

Recorded at ¹⁰ 11 O'clock A.M. Jan. 31, 1980
Reception No. 293759 EUNICE DORR, Recorder

BOOK 496 PAGE 510

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
EAGLES NEST AT STAGECOACH, PHASE 1

THIS DECLARATION is made on the date hereinafter set forth by STAGECOACH DEVELOPMENT CORPORATION, a Colorado corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Stagecoach, County of Routt, State of Colorado, as described on Exhibit "A" attached hereto and being all that real property more particularly described and shown on the Plat of EAGLES NEST AT STAGECOACH, PHASE 1, filed on January 31, 1980, in File No. 8514, Routt County records, (hereinafter called the "Plat of Phase 1"), and desires to create on such property, and on such additional properties adjacent thereto and within Multi-Family Lot 7, Meadowgreen at Stagecoach, as may hereafter be added and annexed by Declarant (the right and options to add such additional properties being expressly herein reserved in Declarant and its successors and assigns to such Property), a residential townhomes community with open spaces and common facilities for the benefit of the owners and occupants of said community; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said townhomes community and for the maintenance of said open spaces and common facilities and, to this end, desires to subject all of the real property shown and designated on the Plat of Phase 1, and additional properties adjacent thereto and within Multi-Family Lot 7, Meadowgreen at Stagecoach, as may hereafter be added and annexed by Declarant and made a part of and subject to this Declaration, to the covenants, restrictions, easements,

charges and liens hereinafter set forth, each and all of which is and are for the benefit of all of such original property and additional property and all owners of lots and townhomes thereof; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Colorado, as a nonprofit corporation, the Eagles Nest Townhomes Owners' Association, for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, Declarant hereby declares that all of the real property described on Exhibit "A" hereto and shown on the Plat of Eagles Nest at Stagecoach, Phase 1, and all additional properties adjacent thereto and within Multi-Family Lot 7, Meadowgreen at Stagecoach, as may hereafter be added and annexed by Declarant (or its successors and assigns thereto) and made a part of and subject to this Declaration, 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, all of such real property and be binding on all parties having any right, title or interest in such real property 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 Eagles Nest Townhomes Owners' Association, a Colorado nonprofit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to any individual, corporation, partnership, association, trust or other legal entity which is the record owner of an undivided fee simple interest in any Lot which is a part of the Properties, including a contract seller but excluding those having such interest merely as security for the performance of any obligation.

Section 3. "Properties" shall mean and refer to all of that certain real property more particularly described on Exhibit "A" and shown on the Plat for Eagles Nest at Stagecoach, Phase 1, (including the lots and the Common Area), together with such additional real properties adjacent thereto and within Multi-Family Lot 7, Meadowgreen at Stagecoach, as may hereafter be added and annexed by Declarant or its successors or assigns and made a part of and subject to this Declaration.

Section 4. "Common Area" shall mean all real property within the Properties (including facilities thereon and improvements thereto) now and hereafter owned in fee 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 shown on and described as "Common Area" on the Plat for Eagles Nest at Stagecoach, Phase 1, and includes all private roadways, parking areas, grounds, recreation and play areas, and utilities thereon, and shall be conveyed, unencumbered, by the Declarant to the Association prior to conveyance of the first Lot. In connection with adding additional properties within Multi-Family Lot 7, Meadowgreen at Stagecoach, to this townhomes project and subjection of such additional properties to this Declaration, the Declarant or its successors and assigns shall designate the Common Area within such additional properties and shall convey the same to the Association.

Section 5. "Lot" shall mean and refer to any plot of land laid out and platted and designated as a lot on any recorded subdivision map of the Properties made pursuant to this Declaration, except any Common Areas, title to which Lot is or will be conveyed in fee simple to an Owner by reference to the Lot designations on any such subdivision map and on which is or may be constructed a Townhome. Every contract of sale, deed, lease, deed of trust, mortgage,



lien, or other instrument recorded in the Routt County property records and affecting a Lot shall describe it by Lot number as shown on the Subdivision Plat, followed by the name "Eagles Nest at Stagecoach," followed by reference to the applicable phase and reference to the recording date of such subdivision plat and specific reference to this Declaration and, if such Lot be on real property hereafter added and annexed by Declarant to this townhomes development, reference to the applicable Supplemental Declaration. "Specific reference" in the previous sentence shall mean book and page or file number recording date from the Routt County property records.

Section 6. "Declarant" shall mean and refer to Stagecoach Development Corporation, a Colorado corporation. With respect to the rights and options reserved in this Declaration to add and annex additional and adjacent properties within Multi-Family Lot 7, Meadowgreen at Stagecoach, to this townhomes development as above provided and as described in Article VIII hereof, and the allocation of Class B membership and votes in the Association, "Declarant" shall also mean and refer to any person or entity owning at any time any real property within Multi-Family Lot 7, Meadowgreen at Stagecoach, adjacent to the property described in Exhibit "A" and on the Plat for Eagles Nest at Stagecoach, Phase 1, who has received from Declarant an executed and acknowledged deed of transfer by specific reference hereto of the right and option to add and annex such real property to this townhomes development, recorded in the real property records of Routt County, and who thereafter adds or annexes all or any part of such real property to this townhomes development in the manner hereinafter provided. The rights and options reserved in Declarant to add and annex properties is severable, and may be transferred to more than one tract of land and more than one transferee, from time to time.



