

**DECLARATION OF PROTECTIVE COVENANTS
FOR THE RESERVE AT PAGOSA PEAK**

The Reserve at Pagosa Peak, LLC, Declarant, is the owner of real property situated in the county of Archuleta, state of Colorado, known as The Reserve at Pagosa Peak Subdivision and legally described on Exhibit A attached hereto. The Reserve at Pagosa Peak, LLC, in order to protect the living environment and preserve the values of property, does hereby declare that the land should be held, leased, sold and conveyed, subject to the covenants, restrictions, and provisions hereinafter set forth, and that each covenant, restriction, and provision shall inure to and run with the land and shall apply to and bind the successors and assigns of the present owners. The Tracts, Lots, and Open Space comprising the above-mentioned land are made specifically subject to the following described covenants.

DEFINITIONS

The following words and expressions as used in these covenants have the meanings indicated below unless the context clearly requires another meaning.

- DECLARANT:** Reserve at Pagosa Peak, LLC and its successors and assigns.
- ASSOCIATION:** The Reserve at Pagosa Peak Property Owners Association, Inc.
- BOARD:** The Reserve at Pagosa Peak Property Owners Association, Inc. Board of Directors.
- COMMITTEE:** The Reserve at Pagosa Peak Architectural Review Committee.
- GUIDELINES:** The Architectural Guidelines for The Reserve at Pagosa Peak.
- LOT:** Those portions of the property designated as such on the Plat.
- TRACT:** Those portions of the property designated as such on the Plat, for the benefit and use of the Association and Owners of the Property.
- OWNER:** Any person, persons, or legal entity holding the recorded fee simple interest in a Lot or Lots at The Reserve at Pagosa Peak Subdivision.
- PROPERTY:** Certain real property described on Exhibit A hereto, together with all appurtenances thereto and all improvements now or hereafter thereon, also known as The Reserve at Pagosa Peak Phases 1 ("Forest Gate"), 2 ("Redtail Valley"), 3 ("Eagle Point"), and 4 ("The North Range").
- COUNTY:** Archuleta County, Colorado.

Rto Land Properties INC
PO Box 3310
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ACLUR: Archuleta County Land Use Regulations.

COMMON PROPERTY: Those portions of the Property designated as a Tract, including any building or structure located thereon and shall include, but not limited to, landscaping, gardens, walkways/trails, sidewalks, parking areas, playgrounds, picnic areas, gazebos, and outdoor living or recreational spaces, all of which is also known as "Open Space."

I. INTENT: It is the intent of these covenants to protect and enhance the value, desirability and attractiveness of said property, and to prevent the construction of improper or unsuitable improvements. Restrictions are kept to a minimum while keeping in constant focus the right of Owners to enjoy their Lot(s) and the Property in attractive surroundings free of nuisances, undue noise and danger. Further, it is intended that the natural environment be disturbed as little as possible.

II. THE ASSOCIATION: The Association will be operated for the Owner(s) as per the By-Laws and Articles of Incorporation of the Association.

(a) **Membership:** Every Owner will automatically be a member of the Association with one vote per Lot. As long as Declarant holds in fee simple greater than twenty (20) percent of the Property subject to the Covenants, including any subsequently annexed property, Declarant shall be entitled to appoint the majority of the directors of the Board entitled to be elected pursuant to the By-Laws, with the remaining directors elected by the Owners.

(b) **Purpose:** The purpose of the Association is to use its authority, as given in the By-Laws:

- (1) To enforce these protective covenants.
- (2) To assess Owners' annual assessments and special assessments. Any unpaid assessment, charge, fee or other sums assessed against an Owner or his Lot shall be a continuing lien, in favor of the Association upon the Lot against which each such assessment, fee or other sum is made.
- (3) To oversee and provide maintenance, repair, and improvements to all commonly-owned Tracts, Roads, National Forest Accesses, Trails, and Improvements contained within the Property. The roads within each Phase will be conveyed by Declarant to the Association upon 80% sell-out of that Phase in the Property.
- (4) To represent all Owners in matters of mutual interest.
- (5) To appoint/elect a three member Committee as outlined in Article IV contained herein.

