



98010338 12/09/1998 02:45P DCC
1 of 6 R 31.00 D 0.00 N 0.00 ARCHULETA COUNTY

DECLARATION OF PROTECTIVE COVENANTS for Elk Park

6

Timbered Canyon, LLC, A Colorado Limited Liability Company, the owner of real property situated in the County of Archuleta, State of Colorado, hereinafter referred to as *the Property* and legally described on Exhibit A attached hereto, in order to protect the living environment and preserve the values in *the Property*, does hereby declare that the land shall 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 property comprising the above-mentioned land is 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.

- Association:** Elk Park Property Owners Association, Inc.
- Board:** Elk Park Property Owners Association, Inc. Board of Directors.
- Declarant:** Timbered Canyon, LLC and its successors and assigns.
- Parcel:** Those portions of the property designated on the recorded plat.
- Owner:** Any person, persons or legal entity holding the recorded fee simple interest in a Parcel or Parcels in Elk Park.
- Property:** Certain real property described on Exhibit A hereto, together with all appurtenances thereto and all improvements now or hereafter thereon.

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 impairment or reduction of property values by, among other things, the construction of improper or unsuitable improvements. Restrictions are kept to a minimum while keeping in constant focus the right of property owners to enjoy their 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. **PROPERTY OWNERS ASSOCIATION:** The *Elk Park Property Owners Association, Inc.* will be operated as per the bylaws of the Association:

- (a) **Members:** Every property owner will automatically be a member of the Property Owners Association and be entitled to one vote per parcel owned.
- (b) **Purpose:** The purpose of the Association is to use its authority, as given in the bylaws:
 - (1) To enforce these protective covenants.
 - (2) To assess property owners annual assessments. Any unpaid assessment, charge, fee or other sums assessed against an Owner or his Parcel shall be a continuing lien, in favor of the Association upon the Parcel against which each such assessment, charge, fee or other sum is made.
 - (3) To provide upkeep and improvements to all non-county roads in *the Property*.
 - (4) To represent all property owners in matters of mutual interest.
 - (5) To administer and lease grazing rights.
- (c) **Board of Directors:** The business and affairs of the Association shall be managed by its Board of Directors. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of *the Property*. Such powers and duties of the Board shall include, but shall not be limited to, the following, all of which shall be done for and on behalf of the Owners of the Parcels:
 - (1) To administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in the Declaration, the bylaws of the Association and supplements and amendments thereto;
 - (2) To establish, make and enforce compliance with such rules and regulations as may be necessary for the operation, use and occupancy of all of the Parcels with the right to amend the same from time to time. A copy of such rules and regulations shall be delivered or mailed to each Member upon the adoption thereof;

return: Land Properties LLC
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PO Box 2376
Colorado Springs CO 80901

