

OCCUPANCY, USE AND MAINTENANCE DECLARATION

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the undersigned, hereinafter called "Declarant" is the owner of the following described real property, hereinafter called the Property:

Block 2 of the Second Replat of Projects I and II at Stagecoach, Routt County, Colorado

WITNESSETH:

WHEREAS, upon each of said Blocks there has been constructed a multiple dwelling structure containing six (6) separate townhouse units, each unit on its own lot; and

WHEREAS, the units in said multiple dwelling structures are connected by common walls, footings, foundations, sides and roof; and

WHEREAS, Declarant does hereby establish certain rules and regulations concerning the occupancy, use and maintenance of said multiple dwelling structures, the separate townhouse units and the interests in and to the common parking areas; and

WHEREAS Declarant will convey said property subject to said rules and regulations as hereinafter set forth.

NOW THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the land, shall be a burden and a benefit to Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the real property and improvements, their grantees and their heirs, executors, administrators, devisees, successors or assigns.

ARTICLE I

DEFINITIONS

1. "Multiple dwelling structure" shall mean and refer to the building improvement situated on each block and which contains six townhouse units.
2. "Townhouse unit" shall mean and refer to that portion of the multiple dwelling structure situated upon any

Recorded at 9:30 O'clock A.M. Dec 27, 1979  
 EUNICE DORR, Recorder  
 Reception No. 292824

lettered lot designed and intended for use and occupancy as a residence by a single family.

3. "Lot" shall mean and refer to the lettered areas within a block set forth on the Second Replat of Project I and II at Stagecoach, Routt County, Colorado.

4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, including Declarant, of a fee simple title to any lot which is a part of the property, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

5. "Common parking area" shall mean and refer to that tract of land to be conveyed to the individual owners in each Block for parking purposes.

#### ARTICLE II

##### USE AND OCCUPANCY

The use and occupancy of the individual townhouses located on any lot shall be governed by the following provisions, to wit:

1. Each owner of a townhouse unit, his family, guests, business invitees and tenants shall have the exclusive right of occupancy and use of their respective townhouse unit.

2. Each townhouse unit shall be used only for residential purposes; provided, however, that each owner shall be permitted to lease all or any portion of his respective townhouse unit.

3. Each owner of a townhouse unit shall, peaceably and quietly, enjoy and use his respective townhouse unit in such a manner so as not to disturb any other townhouse unit or inhibit the rightful use by other unit owners of the common parking area.

#### ARTICLE III

##### OWNERS' MAINTENANCE AND RESPONSIBILITY

1. Each owner of a townhouse unit shall maintain and keep in good repair the interior of his own unit, including the fixtures therein to the extent current repair shall be necessary in order to avoid damage to other units, or any common

element of the multiple dwelling structure. All fixtures and equipment installed in a townhouse unit, commencing at a point where said fixtures, equipment or utilities enter into the townhouse unit, shall be maintained and kept in repair by the owner thereof.

2. An owner shall do no act or any work that will impair the structural soundness or integrity of the multiple dwelling structure or impair any easement or hereditament. Further, each townhouse unit owner shall individually be responsible for the care, maintenance, repair, landscaping and gardening on his individual lot.

3. For maintenance purposes, the townhouse unit owner shall have the responsibility for repairing and maintaining all of the interior surfaces of supporting or non-supporting walls, floors and ceilings, the materials such as, but not limited to, plaster, gypsum drywall, paneling, wall paper, paint, wall and floor tile and flooring which comprise the perimeter walls, ceilings and floors of his townhouse unit including the unit doors and windows. However, the townhouse unit owner shall not be deemed to have the maintenance responsibility for the lines, pipes, wires, conduits, utilities or systems running through his unit or lot which would serve one or more townhouse units. Said utilities shall be maintained jointly by all of the townhouse unit owners.