III. DWELLINGS:

- (a) All Lots shall be restricted to residential use with one single-family dwelling permitted per Lot, in accordance with the following and as more fully set forth in the Guidelines.
- (1) All residential dwellings shall be no less than 1,800 square feet of living space and shall require a minimum two-car fully enclosed attached garage in addition to the living space. All residential dwellings on Lots 138, 139, and 140 shall be no less than 2,300 square feet of living space with the same garage requirements as stated above.
 - (2) In the event an Owner irrevocably consolidates three or more Lots, the resulting Lot may then have constructed thereon two single-family dwellings, at a minimum 30 feet apart, together with all improvements.
 - (3) The maximum height of any building shall be thirty (30) feet. The height of a building for the purpose of this requirement shall be measured and determined in the manner provided by the Uniform Building Code.
 - (4) Mobile homes and modular homes shall not be permitted on any Lot within the Property. UBC approved frame-less modular homes shall not be permitted.
 - (5) No building, shed, fencing, outbuilding, or improvement may be erected without prior approval in writing from the Committee. Any later changes or additions after initial approval thereof and any remodeling, reconstruction, alterations or additions on any Lot shall be subject to prior approval in writing from the Committee. This includes fencing for domestic animals, as addressed in Article IV, and screening for propane tanks, as addressed in Article V.
 - (6) Outside lighting shall be from indirect sources and horizontal cutoff fixtures (hooded fixtures). The intent is to reduce glare and provide general ambient light. See the Guidelines for more information.
 - (7) All exterior construction shall be completed within one year from the date of commencement, in accordance with the plans and specifications as approved by the Committee. All building exteriors shall be surfaced with log or log siding, cedar, stone, stucco, or other approved siding, which is a natural material and is in keeping with The Reserve at Pagosa Peak community as a whole. Vinyl siding or other comparable synthetic materials will not be allowed. Color may vary, but will be restricted to pre-selected color ranges to be determined by the Committee.
 - (8) All roofs shall meet Uniform Building Code snow-load requirements. All roofs shall be a minimum 6-12 pitch. The texture should reflect other material on the home

and adjacent properties. Roofing materials such as fire retardant treated shingles and shakes, slate, tile, or other non-reflective/low glare materials are encouraged. Standing seam metal roofs may be approved if they are an integral part of the overall building aesthetic. All other metal roofs shall be prohibited.

- (9) No structure of temporary character, recreational vehicle, camper unit, trailer, basement, tent or accessory building shall be used on any Lot as a residence.
- (10) Following construction in all areas, including sloping terrain, bare soil shall be re-seeded by the Owner to prevent erosion and dust. Re-seeding should be with grasses and wildflowers native to the area or with grass seed in an area to be maintained as lawn. Only native shrubs or trees shall be used for landscaping.
- (11) Construction on slopes 20% or less does not require any additional testing or engineering for soils, slope stability, or foundations. Construction may be allowed on slopes between 20% and 30% upon approval from the County after providing the following:
- (a) A foundation designed and approved by a qualified Colorado registered professional engineer, and
 - (b) A soils study and a slope stability study of the proposed building footprint by a qualified Colorado registered professional engineer.
- Such slopes are depicted as shaded areas on the recorded plat.
- (12) No construction shall be allowed within ten (10) feet of any wetland boundary. Such boundaries are depicted as shaded areas on the recorded plat.
- (13) Lots in this subdivision may be subject to the potential for Radon. Construction practices should take into account the possibility of Radon and build with it in mind.

IV. ARCHITECTURAL REVIEW COMMITTEE:

- (a) **Written Approval of Plans Required.** No improvement or alteration of any Lot shall be constructed, erected, placed, planted, applied or installed upon any Lot unless plans and specifications therefore shall have been first submitted to, and approved in writing by, the Committee. Said plans and specifications shall show exterior design, height, materials, color and location of the improvements and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information that may be required by the Committee. The Committee shall exercise its reasonable judgment to the end that all improvements conform to, and harmonize with, the existing surroundings, residences, landscaping and structures.
- (b) **Term.** The initial Committee shall be comprised of the persons appointed by the Declarant for a term of three years, or until the Association assumes control.