- (3) To incur such costs and expenses as may be necessary to keep in good order, condition and repair all of the areas in *the Property* required to be maintained by the Association;
- (4) To obtain and maintain all insurance required or permitted under the Declaration or otherwise deemed advisable by the Association;
- (d) **Control of Property Owners Association:** Notwithstanding anything else contained herein to the contrary, until all infrastructure and amenities are complete and/or as long as Developer owns in fee simple greater than twenty (20) percent of *the Property* subject to the Covenants, including any subsequently annexed property, the Developer shall be entitled to appoint the majority of the Directors on the Board of Directors for the Property Owners Association entitled to be elected pursuant to the bylaws, with the remaining Directors elected by the Owners.
- III. **DWELLINGS:** No dwelling shall be built on *the Property* that is less than 1,000 square feet of living space. Mobile homes, manufactured homes, and modular homes shall not be permitted on any Parcel within *the Property*. Any structure must be on permanent footing and foundation, and all plans must be approved by the Board before construction begins. No commercial activity shall be permitted unless approved by the Board.
- Home office usage is permitted providing that such business does not increase traffic in or out of the subdivision. Such home office usage where clientele and/or customers would visit the home office shall be prohibited unless prior approval is given by the Board.
- IV. **SETBACKS:** No structure may be erected within one hundred (100) feet of the right-of-way line of any road within *the Property*, nor within fifty (50) feet of any side or rear line of any Parcel unless approved by the Board.
- V. **TRASH AND RUBBISH:** Rubbish, garbage or other waste shall be kept and disposed of in a sanitary manner, and all containers shall be kept in a clean, sanitary condition so as not to endanger wildlife.
- VI. **UTILITY EASEMENTS:** A fifteen (15) foot utility easement is hereby set aside on each side of all side and common rear Parcel lines and a thirty (30) foot utility easement is hereby set aside on the interior side of all exterior Parcel lines. A twenty-five (25) foot utility easement is hereby set aside on each side of all interior roads within *Elk Park*.
- VII. **NUISANCES:** No owner shall cause or allow the origination of noxious, offensive or illegal activities on any Parcel, nor shall anything be done on any Parcel that shall be or become a nuisance or unreasonable annoyance to neighbors. The Board shall make the final determination of what constitutes a nuisance.
- VIII. **ANIMALS:** Animals will be allowed on *the Property* for personal use of Parcel owners. Any animals raised for commercial activity must be approved by the Board. Commercial feed lots and swine shall be prohibited from *the Property*.
- IX. **MOTOR VEHICLES:** No motorized vehicle which is either non-operational or non-licensed shall be kept or stored on any Parcel, unless said vehicle is kept or stored in a fully enclosed building.
- X. **TEMPORARY RESIDENCES:** No structure of temporary character, recreational vehicle, camper unit, trailer, basement, tent or accessory building shall be used on any Parcel as a residence. Recreational vehicles, camper units and tents may be used for vacation camping for periods not to exceed ninety (90) consecutive days in any calendar year.
- XI. **LAND USE:** Commercial wood harvesting, mining (including the removal of soil, gravel or rock) and oil or gas production is prohibited except as expressly permitted by the Association or Board. Further subdivision of less than thirty-five acres is prohibited.
- XII. **ENFORCEMENT:** Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant.
- XIII. **TERMS OF COVENANTS:** These Covenants and restrictions are to run with *the Property* and shall remain in full force and effect for 10 years from the date these Covenants are recorded, after which time said Covenants shall be automatically extended for successive periods of 10 years, unless not less than 2/3 of the Owners of the Parcels within *the Property* vote to amend in whole or in part the Covenants, in which case any amendment shall be signed by an officer of the Association and duly recorded.
- XIV. **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.
- XV. **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.
- XVI. **COUNTER PARTS:** This instrument may be executed in a number of counter parts, any one of which may be considered an original.

98010338 12/09/1998 02:45P DCC
2 of 6 R 31.00 D 0.00 N 0.00 ARCHULETA COUNTY

XVII. ANNEXATION: Developer may from time to time within ten years after the date of the recording of this Declaration of Protective Covenants for the Property annex property or allow to be annexed certain property the Developer deems appropriate to the development by recording one or more annexation statements. Upon the recording of such Annexation Statement in the public records of Archuleta County, Colorado, all of the real property described in such Annexation Statement shall be deemed to be part of the development and subject to all of the terms and provisions of these Covenants.

XVIII. FEES AND ENFORCEMENT: All Parcels within the Property shall be subject to assessment for Property Owners Association fees in an amount to be determined by the Association. Assessments may be increased only by majority vote of Members of the Association.