#### ARTICLE IV

##### OWNERS' JOINT MAINTENANCE RESPONSIBILITY

###### 1. Party Walls:

a. As utilized herein, the term "Party Wall" shall mean each wall which is built as a part of the original construction of the multiple dwelling structure and placed on the dividing line between the lots, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or unlawful acts or omissions shall apply thereto.

b. There is hereby established and granted mutual reciprocal easements for support for all party walls between improvements constructed or to be constructed on the lots.

c. The cost of reasonable repair and maintenance of any party wall shall be borne equally by the owners of the townhouse units on either side of the party wall. If one of the owners who uses the wall refuses to pay his proportionate share of the cost of repair or maintenance within 30 days after billing, then the other owner may cause the party wall to be repaired and shall be entitled to assess the cost attributable against the non-paying adjoining townhouse unit owner's property and the same shall become and remain a lien against said property until fully paid. Said lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

d. If a party wall is destroyed or damaged by fire or other casualty, and if insurance proceeds are insufficient to repair the wall; any owner who shares a damaged party wall may restore it, and, if any other owner thereafter makes use of the wall such other owner shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any owner to call for a larger contribution from the other owners under any rule of law regarding liability for negligence of lawful acts or omissions. If one owner causes the wall to be restored and any other owner uses the wall and does not contribute to the cost of the wall's restoration, the owner who caused the wall to be restored shall be entitled to assess the cost attributable against the non-paying owner's adjoining property and the same shall become and remain a lien against said property until fully paid. Said lien may be foreclosed in the manner provided by law for foreclosure on a mortgage of real property or the restoring owner may seek injunctive relief prohibiting the non-contributing owner from use of the party wall, or both.

e. Any owner of a townhouse unit who uses the party wall shall have the right to break through such party wall for

the purpose of repairing or restoring the wall or any utilities contained therein, subject to the obligation and duty to restore the wall to its previous structural condition at such owner's expense.

2. Repair of Foundation, Structural Walls, Roof and Parking Areas.

a. The cost of reasonable repair and maintenance of the common roof, foundation and outer walls of a multiple family structure and parking area shall be borne equally by the owners of all of the townhouse units. If one of the owners refuses to pay his proportionate share of the cost of repair or maintenance, the other owners may cause the roof, foundation, outer walls, or parking area to be repaired and shall be entitled to assess the cost attributable against the non-paying owner's property, and the same shall become and remain a lien against said property until fully paid. Such lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

b. There is hereby established, declared and granted mutual reciprocal easements for access to every townhouse unit for the maintenance, repair or replacement of the common roof, foundation and outer walls.

c. Said easement of access may be exercised by Declarant or any owner or by a contractor or repairman hired by Declarant or any owner to affect said repairs or replacements to said townhouses.

3. Common Repairs and Services.

The cost of reasonable repair and maintenance of the boardwalk, exterior electrical lighting fixtures, sidewalks, walkways, drainage systems, vegetative land cover installed by Declarant and other common improvements or parts of a multiple dwelling structure shall be borne equally by all of the owners of the townhouse units. It is further agreed that the owners shall, as a group, contract for snow removal services, trash removal services, landscaping services for vegetative land cover installed by Declarant provided, however, that ornamental

landscaping installed by an owner shall be the sole responsibility of said owner. If one of the owners refuses to pay his proportionate share of the cost of repair or maintenance as set forth above, the other owners may cause such repairs, maintenance or services to be performed and shall be entitled to assess the cost attributable against such non-paying owner's property and the same shall become and remain a lien against said property until fully paid. Such lien may be foreclosed in the manner provided by law for the foreclosure on a mortgage of real property.

4. No material alteration, including but not limited to architectural, structural or aesthetic improvements or alterations may be made upon or to a multiple dwelling structure without the approval of two-thirds (2/3) of the owners; provided, however, that no owner shall arbitrarily or unreasonably withhold his consent. All exterior painting or staining of a multiple dwelling structure shall be done at one time and all of the exteriors of the townhouse units shall be of the same color or stain as originally provided by Declarant.

