

Cherry Creek Vista Homeowners Association

June, 2009

The following pages were retyped from copies of the original documents. The original documents are available through the Arapahoe County, Colorado, Clerk & Records office by referencing the individual document numbers.

Covenants

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
CHERRY CREEK VISTA HOMEOWNERS ASSOCIATION

THIS DECLARATION, made on the date hereinafter set forth by PARK VISTA, INC., a Colorado corporation, hereinafter referred to as "Declarant".

WITNESSTH:

WHEREAS, Declarant is the owner of certain property in the County of Arapahoe, State of Colorado, which is more particularly described as follows:

A part of the SW1/4, Section 14, Township 5 South, Range 67 West of the 6th Principal Meridian, County of Arapahoe, State of Colorado, described as follows:

Beginning at a point on the West line of said Section 14 a distance of 328.56 feet North of the Southwest corner of said Section 14; thence continuing North along said West line 1141.41 feet; thence Easterly on a deflection angle of 90° to the right 370.00 feet; thence Northerly on a deflection angle of 93° 28' 06" to the left 330.61 feet; thence Northeasterly on a deflection angle of 34° 54' 31" to the right 84.04 feet; thence Northwesterly on a deflection angle of 90° to the left 21.26 feet; thence Northeasterly on a deflection angle of 90° to the right 170.00 feet; thence Southeasterly on a deflection angle 90° to the right 768.46 feet; thence on a deflection angle of 30° 41' 32" to the right 132.24 feet; thence Northeasterly on a deflection angle of 106° 25' 17" to the left 134.01 feet; thence on a deflection angle of 90° to the right and along a curve to the left with a radius of 45.00 feet and a central angle of 185° 06' 38" an arc distance of 145.39 feet; thence on a radial of the aforesaid curve 93.30 feet; thence Easterly on a deflection angle of 49° 23' 58" to the right 174.13 feet; thence Southeasterly on a deflection angle of 43° 42' 11" to the right 54.80 feet; thence on a deflection angle of 24° 55' 32" to the left 113.57 feet; thence Southwesterly on a deflection angle of 86° 21' 04" to the right 640.13 feet; thence Westerly on a deflection angle of 90° to the right 170.49 feet; thence on a deflection angle of 53° 39' 54" to the left 50.00 feet; thence Southeasterly on a deflection angle of 90° to the left and along a curve to the right with a radius of 155.00 feet and a central angle of 10° 42' 52" an arc distance of 28.99 feet; thence Westerly on a radial of the aforesaid curve 114.88 feet' thence Southwesterly on a deflection angle of 60° 43' 39" to the left 356.00 feet; thence Westerly on a deflection angle of 78° 28' 15" to the right 113.77 feet; thence on a deflection angle of 11° 26' 16" to the right 50.90 feet; thence on a

deflection angle of 10° 12' 50" to the left 11.91 feet; thence Southerly on a deflection angle of 93° 32' 09" to the left 200.00 feet; thence Southwesterly on a deflection angle of 40° 07' 11" to the left 83.09 feet; thence on a deflection angle of 24° 32' 12" to the left 160.00 feet; thence Southerly on a deflection angle of 19° 47' 13" to the left 141.36 feet; thence Westerly at a deflection angle of 85° 16' 37" to the right 180.00 feet; thence Southerly at a deflection angle of 90° to the left 26.65 feet; thence Westerly at a deflection angle of 86° 54' 57" to the right 129.88 feet; thence Northerly at a deflection angle of 90° to the right 75.00 feet; thence Westerly at a deflection angle of 90° to the left 99.69 feet; thence Northwesterly on a deflection angle of 63° 36' 44" to the right and a long a curve to the left with a radius of 45.00 feet and a central angle of 37° 13' 28" an arc distance of 29.24 feet; thence on a deflection angle of 37° 13' 28" to the right 43.25 feet; thence on a deflection angle of 90° to the left 220.00 feet to the point of beginning, known as CHERRY CREEK VISTA FILING NO. ONE.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of , and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall insure to the benefit of each owner hereof:

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to CHERRY CREEK VISTA HOMEOWNERS ASSOCIATION, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, where one or more person or entities of a fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as a security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