Assessments for fees will commence upon conveyance at the date of closing. Whenever the obligation to pay fees arises after the start of the calendar year, the first year's fees will be prorated to the commencement date for the Parcel involved. Fees shall be payable in advance in January of each year. Any assessments which are not paid when due shall be delinquent. The Association may bring action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the Owner's Parcel, and/or may suspend the delinquent Owner's right to vote. In the event a judgement is obtained, such judgement shall include a late charge of 5% and interest at the rate of 15% per annum on the assessment, and reasonable attorneys' fees, together with the expenses and costs of the action. The Board may enforce such lien by filing with the Clerk and Recorder of Archuleta County a statement of lien with respect to the Parcel, setting forth the name of the Owner, the legal description of the Parcel and the Owner's interest therein, the name of the Association and the amount of the delinquent assessments then owing. The lien statement shall be duly signed and acknowledged by an officer of the Association and notice thereof shall be mailed to the Owner of the Parcel, at the address of the Parcel or at such other address as the Association may have in its records for the Owner of the Parcel. Such a claim of lien shall also secure all assessments, charges, fees and sums which come due thereafter until the lien, together with all costs, attorney fees, charges and interest have been fully paid or otherwise satisfied. Thirty (30) days following the mailing of such notice, the Board may foreclose the statement of lien in the same manner as provided for in the foreclosure of mortgages under the statutes and laws of the State of Colorado. Except to the extent that the lien of the Association is subordinated to the lien of a First Mortgage on a Parcel pursuant to these Covenants and except as subordinated by law to the lien or real property taxes, the lien of the Association shall be deemed to have a priority date as of the date of the recording of this Declaration and shall have priority over all other liens and encumbrances against a Parcel.

Developer does not pay assessments but is responsible for contributing any necessary funds so that any obligation of the Association is met by the Developer until such time as the Developer transfers his interest in and control of the Association.

IN WITNESS WHEREOF, Randy Lanosga, Jr., of Timbered Canyon, LLC, A Colorado Limited Liability Company, subscribed his name this 16th day of November, 1998.

TIMBERED CANYON, LLC
A COLORADO LIMITED LIABILITY COMPANY

By: Randy Lanosga, Jr.
Randy Lanosga, Jr., Business Manager

STATE OF COLORADO}
 }ss.
COUNTY OF EL PASO}

The foregoing instrument was acknowledged before me this 16th day of November, 1998 by Randy Lanosga, Jr. as Business Manager of Timbered Canyon, LLC, A Colorado Limited Liability Company.

Witness my official hand and seal.

Mary M. Duxon
Notary Public

Address: 3218 Vail Pass Drive, Colo Spgs. CO 80917

My Commission Expires: August 14, 2000

98010338 12/09/1998 02:45P DCC
3 of 6 R 31.20 D 0.00 N 0.00 ARCHULETA COUNTY



CEERTIFICATE OF OWNERS:

KNOW ALL MEN BY THESE PRESENTS:

That Timbered Canyon, LLC, whose address is 216 North Spruce, Colorado Springs, Colorado, 80905, being the legal and record owner of a portion of that tract of land as shown on the Plat of Timbered Canyon Ranch, recorded in the Office of the Archuleta County, Colorado, Clerk and Recorder in the Survey Plat File under Filing F486, described, to wit:

A tract of land located in Sections 22 and 23, Township 35 North, Range 2-1/2 West, New Mexico Principal Meridian, in Archuleta County, Colorado, being described as follows:

Beginning at the Northwest Corner of said Section 22, monumented with a 3-1/4" aluminum cap on a 3/4" rebar stamped P.L.S. 23894;
Thence N 09°42' 12" E, 854.57 feet along the north line of said Section 22 to the Northeast Corner of said Section 22 to a standard 3-1/4" N.L.M. cap;
Thence N 89°42' 02" E, 2719.18 feet along the north line of said Section 23 to the North 1/4 Corner of said Section 23 monumented by the original stone monument;
Thence S 87°42' 30" E, 1066.23 feet along the north line of said Section 23;
Thence S 29°42' 52" W, 472.93 feet to the northerly right-of-way of Backcountry Drive;
Thence S 71°42' 30" E, 243.20 feet along the northerly right-of-way of said Backcountry Drive;
Thence along the arc of a tangent curve to the right with a delta angle of 44°42' 31" and a radius of 309.04 feet for a distance of 240.17 feet the long chord of which bears N 86°42' 13" W, 234.17 feet along the northerly right-of-way of said Backcountry Drive;
Thence along the arc of a tangent curve to the left with a delta angle of 179°42' 13" and a radius of 80.00 feet for a distance of 250.25 feet the long chord of which bears S 26°42' 25" W, 160.00 feet along the northerly right-of-way of said Backcountry Drive;
Thence S 63°42' 11" E, 174.49 feet along the northerly right-of-way of said Backcountry Drive;
Thence along the arc of a tangent curve to the right with a delta angle of 85°42' 51" and a radius of 70.40 feet for a distance of 105.51 feet the long chord of which bears S 20°42' 15" E, 95.91 feet along the northerly right-of-way of said Backcountry Drive;
Thence S 22°42' 40" W, 311.66 feet along the northerly right-of-way of said Backcountry Drive;
Thence along the arc of a tangent curve to the left with a delta angle of 16°42' 31" and a radius of 1618.07 feet for a distance of 466.66 feet the long chord of which bears S 14°42' 24" W, 465.05 feet along the northerly right-of-way of said Backcountry Drive;
Thence along the arc of a tangent curve to the right with a delta angle of 57°42' 28" and a radius of 125.00 feet for a distance of 125.38 feet the long chord of which bears S 34°42' 53" W, 120.19 feet along the northerly right-of-way of said Backcountry Drive;
Thence S 63°42' 37" E, 359.30 feet along the northerly right-of-way of said Backcountry Drive;
Thence along the arc of a tangent curve to the right with a delta angle of 30°42' 33" and a radius of 230.00 feet for a distance of 122.66 feet the long chord of which bears S 7°42' 53" W, 121.21 feet along the northerly right-of-way of said Backcountry Drive;
Thence S 19°42' 50" W, 61.82 feet to the southerly right-of-way of said Backcountry Drive to the westerly right-of-way of Peterson Ridge Court;



98010338 12/29/1998 02:45P DCC
4 of 6 R 31.00 D 0.00 N 0.00 ARCHULETA COUNTY

Thence S 14°44' 41" 00" E, 1726.60 feet along the westerly right-of-way of said Peterson Ridge Court;

Thence S 07°44' 52" 36" E, 1345.30 feet;

Thence along the arc of a non-tangent curve to the right with a delta angle of 23°44' 03" 14" with a radius of 229.35 feet for a distance of 92.28 feet the long chord of which bears S 22°44' 28" 33" E, 91.66 feet;

Thence along the arc of a tangent curve to the left with a delta angle of 18°44' 33" 57" and a radius of 40.00 feet for a distance of 12.96 feet, the long chord of which bears S 20°44' 13" 55" E, 12.90 feet;

Thence S 29°44' 30" 53" E, 713.98 feet;

Thence along the arc of a tangent curve to the right with a delta angle of 82°44' 40" 58" and a radius of 75.00 feet for a distance of 108.23 feet the long chord bears S 11°44' 49" 36" W, 99.08 feet to the easterly right-of-way of Ironwood Drive;

Thence along the arc of a non-tangent curve to the left with a delta angle of 21°44' 54" 30" and a radius of 130.00 feet for a distance of 49.71 feet the long chord of which bears N 28°44' 36" 26" W, 49.41 feet along the easterly right-of-way of said Ironwood Drive;

Thence N 39°44' 33" 41" W, 137.91 feet along the easterly right-of-way of said Ironwood Drive;

Thence along the arc of a tangent curve to the right with a delta angle of 11°44' 30" 51" and a radius of 370.00 feet for a distance of 74.36 feet the long chord of which bears N 33°44' 48" 16" W, 74.23 feet along the easterly right-of-way of said Ironwood Drive;

Thence along the arc of a tangent curve to the left with a delta angle of 37°44' 52" 16" and a radius of 230.00 feet for a distance of 152.02 feet the long chord of which bears N 46°44' 58" 58" W, 149.27 feet along the easterly right-of-way of said Ironwood Drive;