Section 7. "First lienor" means a holder of a promissory note payment of which is secured by a first mortgage or first deed of trust encumbering a Lot. "Mortgage" shall include a deed of trust, and "mortgagee" shall include the beneficiary of a deed of trust.

Section 8. "Townhome" means a building improvement constructed on any Lot and occupied or to be occupied for residential purposes, and having one or more party walls with Townhomes on one or more contiguous Lots.

Section 9. "Declaration" means this instrument and all amendments hereto recorded hereafter in the real property records of Routt County, Colorado, and "Supplemental Declaration" means any instrument hereafter executed and recorded by Declarant (or its successors or assigns) which adds and annexes additional adjacent property to this townhomes development, in the manner hereinafter described.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner (including each co-owner in a co-owned Lot) shall have a right and easement of use and enjoyment in and to the Common Areas and all facilities and improvements at any time thereon which shall be appurtenant to and shall pass with the title to such Owner's Lot, subject to the following provisions:

- (a) the right of the Association to adopt, publish and enforce reasonable rules and regulations for the use and enjoyment of Common Area or any facility, and 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, in accordance with its Articles and Bylaws but only after the written approval of all of the first lienors (based upon one vote for each first mortgage owned) and the owners of at least two-thirds of the Lots (other than Declarant), to borrow money for the purpose of (i) improving or maintaining the Common Area, or (ii) constructing, repairing, maintaining, or improving improvements or facilities on the Common Area, and to mortgage or encumber all or any part of the Common Area and improvements thereon to secure such borrowing.
- (c) the right of the Association to suspend the voting rights and right to use and enjoy the recreational facilities or Common Area by an Owner for any period during which any assessment against his Lot remains unpaid for more than 30 days, and for a period not to exceed 60 days for any infraction of its published rules and regulations; provided, however, that no suspension of voting rights shall affect the rights of a first lienor to vote pursuant to a proxy granted in connection with a first-lien deed of trust or mortgage encumbering a Lot during the period of default of such Owner.
- (d) perpetual and non-exclusive easements for installation, construction, repair and replacement of underground public utilities on and under the Common Area, as may be conveyed or dedicated by Declarant to any public agency or authority or utility in any recorded subdivision map of the Properties or by any later deed of dedication or transfer.
- (e) In addition to subparagraph (d) above and not to conflict therewith, the right of the Association



to dedicate or transfer all or any part of the Common Area to any public agency, authority, entity or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been signed by all of the first lienors (based upon one vote for each first mortgage owned) and the Owners of at least two-thirds of the Lots, and such instrument has been recorded.

- (f) the right and non-exclusive easement hereby reserved in Declarant to use at any time and from time to time hereafter so much of the Common Area as Declarant deems necessary or advisable for the purpose of access to and of aiding or assisting in the construction, reconstruction or development of unimproved Lots on the Properties; provided, however, that this easement shall terminate 7 years after recording of this Declaration in the real property records of Routt County, and provided further that Declarant shall pay for any actual physical damage to improvements which have been installed upon the Common Area caused by such use by Declarant.
- (g) the right of individual owners to the exclusive use of parking spaces, if assigned by the Association pursuant to Article X herein.
- (h) that use and enjoyment of Common Area and facilities shall not interfere with or be injurious to the use and enjoyment thereof by other Owners, nor create any public or private nuisances thereon.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the

Common Area and facilities to the members of his family, his tenants, guests, invitees, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of an undivided fee simple interest in a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of an undivided fee simple interest in a Lot. However, an Owner may grant a proxy to a first lienor in connection with a first mortgage on a Lot and such first lienor may exercise such voting rights during the existence of any default in such first mortgage.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot owned. When two or more Owners own undivided fee simple interests in any Lot, whether as joint tenants, tenants in common, or otherwise, then each such person shall be a member, and the voting rights allotted for such Lot shall be exercised as such co-Owners may determine and agree, but in all events only one vote, undivided, may be cast for all such co-Owners of such individual Lot with respect to any matter, decision or election of the Association on which a vote is taken.

Class B. The Class B member shall be the Declarant, and Declarant shall be entitled to three (3) votes for each Lot owned by it. For purposes of Class B membership, "Declarant" shall also mean and refer to any person or entity owning at any time any real property within Multi-Family Lot 7, Meadowgreen at Stagecoach, adjacent to the property described in Exhibit "A" and on the Plat for Eagles Nest at Stagecoach, Phase 1, who has received from Declarant an executed and acknowledged deed of transfer by

specific reference hereto of the right and option to add and annex such real property to this townhomes development, recorded in the real property records of Routt County, and who thereafter adds or annexes all or any part of such real property to this townhomes development in the manner hereinafter provided. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) on December 1, 1986.

