For the purpose of providing funds for the operation and maintenance of the Development and 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 attorneys 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 attorneys 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 services thereto not provided by the Developer. The annual assessments shall be fixed at a uniform rate for all Lots and shall be collected on a periodic basis to be determined by the Association.

The annual assessment of the Association for the first calendar year shall be not less than Sixty-five Dollars (\$65.00), 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 below a minimum of Thirty Dollars (\$30.00) per Lot without approval of the County. The annual assessments shall continue as to all Lots in Plats 1-14, 16, 18, and 18A. The assessments for Lots in Plat 19 and any other Lots in subsequent plats which may be added to the Development shall begin as of the first of the month following the recordation of the corresponding approved plat in the Office of the Wasatch County Recorder. 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 spaces, Common Areas and facilities on Plats 1-14, 16, 18, 18A, and 19 have been conveyed to the Association, which conveyance is to occur immediately following and as a condition of approval by the County of Plat 19.

It is further agreed that Lots owned by the Developer or its designated sales organization shall not be subject to assessment under this section but shall be subject to assessment pursuant to Article VII, Section 3a, of the Declaration of Covenants, Conditions, Restrictions and Management Policies executed concurrently with this agreement. 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 nonuse of the Common Area, abandonment of his Lot or assignment of his voting right or right to use of the Common Area, except for Lots which may be owned by the public.

9. To provide a means of paying for necessary services to or maintenance of the Development's sewage facilities, streets and other facilities which have a direct relationship to protection of the public health and safety, should the Association default in providing such services or maintenance, an impound account shall be established by depositing an amount equal to twenty percent (20%) of the Association's annual assessment on each lot in Plat 19 and subsequent plats, if any, to such an account until there has been deposited a total sum equal to the amount obtained by multiplying the number of lots or dwelling units (whichever is greater) in Plat 19 and subsequent plats, if any, approved for the Development by the Association's annual assessment per lot. Thereafter, no funds need be deposited until funds from the account have been expended as set forth below whereupon funds from said twenty percent (20%) of the annual assessment on Plat 19 and subsequent plats shall again be deposited until the account has again reached the required sum. It is the intention of this provision to require said account to be maintained at the required sum determined by the above formula. The County shall not have the right to draw upon said impound account unless the County Commission determines that the Association's failure to maintain the above-described systems and facilities is endangering the health and safety of the Development's and/or the County's inhabitants. If the danger is imminent, the County may immediately proceed to supply such services or maintenance without a public hearing, but only to the extent deemed necessary to rectify the immediate danger. No further funds shall be expended until after reasonable notice to the Association, a public hearing to determine the specific actions that must be taken to correct the health or safety hazard, and a reasonable opportunity for the Association to take such actions. If the Association fails after such reasonable opportunity to take the required actions, the County may then (but shall have no obligation to) do so and

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defray the cost thereof with funds from the impound account. Any person affected by the County's determination to use such funds may appeal to the courts under applicable law, but no decision of the County which is supported by substantial evidence shall be overturned or modified by the courts. In the alternative to taking such actions, the County may initiate an action in court to enforce the Association's obligations hereunder and defray the costs of such action, including the costs of technical services and reasonable attorneys fees from the impound account. In addition, the County shall be entitled to recover reasonable attorneys fees and costs (whether incurred before or after settlement or judgment) expended in enforcing any part of this agreement. No person or entity other than the County shall have the right to draw against the impound account. The impound funds shall be deposited in an interest bearing account with First Security Bank of Utah, NA, Heber Office, who may charge a reasonable fee for servicing the same by deducting the said fee from the account. Payments by the Association to the account of that portion of the annual assessments above required shall be made periodically as assessments become payable and within thirty (30) days after collection by the Association. The County shall have the right to audit the Association's assessment records upon reasonable notice for the purpose of verifying the accuracy of the amounts remitted to the account, and the Association shall have the right to audit the impound account and disbursements made therefrom upon reasonable notice. All income produced by the impound account shall belong to the Association but shall remain in and become part of the account at all times when the total amount deposited therein is less than the required sum. All income to the account which may cause it to exceed the required sum shall be paid over to the Association. The remedies of the County described in this section 9 are not exclusive, but in the alternative to and cumulative with all other equitable and legal remedies which the County may pursue for breach of this agreement under all applicable statutes, ordinances, rules and regulations.

10. Immediately upon approval by the County of Plat 19, the Developer and the Association agree to establish and record in the Office of the County Recorder the Declaration attached hereto which shall have first been submitted to and approved by the County. The covenants, conditions, restrictions and management policies contained in the Declaration shall run with the land and shall be binding upon all parties and persons residing on the land or claiming any ownership or interest in the premises; and the same shall not be modified or changed thereafter without the approval of the County. All of the covenants and provisions of this agreement and such provisions as the Development Code of the County require to be set forth in the Declaration shall be set forth in and made a part of the Declaration, together with such other provisions as the Developer and Association deem necessary for their

purposes. Among other required restrictions, the Declaration shall provide that no lot within the Development shall be used for human occupancy, either temporarily or permanently, except during a reasonable period for construction, until culinary water and sewage and waste disposal facilities approved by the 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 the County and rules and regulations promulgated thereunder. The Declaration shall further provide that at the request of the County, the Developer shall discontinue culinary water service to any Lot where a violation of the laws of the State of Utah, the ordinances of the County and rules and regulations promulgated thereunder continues after thirty (30) days notice in writing to the Owner of the Lot of such violation and the same remains unremedied. The provisions of this agreement shall be subject to the rights reserved to the Developer in the Declaration to expand the Development.

11. The Association agrees to enforce all covenants, conditions, restrictions and management policies set forth in the Declaration and recorded in the Office of the County Recorder. Upon failure of the Association to enforce the covenants, conditions, restrictions and management policies of the Declaration, the County may, subject to the notice and hearing provisions imposed by paragraph 9 hereof, cause suit to be brought against the Association for the purpose of requiring it to enforce the same or may itself bring and prosecute a suit in the name of the Association for the purpose of enforcing the covenants, conditions, restrictions and management policies.

12. If any part or provision of this agreement shall be adjudged unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such adjudgment shall not affect any other part or provision of this agreement, except that part or provision so adjudged to be unconstitutional, invalid or unenforceable. Also, in the event that a part or provision of this agreement shall be adjudged unconstitutional, invalid or unenforceable, the Developer and its successors and assigns and the Association shall be absolved from enforcing said part or provision.

IN WITNESS WHEREOF, the parties to this agreement have caused the same to be executed by their proper officers thereunto duly authorized this 7th day of March, 1988.

ATTEST:

TIMBER LAKES CORPORATION

Gary L. Stout
Harvey Cummings Sec

By

Veigh Cummings
President

ATTEST:

TIMBER LAKES PROPERTY OWNERS ASSOCIATION

Eldon B. Romney
Secy. - T.P.O.

James A. Hunter

ATTEST:

WASATCH COUNTY

Jeffrey M. Braden
CLERK
WASATCH COUNTY

Milton Deser
Chairman of the Board of County
Commissioners