#### ARTICLE V

#### INSURANCE

1. Each owner agrees to share equally in the costs of maintaining fire and extended coverage insurance covering the multiple dwelling structures situated in each of the described Blocks. Said insurance shall be written by insurance companies licensed to do business in the State of Colorado and having a Best's rating of A or better for management and a rating of AAAA or better financially, or a comparable rating. Insurance shall be obtained in an amount equal to the full replacement value of the multiple dwelling structure, without deduction for depreciation. Such policy shall contain a standard non-contributory mortgage clause in favor of each mortgagee of a townhouse unit. The policy shall recite each of the owners as a named "insured" to the extent of their interest. Further, each policy shall provide that it may not be cancelled or substantially modified without at least ten (10) days' prior written notice to all insureds, including mortgagees.

2. Each owner shall be solely responsible for obtaining and paying for fire and other insurance coverage on his furnishings and other items of personal property, and for casualty and public liability insurance coverage within that portion of the multiple dwelling structure for which he has the exclusive right of occupancy and use.

3. The determination of full replacement value of a multiple dwelling structure without deduction for depreciation shall be annually and the fire and extended coverage insurance covering a multiple dwelling structure shall be contemporized to reflect any changes in full replacement value. The appraisals referred to above shall be made by an MAI, SRA, or other similarly qualified appraiser.

4. In the event of damage or destruction due to fire or other disaster, if the insurance proceeds are sufficient to reconstruct a multiple dwelling structure, all such insurance proceeds available shall be used to pay the costs and expenses of such reconstruction. Repairs and reconstruction of a multiple dwelling structure shall mean the restoring of the multiple dwelling structure to substantially the same condition in which it existed prior to the damage.

5. In the event of damage or destruction due to fire or other disaster, if the insurance proceeds are insufficient to reconstruct a multiple dwelling structure then such damage or destruction shall be promptly repaired and reconstructed using the proceeds of insurance and the proceeds of a special assessment to be made against all of the owners of the townhouse units. Such special assessment shall be equal to the cost of repairs over and above the cost of any insurance proceeds available for reconstruction. Said assessment shall be made prorata among the townhouse unit owners. Said assessment shall be payable within 30 days from the date of notice thereof and the failure of an owner to pay the same shall entitle the other owners to assess the amount of said assessment against the non-paying owner's property and the same shall become and remain a lien against the property until fully paid. Such lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

ARTICLE VITAX AND ASSESSMENTS

Each owner shall be responsible for timely payment of the general taxes, including those for 1973 (based on 1972 levy and 1972 assessment), prepaid rents, water rents, sewer rents, on his lot and for payment of assessments levied upon such lot by Stagecoach Property Owners' Association.

ARTICLE VIIUTILITIES

Each owner shall be responsible for his respective cost for separately metered utilities, including gas, electricity and any other utilities which may in the future become separately metered. The cost of any commonly metered utilities, including gas and electricity shall be a common expense to all of the townhouse unit owners and such expense shall be shared equally among all of the owners of the townhouse units.

ARTICLE VIIIEASEMENTS

It is hereby declared, conveyed and granted that each lot shall be subject to the following easements:

a. Each lot shall be subject to an easement for encroachment of a unit onto an adjoining lot and for any encroachment occurring hereinafter as a result of settling or shifting of the multiple dwelling structure.

b. Each lot shall be subject to a blanket easement upon, across, over and under said lot as may be necessary or required for the installation, replacement, repair and maintenance of all utilities, including but not limited to water, sewer, gas, telephone and electricity and for drainage and for the maintenance of any drainage system.

