

OCCUPANCY, USE AND MAINTENANCE AGREEMENT

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THIS AGREEMENT Made and entered into this 22nd day of

June, A. D., 1973, by and between the Owners of Lots A through F, Block FIVE of the Second Replat of Projects I and II at Stagecoach, Routt County, Colorado, hereinafter called the Property.

WITNESSETH:

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

WHEREAS, each unit of said multiple dwelling structure is connected by common walls, footings, foundations, sides and roof; and

WHEREAS, each of the parties hereto have either purchased or have contracted to purchase a townhouse unit in said multiple dwelling structure upon the said property; and

WHEREAS, each of the parties hereto have also purchased an interest in the parking area legally described on Exhibit A, attached hereto and incorporated herein by reference, in accordance with the Second Replat of Projects I and II at Stagecoach, Routt County, Colorado; and

WHEREAS, the parties hereto recognize the necessity of having certain rules and regulations concerning the occupancy, use and maintenance of said multiple dwelling structure, the separate townhouse units and the interests in and to the common parking area.

NOW, THEREFORE, in and for the mutual covenants of each of the undersigned; their respective agreements to abide by the following provisions, and the mutual reliance of each upon the others for compliance therewith, the parties agree as follows:

ARTICLE I

DEFINITIONS

1. "Multiple dwelling structure" shall mean and refer to the building improvement containing six townhouse units.

Recorded at 9:00 AM  
Reception No. 24256  
June 28, 1973  
CECH REC'D RECORDER

2. "Townhouse unit" shall mean and refer to that portion of the multiple dwelling structure situated upon any 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. "Common parking area" shall mean and refer to that tract of land described on Exhibit A and which Tract shall be used by the Owners of the Lots A through F on Block FIVE 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 by the parties to this Agreement only for residential purposes; provided, however, that each of the parties hereto shall be permitted to lease all or any portion of their respective townhouse unit.

3. Each of the parties hereto shall, during the term of this Agreement, peaceably and quietly enjoy and use their respective townhouse unit in such a manner so as not to disturb any other townhouse unit owner 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

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 of that portion of the real property of Block FIVE located 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

##### I. 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. The parties agree and hereby establish mutual reciprocal easements for support for all party walls between improvements constructed or to be constructed on the lots.

c. The parties agree that 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. The parties agree that 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 parties agree that the cost of reasonable repair and maintenance of the common roof, foundation and outer walls of the 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. The parties hereby grant and convey mutual reciprocal easements to each other for access to every townhouse unit for the maintenance, repair or replacement of the common roof, foundation and outer walls.

c. The parties agree that said easement of access may be exercised by any of the parties hereto or by a contractor or repairman hired by any one or more of the parties hereto to affect such repairs.

### 3. Common Repairs and Services.

The parties agree that the cost of reasonable repair and maintenance of the boardwalk, exterior electrical lighting fixtures, sidewalks, walkways, drainage systems, vegetative land cover installed by Woodmoor and other common improvements or parts thereof shall be borne equally by all of the owners of the townhouse units. The parties further agree that they shall, as a group, contract for snow removal services, trash removal services, landscaping services for vegetative land cover installed by Woodmoor, 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 said multiple dwelling structure without the approval of two-thirds (2/3) of the parties to this agreement; provided, however, that no party shall arbitrarily or unreasonably withhold their consent. The parties agree that all exterior painting or staining of the multiple dwelling structure shall be done at one time and that all of the exteriors of the townhouse units shall be of

the same color or stain as originally provided by Woodmoor Corporation.

## ARTICLE V

### INSURANCE

1. Each party agrees to share equally in the costs of maintaining fire and extended coverage insurance covering the multiple dwelling structure situated in Block FIVE. 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 parties to this agreement 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 party hereto shall be solely responsible for obtaining and paying for fire and other insurance coverage on such party's 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 such party has the exclusive right of occupancy and use.

3. The determination of full replacement value of the multiple dwelling structure without deduction for depreciation shall be made annually and the parties agree that the fire and extended coverage insurance covering the 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. The parties agree that in the event of damage or destruction due to fire or other disaster that if the insurance proceeds are sufficient to reconstruct the multiple dwelling structure and that all insurance proceeds available shall be used to pay the costs and expenses of such reconstruction. Repairs and reconstruction of the 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. The parties agree that in the event of damage or destruction due to fire or other disaster that if the insurance proceeds are insufficient to reconstruct the multiple dwelling structure then such damage or destruction shall be promptly repaired and reconstructed by the parties using the proceeds of insurance and the proceeds are 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 pro rata 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 VI

##### TAX AND ASSESSMENTS

Each party 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 Stage Coach Property Owners' Association.

