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FOR: Lot 28, Chalet Village
Addition No. 11, County
of Gunnison, State of Colorado

ELKRUN
MOUNTAIN ENTERPRISES 80
400 East Main, Suite 201 A.
Aspen, Colorado 81611 303/925-4331

USE AND MAINTENANCE AGREEMENT

THIS AGREEMENT made and executed, in triplicate, on this 1st day of August, 1979, by and between Alfred R. Chaves, whose address is 13388 Tennessee Avenue, City of Los Angeles, State of California, and Michael J. Pierson, whose address is P. O. Box 428, City of Crested Butte, State of Colorado, the same being hereinafter referred to as "First Party" and Mountain Enterprises-80, a joint venture composed of Mountain Enterprises, Inc., 400 East Main, City of Aspen, State of Colorado 81611, and Trenson, Inc., 4001 Classen Boulevard, City of Oklahoma City, State of Oklahoma 73118, the same being hereinafter referred to as "Second Party."

W I T N E S S E T H:

WHEREAS, First Party is the fee simple title holder of Lot 28, Chalet Village Addition to the Town of Mt. Crested Butte, State of Colorado, and

WHEREAS, First Party desires, subject to all terms and conditions hereinafter set forth, the use and benefit of certain amenities and privileges otherwise incidental to the ownership of real property located within the Elk Run Subdivision, Town of Mt. Crested Butte, State of Colorado, and

WHEREAS, Second Party is the sole entity entitled to grant and extend the use and benefit of said amenities and privileges to persons other than the fee simple title owner of lots located within said Elk Run Subdivision, Town of Mt. Crested Butte, State of Colorado, and

WHEREAS, subject to all terms and conditions set forth herein, Second Party desires to extend and grant unto First Party the use and benefit of the said amenities and privileges as set forth herein.

NOW THEREFORE, for and in consideration of the mutual promises set forth herein, the mutual benefits derived herefrom, and other good and valuable consideration received by First Party from Second Party, the receipt and sufficiency of which being acknowledged by the execution and delivery hereof, it is agreed between the parties hereto as follows, to-wit:

1. Second Party does by the execution and delivery hereof grant and extend unto First Party the right and privilege of full use and enjoyment of (a) any and all improvements to real property now and/or hereinafter located upon Tract A, Elk Run Subdivision, Town of Mt. Crested Butte, State of Colorado, including the right and privilege of full use and enjoyment of that amenity package set forth in paragraph 4 herein and, (b) an Associate Membership in and to the Elk Run Homeowners Association, together with all rights and duties incidental thereto as an Associate Member thereof, and (c) maintenance by the Elk Run Homeowners Association of all private roads, private streets, private lanes, private avenues, private courts, private circles, and/or public roads having less than a sixty (60) foot legal right of way which are now located upon said Lot 28, Chalet Village Addition 11, Town of Mt. Crested Butte, State of Colorado, and/or provide direct and immediate access thereto. "Direct and/or immediate access thereto" is agreed between the parties

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hereof to exclude any and all roads, roadways, streets, lanes, avenues, courts, and/or circles, other than those created by a conveyance of easement across private property now owned either by First Party or Second Party.

2. With respect to all rights and privileges extended to First Party by Second Party within paragraph 1 above, First Party does accept the same in addition to those rights and privileges provided for within those Protective Covenants attached hereto and made a part hereof as Exhibit "B", that Certificate of Incorporation attached hereto and made a part hereof as Exhibit "B", and those Bylaws attached hereto and made a part hereof as Exhibit "C", and each of the same may separately, and/or in combination, relate, directly and/or indirectly, to those rights and privileges set forth within subparagraphs 1 (a), 1 (b), and/or 1 (c) above, and the use and enjoyment thereof.

3. As partial consideration for the granting of those rights and privileges set forth within paragraph 1 above, First Party does hereby agree with Second Party for and on the behalf of the Elk Run Homeowners Association as third party beneficiary hereto, to pay, and/or cause to be paid, unto said Elk Run Homeowners Association when due, such amount and/or amounts as shall be levied by said Elk Run Homeowners Association in accordance with Articles IV, paragraphs 20, 21 and/or 22 of those Protective Covenants attached hereto as Exhibit "A", said amount and/or amounts being First Party's proportionate share of the Elk Run Homeowners Association's costs and expenses directly incurred for the operation and maintenance of the amenities package set forth in paragraph 4 herein, and no other costs, expenses or amounts shall be due or payable by First Party, and further, does hereby specifically agree to without exclusion or denial of agreement as otherwise set forth herein to paragraphs 7, 11, 15, 24 and 25 of said Article IV of said Protective Covenants as the same shall now and/or hereinafter relate to those obligations contained therein. In this regard, First Party does hereby grant unto said Elk Run Homeowners Association a lien upon Lot 29, Chalet Village Addition Number 11 to the town of Mt. Crested Butte, Colorado, to secure payment of any assessment, charge, fine, penalty or other amount due to the Association from First Party which is not paid when due, plus interest from the date of demand for payment at the rate of twelve percent (12%) per annum, plus all costs and expenses of collecting the unpaid amount, including reasonable attorney's fees. The lien may be foreclosed in the manner for foreclosure of mortgages in the State of Colorado.