A Park Site located within Southwest Quarter, Section 14, Township 5 South, Range 67 West of the 6th P. M., County of Arapahoe, State of Colorado, described as follows, to-wit: Commencing at the Southwest Corner of Lot I, Block I, CHERRY CREEK VISTA FILINGIN NO. ONE; thence North

at an angle of 90° for a distance of 347.02 feet to a point, thence Northeasterly at an angle of 124° 31' 20" at a distance of 134.01 feet to a point; thence on an arc having a radius of 45.00 feet a central angle of 185° 06' 38" for a distance of 145.39 feet to a point; thence continuing Northeasterly for a distance of 93.30 feet to a point; thence Easterly at an angle of 130° 36' 02" a distance of 174.13 feet to a point; thence Southwesterly on an angle 69° 42' 09" a distance of 78.55 feet; thence continuing along the Easterly boundary of Kenton Court a distance of 358.87 feet to a point; thence continuing along the Northwesterly boundary of Kenton Court a distance of 255.67 feet to a point; thence a distance of 42.62 feet to the true point of beginning. All of the above and foregoing site being referred to as "Park Site" on the Plat of CHERRY CREEK VISTA FILING NO. ONE, recorded in Book 21 at page 4 on May 24, 1971, in the records of the Clerk and Recorder of Arapahoe County, Colorado.

A parcel of ground located in the Southwest Quarter, Section 14, Township 5 South, Range 67 West of the 6th P. M., County of Arapahoe, State of Colorado, which is designed on the Plat of CHERRY CREEK VISTA FILING NO. ONE, as "Out Lot A" and shown in the center of East Dorado Avenue at its most Westerly point where the same intersects with South Havana Street.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded Subdivision Map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to PARK VISTA, INC., a Colorado corporation, its successors or assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated in the Common Area;
- (b) The right of the Association to suspend the voting right and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agent, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3rds) of each class of members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate in accordance with the By Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to an assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the class B membership, or
- (b) On January 1, 1974.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association; (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien up on the property against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's 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 personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Twenty-Four Dollars (\$24.00) per Lot; payable at the rate of Two Dollars (\$2.00) per month and due on the first day of each and every month following said conveyance.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 3 percent of the maximum assessment for the previous year without a vote of membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year above 3 percent by a vote of two-thirds (2/3rds) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum of Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty days nor more than sixty days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held no more than sixty days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment

against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth where the assessment on a specified Lot has been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at 6 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability from the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any assessments thereafter becoming due or from the lien, thereof.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specification have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so hereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in nowise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term on twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional land within the area described in Book 1927, Page 605; Book 1782, Page 259; Book 1864, Pages 59, 60, 61 and 62; Book 1756, Page 104; Book 1915, page 354; and book 1797, Pages 646 and 650 of the land records of Arapahoe County, Colorado, may be annexed by the Declarant without the consent of members within fifteen (15) years of the date of this instrument provided that FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 6. Place of Payment of Annual Assessments. The place to which all annual assessments herein required must be made shall be to: CHERRY CREEK VISTA HOMEOWNERS ASSOCIATION at 3605 South Tamarac Street, Denver, Colorado 80237.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein has hereunto set his hand and seat this 1st day of July, 1971.

PARK VISTA, INC., a Colorado corporation

AMENDMENT TO PROTECTIVE COVENANTS

FOR

CHERRY CREEK VISTA, FILING NO. ONE

WHEREAS, Park Vista, Inc., has heretofore recorded Protective Covenants for a subdivision known and plotted as Cherry Creek Vista, Filing No. One, County of Arapahoe, State of Colorado.

WHEREAS, said Protective Covenants were recorded in the office of the Clerk and Recorder of the County of Arapahoe, State of Colorado on April 14, 1972 in book 2010 on Page 149.

WHEREAS, Park Vista, Inc., is desirous of clarifying one of the terms and conditions contained within the aforementioned recorded Protective Covenants.

The foregoing instrument was subscribed and sworn to before me this 22nd day of May, A. D., 1972, by MICHAEL K. COOPER as President and GARY COOPER as Secretary-Treasurer of PARK VISTA, INC., a Colorado corporation.

My commission expires: _____

Notary Public

APPROVAL OF MORTGAGE HOLDERS

GARRETT-BROMFIELD MORTGAGE COMPANY

Thomas J. Coughlin, Executive
Vice President

ATTEST:

Dolores Maron, Assistant Secretary

STATE OF COLORADO)
)ss.
City and County of Denver)

The foregoing instrument was subscribed and sworn to before me this 25th day of October, A.D., 1971 by THOMAS J. COUGHLIN as Executive Vice President and DOLORES MARON as Assistant Secretary of GARRETT-BROMFIELD MORTGAGE COMPANY, a Colorado corporation.

