

**PROTECTIVE COVENANTS
FOR LOTS 1, 2 AND 3, UTE PARK SUBDIVISION**

#365851 01/17/94 11:48 Rec \$35.00 BK 739 PG 20
Silvia Davis, Pitkin Cnty Clerk, Doc \$.00

WHEREAS, UTE PARK PARTNERSHIP, LTD., a Colorado limited partnership (hereinafter referred to as "Declarant"), has previously caused certain real property in Pitkin County, Colorado, located in the NW¼ of the SE¼, Section 18, Township 10 South, Range 84 West of the 6th Principal Meridian, to be surveyed, subdivided and platted into lots as shown on the Plat of the Ute Park Subdivision (hereinafter referred to as the "Subdivision"), which plat has been filed for record in the real property records of Pitkin County, Colorado on the 22nd day of February, 1993, in Plat Book 30 at Page 86 (hereinafter referred to as the "Plat"); and

WHEREAS, as of the date of recording of these Protective Covenants, Declarant is the owner in fee simple of said real property described on the Plat; and

WHEREAS, Declarant has filed for record in the real property records of Pitkin County, Colorado, that certain Master Deed Restriction, Occupancy and Resale Deed Restriction Agreement for Ute Park Subdivision restricting Lot 4, Ute Park Subdivision and the townhomes constructed thereon, to the acquisition or transfer to Qualified Buyers, as that term is defined therein, which Master Deed Restriction is recorded in Book 704 at Page 199 of said records; and

WHEREAS, Declarant wishes to impose certain covenants, restrictions, and limitations on Lots 1, 2 and 3, Ute Park Subdivision, as contained in these Protective Covenants.

NOW, THEREFORE, Declarant, as the owner of Lots 1, 2 and 3 within said Subdivision as so platted and above described, does hereby declare and acknowledge that said Lots 1, 2 and 3 are and shall hereafter be subject to all of the covenants, restrictions and limitations contained hereinafter. These covenants shall run to the benefit of and be enforceable by the owner of the lots within the Subdivision.

ARTICLE I - PURPOSE OF COVENANTS

1. General Requirements. It is the intention of Declarant, expressed by its execution of this instrument, that Lots 1, 2 and 3 within the Subdivision be developed and maintained as a highly desirable residential area. It is the purpose of these covenants that the present natural beauty, the natural growth and native setting and surroundings of the Subdivision shall always be protected insofar as is possible in connection with the uses and structures permitted by this instrument. It is of primary intent that the seclusion of each of the three residential home sites in the Subdivision be protected from neighboring home sites insofar as possible.

2. Notice Regarding Avalanche, Snowslide and Rock-fall Hazards. It is the further purpose of these covenants to place each owner of a Residential Lot on notice and each owner of a Residential Lot, by acceptance of the deed to such lot, shall be deemed to have acknowledged that the Residential Lots are susceptible to varying degrees of avalanche, snowslide and rock-fall risks and hazards and release the Declarant from any and all liability resulting therefrom. These and all attendant risks, conditions and effects, including without limitation, the risk of damage or breakage to structures, vehicles and bodily injury, affect the Subdivision. Such hazards are approximately located on the Plat. Each Residential Lot owner shall, in consultation with the Architectural Committee, appropriately engineer and

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design all dwellings and structures and place the same on each Residential Lot in a location to eliminate or mitigate against such hazards.

ARTICLE II -- DEFINITIONS

1. **Residential Lots.** Lots 1, 2 and 3 as designated on the recorded plat of the Subdivision.
2. **Recorded Plat.** The Plat recorded in Plat Book 30 at Page 86 of the records of the Clerk and Recorder of Pitkin County, Colorado and any amendments or replats thereof of all or a portion of said subdivision.