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 also to covenant and agree, to pay to the Association: (a) annual assessments, and (b) special assessments for unanticipated repairs or replacements, such assessments to be established and collected as hereinafter provided. The annual and special assessments of the Association, together with interest, costs of court and discovery, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessments are made, from the time such assessments become due. Each such assessment, together with interest, costs of court and discovery, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due, and if such Lot is owned by two

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or more persons, as tenants in common or in joint tenancy, then such personal obligation shall be joint and several among all co-owners of such Lot. However, the personal obligation of an Owner for delinquent assessments shall not pass to such Owner's successors in title to such Lot unless expressly assumed by such successors. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. The Association's lien may be foreclosed by the Association in like manner as a mortgage on real property upon recording of a notice thereof in the Routt County property records, executed by the Association or its managing agent, such notice setting forth the amount of the unpaid indebtedness (itemized for general or special assessment, interest, fees and late charges), the name of the Owner of the Lot, the legal description of the Lot, and a statement that such lien extends to reasonable attorney's fees and costs incurred in enforcing the same.

Section 2. Purpose of Assessment. The assessments levied by the Association through its Board of Directors shall be used exclusively to: (a) promote the recreation, health, safety, enjoyment, and welfare of the residents in the Properties; (b) promote the services and facilities devoted to such purposes and related to the use and enjoyment of the Common Area and of the Townhomes situated upon the Properties; (c) construct, replace, maintain and repair parking areas, landscaping, private roads, recreational facilities and Common Area; (d) perform any maintenance or improvement obligations which may be incurred by virtue of agreement with the County of Routt; (e) provide maintenance and repairs to the exteriors of the Townhomes as provided in Article VII of this Declaration; (f) pay any taxes, assessments, liens, encumbrances, mortgages or charges encumbering or against the Common Area or any part thereof; (g) pay all water, sewer and trash removal charges and fees



as may be levied or assessed to the Common Area or to the Lots, if the provider of such service shall desire to bill the Properties on a consolidated basis; (h) pay legal and accounting and management fees and costs for Association activities; (i) defray the costs of any activity which the Association is empowered to perform or undertake pursuant to this Declaration or the Articles of Incorporation or By-laws; (j) pay the premiums for adequate insurance of any and all types and amounts deemed necessary or proper by the Board of Directors with respect to the Common Area or required or permitted by this Declaration including without limitation, insurance provided for in Article XI hereof; and (k) to establish an adequate reserve fund for construction, reconstruction, repair and replacement of the Common Area improvements, including fixtures and personal property related thereto; and (l) to provide such other reserves as may be deemed to be necessary in order to accomplish the objects, purposes and obligations of the Association and as approved by the affirmative vote of the Owners of two-thirds of the Lots (excluding Declarant).

Section 3. Basis and Payment of Annual Assessments.

- (a) The annual assessment with respect to each Lot for the first calendar year or part thereof shall be estimated and determined by the Board of Directors prior to the conveyance of the first Lot, and shall be payable in equal periodic installments (but not less than quarterly) in advance over the balance of the first calendar year.
- (b) The Board of Directors of the Association shall determine within 30 days prior to the close of each calendar year whether or not a deficiency will exist in meeting the actual annual costs for such year. The Association shall bill all Owners at a uniform rate for such deficiency with



the next succeeding periodic bill following such determination. After the close of each calendar year, if a surplus shall exist, such surplus shall be placed in an operating reserve of the Association, unless 2/3ds of the members of each class vote to credit the Owners with such surplus, in which event pro rata credit shall be given to each Owner on a uniform basis to be credited against next succeeding installment payments following such vote.

- (c) At least thirty (30) days prior to the end of each calendar year, the Board of Directors of the Association shall determine the assessments for the next ensuing calendar year. Such assessments shall be based upon an annual budget for the Association approved by the Board of Directors at least 30 days prior to the end of each calendar year. Each such budget shall be based upon the actual income and expenditures for the preceding year, plus an amount reasonably attributable to inflation, plus such amounts representing expected expenses for the ensuing year which were not expenses in the preceding year. Each such budget, and assessments based thereon, shall include contributions to reserves maintained by the Association, and shall include contributions to a reserve fund for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis.
- (d) Periodic installments of annual assessments shall be payable on or before the 10 days after the billing for such installment is mailed or delivered, but shall be and become a lien as of the date of the first installment of the annual assessment,

as hereinafter provided. Written notice of the annual assessment, the amount of each installment and the due dates therefor, shall be sent to every Owner as soon as practicable after the beginning of the calendar year for which such assessment is made.

