

240134 DRAWER IS CARG 321A

DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by SMARTT-INGELS AND ASSOCIATES, INC., hercin- after referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain prop- erty in the County of Teller, State of Colorado, which is more particularly described as:

Aspen Moors, a subdivision of a portion of the Northwest Quarter of Section 19, Township 12 South, Range 69 West of the 6th P.M.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following easements, restric- tions, covenants, and conditions, which are for the pur- pose 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 des- cribed properties or any part thereof, their heirs, suc- cessors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to Aspen Moors Home Owners Association, Inc., its succes- sors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of

243134

DRAWER 10 CARD 33113

a fee simple title to any lot which is a part of the properties, including owners who have sold on contract but have not conveyed their fee interest.

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 the conveyance of the first lot is described as follows:

All platted roads in Aspen Moors Subdivision as shown on the plat thereof recorded in Teller County, Colorado, in Plat Book E, at Page 11, and under Reception No. 211456, and

Lot 44 in Aspen Moors Subdivision, and the access easements appurtenant thereto, which Lot 44 and access easements are shown on the plat thereof recorded in Teller County, Colorado, in Plat Book E, at Page 11, and under Reception No. 211456.

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 SMART-INGELS AND ASSOCIATES, INC., its successors, and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

243134

DRAWER IS CARD 322A

## 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 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) consecutive 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 an instrument signed by two-thirds (2/3) 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.

243134

DRAWER 13 CARO 322B

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to 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 record owner or owners of each lot shall be entitled to one vote. If there be more than one owner of a lot, then they shall have a fractional vote according to the number of owners of that particular lot. Record owners who have sold on contract may assign by written proxy their voting interest to the contract owner, and such proxy shall be recognized by this Association.

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 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 area and of the homes situated upon the properties.

Section 3. Commencing July 1, 1975, each member or contract owner in receipt of a proxy to vote as a member from the Declarant shall be subject to an annual assessment of Twenty and No/100ths Dollars (\$20.00) per lot. From and after January 1, 1976, said assessment of Twenty and No/100ths Dollars (\$20.00) per lot may be raised only by a vote of the membership where a two-thirds (2/3) majority vote would be required.

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 (2/3) of the votes of the membership, voting

243134

OWNER ID CARD 3226

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 Sections 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 members or of proxies entitled to cast sixty percent (60%) of all the votes of the 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 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 or annual basis.

Section 7. 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 six percent (6%) 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 8. Subordination of the Lien to Mort-

gages. 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 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 assessments as to payments which became due prior to 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.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. Design and Construction. 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 specifications have been submitted to it, approval will not be required; and this Article will be deemed to have been fully complied with.

243134

DRAWER IS CAPD 32413

Section 2. Permanent Dwelling. No more than one (1) dwelling for occupancy by one (1) family may be erected on any lot within the subdivision. The ground floor area of such dwelling, exclusive of open porches, garages, and basements, shall be no less than six hundred (600) square feet for a one-story structure. For dwellings of more than one-story, the minimum permissible area of the ground floor is five hundred (500) square feet, with no minimum size prescribed for levels above the ground floor.

Section 3. Temporary Dwellings. No trailer, camper, tent, basement, accessory building, or other shelter of a temporary nature shall be used as a dwelling: provided, however, that the Control Board may, in its judgment, authorize exceptions to this restriction in individual cases during the period of construction of a permanent dwelling or for brief and limited use as a temporary vacation shelter.

Section 4. Setbacks. No structure of any kind shall be erected nearer than forty-five (45) feet to any boundary along a street or road or so that any part of said structure is closer than twenty-five (25) feet to any other boundary within the subdivision; and this restriction includes eaves, steps, open porches, and like architectural components of the structure. As an exception hereto, existing structures, terraces, walls, fences, swimming pools, or similar low, unroofed, unscreened facilities may be constructed outside the setback limitations herein prescribed if and only when specifically approved by the Control Board and, further, when such construction will not interfere with

the exposure, view, or reasonable privacy of adjoining or facing lots.

Section 5. Easements. There shall be a thirty (30) foot easement around all ponds and lakes within the subdivision common area to provide access thereto by all holders of interest; however, the Control Board reserves access and control of all water rights on existing springs and streams within the subdivision common area.

Section 6. Ecology. No trees, shrubs, ground cover, or other foliage contributing to the natural beauty of the subdivision or providing shelter or sustenance for wildlife shall be removed or disturbed, except as required to accommodate approved construction or in the interests of sound conservation practices as specifically authorized by the Control Board.

Section 7. Construction Period. Once construction, including related excavation or clearing of the ground, has been initiated, it shall be fully completed within twelve (12) months' time; provided, however, that the Control Board may, in its judgment, authorize extension of time when unusual or unexpected circumstances so warrant.

Section 8. Nuisances. Nothing shall be done or permitted on any lot that may be or become an annoyance or nuisance to other holders of interest in the subdivision.

Section 9. Commercial Activities. No business, trade, industry, or other commercial enterprise shall be established or conducted within the subdivision.

Section 10. Toilets. Toilet facilities shall be confined within dwellings, except for outflow pipes, septic tanks, and leaching fields; and they must meet all

requirements of the State of Colorado and Teller County Health Authorities. The location of septic tanks and leaching fields must be approved in each and every case by the Control Board.

Section 11. Waste Materials. Refuse, trash, rubbish, garbage, other household waste materials, and animal waste materials shall be kept in covered containers and be often enough removed from the subdivision that they do not become hazardous to the health of others within the subdivision nor become a nuisance as contemplated under Article V, Section 8, above.

Section 12. Miscellaneous. Construction materials, particularly scraps of unused components, shall be neatly stacked or piled and be screened from view from the public streets and roads, except during periods of actual construction.

Section 13. Domesticated Animals. No more than two (2) domesticated animals shall be authorized or maintained per lot (subject to the provisions of Article V, Section 14); and they must be contained in a fenced enclosure so located as to avoid interference with rights of other holders of interest in the subdivision and consistent with good erosion, ecological, and sanitation control practices. Should a stable be constructed, it also shall be subject to setback restrictions and architectural controls as prescribed in Article V.

Section 14. Household Pets. Dogs and cats may be kept provided they are controlled in such a manner that they do not constitute nuisances as contemplated in Article V, Section 8.

243134

DRAWER 18 CARD 326A

Section 15. Commercial Breeding. No animals may be kept for breeding purposes anywhere within the subdivision.

Section 16. Subdivision. There shall be no subdivision of lots, except by amendment of these Covenants as provided herein.

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, and 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 thereafter.

Section 2. Severability. Invalidity 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 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 two-thirds (2/3) of the lot owners. Any amendment must be recorded.

243134

DRAWER 13 CARD 326B

Section 4. Annexation. Additional residential property and common areas may be annexed to the properties with the consent of two-thirds (2/3) of the membership.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 6<sup>th</sup> day of October, 1975.

SMARTT-INGELS AND ASSOCIATES, INC.  
Declarant

By W. L. S. J. J.  
President

ATTEST:

Lucille Robbins  
Secretary

STATE OF COLORADO )  
COUNTY OF EL PASO ) ss.

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of October, 1975, by Hubert E. Ingels, President of SMARTT-INGELS AND ASSOCIATES, INC., and Lucille Robbins, Secretary-Treasurer of SMARTT-INGELS AND ASSOCIATES, INC.

WITNESS my hand and official seal.

W. L. S. J. J.  
Notary Public