Thence along the arc of a tangent curve to the right with a delta angle of 14°44' 41" 19" and a radius of 669.05 feet for a distance of 171.52 feet the long chord of which bears N 58°44' 34" 26" W, 171.05 feet along the easterly right-of-way of said Ironwood Drive;

Thence N 51°44' 13" 47" W, 115.59 feet along the easterly right-of-way of said Ironwood Drive;

Thence along the arc of a tangent curve to the right with a delta angle of 25°44' 40" 49" and a radius of 420.00 feet for a distance 188.25 feet the long chord of which bears N 38°44' 23" 23" W, 186.67 feet along the easterly right-of-way of said Ironwood Drive;

Thence along the arc of a tangent curve to the left with a delta angle of 23°44' 01" 09" and a radius of 251.86 feet for a distance of 101.19 feet the long chord of which bears N 37°44' 03" 33" W, 100.51 feet along the easterly right-of-way of said Ironwood Drive;

Thence along the arc of a tangent curve to the right with a delta angle of 15°44' 42" 12" and a radius of 340.00 feet for a distance 93.19 feet the long chord of which bears N 40°44' 43" 01" W, 92.89 feet along the easterly right-of-way of said Ironwood Drive;

Thence N 32°44' 51" 55" W, 139.61 feet along the easterly right-of-way of said Ironwood Drive;

Thence along the arc of a tangent curve to the left with a delta angle of 48°44' 50" 40" and a radius of 210.00 feet for a distance of 179.02 feet the long chord of which bears N 57°44' 17" 15" W, 173.65 feet along the easterly right-of-way of said Ironwood Drive;

Thence along the arc of a tangent curve to the right with a delta angle of 34°44' 14" 55" and a radius of 170.00 feet for a distance of 101.62 feet the long chord of which bears N 64°44' 35" 08" W, 100.11 feet along the easterly right-of-way of said Ironwood Drive;



98010338 12/09/1998 02:45P DCC
S of S 31.00 D 0.00 N 0.00 ARCHULETA COUNTY

Thence N 47°42' 27" 41" W, 34.70 feet along the easterly right-of-way of said Ironwood Drive;
Thence along the arc of a tangent curve to the right with a delta angle of 154°42' 25' 37" and a radius of 6.50 feet for a distance of 17.53 feet the long chord of which bears N 29°42' 45' 08" E, 12.68 feet along the easterly right-of-way of said Ironwood Drive;
Thence S 73°42' 02' 04" E, 17.98 feet along the easterly right-of-way of said Ironwood Drive;
Thence along the arc of a tangent curve to the left with a delta angle of 166°42' 25' 33" and a radius of 55.00 feet for a distance of 159.76 feet the long chord of which bears N 23°42' 45' 10" E, 109.23 feet along the easterly right-of-way of said Ironwood Drive;
Thence along the arc of a tangent curve to the right with a delta angle of 253°42' 18' 32" and a radius of 470.00 feet for a distance of 207.61 feet the long chord of which bears N 46°42' 48' 21" W, 205.93 feet along the easterly right-of-way of said Ironwood Drive;
Thence along the arc of a tangent curve to the right with a delta angle of 348°42' 19' 25" and a radius of 622.85 feet for a distance of 373.13 feet the long chord of which bears N 16°42' 59' 22" W, 367.57 feet along the easterly right-of-way of said Ironwood Drive;
Thence N 89°42' 49' 40" W, 60.00 feet;
Thence N 58°42' 36' 02" W, 3174.70 feet to the west line of said Section 22;
Thence N 00°42' 04' 45" W, 1301.21 feet along the west line of said Section 22 to the East 1/4 Corner of Section 36, Township 35 North, Range 3 West, New Mexico Principal Meridian monumented with a standard B.L.M. 3-1/4" cap;
Thence N 00°42' 10' 48" W, 630.58 feet along the west line of said Section 22 to the point of beginning.
Contains 282.988 acres, more or less.

98010338 12/09/1998 02:45P DCC
6 of 8 R 31.00 D 0.00 N 0.00 ARCHULETA COUNTY