- (1) Thereafter, the Committee shall be comprised of three members elected annually for a term of two years by the Association at the annual meeting of the Association. Such members shall be Owners of a Lot(s) within the Property.
 - (2) In the event of the death or resignation of any member of the Committee, the Board shall have full authority to appoint a successor who shall be an Owner in the Property.
- (c) Procedures. Building plans and specifications for all proposed structures, improvements, and road cuts shall be submitted to the Committee prior to the commencement of any construction, including the \$2,500.00 security deposit for the benefit of the Association as outlined below.
- (1) Submittal of plans shall include a site location plan for improvements, including elevations, indicating the location of each improvement on the Lot. This includes any residential dwelling, garage, outbuilding, wall, fence, propane tank, driveway, or any other improvement proposed to be constructed, altered, or placed on the Lot.
 - (2) Submittal of plans shall include color schemes, styles, and types of materials for roofs and exteriors of all improvements.
 - (3) Owner shall provide the Committee with a security deposit (i.e. certificate of deposit, cash, etc.) in the amount of \$2,500.00 for the benefit of the Association. The security deposit is held to ensure satisfactory completion of the improvements, in the accordance with the approved plans, including but not limited to reclamation of the Property and roads, erosion control, reseeding, and trash removal. Owner will be reimbursed the security deposit upon approval of satisfactory completion from the Declarant or Committee, unless it is necessary to use all or part of the deposit for satisfactory completion.

In the event the improvements are not satisfactorily completed, the Declarant or Committee shall notify the Owner of the needed action. If the needed action is not completed by the Owner within 45 days of mailing of said notice, the Board, at its option, may contract with a third party for the needed work, use the security deposit towards expenses incurred, and assess any costs exceeding \$2,500.00 against the Owner. The provisions regarding assessments contained in Article XXX FEES & ENFORCEMENT shall apply.
 - (4) The Committee shall respond in writing to the Owner and/or Contractor within thirty (30) calendar days after receiving a complete submittal. The response may approve or disapprove the plans, approve the plans with conditions, or make recommendations for changes or adjustments deemed necessary or appropriate by

the Committee. If the Committee does not respond to the Owner within 30 days after receiving a complete submittal, the response period will automatically be extended for an additional 15 days. If a response from the Committee is not received following this 15-day response extension, the plans shall be considered approved.

- (5) Should the Committee provide written disapproval, the reason(s) shall be so stated with suggested changes, which if adopted, would result in approval.
- (6) Owner shall have the right to an appeal of any decision made by the Committee. The Committee must receive written request of appeal within thirty (30) days of original decision.
- (7) All plans and specifications submitted will remain in the permanent files of the Committee.
- (8) Approval by the Committee does not constitute compliance with the zoning or building codes and regulations of the County, and any other applicable state or federal agencies. It shall be the responsibility of the Owner to comply therewith and obtain all approvals, licenses and permits prior to the commencement of construction.
- (d) The Committee shall have the authority to set up regulations as to the materials, height, and size requirements for all structures, outbuildings, fences, etc., so long as they are consistent with the purpose of these Covenants. The Committee shall also have the authority to adopt, from time to time, such additional rules and regulations as are appropriate or necessary to govern its proceedings and fulfill its obligations.
- (e) The Committee may allow reasonable variances and adjustments of the restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein, provided that such variance is not materially detrimental or injurious to other Lots, Tracts, or improvements within the Property. Any variance so granted shall be in writing from the Committee.

IV. FENCES: Perimeter fencing is not allowed on any Lots within the Property, except for perimeter fencing of the subdivision as required by ACLUR. Fencing is allowed within twenty-five (25) feet of the residence with prior approval in writing from the Committee regarding the location and style of fence (see Guidelines for more information). No chainlink, metal, or wire fencing material will be allowed.