#### ARTICLE VII

##### UTILITIES

Each party 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 VIII

##### EASEMENTS

The parties hereby declared, convey and agree that each lot in Block FIVE 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 IX

PARTITION OF PARKING AREA

The parties hereto agree that the common ownership of the parking area, if any, shall remain undivided as equal tenants in common. Each of the parties specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of said parking area, and each of the parties hereto specifically agrees not to institute such an action. A violation of this provision by one or more of the parties hereto shall entitle the other parties to personally collect, jointly and severally, from the parties violating the same, damages, attorney's fees and costs incurred in connection with such violation. Further, the parties agree that any decree of partition or proceeding to obtain such a decree shall be void.

ARTICLE X

TERM

This Agreement shall commence on the 22nd day of June, A. D., 1973, and shall expire on the 1st day of January, 2025.

ARTICLE XI

MANAGEMENT

The parties agree that within 30 days after the execution hereof that they shall hold a meeting, at a time and place agreed upon by two-thirds (2/3) of the parties hereto, and at such meeting the parties agree to 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 agreement. The parties agree that whatever



management vehicle which they determine 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 structure and parking lot. The management vehicle shall also be authorized to notify the parties hereto of any assessments or common costs set forth in this agreement and shall be required to collect the same from the parties hereto and to use such funds to pay for any common services contracted for.

## ARTICLE XII

### GENERAL

1. The parties hereby agree that the terms of this agreement shall be in addition and not in substitution of the Declaration of Covenants, Conditions and Restrictions for Stagecoach recorded in Book 358 at Page 175 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. Wherever applicable, the pronouns designating the "masculine" shall equally apply to the "feminine" and "neuter". Further, wherever applicable within this agreement, the "singular" shall include the "plural".
4. 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.
5. The terms, provisions and obligations of this Agreement shall be deemed and construed as real covenants running with the land and shall be binding upon and enforceable by the parties hereto and subsequent owners of their respective interests in the premises.
6. This Agreement is binding upon the parties hereto, their respective heirs, representatives and assigns.
7. This Agreement, and any subsequent amendment, additions and/or accession thereto, shall only become binding upon the parties hereto 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.
8. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one Agreement binding on all the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart.

ARTICLE XIII  
SUBORDINATION OF THE LIEN TO MORTGAGES      BCDK379 PAGE 347

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages. Sale or transfer of any lot as a result of court foreclosure of a mortgage, foreclosure through the Public Trustee, or any proceeding in lieu of foreclosure, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer, but shall not relieve any former Owner of personal liability therefor. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures and seals on the day and year first above written.

Lot C

George R. McIntosh  
George R. McIntosh

Marilyn M. McIntosh  
Marilyn M. McIntosh

Lot A, B, D, E. and F.  
THE WOODMOOR CORPORATION  
Dan M. Horner  
Dan M. Horner, Vice President



STATE OF COLORADO )  
 CITY AND COUNTY OF DENVER ) ss.  
 The above and foregoing was subscribed to before me this 22nd day of  
June, A.D., 1973 by George R. McIntosh and Marilyn M. McIntosh  
 My Commission Expires: December 3, 1975

Helga M. Herholz  
Notary Public

STATE OF COLORADO )  
 CITY AND COUNTY OF DENVER ) ss.

The above and foregoing was subscribed to before me this 22nd day of  
June, A.D., 1973 by Dan M. Horner as  
Vice President-Real Estate of THE WOODMOOR CORPORATION

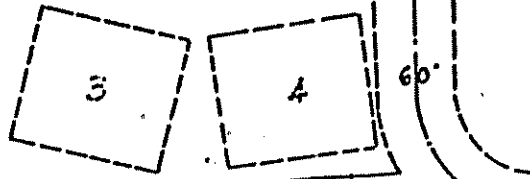
My Commission Expires: December 3, 1975



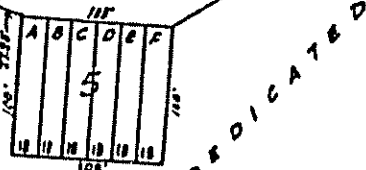
Helga M. Herholz  
Notary Public

EXHIBIT A.

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SCHUSSMARK TRAIL



WESTLY CORNER OF "A SECOND REPLAT OF PROJECT I & II AT STAGECOACH"

INFORMATION MAP  
BLOCK 5  
A SECOND REPLAT OF PROJECT I & II  
AT STAGECOACH  
MARCH 23, 1973

PURCHASERS OF EACH LOT IN BLOCK 5 WILL RECEIVE  
AN UNDIVIDED 1/6 INTEREST IN PARCEL 5-G FOR  
PARKING AND ACCESS PURPOSES.