

DECLARATION OF PROTECTIVE COVENANTS

for

THE WOODS AT GEM MOUNTAIN

Luning Prak Limited Liability Company, the owner of real property situated in the Counties of Custer and Fremont and State of Colorado, known as The Woods at Gem Mountain and legally described on Exhibit A attached hereto, in order to protect the living environment and preserve the values in The Woods at Gem Mountain, 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 composing the above mentioned land is made specifically subject to the following described covenants.

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 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 Woods at Gem Mountain Property Owners Association will be operated as per the by-laws of the association,

(a) **Members:** Every property owner will automatically be a member of the Property Owners Association and will be required to remain members in good standing as long as they own the property.

(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 property owners yearly dues. Should any property owner fail to pay assessments when due, the Property Owners Association may file a lien against the owner for collection purposes, as such liens and enforcement rights are provided in Colorado Revised Statutes §38-33.3-315 and 316.

(3) To provide upkeep and improvements to all non county roads in The Woods at Gem Mountain. In the event snow removal expense threatens to consume more than 20% of the annual P.O.A. funds collected, The Woods at Gem Mountain Property Owners Association Board of Directors must approve expenditure of additional money from the P.O.A. fund for additional snow removal.

(4) To represent all property owners in matters of mutual interest.

(5) To administer and lease grazing rights.

III. **BUILDING USE AND TYPE:** All parcels designated shall be restricted to residential use either a vacation homes or year round dwellings. Such structures shall be only one family dwellings and shall be for residential use only. Auxiliary buildings or structures usual to a residence may be erected or placed thereon. Not more than one dwelling shall be erected or placed on any lot except that one guest house and one caretakers house may be erected in addition to the main dwelling. Private stable, shed or animal shelter with no minimum dimensions shall be permitted provided such are not used for any commercial purposes.

IV. **DWELLING SIZE:** No primary dwelling shall be erected or placed on any parcel at The Woods at Gem Mountain unless that dwelling has a ground floor area of not less than 1,000 square feet, however, the guest house and caretaker's house ground floor area shall be of not less than 600 square feet exclusive of garages, carports, open porches patios or court areas unless such structure is given prior approval from the Property Owners Association.

V. **SETBACKS:** No structures may be erected within one hundred (100) feet of the right-of-way line of any road within The Woods at Gem Mountain, nor within one hundred (100) feet of any side or rear line of any parcel. In the case of purchasers owning more than one parcel and building a single dwelling, this restriction shall apply to the parcel as a whole. For the purpose of these covenants, eaves, steps and open porches shall be considered as a part of the building.

VI. **TIME OF CONSTRUCTION:** Once construction is started, it must be completed within twelve (12) months.

VII. **TRASH AND RUBBISH:** No part of the property above or below ground shall be used or maintained as a dumping ground for rubbish, trash, garbage, debris or other waste. All rubbish, garbage or other waste shall be consolidated away from homes in a central location and disposed of in a sanitary manner. All containers shall be bear-proof and kept in a clean, sanitary condition. Reasonable preventions shall be taken against fire hazards and no outdoor burning of any kind shall be permitted upon the premises (except for cooking) unless in an approved incinerator with ash control.

VIII. **EASEMENTS:** A ten (10) foot utility easement is hereby set aside on each side of all side and common rear lot lines and a twenty (20) foot utility easement is hereby set aside on the interior side of all exterior lot lines exclusive of road frontages. All future electric and phone lines shall be extended underground, excepting that the Property Owners Association Board may approve overhead lines where the terrain would make the placement of underground lines difficult. 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 Woods and Gem Mountain, will be kept open and readily accessible for use, service and maintenance.

IX. **NUISANCES:** No owner shall cause or allow the origination of excessive odors or sounds from his parcel. No owner shall cause or allow any other nuisances of any kind whatsoever to exist on his parcel. In case of a dispute, at the request of an owner, the Property Owners Association board shall make the final determination of what constitutes a nuisance.

X. **ANIMALS:** Animals will be allowed on The Woods at Gem Mountain for personal use of parcel owners. Dogs shall be physically restrained. Pet food may not be exposed or stored outdoors. Feeding of wildlife, including hummingbirds, squirrels, etc. is prohibited. Commercial feed lots and swine shall be prohibited from The Woods at Gem Mountain.

XI. **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.

XII. **TEMPORARY RESIDENCES:** No structure of temporary character, recreational vehicle, camper unit, trailer, basement, tent or accessory building shall be used on any parcel as temporary or permanent living quarters. Recreational vehicles, camper units and tents may be used for vacation camping for periods not to exceed thirty (30) continuous days.