The Association, in accordance with ACLUR shall maintain the perimeter fence of the Property with consideration to input and guidelines from the Colorado Division of Wildlife.



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V. PROPANE TANKS: Propane tanks, for the storage of fuel, installed outside any structure on the Property shall be underground.

VI. ROAD MAINTENANCE: All maintenance, repairs, snow plowing, and supervision of all roads located within the Property shall be the duty of the Association. The Association shall maintain the roads in suitable condition for year round access and use by the Owners of the Property, all emergency vehicles, and public and private utility companies. All Owners shall be responsible for the construction and maintenance of their private driveways, as outlined in Article XVIII contained herein.

VII. SETBACKS: No structure may be erected within thirty (30) feet of the right-of-way line of any road within the Property nor within ten (10) feet of any common side Lot/Tract line or twenty (20) feet of any rear or uncommon/exterior side Lot line of any Lot. For the purpose of these covenants, eaves, steps, and open porches shall be considered part of the structure.

VIII. TRASH AND RUBBISH: No trash, ashes, garbage or other waste shall be allowed to accumulate or be placed on any Lot within the Property. All waste shall be kept and disposed of in a sanitary manner in bear-proof containers. A burning permit issued by the Pagosa Fire Protection District is required before burning on any Lot.

IX. ACCESS AND UTILITY EASEMENTS: A ten (10) foot access and utility easement is hereby set aside on each side of all side and common rear Lot lines and a twenty (20) foot access and utility easement on the interior of all exterior lot lines. A twenty (20) foot access and utility easement is hereby set from each side of all roadways. All future electric and phone lines shall be extended underground. Easements for installation and maintenance of utilities, roadways and such other purposes incidental to development of the Property as reserved and shown by notes on the recorded plat of the Property shall be kept open and readily accessible for use, service, and maintenance. The Declarant and/or Association shall have the right to access, extend, install, and maintain all utilities along, over, under and through the Tracts, together with the right to carry out any activities necessary and appropriate for such purpose.

X. NUISANCES: Owners shall not cause or allow the origination of excessive odors or sounds from their Lots. All complaints shall be brought to the Board and efforts causing said nuisance shall cease until an agreement has been reached. In case of dispute, at the request of an Owner, the Board shall make the final determination of what constitutes a nuisance.

XI. ANIMALS: No animals shall be housed, raised or kept on any lot, including livestock grazing and barnyard animals, except for domestic household pets, which must be physically restrained. Domestic household pets are limited to four (4) per household, and no animals shall be allowed to run free. The owner of any animal shall at all times be personally liable and responsible for all actions of such animals and any damage caused by such animal.



The Colorado Division of Wildlife has identified this area as a big game migration corridor. Therefore, wildlife habitat such as deer, elk, black bear, and other species may be found in the area. Owners should also be aware that hunting takes place on the National Forest surrounding the property. Feeding of wildlife is restricted to enclosed food dispensers, which, whether dispensing solids or liquids, shall be placed in a manner such that they are suspended a minimum of twelve (12) feet in height and placed a minimum of four (4) feet away from any permanent structure. Platform feeders and ground feeding are prohibited.

XII. NATIONAL FOREST ACCESS/WALKING TRAILS: Accesses to the San Juan National Forest are provided only for the use of Owners and residents of the Property. Entry points to the National Forest are designated on the recorded plat and will be accessed by trails to be created through the Tracts in the Property.

Use of the accesses and/or trails are restricted to foot and all non-motorized traffic. Maintenance, repair, and supervision of the accesses and/or trails shall be the duty of the Association.

The approximate location of the trails is shown on the recorded plat. However, the actual location may vary, as the trails will be built taking into consideration the topography of the subdivision and the natural habitat that exists.

XIII. COMMERCIAL ACTIVITY: Limited in-house commercial activity will be allowed, so long as such home occupation does not increase traffic in and out of the Property, and no signs advertising such activity are placed on the Lot or within the Property. All other in-house commercial activity must receive prior approval in writing from the Board.

