

**THE WOODMOOR CORPORATION**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**Recorded April 20, 1973  
Book 2579, page 423**

THIS DECLARATION, made on the date hereinafter set forth by The Woodmoor Corporation, hereinafter referred to as "Declarant".

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain property in the county of El Paso, Colorado, located in Sections 13, 14, 23 and 24, Township II South, Range 67 West of the Sixth Prime Meridian, County of El Paso, State of Colorado, and being more particularly described as follows: the Southeast Quarter (SE1/4) and South Half of the Southwest Quarter (S1/2 SW 1/4) of section 13; the North Half (N1/2) of Section 24; that portion of the North Half (N1/2) of Section 23, lying East of the Highway Service road adjacent to U. S. Interstate Highway No. 25; that portion of the Southeast Quarter (SE 1/4) of the Southeast Quarter, both of Section 14, lying East of the Highway Service Road adjacent to u. S. Interstate Highway No. 25 and South of Colorado Highway No. 105, which is being platted as WOODMOOR PLACER.

NOW, THEREFORE, Declarant hereby declares that all declarations of protective covenants, restrictions and conditions affecting the above described property are hereby revoked and amended and all of the property 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 inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

**Section 1. "Association"** shall mean and refer to The Woodmoor (South) Improvement Association, its successors and assigns.

**Section 2. "Owner"** shall mean and refer to the record owner, whether one or more persons 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 security for the performance of an obligation.

**Section 3. "Properties"** shall mean and refer to that certain real property, hereinbefore 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 conveyance of the first Lot is described as:

The median strips of vacant land within the median of Fairplay Drive, according to the plats of Woodmoor Lode and Woodmoor Nugget, filed in the office of the County Recorder, El Paso County, Colorado.

**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 and further, each parcel or condominium designated on such map, into which such lot has been split.

**Section 6. "Declarant"** shall mean and refer to The Woodmoor Corporation, its 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 of 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 upon the Common Area;

(b) the right of the Association to suspend the voting rights 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 sixty (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 agency, 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 approved by two-thirds (2/3) of each class of members.

**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 shall become a member of the Association upon the acquisition of said Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

**Section 2.** The Association shall have two (2) 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.** Class B members 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 first:

- (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, 1978.

#### **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 therefore, 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 as 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 upon the property against which each such 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 Areas.

**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 twentyfour and no/100 dollars (\$24.00) per lot.

(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 three percent (3%) above the maximum assessment for the previous year without vote of the 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 above three percent (3%) by a two-thirds (2/3) of each class of members voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment to an amount not in excess of the maximum.

**Section 4. Special Assessments for Capital Improvements.** In addition to 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 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 (2/3) 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 for 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 (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of sixty percent (60) of the members

or of proxies entitled to vote 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 the same as the required quorum at the preceding meeting. No subsequent meeting shall be held more than sixty (60) 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 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 Association shall, upon demand and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have 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 the rate of eight percent (8%) 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 for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

**Section 9. Subordination of the Lien to the Mortgages.** The lien

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

**Section 10. Exempt Property.** All property dedicated to and accepted by a local public authority, and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Colorado shall be exempt from the assessments created herein. However, no land or improvements devoted the dwelling use shall be exempt from said assessments.

## **ARTICLE V ARCHITECTURAL CONTROL COMMITTEE**

No building, fence, wall, swimming pool, 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 specifications have been submitted to it. Approval will not be required and this Article will be deemed to have been fully complied with. At the beginning of the 30 day period the

Architectural Control Committee will notify adjoining property owners that plans and specifications are being considered on an adjacent Lot.

**Section 1. Building Type and Occupancy.** All Lots shall be known and described as residential tracts and shall be used only for residential homes. No building shall be allowed or erected on any tract in said subdivision except a residence provided that no such building shall exceed two and one-half stories in height. All garages, porches, storage areas, garden houses, etc., must be attached to said dwelling house and be constructed so as to constitute one building only except that one ancillary building in keeping with the overall architecture and scheme of the dwelling will be permitted provided that it is included both as to design and location on a plan submitted to the Committee.

**Section 2. Dwelling Size.** Individual townhouses, condominium and apartments shall occupy a floor area of an actually and fully enclosed building of not less than five hundred (500) square feet. Balconies, open porches and garages are not included in such minimum footage. No fences may be built outside building setback lines without written permission of the Committee.

**Section 3. Building Location.** Location of any building on said subdivision shall be governed by the zoning ordinances of the County of El Paso, State of Colorado, applicable to said subdivision.

**Section 4. Re-Subdividing.** No further subdivision or re-subdivision of any tract or combination of tracts as shown on the plat shall be permitted except upon prior approval of the Architectural Control Committee.

**Section 5. Easements.** Easements for the installation and maintenance of utilities and drainage facilities and for roadways are preserved as described on the recorded plat. No shrubbery, trees or plantings shall be placed on said easement. No buildings, fences or structures of any type shall be built over, across, on the line of, or in such a manner

as to include such easements within the Lot or tract, but such easements shall remain open and readily accessible for service and maintenance of utility and drainage facilities and other purposes.