Section 4. 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 ONE THOUSAND DOLLARS (\$1,000.00) 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 20% above the maximum assessment for the previous year, without a 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 20% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Special Assessment for Unanticipated Repairs and Replacements. In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any unanticipated maintenance, repair or replacement of all or any part of any capital improvements 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 present and voting in person or by proxy at a meeting duly called for this purpose. Any special assessment shall be payable in one or more installments on a regular basis as determined by the Board of Directors of the Association, and the lien therefore shall be effective from the due date for the first installment.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 4(b) and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4(b) or 5 shall be sent to all members not less than 10 days nor more than 50 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 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 one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Proportionate Allocation of Assessments. All assessments, including annual and special assessments, shall be allocated among the Owners on the basis of respective square footage of interior floor space of the Townhomes initially constructed on all of the Lots. The percentage liability of the Owner or Owners of any Lot for assessments shall be determined by dividing the interior square footage of the Townhome initially constructed on such Lot by the total interior square footage of all Townhomes initially constructed on all Lots then in the Properties. Such percentage liability shall be re-determined each time additional property is annexed and added to this residential townhomes community pursuant to Article VIII herein. The interior square footage

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of all Townhomes initially constructed in Eagles Nest at Stagecoach, Phase 1, is set forth in the schedule on Exhibit "B" attached to this Declaration and by this reference made a part hereof. For purposes of allocation of assessments, the interior square footage of Townhomes on Lots shall not be altered, abated or affected by damage to or destruction of all or part of any Townhome. No Owner may avoid liability for any assessments by virtue of non-use of all or any part of the Townhome on such Owner's Lot, or by virtue of the damage to or destruction of such Townhomes.

Section 8. Date of Commencement of Annual Assessment: 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 the first Lot by Declarant to an Owner. 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 calendar year. Written notice of the annual assessment and the due dates for the installments shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

Section 9. 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 24% per annum, and, in addition, the Association may charge a late payment fee not exceeding \$100.00. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien against the Lot, or may do both in the same proceeding. 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 10. Subordination of the Lien to Mortgages.
The lien of the assessments in favor of the Association

provided for herein shall be prior to all other liens and encumbrances on a Lot except (i) any liens or encumbrances recorded before this Declaration, (ii) the lien for real property taxes and special assessments and the lien of any Colorado special district, and (iii) the lien of any first mortgage or first deed of trust on the Lot. Sale or transfer of any Lot shall not affect the assessment lien, provided, however, that any first lienor who obtains title to a Lot pursuant to the remedies provided in the mortgage or deed of trust, or upon foreclosure of such mortgage or deed of trust, will not be liable for such Lot's unpaid assessments or charges which accrue prior to the acquisition of title to such Lot by such first lienor.

Section 11. Exempt Property. All properties dedicated to, and accepted by, a public entity or authority shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 12. Statement of Assessments. Upon written request of any Owner, mortgagee, prospective mortgagee, purchaser or other prospective transferee of a Lot, the Association shall issue a written statement setting forth with respect to any Lot the amount of any unpaid assessments, the dates on which such assessments respectively became or shall become due, the amount of any credits to the account of such Lot, and the amounts of any interest, late payment charges, attorney's fees or costs due with respect to such Lot. Such statement, for which a reasonable fee may be charged, is binding upon the Association in favor of any person who may rely thereon in good faith. Unless such statement shall be supplied within 15 days after receipt of request therefor, all unpaid annual or special assessments which became due prior to the date of making such request shall be subordinated to the lien or other interests of



the person requesting such statement. In addition, a first lienor, upon request, is entitled to written notification from the Association of any default in the performance by the Owner or any Owner of the Lot encumbered by the deed of trust or mortgage in favor of such first lienor of any obligation under this Declaration or the articles of incorporation, bylaws and rules and regulations of the Association which is not cured within 60 days.

Section 13. First Lienor Entitled to Pay Common Area Charges. First lienors of Lots, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against the Common Area or any part thereof and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for improvements on the Common Area, and first lienors making such payments shall be owed immediate reimbursement therefor from the Association.

ARTICLE V

ARCHITECTURAL CONTROL

Except for original construction or reconstruction of Townhomes by Declarant on unimproved Lots for purposes of sale, 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 of any Townhome 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, quality of construction, and similarity of materials, in relation to adjacent or nearby Townhomes and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more members of the

Association 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.