XIV. VEHICLES: No motorized vehicle, which is either non-operational or non-licensed shall be kept or stored on any Lot, unless said vehicle is kept or stored in a fully enclosed building. All recreational vehicles, whether motorized or non-motorized, camper units, trailers, and similar units must be kept or stored in a fully enclosed building on the Lot or stored off the Property.

XV. FIREWORKS: The use of or discharge of fireworks of any kind within the Property is prohibited.

XVI. HUNTING AND THE USE OF FIREARMS: No hunting of any kind shall be permitted within the Property. No use of or discharge of firearms of any kind shall be permitted within the Property, except as needed to dispose of nuisance wildlife, in accordance with applicable state and local laws.

XVII. SIGNS: One sign of no more than four square feet shall be allowed on any Lot within the Property, except as needed during periods of construction for safety purposes. This provision shall not restrict the Declarant or a licensed real estate broker in the employ of the Declarant

from placing signs for sale, construction, safety or other use prior to the full sell-out of all Lots owned by Declarant.

XVIII. SUBVISION ROADS/DRIVEWAYS: All driveways shall be constructed to comply with the Private Driveway Access Specifications of the County Road Specifications and shall provide for adequate drainage, so as not to interfere with any natural drainage or create any additional erosion to the Property. It shall be the sole responsibility of Owner to pave driveway using asphalt or concrete within one year from start of residential construction. Owner is responsible for restoring the roads, including the graveled and/or paved surface and ditches, within the Property to its original condition, when they are disturbed and/or damaged due to the installation of driveways, culverts, utilities, or construction of any improvement to Owner's respective Lot.

XIX. NOXIOUS WEED CONTROL: The Association and every Owner, whether or not their Lot and/or Tract contains any improvements, shall take all action necessary to restrict the growth of and remove, noxious weeds and grasses, as identified by the County. The control of noxious weeds using chemical control methods shall be in accordance with U.S. EPA label restrictions, and all control methods shall be subject to approval by Pagosa Area Water and Sanitation District, prior to implementation, due to the drainage into Lake Hatcher.

XX. WETLANDS: Certain portions of the Property have been designated as wetlands, as defined by the US Army Corp of Engineers and as delineated on Sheet 2 of the recorded Plat. To ensure preservation of wetland functions, the following language shall apply to all preserved wetlands, constructed wetland mitigation areas, and to a 10-foot upland buffer adjacent to the wetlands within the Property:

The existing vegetation shall not be removed.

The construction of any permanent structure is prohibited.

The grazing of animals is not allowed.

The filling, excavation, or other acts that would alter the topography are not allowed.

Any additional planting(s) shall be species native to the area.

XXI. DEFENSIBLE FIRE ZONES: Owners are required to protect their Lot and the Property by creating a fire safety zone around all buildings. Guidelines and additional suggestions for a defensible fire zone may be obtained in a brochure available from the Pagosa Area Fire Protection District and Colorado State Forest Service offices. The Colorado State Forest Service or other county approved inspector must approve the required defensible fire zone around all buildings at Buyer's expense, in order to receive a certificate of occupancy from the Archuleta County Building Inspector.

The Association will be required to have the Property inspected for a fee by the Colorado State Forest Service or other county approved inspector on an annual basis in order to maintain any fire hazard. The Board will act on the recommendation(s) of the inspector and may use their authority as provided in Article XXXI. Fees And Enforcement, contained herein.

XXII. LAND USE: Commercial wood harvesting, mining (including rock, soil and gravel) and oil or gas production is prohibited on the Property. This covenant shall not preclude the Declarant and/or its assigns from removing rock, soil and gravel from any Lot owned by the Declarant for the purpose of construction material or the benefit of future Lots and/or roads within the Property.

XXIII. COMMON PROPERTY/TRACTS: All parks, recreational facilities, trails and other amenities within the Property are private, and neither the Declarant's recording of the plat nor any other act of the Declarant with respect to the plat, shall be construed as a dedication to the public, but rather all such amenities shall be for the use and enjoyment of Owners of the Association.