ARTICLE III -- ARCHITECTURAL COMMITTEE

1. **Architectural Committee.** The Architectural Committee shall be composed of the Declarant so long as Declarant owns a Residential Lot within the Subdivision. Thereafter the Architectural Committee shall consist of three members being one of the owners of each of the three Residential Lots. Any member petitioning the Architectural Committee shall abstain from voting on his own application. Said Architectural Committee shall have and exercise all of the powers, duties and responsibilities set out in this instrument, and may, but shall not be required to, establish guidelines and requirements for compliance with its authority with respect thereto, including the establishment of costs and fees reasonably related to the processing an evaluation of requests of Committee action.
2. **Approval by Architectural Committee.** No improvements of any kind, including but not limited to dwelling houses, barns, stables, outbuildings, swimming pools, tennis courts, ponds, parking areas, fences, walls, garages, drives, antennas, flagpoles, curbs, walks, landscaping and vegetation be altered or destroyed nor any landscaping performed on Residential Lot, unless the complete architectural plans for such construction or alteration or landscaping are approved in writing by the Architectural Committee prior to the commencement of such work. In the event the Architectural Committee fails to take any action within 60 days after complete architectural plans for such work have been submitted to it, then all of such submitted architectural plans shall be deemed to be approved.
3. **Variances.** Where circumstances, such as topography, location of property lines, location of trees and brush, or other matters require, the Architectural Committee may allow reasonable variances as to any of the covenants contained in this instrument, on such terms and conditions as it shall require.
4. **General Requirements.** The Architectural Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on the lands within the Subdivision conform and harmonize with the natural surroundings and with the existing structures as to external design, materials, color, siting, height, topography, grade, landscaping and finished ground elevation. The Architectural Committee shall protect the seclusion of each home site from other home sites insofar as possible and shall require landscaping and the planting of specimen trees in accordance with City of Aspen requirements for approval of the Subdivision or in the discretion of the Committee.
5. **Preliminary Approvals.** Persons who anticipate constructing improvements on any Residential Lot, whether they already own the Residential Lot or are contemplating the purchase of Residential Lots, may submit preliminary sketches of such improvements to the Architectural Committee for informal and preliminary review, but the Architectural

Committee shall never be finally committed or bound by any preliminary or informal approval until such time as complete architectural plans are submitted and approved.

6. Architectural Plans. The Architectural Committee shall disapprove any architectural plans submitted to it which are not sufficient for it to exercise the judgment required of it by these Protective Covenants.

7. Architectural Committee Not Liable. The Architectural Committee shall not be liable in damages to any person or association submitting any architectural plans for approval, or to any owner or owners of Residential Lots within the Subdivision, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, with regard to such architectural plans. Any person or association acquiring the title to any property in the Subdivision, or any person or association submitting plans to the Architectural Committee for approval, by so doing does agree and covenant that he or it will not bring any action or suit to recover damages against the Architectural Committee, its members as individuals, or its advisors, employees or agents.

8. Written Records. The Architectural Committee shall keep and safeguard for at least five years, complete permanent written records of all applications for approval submitted to it (including one set of all architectural plans so submitted) and of all actions of approval or disapproval and all other actions taken by it under the provisions of this instrument.

ARTICLE IV – GENERAL RESTRICTIONS ON ALL RESIDENTIAL LOTS

1. Residential Use. All Residential Lots shall only be used for residential purposes by the owners thereof, their family members, servants, guests and invitees.

2. Zoning regulations. No Residential Lot shall ever be occupied or used by or for any structure of purpose or in any manner which is contrary to the zoning regulations of the City of Aspen, Colorado, validly in force from time to time, except as the same may be allowed under said regulations as a nonconforming structure or use.

3. No Mining, Drilling or Quarrying. No mining, drilling, quarrying, tunnelling or excavating for any substance within the earth, including but not limited to, oil, gas, minerals, gravel, sand, rock, geothermal and earth, except for ponds, watercourses, utility, water and septic purposes, shall be permitted within the limits of the Subdivision. Nothing contained herein is intended to interfere with the construction of a residence.

4. No Business Uses. No Residential Lot shall ever be occupied or used for any commercial or business purpose (except for lawful home occupations) nor for any noxious activity, and nothing shall be done or permitted to be done on any of said Residential Lots which is a nuisance or might become a nuisance to the owner or owners of any said Residential Lots.

5. Signs. With the exception of one "For Sale" or "For Rent" sign (which shall not be larger than 24 x 30 inches) and except for entrance gate signage of a style and design approved by the Architectural Committee, no advertising signs, billboards, unsightly objects or nuisances shall be erected, altered or permitted to remain on any Residential Lot.

6. Animals. Only household pets may be kept on any Residential Lot. Any animals which interfere with wildlife within the Subdivision or any adjoining lands, or which

otherwise cause a disturbance among the other owners, shall be subject to removal by the owners of Residential Lots. In the event of a dispute as to whether an animal is a nuisance, the majority of Residential Lot owners shall decide in favor of a the complainant. If the majority of Residential Lot owners finds an animal to be undesirable and orders it removed, the owner must comply within fourteen (14) days or be subject to fines of \$25.00 per day thereafter, said fines to be levied and enforced as provided in Paragraph 1 of Article VII, below.