ARTICLE VI

PARTY WALLS

Section 1. Party Wall Easements. Mutual reciprocal easements are hereby established, declared and granted for all common walls between Townhomes now and hereafter constructed on Lots, for the mutual support of such Townhomes, and shall be governed by this Declaration. The common wall between such Townhomes on adjoining Lots is hereby declared to be a party wall, and the Owners of the adjoining Lots shall have the right to use it jointly. Each Owner of each Lot shall have an easement on that part of the foundation, stem-walls, supporting wall structure and roofing of the Townhomes on each adjoining Lot as are situated adjacent to the common boundary between such adjoining Lot and such Owner's Lot, for the purpose of structural support, repair and maintenance of the same, and including reasonable access through such adjoining Lots and the Townhomes thereon for the repair, maintenance, restoration and replacement of such building components constituting the party wall and situated on such common boundary. Reference to any Lot in any instrument affecting the title thereto, including without limitation deeds, mortgages, deeds of trust, statements of lien and the like, shall be deemed automatically to include the reciprocal easements for party wall structural improvements adjacent and appurtenant to such Lot. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

Section 2. Restrictions on Party Wall. An Owner may, in connection with modification, remodeling, adding to or changing a Townhome on a Lot, extend the common party wall horizontally or vertically, so long as the extension (a) does not encroach on the Common Area, (b) does not exceed a height of 25 feet above ground level or the height of the Townhome as initially constructed on such Lot, whichever is higher, and (c) is the same width as the remainder of the party wall and does not impair its strength nor injure the foundations of the Townhome on the adjacent Lot. The Owner of an adjoining Lot shall have the right to use the extended part of the party wall and join in ownership of it by paying to the constructing Owner one-half of the cost and expense of extending such party wall. Any such extension of the wall so jointly paid for shall be a party wall. All extensions of the party wall shall be constructed in accordance with Routt County building codes then in effect. No Owner shall construct, or permit or allow the construction or continuation of, any openings in any party wall of any nature whatsoever without the consent of the Owner of the adjoining Lot, excepting only as permitted for repair, maintenance, restoration and replacement of party wall improvements.

Section 3. Repair, Maintenance, Damage and Destruction of Party Wall. Repair, restoration and replacement of any part of party wall improvements of an Owner caused by the willful act or negligence of the Owner of an adjoining Lot, or his family members, guests or invitees, shall be the responsibility of and performed by such other Owner at his sole cost and expense. Repair and maintenance of party wall coverings (including sheet-rock, panelling, fireboard and the like) due to ordinary wear and tear or damage or destruction by acts of God or the elements, shall be the responsibility of the Owner on whose Lot such wallcoverings are situated,

at his cost. Repair, maintenance, replacement and restoration of all other parts and components of party wall improvements (including extensions), including concrete, structural framing, roof material and insulation, shall, unless caused by the willful act or negligence of one Owner or his family, guests or invitees, be performed at the joint and mutual cost and expense of the Owners of both Lots having easements in such party wall. Notwithstanding any of the foregoing, if any Owner shall willfully or negligently cause party wall improvements to be exposed to the elements, such Owner shall bear the whole cost of furnishing necessary protection to such party wall improvements against the elements. Each Owner is hereby licensed by the adjacent Lot Owner to enter upon the other Owner's premises during reasonable business hours and after reasonable notice to make necessary or proper repairs, maintenance, restoration, replacement or extension of the party wall improvements.

Section 4. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title, provided however, that no first lienor who obtains title to a Lot pursuant to the remedies provided in the mortgage or deed of trust, or by foreclosure thereof, or its successors in title, shall be liable for any party-wall charges which accrued prior to the acquisition of title by such first lienor.

Section 5. Arbitration. In the event of any dispute between adjacent Lot Owners arising concerning a party wall, or under the provisions of this Article, such dispute shall first be submitted to binding arbitration pursuant to the Colorado Uniform Arbitration Act of 1975. Each party shall choose one arbitrator, and such two arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. The selection by each



party of an arbitrator shall be made within 20 days of notice by one party in writing to the other party demanding arbitration of any such dispute.

ARTICLE VII

EXTERIOR MAINTENANCE

In addition to maintenance of the Common Area, the Association shall maintain in good order and repair the exterior of each Townhome on each Lot, the sidewalks and walkways to each Townhome, and the lawns adjacent to each Townhome. In this connection, the Association shall paint, repair, replace, and care for roofs (including snow removal), fireplace flues, gutters, downspouts, siding and exterior building surfaces, trees, shrubs, grass, walkways and other exterior improvements originally installed by the Declarant. The expense of such exterior maintenance shall be a common expense of all Owners and shall be assessed to all Owners by the Association as part of the annual assessment. Such exterior maintenance shall not, however, include repair, maintenance or replacement of (i) glass surfaces or windows, (ii) additions not originally installed by Declarant, (iii) concrete elements or foundations, or (iv) exterior lighting or plumbing or utility elements or appurtenances, nor the removal of snow from walkways, all of which shall be maintained, repaired or performed by Owners upon demand of the Association.

In the event that the need for extra maintenance or extra repair on any Townhome is caused through the willful or negligent act or omission of the Owner, his family, guests, or invitees, or is to be made to those elements for which the Owner is liable by virtue of the preceding sentence and such Owner refuses or neglects to perform same within 30 days after written demand from the Association, then the cost of such extra maintenance or extra repairs as shall be made by the Association shall be billed and added

to and become a part of the annual assessment to the Lot on which such Townhome is situated.