All Tract(s) as shown on the plat are designated as Open Space for use by the Association shall be conveyed to the Association as common element property for the common use, benefit and enjoyment of its Owners and residents, and such conveyance shall be accepted by it, provided it is free and clear of all financial encumbrances.

All uses of the Tract(s) shall be subject to rules and regulations of the Association as established by the Board thereof from time to time. Uses of the undeveloped and unimproved Tract(s) shall be limited to those activities which do not materially injure or scar the Tract(s) or cause unreasonable disturbance to the Owners in the enjoyment of their Lot(s) or the Tract(s).

The Association shall maintain applicable liability and hazard insurance coverage on all Tracts, together with any improvements thereon. All maintenance, repairs, and supervision of all common property located within the Property shall be the duty of the Association.

XXIV. ENFORCEMENT: Enforcement of these covenants shall be by proceedings at law, in equity or by mediation against any person or persons violating or attempting to violate any covenant.

XXV. TERMS OF COVENANTS: These covenants and restrictions are to run with the land and shall remain in full force and effect for ten years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten years, excepting that an instrument signed by not less than a two-thirds (2/3) majority of the Owners of the Lots may be recorded, changing said covenants in whole or part at any time after the Association assumes control. The Declarant reserves the right to change said covenants, in whole or part, prior to the Association assuming control, upon an instrument being signed by a majority of the Owners of the Lots. These covenants shall incorporate all information presented on the final plat. The final plat may be amended only pursuant to the approval of the Board of County Commissioners. No changes, which would alter Section XX. WETLANDS, in whole or part shall be made without prior written approval of the US Army Corp of Engineers.



XXVI. SEVERABILITY: Invalidation of any of these covenants or any part thereof by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

XXVII. COUNTY REGULATIONS: To the extent that the applicable county or other governmental regulations, rules, codes, ordinances or laws are more restrictive in their allowable land utilization than these covenants, they shall supersede these covenants and govern at all times.

XXVIII. COUNTER PARTS: This instrument may be executed in a number of counterparts any one of which may be considered an original.

XXIX. ANNEXATION: Declarant may from time to time within ten years after the date of recording of this Declaration of Protective Covenants annex property Declarant deems appropriate to the development by recording one or more annexation statements. Upon the recording of such Annexation Statement, all of the real property described in such annexation statement shall be deemed to be part of the Property and subject to all the terms and provisions of these Covenants.

XXX. FURTHER SUBDIVISION: No part of any Lot and/or Tract may be partitioned, separated or subdivided from any other part thereof. Nothing herein shall be construed as to prohibit two Owners from splitting a Lot located between their Lots, so long as no additional Lots are created, each resulting Lot has the same or greater street frontage, and the partitions split are irrevocably joined in title to contiguous Lots.

XXXI. FEES AND ENFORCEMENT: All Lots shall be maintained at all times by the Owner in good condition and repair. If an Owner fails to maintain his Lot, or any improvements thereon, in good repair, the Board may give the Owner written notice of the needed maintenance or repair. If said maintenance or repair is not completed by the Owner within 45 days of mailing of said notice, the Board, at its option, may contract with a third party for the needed work and assess the costs of same against the Owner.

All Lots within the Property shall be subject to assessments for fees in an amount to be determined by the Association. Should Owner consolidate two (2) or more Lots, each Lot shall be separately assessed any annual or special assessment. In addition to the annual assessment authorized above, the Association may levy and collect special assessments as determined by the Board, for the purpose of defraying, in whole or in part, the cost of an emergency situation or of any regular maintenance, construction, repair or replacement of a capital improvement upon any common area, and any improvements and fixtures upon any Lot, which benefits the Association and/or the Property as a whole. Assessment for fees will commence upon conveyance at the date of closing. The first year's fees will be prorated at the time of closing and fees thereafter shall be payable in advance in January of each calendar year.