My commission expires: _____

Notary Public

SECOND AMENDMENT TO PROTECTIVE COVENANTS

FOR

CHERRY CREEK VISTA FILING NO. ONE

WHEREAS, Park Vista, Inc., has heretofore recorded Protective Covenants for a subdivision known and platted as CHERRY CREEK VISTA, FILING NO. ONE, County of Arapahoe, State of Colorado.

WHEREAS, said Protective Covenants were recorded in the office of the Clerk and Recorder of the County of Arapahoe, State of Colorado, on April 14, 1972 in Book 2010 at Page 149.

WHEREAS, an Amendment to said Protective Covenants was recorded in the office of the Clerk and Recorder in the County of Arapahoe, State of Colorado, on May 26, 1972, in Book 2022 at Page 170.

WHEREAS, Park Vista, Inc. is the sole owner of all real property lying within the said subdivision known and platted as CHERRY CREEK VISTA, FILING NO. ONE, County of Arapahoe, State of Colorado.

WHEREAS, Park Vista, Inc. is desirous of adding an additional Protective Covenant which shall bind any and all successive owners of real property located within Cherry Creek Vista, Filing No. One, County of Arapahoe, State of Colorado.

NOW, THEREFORE, Park Vista, Inc. does for itself, its grantees, successors and assigns hereby declare, impose and establish the following condition and protective covenant with respect to the subdivision known as Cherry Creek Vista, Filing No. One, County of Arapahoe, State of Colorado, to-wit:

1. That all lots shall be subject to and bound by Public Service Company tariffs which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado relating to street lighting in this subdivision, together with rates, rules and regulations therein provided and subject to all future amendments and changes thereto. All owner or owners shall pay as billed a portion of the cost of public street lighting in the subdivision in accordance with the rates, rules and regulations now in effect and as hereafter amended by the Public Service Company; the same to be filed with the Public Utilities Commission of the State of Colorado.
2. Park Vista, Inc. hereby reaffirms, ratifies, adopts and incorporates by reference all prior recorded Protective Covenants dated the 25th of October, 1972; recorded on the 14th day of April, 1972, in Book 2010 at Page 149, Arapahoe County, Colorado; as well as, the Amendment thereto recorded May 26, 1972, in Book 2022 at Page 170.
3. That this Second Amendment to Protective Covenants shall in no way later, modify or negate those certain Declaration of Covenants, Conditions and Restrictions for Cherry Creek Vista Homeowner's Association which were recorded October 22, 1972 in Book 1966 at page 783 of the records of the Clerk and Recorder of the County of Arapahoe, State of Colorado.
4. That this Second Amendment to Protective Covenants shall run with the title to the land and be binding upon all parties claiming under them until June 1, 1997, after which time said Second Amendment to Protective Covenants shall automatically be extended for successive periods of ten (10) years until an instrument signed by a majority of the owners of the lots within the subdivision has been recorded therein agreeing to change the terms and conditions of this instrument in whole or in part. Further, any such change must be approved in writing by Public Service Company of Colorado prior to its taking effect

DATED at Englewood, Colorado, this 22nd day of May, A.D., 1972.

PARK VISTA, INC., a Colorado corporation

By: _____
Michael K. Cooper, President

ATTEST:

By: _____
Gary Cooper, Secretary-Treasurer

STATE OF COLORADO)
) ss.
County of Arapahoe)

The foregoing instrument was subscribed and sworn to before me this 1st day of June, A. D., 1972, by MICHAEL K. COOPER as President and GARY COOPER as Secretary-Treasurer of PARK VISTA, INC., a Colorado corporation.

My commission expires: _____

Notary Public

APPROVAL OF MORTGAGE HOLDERS

GARRETT-BROMFIELD MORTGAGE COMPANY

Thomas J. Coughlin, Executive
Vice President

ATTEST:

Dolores Maron, Assistant Secretary

STATE OF COLORADO)
)ss.
City and County of Denver)

The foregoing instrument was subscribed and sworn to before me this 25th day of October, A.D., 1971 by THOMAS J. COUGHLIN as Executive Vice President and DOLORES MARON as Assistant Secretary of GARRETT-BROMFIELD MORTGAGE COMPANY, a Colorado corporation.

My commission expires: _____

Notary Public