ARTICLE VIII

ADDITIONS TO DEVELOPMENT

Additional land situated adjacent to the property described on Exhibit "A" hereto and on the Plat of Eagles Nest at Stagecoach, Phase 1, may be added and annexed by Declarant to this residential townhomes community and be made a part of and subject to this Declaration, without the consent or approval of the Owners or members of the Association, at any time and from time to time within 7 years of the date of recording this instrument, at once or in additional phases, by recording in each instance a Supplemental Declaration which shall be executed and acknowledged by Declarant and recorded in the real property records of Routt County and which shall contain at least the following: (i) a legal description of the real property being added; (ii) an adoption by reference of all provisions, terms, restrictions and conditions of this Declaration as being applicable to, and a limitation on, all Lots and Common Area and Townhomes on and within such additional property; and (iii) a schedule of the exterior square footage of all Townhomes initially constructed on all Lots in the additional Property. Additionally, Declarant shall record a Supplemental Plat delineating thereon at least the location and dimensions of each Lot and the Common Areas. In each such event and after recording such Supplemental Declaration and the plat of the subdivision of such additional property into Lots and Common Areas, this Declaration and all provisions, terms, limitations, conditions and restrictions hereof, shall apply to such additional Lots and Common Areas and Townhomes, and Owners of such Lots shall be members of the Association, all the same as if originally included in this Declaration.

USE RESTRICTIONS

The use of the Common Area shall be subject to the restrictions set forth in Article II, Section 1, and to the following, which shall be deemed restrictive covenants respecting use and occupancy of each of the Lots and of the Common Areas:

- (a) No use shall be made of the Common Area which will in any manner violate the statutes, rules and regulations of any governmental authority having jurisdiction over the Common Area.
- (b) No Owner shall place any structure whatsoever upon the Common Area, nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of the Common Area to all Owners, and guests, tenants and invitees of Owners.
- (c) No use shall be made of the Common Area which is contrary to the rules and regulations as may be adopted from time to time by the Board of Directors of the Association, and the Board is so empowered to adopt and publish reasonable rules and regulations affecting the Common Area and use thereof not inconsistent with this Declaration.
- (d) No use shall ever be made of the Common Area which will deny ingress and egress to those Owners having access to Lots only over Common Area and the right of pedestrian ingress and egress to said Lots is hereby expressly granted.
- (e) The Lots are hereby restricted to residential Townhomes for single-family residential use, and to uses related to the convenience and enjoyment of such residential use. Any Townhome may be leased or rented for such residential purposes.

All Townhomes erected upon any Lot shall be of new construction, and no buildings or structures shall be moved from other locations onto any Lot. No structures of a temporary character, and no mobile home, modular or preconstructed dwelling, shack, garage, barn, or other outbuilding shall be placed installed or used on any portion of any Lot at any time for any purpose, either temporarily or permanently. Motor homes, camper trailers and boats may be stored at such locations on the Common Areas as are designated by the Board of Directors of the Association.

- (f) No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot or the Common Area; provided, however, that, except for those that are kept, bred or maintained for any commercial purpose, dogs and cats may be kept, subject to rules and regulations adopted by the Association.
- (g) No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any Lot or Townhome or the Common Area, nor shall any part of the Properties be used in any way for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any resident of a Townhome; provided, however, that one "For Sale" or "For Rent" sign of no more than five (5) square feet in area may be placed on a Lot. No business activities of any kind whatever shall be conducted in any Townhome or in the Common Area. Provided further, however, that the foregoing restrictions in this subparagraph (g) shall not apply to the business activities, erection and maintenance of signs and billboards,



use of model units, or the construction and maintenance of Townhomes, if any, by the Declarant, its agents contractors, employees and assigns, during the period of construction and sale of Townhomes on Lots, and of the Association, its successors and assigns, in furtherance of its powers and purposes as herein set forth.

- (h) All equipment, garbage cans, service yards, wood piles, or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Lots and streets. All rubbish, trash, or garbage shall be regularly removed from the Properties, and shall not be allowed to accumulate thereon. No clotheslines or propane gas tanks shall be permitted. Exterior paint and trim and decoration of each Townhome shall be the same color as the adjacent Townhomes.
- (i) No planting or gardening shall be done, and no fences, hedges, trees or bushes shall be erected or grown or maintained upon the Lots, except for ordinary lawns and except as were planted by Declarant in connection with the initial construction of the Townhomes located thereon and except as are approved under the Architectural Control provisions of this Declaration.
- (j) The Association, shall maintain, keep in good order and repair and otherwise manage and operate all Common Areas, and the Association may contract with any professional property manager or management firm to perform such management duties and other maintenance, repair and management functions required of or permitted by the Association under this Declaration; provided, however, that any such contract or agreement for professional property



management, and any contract providing for services by Declarant, may not exceed 3 years and must contain a provision allowing termination by either party without cause and without payment of a termination fee on 90 days or less written notice.