7. Service Yards and Trash. All equipment, campers, boats, trucks, trailers, service yards, woodpiles or other exterior storage on any Residential Lot shall be kept screened by adequate planting or fencing so as to conceal them from the view of neighboring lots and streets and access roads. All rubbish and trash shall be removed from all Residential Lots in the Subdivision, and shall not be allowed to accumulate and shall not be burned thereon except in approved incinerators.

8. No Discharge of Firearms. The discharge of firearms shall not be permitted on any of the lands in the Subdivision.

ARTICLE V -- RESTRICTIONS ON RESIDENTIAL LOTS

1. Number and Location of Buildings. No buildings or structures shall be placed, erected, altered or permitted to remain on any Residential Lot other than:

- (a) One detached single-family dwelling; and
- (b) One guest or caretaker or servant house or quarters if permitted by applicable zoning codes; and
- (c) One attached or detached garage; and
- (d) One or more accessory buildings or other structures. No dwelling house, building or other structure shall be placed, erected, altered or permitted to remain on any Residential Lot at any site or location other than that indicated as building envelopes on the recorded Plat or as existing on the date of recording of these Protective Covenants, except as otherwise specifically permitted in writing by the Architectural Committee and the City of Aspen.

2. Dwelling House to be Constructed First. No guest house, caretaker, or servant house, garage or other building shall be constructed on any Residential Lot until after commencement of construction of the dwelling house on the same lot. All construction and alteration work shall be prosecuted diligently, and each building, structure or improvement which is commenced on any residential tract shall be entirely completed within eighteen (18) months after commencement of construction.

3. Towers and Antennae. No towers or radio or television antennae or satellite transmission receiving antennae or dish shall be erected on any Residential Lot without the approval of the Architectural Committee and shall be fully screened from view from adjacent properties.

4. Trees and Landscaping. No trees or brush on any Residential Lot shall be felled or trimmed nor shall any natural areas be cleared, graded or formal lawn areas constructed, or landscaping performed on any Residential Lot without the prior written permission of the Architectural Committee. Under no circumstances shall healthy mature conifer trees be permitted to be cut down, destroyed or otherwise removed from the property unless consent is obtained from the City of Aspen. Mature conifer trees shall be deemed those which have a trunk diameter of 3½ inches or greater as measured by caliper at a point five (5') feet above the ground.

5. Tanks. No elevated tanks of any kind shall be erected, placed or permitted upon any Residential Lot except by special permission from the Architectural Committee and the City of Aspen.

6. Used or Temporary Structures. No used or previously erected or temporary house, structure, house trailer or nonpermanent outbuilding shall ever be placed, erected or allowed to remain on any Residential Lot, except during the construction periods, and no dwelling house shall be occupied in any manner prior to its completion.

7. Exterior Lighting. All exterior lights and light standards on Residential Lots shall be approved by the Architectural Committee for harmonious development and the prevention of lighting nuisances to other lands in the Subdivision and shall comply with the requirements of the City of Aspen exterior lighting guidelines and the scenic viewplane criteria.

8. Off-Street Parking. No dwelling house shall be constructed on any Residential Lot unless there is concurrently constructed on the same Residential Lot adequate off-street parking areas for at least four automobiles.

9. Sanitary Systems. No sewage disposal system, sanitary system, cesspool or septic tank shall be constructed, altered or allowed to remain or be used on any Residential Lot unless fully approved and permitted as to design, capacity, location and construction by all proper public health agencies of the State of Colorado and the City of Aspen.

10. Sprinkler Systems. In accordance with paragraph 20 of the Planned Unit Development and Subdivision Improvement Agreement for Ute Park Subdivision recorded in Book 214 at page 216, the single family dwellings constructed on Residential Lots 1 and 2 shall be sprinklered for fire protection.

ARTICLE VI -- RESTRICTIONS OF EASEMENT AREAS

1. Dwellings. No dwelling shall be placed, erected, altered or permitted to remain on any easement area shown on the Plat. Fences, ponds, accessory structures and private roads giving access to Residential Lots may be permitted, subject to the prior written approval of the Architectural Committee. Necessary utility installations shall be permitted along established or platted utility easements.