XIII. **MOBILE HOMES:** Mobile homes or any building which could reasonably be construed as being a mobile home shall not be permitted on any parcel within The Woods and Gem Mountain.

XIV. **LAND USE:** Commercial wood harvesting, mining (including the removal of soil, gravel or rock) and oil or gas production is prohibited; nor shall oil or gas wells, tanks, tunnels, mineral excavations or shafts be permitted. The foregoing shall not be construed to prevent the drilling of water wells to serve the premises for domestic purposes. There shall be no re-subdivision of any of the said parcels.

XV. **GRAZING LEASE:** All parcel owners within The Woods at Gem Mountain will hold their interest in their property subject to the terms of that certain Grazing Lease dated August 1, 1992 between Job Luning Prak and Irving Storey. A copy of said lease will be provided to those parcel owners requesting same.

XVI. **WATER AND SEWAGE:** All water wells and sewage disposal systems placed upon any parcel shall comply with the requirements of Custer and Fremont Counties, and the State of Colorado Health Department, and the Colorado Division of Water Resources. No septic tank or field system shall be nearer than one hundred (100) feet to any parcel line except with the consent of the appropriate health official of the State, and no sewage, waste water, trash, garbage or debris shall be emptied, discharged, or permitted to drain into any body of water in or adjacent to the subdivision. No outside toilets or privies shall be permitted on any parcel, except, once construction has started a temporary "port-a-pot" may be placed for use during the construction phase for a period not to exceed twelve (12) months. All permanent toilet facilities must be a part of the residence or garage and shall be of a modern flush type and connected with a proper septic tank system.

XVII. **HUNTING, TRAPPING AND USE OF FIREARMS:** No hunting, trapping of any kind shall be permitted in any of the areas covered by these covenants. Further, no use of or discharge of firearms shall be permitted within any of the land area herein covered with the only exception being that an individual lot owner or their invitees may target shoot on their lot only.

XVIII. **COMMERCIAL ACTIVITY:** No store, office or other place of business or any kind shall be erected or permitted upon any of the residential lots or any part thereof and no commercial activity shall be permitted.

XIX. **ENFORCEMENT:** Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, as such liens and enforcement rights are provided in Colorado Revised Statutes §38-33.3-315 and 316.

XX. **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, unless an instrument signed by a majority of the land owners of the parcels has been recorded, changing said covenants in whole or part. All successive and future owners and occupants shall have the same right to invoke and enforce the covenants, conditions, restrictions and reservations applicable to this conveyance as the original parties hereto.

XXI. **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.

XXII. **COUNTY, STATE AND FEDERAL 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. All county, state and federal laws and guidelines shall be followed in regards to zoning, zoning laws, building and building codes, water and water rights, if any.

XXIII. **COUNTER PARTS:** This instrument may be executed in a number of counter parts any one of which may be considered an original.

XXIV. **FEES AND ENFORCEMENT:** All parcels within The Woods at Gem Mountain 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. In no event shall Assessments exceed \$300.00 per year except that this amount may be increased by the greater of 12% per annum or the percentage increase, if any, in the "Consumer Price Index-All Urban Consumers" for Denver, Colorado, between January 1 of the year in question and of the preceding year. Any increase in Association dues will also require written assurance that any such increase will not cause additional regulatory or other requirements to be imposed upon the Association, Declarant or any property owner, as such liens and enforcement rights are provided in Colorado Revised Statutes §38-33.3-315 and 316.

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. Each property owner shall be responsible for payment of all fees and any costs (including attorney fees) necessary to enforce any violation of these covenants affecting his or her parcel. Failure to pay fees shall be deemed a violation of these covenants. Unpaid fees and costs shall also be a lien and may be foreclosed in the same manner as a mechanics lien.

XXV. **AMENDMENTS:** These covenants may be amended by the affirmative vote of two-thirds of all the parcel owners. The Luning Prak Limited Liability Company is entitled to one vote per parcel not yet sold, and will turn over control of the Property Owners Association when 75% of the parcels have been sold. As the property sells, each owner shall be entitled to one vote per parcel owned. The owners of at least one-third of the parcels may call for a vote on the proposed amendment. Copies of the proposed amendments shall be sent to each parcel owner by certified mail. The notice shall provide that the vote shall be held at a time and place in Custer County or Fremont County, Colorado at least thirty (30) days after the mailing of said notice. Voting may be by mail, personally or by written proxy.

[signed] Jacob Luning Prak, Manager
 Luning Prak Limited Liability Company

[notarized]