- (k) No exterior television or radio antennae of any sort shall be placed, allowed or maintained upon any portion of a Townhome located upon any Lot, nor upon any structure situated upon the Properties, except as may be approved under the Architectural Control provisions of this Declaration.
- (l) No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family Townhome not to exceed three stories in height. No garages may be constructed on any Lot.
- (m) The total floor area of each Townhome shall be not less than 1100 square feet, and the main floor area shall have not less than 500 square feet.
- (n) No Townhome shall be located on any Lot nearer than 3 feet from the nearest parking lot.

ARTICLE X

PARKING RIGHTS

The Association shall maintain upon the Common Area at least two parking spaces for each Lot. These parking spaces shall be undesignated, unless the Association shall determine that such designation is in the best interests of the Owners. If such determination shall be made, then the following provisions shall be in effect: subject to reasonable rules and regulations, the Association shall, from time to time, designate such parking spaces conveniently located with respect to each Lot for the exclusive use of the members

residing therein, their families, tenants, invitees and guests. The use of such designated spaces by any other member or person may be enjoined by the Association or the members entitled thereto. The right to the exclusive use of such parking spaces and to its maintenance and designation by the Association shall be appurtenant to and shall pass with the title to each Lot. The Owners and their families, guests, tenants, and invitees, shall be entitled to use of any additional parking spaces in excess of two per Lot on a first come-first served basis, provided that no Owner shall be entitled to the use of more than a total of 3 parking spaces for each Lot. Motor homes, camper trailers, and boats may be placed on such parking areas as are designated by the Board of Directors of the Association. The Association's trash containers may be parked in the spaces designated for such purposes by the Association.

ARTICLE XI

INSURANCE

- (a) The Association shall, on behalf of the Owners:
- (i) Keep all Townhomes (including all fixtures therein, but not including furniture, furnishings or other personal property) and all building improvements (if any) on the Common Area insured against loss or damage by fire, with extended coverage endorsement (including insurance against loss or damage by vandalism or malicious mischief), in an amount not less than 100% of the insurable value thereof (based on current replacement cost).
 - (ii) Provide and keep in force, for the protection of the Association, its officers and directors, and all the Owners and first lienors, general public liability insurance against claims for bodily injury or death or property damage

occurring upon or in the Common Area, in limits of not less than \$500,000.00 per occurrence and not less than \$1,000,000.00 aggregate, for bodily injury or death to persons, and in limits of not less than \$100,000.00 for damage to property, and if higher limits shall at any time be customary to protect against possible tort liability, such higher limits shall be carried; and

- (iii) Carry insurance in such amounts as the Association may consider necessary or advisable against such other insurable hazards as may from time to time be commonly insured against in the case of similar property in similar locations elsewhere.

(b) All insurance required to be carried under this paragraph shall be carried in favor of the Association, and in favor of the Owners and all first lienors, as their respective interests may appear of record, the respective interests of each Owner being his respective pro rata liability for assessments, from time to time. Each policy of insurance on Townhomes shall contain a standard mortgagee clause in favor of each first lienor of a Lot which shall provide that the loss, if any, thereunder shall be payable to such first lienor, as its interest may appear, subject, however, to the requirement that insurance proceeds shall first be utilized to repair the exterior of a damaged Townhome (if the insurance proceeds are adequate in that regard) in order to prevent continuation of any damaged Townhome from degrading the value of adjacent Townhomes. All policies of insurance against damage to or destruction of improvements in the Common Area shall be in the name of the Association, as owner, and the proceeds of any such insurance shall first be applied to the repair or replacement of the Common Area improvements,

JW
[Signature]

if practicable, but if the Association shall propose a distribution of any of such insurance proceeds in lieu of such replacement, no party shall have rights to such proceeds prior to the rights granted to first lienors pursuant to the terms of their deeds of trust or mortgages. Each insurance policy shall provide that in case of violation of any provision thereof by one or more (but not less than all) of the Owners, the coverage of such policy shall be suspended or invalidated only as to the interest of the Owner or Owners committing the violation and not as to the interest of any other Owner. Evidence or certificate of continuing insurance shall be delivered by the Association to any Owner or any first lienor promptly upon written request, showing such Owner's or such first lienor's interests thereunder. Premiums on all insurance policies carried under this paragraph by the Association shall be common expenses of all Owners collected with the annual assessments.

(c) The maximum insurable value of all of the Townhomes (which shall indicate the maximum insurable value of each Townhome), based upon current replacement cost, without deduction for depreciation, shall be determined by the Association prior to obtaining any policy of fire or casualty insurance by reference to one or more written appraisals made by competent, disinterested appraisers.

