

RECORDED AT 1:15 o'clock P. M. May 23, 1986
 RECEPTION NO. 394249 Joanne M. Reintner Recorder
 By: Ruth Howard Deputy

RESTRICTIVE COVENANT AGREEMENT

This Restrictive Covenant Agreement is entered into this 12th day of December, 1985, among Carlton Hicks, whose address is 2600 Parkwood Drive, Brunswick, Georgia 31520, hereinafter referred to as "Hicks", and Paul L. Starry, whose address is 35 Three Mast Lane, Hilton Head, South Carolina 29928, hereinafter referred to as "Starry", and D. Richard Clark, whose address is Post Office Box 7508, Tulsa, Oklahoma 74105, hereinafter referred to as "Clark".

RECITALS:

WHEREAS, Hicks is the owner of Lots 19, 20, and 21, Chalet Village Addition No. 6, in the Town of Mt. Crested Butte, County of Gunnison, State of Colorado, according to the subdivision plat thereof filed for record in the office of the Gunnison County Clerk and Recorder and bearing Reception No. 160620; and

WHEREAS, Clark and Starry are the owners of Lots 22 and 23 in the said Chalet Village Addition No. 6; and

WHEREAS, Hicks has requested the Town of Mt. Crested Butte, "Town", to vacate Pt. Lookout Road as platted on the said plat of said Chalet Village Addition No. 6; and

WHEREAS, the Town by Ordinance No. 2, Series 1985 of Mt. Crested Butte, Colorado, has approved said request by Hicks subject to certain terms and conditions; and

WHEREAS, paragraph 2.a. of said ordinance requires the construction and dedication of a limited access drive across said Lots 19, 20, 21, 22, and 23; and

WHEREAS, said limited access drive has been dedicated and constructed as platted on the Amended Plat of a Portion of the Amended Plat of Chalet Village Addition No. 6 filed for record in the office of the Gunnison County Clerk and Recorder and bearing Reception No. 394247; and

WHEREAS, said dedication requires that the owners of the said lots and their respective heirs, successors, and assigns, shall be solely liable and responsible for the proper maintenance of the said limited access drive, to include any and all resurfacing, grading, drainage and snow removal, without any liability on the part of the Town of Mt. Crested Butte, Colorado; and

WHEREAS, the parties hereto are now desirous of setting forth their mutual rights and obligations as to the said maintenance, including snow removal of the said limited access drive.

NOW THEREFORE, in consideration of the covenants of the parties set forth below, it is hereby mutually agreed by and between the parties as follows:

1. Maintenance. All costs reasonably necessary for the upkeep and maintenance of the said limited access drive shall be borne equally by the parties according to the number of subject lots which they own.

2. Snow Removal. The cost of snow removal shall be borne equally by the parties according to the number of the subject lots which they own.

3. Assessments. Any party who incurs cost for either maintenance or snow removal as set forth above, may assess the other parties hereto for their share of said cost by sending notice thereof via certified mail, return receipt requested, to the address given for each party as set forth below. Said notice shall contain:

A. A copy of the bill or bills covering the maintenance or snow removal work for which reimbursement is sought.

B. A statement indicating the share of said expense to be reimbursed by the party to whom notice is sent.

4. Lien for Nonpayment of Assessments. All sums assessed to any party hereto in compliance with paragraph 3 above and not paid within 30 days from the date of said assessment, shall constitute a lien upon the subject lot or lots owned by the party from whom reimbursement is sought in favor of the party who is seeking reimbursement. Such lien shall be superior to all other liens and encumbrances on said lot or lots except only:

A. Tax and assessment liens on said lot or lots by any governmental authority.

B. All sums unpaid on a first mortgage of record, including all unpaid obligatory advances made pursuant to such mortgage.

4.1 To evidence such lien, the party in whose favor said lien exists may prepare a written notice of lien setting forth the amount of the assessment, the amount remaining unpaid, the name of the owner of the lot or lots affected, and a description thereof. Such notice may be recorded in the records of Gunnison County, Colorado. Such liens shall attach from the date of the failure of payment of the assessment and shall continue as a lien until all sums and other charges thereon, including the lienor's attorneys' fees and costs in the drafting and recording of said notice of lien and release thereof, have been fully paid, and such liens shall not be extinguished nor annulled by the foreclosure of any other lien.

4.2 Such lien may be enforced by foreclosure by the lienor in the same manner as a foreclosure of a mortgage. In such foreclosure, the owner shall be required to pay the cost and expenses for such proceedings, the cost and expenses for filing the notice of claim of lien and all reasonable attorneys' fees.

5. Covenants to Run With the Land. It is understood and agreed by the parties hereto that the covenants set forth herein shall attach to and run with the lots which are the subject of this agreement, and the owner or owners of any said lot or lots shall have the right to enforce compliance with said covenants by the lien power set forth herein, by injunction, or other legal proceedings.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the date first above written.

Carlton Hicks
Carlton Hicks, individually and as attorney in fact for D. Richard Clark and Paul L. Starry.



The foregoing instrument was acknowledged before me this 12th day of December, 1985 by Carlton Hicks, individually and as attorney in fact for D. Richard Clark and Paul L. Starry.

Witness my hand and official seal.
My commission expires: March 5, 1988

W.C. Davis, Jr.
Notary Public