**Section 6. Temporary Residence.** No structure of temporary character, trailer, basement, tent, or accessory building shall be used on any tract as a residence, temporarily or permanently, and no used structure of any sort shall be moved onto any Lot. In any event no trailers of any type shall be placed or kept on any Lot unless such trailer is kept in an enclosed garage. This section shall not prevent the placement of a temporary structure upon the lot or tract to serve as a construction shed. Said temporary structure must be approved by the Architectural Control Committee and shall conform to all applicable zoning regulations.

**Section 7. Water.** There shall be no water wells drilled or placed on any Lot or tract covered by these Covenants. Any residence construct on any LOT shall be connected with any public or community water or sewage disposal system which may be formed or created to serve the subdivision so long as public system is in existence and makes service available to the Lot on which construction is to commence.

**Section 8. Clearing of Trees.** Approval shall be obtained from the Architectural Control Committee to cut down, clear, or kill any trees on any Lot. Further, each and every grantee agrees that all the trees cleared by him will be disposed of in such a way that all Lots, whether vacant or occupied by buildings, shall be kept free of accumulations of brush, trash, or other materials which may constitute a fire hazard or renders a Lot unsightly, provided, however, that this shall not operate or restrict grantees from storing fireplace wood in neat stacks on their Lots.

**Section 9. Commercial.** Commercial zoning will not be allowed within the Woodmoor subdivisions outlined in the legal description at the beginning of the

Covenants. No commercial type vehicles and no trucks shall be stored or parked on any Lot except in a closed garage, nor parked on any residential street or alley except while engaged in transport to or from a residence. For the purposes of this Covenant, a ¾ ton or smaller vehicle, commonly known as a pick-up truck, and which is not used for commercial purposes, shall not be deemed to be a commercial vehicle or truck.

**Section 10. Nuisance.** Nothing shall be done or permitted on any Lot which may be or become an annoyance or nuisance to the neighborhood. No noxious or offensive activities or commercial business or trade shall be carried on upon any tract, except that professional offices such as that of a lawyer, doctor, dentist, or engineer may be maintained within the main dwelling upon specific approval by the Architectural Control Committee in each case. Outside aerials or antennas will not be permitted.

**Section 11. Refuse and Rubbish.** Rubbish, garbage, or other waste shall be kept and disposed of in a sanitary manner. No tract or easement shall be used or maintained as a dumping ground for rubbish. All containers or other equipment for the storage or disposal of garbage, trash, rubbish, or other refuse shall be kept in a clean, sanitary condition. No trash, litter, or junk shall be permitted to remain exposed upon the premises and visible from public roads or adjoining or nearby premises. Burning of trash will not be permitted.

**Section 12. Signs.** No sign of any character shall be displayed or placed upon any of the premises or Lots in said Subdivision except one professional sign of not more than one square foot in area per side, advertising the property for sale, house numbers, occupant's name, or signs used by a builder approved in writing by the Architectural Control Committee to advertise the property during the construction and sales period. All signs are subject to the approval of the Architectural Control Committee.

**Section 13. Animals.** No animals, livestock, or poultry of any kind shall be housed, raised or kept on any tract or property either temporarily or permanently, except that commonly accepted domestic household pets may be kept provided they are not kept or maintained for any commercial purposes.

**Section 14. Clothesline and Exterior Tanks.** No grantee shall place upon his premises clotheslines, swimming pool filter tanks, fuel oil tanks, or similar tanks which may be visible from the street. All tanks must be enclosed or otherwise appropriately screened so that they will not be visible from the street or from adjoining Lots. Protective enclosures to screen the above must be approved by the Architectural Control Committee as part of the plans for the improvements to be located on the property.

**Section 15. Party Wall and Common Roof.** Each wall which is built as part of the original construction of the homes upon the lots and placed on the dividing line between the Lots shall constitute a Party Wall and to the extent not inconsistent with the provisions of the Article, the general rules of law regarding Party Walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

(1) The cost of reasonable repair and maintenance of the Party Wall shall be shared by the Owners who make use of the Wall in proportion to such use.

(2) If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the Wall may restore it and if the other Owners thereafter make use of the Wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(3) Notwithstanding any other provisions of the Article, an Owner who by his negligent or willful act causes the Party Wall to be exposed

to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(4) The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to Owner's successors in title.

(5) In the event of any dispute arising concerning a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose an additional arbitrator, and the decision of the majority of all the arbitrators shall be final and conclusive of the question involved.

## ARTICLE VI GENERAL PROVISIONS

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

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise 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 of twenty (20) years from the date of this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Any amendment must be recorded. The 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.

**Section 4. Annexation.**

(a) Additional residential property and Common Area may be annexed to the properties with the consent of two-thirds (2/3) of each class of members.

(b) Additional land within the area described in deed Book 2427, pages 388 and 389, Reception No. 819818, of the land records of El Paso County, Colorado, may be annexed by the Declarant without the consent of the members within ten (10) years of the date of this instrument provided that the 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 the Common Area and amendment of this Declaration of Covenants, Conditions and Restrictions.