(d) Each Owner shall be responsible for all insurance covering loss or damage to personal property in his Townhome and liability for injury, death or damage occurring inside his Townhome. Any such policy shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Enforcement. Except as modified herein, the Association, or any Owner, shall have the right to enforce

by any proceeding at law or in equity, all restrictions, obligations, 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 or obligation herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable in law and in equity, by the Association, any of the Owners and their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years after the last to die of the class of persons consisting of all officers and directors of Stagecoach Development Corporation, and all living spouses and children of such directors, as of the date of recording of this Declaration in the real property records of Routt County. The terms, obligations, covenants and provisions of this Declaration may be amended by an instrument signed and acknowledged by Owners owning not less than sixty-seven percent (67%) of the Lots then subject to this Declaration and all of the first lienors (based upon one vote for each first mortgage owned). Such amendment shall not be effective unless recorded with the County Clerk and Recorder, Routt County, Colorado. No part of the Declaration may be amended in such a manner that will adversely affect the existing rights of any Owner in party walls, or will adversely affect any mortgagee or beneficiary of a deed of trust in the security for the lien of any mortgage or deed of trust, or that will alter or change the allocation of liability of Owners for assessments.

Section 3. Restrictions on Certain Acts of the Association. Notwithstanding anything earlier contained herein to the contrary, unless at least two-thirds of the Owners of the

Lots and all of the first lienors (based upon one vote for each first mortgage owned) have given their prior written approval, the Association shall not be entitled to: (a) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Owners (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this clause); (b) change the method of determining the obligations, assessments, dues or other charges which may be levied against the Owners; (c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the Townhomes, the exterior maintenance of Townhomes, the maintenance of the Common Area party walls or common fences and driveways, or the upkeep of lawns and plantings in the Properties; (d) fail to maintain fire and extended coverage insurance at all times on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than 100% of the insurable value (based on current replacement costs); (e) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such Common Area.

Section 4. Reserved Easements. Anything to the contrary herein notwithstanding, the Declarant hereby reserves an easement and right-of-way over all or any part of the Common Area for ingress and egress and for its use in constructing improvements (including storage of onsite materials and maintenance of construction office trailer), installing utilities and for any other lawful purposes. This easement shall continue only for so long as Declarant owns a Lot in the Properties (including additional real properties as are hereafter annexed).

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In addition, Declarant further reserves the right to use any one Townhome on any Lot owned by Declarant for the purpose of a sales or business office or model Townhome.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 14th day of December, 1979.

STAGECOACH DEVELOPMENT CORPORATION

By: John Wittemyer President



K. R. Gills
~~Notary~~ Secretary

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 14 day of December, 1979, by John Wittemyer, as President and by K. R. Gills, as ~~Notary~~ Secretary of STAGECOACH DEVELOPMENT CORPORATION, a Colorado corporation.

WITNESS my hand and official seal.

John A. Kleya
Notary Public

My commission expires: My Commission Expires Oct. 6, 1981



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EXHIBIT A

(Attached to and made a part of the Declaration of Covenants, Conditions and Restrictions of Eagles Nest at Stagecoach, Phase 1)

DESCRIPTION OF PROPERTY

A tract of land located in a portion of Multi-Family Lot 7, Meadowgreen at Stagecoach, a subdivision, Routt County, Colorado, said tract being all that portion of said Multi-Family Lot 7 lying North of the following described boundary line:

Beginning at a point on the east line of said Multi-Family Lot 7 from which the SE corner bears S 22°19'07" E 296.55 feet,
Thence S 70°00'00" W 320.00 feet,
Thence S 07°12'00" W 105.00 feet,
Thence S 58°14'00" W 75.00 feet,
Thence S 73°25'00" W 180.00 feet,
Thence N 87°34'26" W 92.16 feet,
Thence S 63°25'44" W 130.64 feet,
Thence S 35°20'00" W 151.00 feet,
Thence S 62°17'00" W 267.90 feet to the West line of the said Multi-Family Lot 7.

Containing 6.43 acres, more or less.

JW
AKG

EXHIBIT B

(Attached to and made a part of the Declaration
of Covenants, Conditions and Restrictions of
Eagles Nest at Stagecoach, Phase I)

<u>Description of Lot</u>	<u>Interior Square Footage of Townhome Initially Constructed on Lot</u>
Lot 1	1346
Lot 2	1390
Lot 3	1510
Lot 4	1346
Lot 5	1390
Lot 6	1346
Lot 7	1346
Lot 8	1390
Lot 9	1390
Lot 10	1465
Lot 11	1510
Lot 12	1390
Lot 13	1346
Lot 14	1346
Lot 15	1465
Lot 16	1390
Lot 17	1465
Lot 18	1510
Lot 19	1465
Lot 20	1346
Lot 21	1465
Lot 22	1510
Lot 23	1390
Lot 24	1346
Lot 25	1390
Lot 26	1346
Lot 27	1346
Lot 28	1465
Lot 29	1390
Lot 30	1465
Lot 31	1510
Lot 32	1465