ARTICLE VII -- EASEMENTS AND LANDS RESERVED

1. Access and Utility Easement Maintenance. All of the Owners of the Residential Lots shall be responsible for the maintenance, repair, and snow removal of the Access and Utility Easement as the same is shown on the Plat. All expenditures made to

maintain, repair or remove snow from the Access and Utility Easement shall be borne equally by the three Residential Lot owners. Each owner shall have an enforceable lien upon the other owner's Residential Lot in an amount equal to any unpaid or unreimbursed share of such expenses following such owner's failure to pay his share after thirty (30) days written notice by the other owners. Such lien may be enforced by sale of the Residential Lot owned by the non-paying owner through judicial foreclosure in the event full reimbursement is not made within thirty (30) days of demand therefor. In such event, the foreclosing owner or owners shall be entitled to statutory interest from the date of demand and reasonable attorneys' fees. The foreclosing owner or owners shall have the power to bid at the foreclosure sale of the Residential Lot being sold.

2. Utility Easements Reserved. Declarant hereby reserves to itself, its successors and assigns, perpetual easements ten (10') feet in width on each side of the boundary line along the entire perimeter of each Residential Lot and all other easements across all of the lands in the Subdivision along the line of all domestic water lines and irrigation ditches, ponds and laterals presently in existence and across all other lands in the Subdivision, for the purpose of constructing, maintaining, operating, replacing, enlarging and repairing electric, telephone, water, irrigation, cable television, sewer, gas and similar lines, pipes, wires, ditches and conduits and walking or riding trails.

3. Easements for Private Roads. Declarant hereby reserves to itself, its successors and assigns, perpetual easements across Residential Lots 2 and 3 for the private Access and Utility Easement giving access to the Residential Lots.

ARTICLE VIII -- TRAIL EASEMENT

Declarant has dedicated to the public a nordic/pedestrian trail easement along the alignment as described on the Plat. The City of Aspen shall have the right to construct a nordic/pedestrian trail along said alignment, said trail to be used for non-motorized pedestrian, equestrian, bicycle or ski activities.

ARTICLE IX -- ENFORCEMENT

1. Enforcement Action. The Architectural Committee shall have the right to prosecute any action to enforce the provisions of all of these Protective Covenants by injunctive relief, on behalf of itself and all or part of the owners of Residential Lots. In addition, each owner of a Residential Lot shall have the right to prosecute any action for injunctive relief and for damages by reason of any violation of these covenants.

2. Limitations on Actions. In the event any construction or alteration or landscaping work is commenced upon any of the lands in the Subdivision in violation of these covenants and no action is commenced within ninety (90) days after completion of said improvement to restrain such violation, then injunctive or equitable relief shall be denied, but an action for damages shall still be available to any party aggrieved. Said ninety (90) day limitation shall not apply to injunctive or equitable relief against other violations of these Protective Covenants. Attorney's fees and costs shall be awarded to the prevailing party in any action to enforce these Protective Covenants in addition to any other damages, relief or remedy.

ARTICLE X -- GENERAL PROVISIONS

1. **Covenants to Run.** All of the covenants contained in this instrument shall be a burden on the title to all Residential Lots and the lands within the Subdivision, and the benefits thereof shall inure to the owners of all of the Residential Lots, and the benefits and burdens of all said covenants shall run with the title to all of the Residential Lots and the lands within the Subdivision.

2. **Termination and Amendment to Covenants.** The covenants contained in this instrument shall terminate January 1, 2044, unless extended as provided herein, except that those provisions incorporated herein by reason of a requirement of the City of Aspen shall not so terminate.

These covenants may be amended or extended by sixty-six (66%) percent of the owners of the Residential Lots. A properly certified copy of any resolution of amendment or extension shall be placed of record in Pitkin County, Colorado, not more than six (6) months after the date of said amendment. If these covenants are extended, then they shall continue in effect for so long thereafter as may be stated in said amendment or extension instrument.

3. **Severability.** Should any part or parts of these covenants be declared invalid or unenforceable by any court of competent jurisdiction, such decisions shall not affect the validity of the remaining covenants.

4. **Paragraph Headings.** The paragraph headings in this instrument are for convenience only and shall not be construed to be a part of the covenants contained herein.

IN WITNESS WHEREOF, Declarant as the owner in fee of Lots 1, 2 and 3, Ute Park Subdivision, has executed this instrument this 14th day of January, 1994.

UTE PARK PARTNERSHIP, LTD.,
a Colorado limited partnership

By: James T. Martin
James T. Martin,
General Partner

STATE OF COLORADO)
) ss.
COUNTY OF PITKIN)

This instrument was acknowledged before me this 14 day of January, 1994, by James T. Martin as General Partner of Ute Park Subdivision, Ltd., a Colorado limited Partnership.

Witness my hand and official seal.



My commission expires: 9-14-96

Thomas H. Morris
Notary Public