4. Second Party does by the execution and delivery hereof warrant, covenant and agree with First Party that it shall on or before September 1, 1983, construct and/or cause to be constructed upon Tract A of said Elk Run Subdivision as shown upon the recorded plat thereof an amenity package to consist of not less than a clubhouse facility, two tennis courts, twenty person jacuzzi, and a swimming pool (an alternate amenity to be furnished by way of substitution if and in the event said pool shall be disallowed by any federal, state, county or town agency and/or regulation). Said Tract A as well as the amenity package constructed thereon, shall be conveyed without charge, by Second Party to the Elk Run Homeowners Association free and clear of all restrictions, easements, rights of way, covenants, and use and maintenance agreements of record, all at the time of completion thereof.

(a) For this purpose, Second Party does further warrant, covenant and agree with First Party that a sum of money equal to five percent (5%) of each and every lot sale price shall be paid by Second Party into an escrow account at the time of closing of each lot sale agreement upon lots located within the Elk Run Subdivision. Said sums shall be applied to the satisfaction of all construction cost resulting from said amenity package. All deficits in cost of construction shall be paid by Second Party and all surpluses in said escrow account

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shall be paid unto Second Party after completion of the amenity package.

(b) It is understood and agreed between the parties hereto that Second Party intends to construct the amenity package for Elk Run Subdivision over a period of time. First Party understands and accepts that there may be some unsightliness, noise and inconvenience necessarily associated with said construction.

(c) The parties further agree that the final design and terms of construction of the amenity package shall be at Second Party's sole and exclusive option and election.

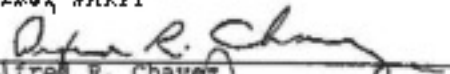
5. The above and foregoing is declared to constitute the entire agreement between the parties hereto with the same being declared to incorporate and include any and all prior and/or concurrent negotiations, understandings and/or agreements between the parties hereto except for that certain written agreement between the parties hereto executed on July 3, 1979, which agreement is declared to remain in full force and effect. This agreement may not be modified, changed and/or altered except by written agreement executed by all parties hereto, less and except that First Party may terminate its right to use and/or enjoy any rights, duties and/or privileges afforded hereby upon written notice to the Elk Run Homeowners Association, less and except for the easement, which shall continue.

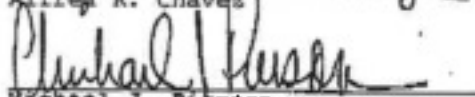
6. If and in the event, more than one person, partnership, venture, corporation and/or other entity shall constitute a "Party" hereto as defined herein, all terms and provisions set forth herein are declared to be joint and several as to each.

7. This agreement shall be binding upon all heirs, beneficiaries, successors, assigns, personal representatives, attorneys, agents, guardians, administrators, administratrix, trustees and/or receivers.

Signed and executed on the date and year above stated.

FIRST PARTY


Alfred R. Chaves


Michael J. Pierson

SECOND PARTY

MOUNTAIN ENTERPRISES-80
By: MOUNTAIN Enterprises, Inc.

By: 
James A. Bagley, President

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AMENDMENTS TO USE AND MAINTENANCE
AGREEMENT OF AUGUST 1, 1979

Clause 1(c) is amended to read as follows:

(c) maintenance by the Elk Run Homeowners Association of all private roads, private streets, private lanes, private avenues, private courts, private circles, and/or public roads having less than a sixty (60) foot legal right of way which are now located upon said lot 29, Chalet Village Addition 11, Town of Mt. Crested Butte, State of Colorado, and provide direct and immediate access to the same. "Direct and immediate access to the same" is agreed between the parties hereof to exclude any and all roads, roadways, streets, lanes, avenues, courts, and/or circles, other than those created by a conveyance of easement across private property now owned either by First party or Second party; (this provision shall not in any way limit First party's access to the amenities package).

The last sentence of paragraph 4 (prior to 4(a)) is amended to read as follows:

Said Tract "A" as well as the amenity package constructed thereon, shall be conveyed without charge by Second party to the Elk Run Homeowners Association free and clear of all restrictions, liens and/or encumbrances less and except restrictions, easements, rights of way, covenants, and Use and Maintenance Agreements of record, all at the time of completion thereof.

SECOND PARTY:

FIRST PARTY:

MT. ENTERPRISES - 00

BY: MOUNTAIN ENTERPRISES, INC.

BY: James A. Bagley
JAMES A. BAGLEY, PRESIDENT

Alfred R. Chavez
ALFRED R. CHAVEZ
Michael J. Pierson
MICHAEL J. PIERSON