ARTICLE IXPARTITION OF PARKING AREA

1. The common ownership of the parking areas, if any, shall remain undivided as equal tenants in common. No partition



action or any other action designed to cause a division of said parking areas shall be maintained or instituted by an owner. A violation of this provision by any owner shall entitle the other owners to personally collect, jointly and severally, from the owners violating the same, damages, attorney's fees and costs incurred in connection with such violation. Further, any decree of partition or proceeding to obtain such a decree shall be void.

2. There is hereby established, granted and conveyed an easement over, on and across the common parking areas for construction and repair thereof and for all purposes necessary for the full and complete use, occupation, and enjoyment of the easement hereby granted and all rights and privilege incident thereto.

ARTICLE X  
MANAGEMENT

The Declarant shall either form a non-profit corporation, hire a managing agent or form a committee to govern and administer the property in accordance with the terms and conditions of this Declaration. Whatever management vehicle which Declarant determines to use shall be immediately authorized and required to contract for snow removal services, trash removal service and maintenance services for the common portions of the multiple dwelling structures and parking lots. The management vehicle shall also be authorized to notify the owners of any assessments or common costs set forth in this Declaration and shall be required to collect the same from the owners and to use such funds to pay for any common services contracted for.

ARTICLE XI  
GENERAL

1. The terms of this agreement shall be in addition and not in substitution of the Declaration of Covenants, Conditions, and Restrictions for Stagecoach recorded under Reception No. 229787, File 7073, in the records of the Routt County Clerk and Recorder, Routt County, Colorado.

2. The use of captions preceding each Article and/or Paragraph herein shall in no way alter the exact wording utilized in such paragraphs, nor shall it have any binding effect upon the construction thereof.

3. The rules and regulations of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the owner of any lot subject to this Declaration or by any non-profit corporation, managing agent or committee established by Declarant to cover and administer the property, their respective legal representatives, heirs, successors, and assigns, for a term of twenty years from the date of this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten years. The covenants and restrictions of this Declaration may be amended during the first twenty year period by an instrument signed by not less than fifty-one percent of the Owners, including Declarant, and thereafter by an instrument signed by not less than fifty-one percent of the Owners. Any amendment must be properly recorded. No part of the Declaration may be amended in such a manner that it will adversely affect the existing rights of any Owner or mortgagee with particular respect, but not limited to, party walls, unpaid assessments, or the lien of any mortgage.

4. Wherever applicable, the pronouns designating the "masculine" shall equally apply to the "feminine" and "neuter". Further, wherever applicable within this Declaration, the "singular" shall include the "plural".

5. The provisions contained herein shall be considered severable; therefore, should any one or more of them be declared legally void or voidable, the remaining provisions shall in no way be affected thereby.

6. The terms, provisions and obligations of this Declaration shall be deemed and construed as real covenants running with the land and shall be binding upon and enforceable by the owners and subsequent owners of their respective interests in the premises.

7. This Declaration, and any subsequent amendment, additions and/or accession thereto, shall only become binding upon the owners at such time as it is filed for record at the Office of the Clerk and Recorder of the County of Routt, State of Colorado.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 21st day of December, 1979.

STAGECOACH DEVELOPMENT CORPORATION

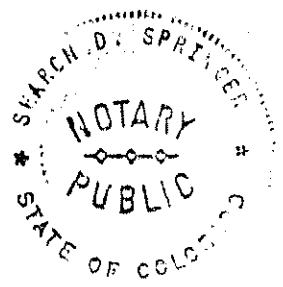
John Wittemyer  
John Wittemyer  
President

Ken R. Gillis  
Ken Gillis, Secretary

STATE OF COLORADO )  
                                  )  
COUNTY OF BOULDER )

The above and foregoing was subscribed to before me this 21st day of December, 1979, by John Wittemyer and Ken R. Gillis.

My commission expires \_\_\_\_\_ My Commission Expires Sept. 13, 1981



Sharon D. Springer  
Notary Public

RECORDED  
INDEXED  
DEC 21 1979  
COUNTY OF BOULDER  
COLORADO