

DECLARATION OF COVENANTS BY
Bushy Creek Associates, Inc.

RECITALS

BUSHY CREEK ASSOCIATES, INC., a Colorado corporation, ("Declarant") is the owner of that certain real property located in Black Horse II Subdivision, Stagecoach, County of Routt, Colorado, more particularly described on the attached Exhibit A (the "Property"). Russell N. Dashow joins in this Declaration solely for the purpose of subjecting the real property owned by him, more particularly described on the attached Exhibit A, to the provisions of this Declaration.

ARTICLE 1
DECLARATION AND SUBMISSION

Section 1.1 *Declaration*. Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, restrictions and easements which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property.

→ Section 1.2 *Mission Statement*. Declarant further declares the purpose of these covenants, restrictions and easements to be: To provide for a rustic, friendly, environment where ecologically responsible neighbors possessing a love and respect for the existing natural beauty can express their respect through maintenance of homestead and homesite without adversely affecting the surrounding valuable pristine vistas; thereby enhancing their lives and preserving as much as possible the heritage and legacy of biological diversity of the surrounding countryside.

ARTICLE 2
DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration, shall have the following meanings:

Section 2.1 "*Clerk and Recorder*" means the office of the Clerk and Recorder in the County of Routt, Colorado.

Section 2.2 "*County*" means the County of Routt, Colorado.

Section 2.3 "DACC" shall mean the Architectural Control Committee appointed by the Declarant or any Successor Declarant.

Section 2.4 "*Guideline Manual*" means that certain Architectural Control Guideline Manual provided by Declarant to the initial purchaser of a Lot from Declarant and any and all supplements thereto, as it may be updated and revised from time to time.

Section 2.5 "*Declaration*" means this Declaration and amendments and supplements to the foregoing.

Section 2.6 "*Lot*" means each platted and numbered division of

land in Black Horse II Subdivision, Stagecoach, Routt County, Colorado, as listed on Exhibit A, and any other platted, numbered division of land in Black Horse II Subdivision which may be subjected to these covenants and brought within the jurisdiction of the Subdivision POA by recorded agreement to annex which has been executed between the owner thereof and the Subdivision POA in substantially the form attached hereto as Exhibit "B". If the Subdivision POA has not yet been formed, then the agreement to annex may be signed between the owner of the land to be annexed and Declarant. "Lots" shall mean the plural of Lot.

Section 2.7 "Owner" means the owner of record, whether one or more persons or entities, of fee simple title to any Lot, and "Owner" also includes the purchaser under a contract for deed covering a Lot with a current right of possession and interest in the Lot.

Section 2.8 "Prevailing Skyline Regulations" shall mean those restrictions upon construction of improvements on ridgelines and their impact upon views and vistas the County may adopt from time to time.

Section 2.9 "Property" means the all the Lots, and, without limitation, includes the land annexed hereto pursuant to Section 2.6.

Section 2.10 "Stagecoach ACC" shall mean the Architectural Control Committee appointed by the Stagecoach Property Owners Association.

Section 2.11 "Stagecoach Covenants" means that certain Declaration of Covenants, Conditions, and Restrictions recorded December 7, 1971, under Reception No. 229787 in the office of the Clerk and Recorder.

Section 2.12 "Stagecoach POA" shall mean the Stagecoach Property Owners Association.

Section 2.13 "Subdivision POA" shall mean a Property Owners Association formed by Declarant whose membership consists of the Owners of the Lots.

Section 2.14 "Successor Declarant" means any person or entity to whom Declarant, or a prior assignee of Declarant, assigns any or all of its rights, obligations or interest as Declarant, as evidenced by a good and sufficient assignment or deed of record executed by both Declarant, or its previous assignee, and the transferee or assignee and recorded with the Clerk and Recorder. The Stagecoach POA or a Subdivision POA whose membership consists of the owners of the Lots may be the Successor Declarant. Reference to "Declarant" herein shall also include "Successor Declarant" unless the context dictates otherwise.

Section 2.15 "Manufactured home" means a single family dwelling which: (A) Is partially or entirely manufactured in a factory; (B) Is not less than twenty-four feet in width and thirty-six feet in length; (C) Is installed on an engineered permanent foundation; (D) Has brick, wood, or cosmetically equivalent exterior siding and a pitched roof; and (E) Is certified pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. 5401 et

seq., as amended.

**ARTICLE 3
ASSOCIATION MEMBERSHIP, VOTING RIGHTS.**

Section a. Every Owner of a Lot shall become a member of the Subdivision POA upon acquisition of said Lot. Membership shall be appurtenant to and not be separate from ownership of any Lot. Each Owner shall have one (1) vote per lot owned. If two or more Lots are consolidated pursuant to County regulations with approval of the Stagecoach POA, the Owner of the consolidated Lot shall have the same number of votes as were allocated to the Lots before the consolidation.

Section b. Each Owner hereby authorizes the Subdivision POA to collect any and all funds from the Stagecoach POA which are being held or have been or will be held for the benefit of Black Horse II Subdivision for improvements within the subdivision.

**ARTICLE 4.
MAINTENANCE ASSESSMENTS**

Section a. *Creation of the Lien and Personal Obligation for Assessment.* The Declarant, for each Owner of a Lot, hereby covenants, and each Owner of any Lot by acceptance of deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Subdivision POA:

1. annual assessment or charges, and
2. special assessments for capital improvement, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be charged on land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section b. *Purpose of Assessments.* The assessments levied by the Subdivision POA shall be used exclusively to promote the recreation, health, safety and welfare of the residences in the Properties and for the improvement and maintenance of any Common Areas within Black Horse II Subdivision. Use of the funds generated from the assessments for construction, improvement and maintenance of the roads within the Black Horse II Subdivision is expressly authorized.

Section c. *Annual Assessment.* Until January 1 of the year immediately following the incorporation of the Subdivision POA, there shall be no annual assessment. Annual assessments shall be levied by the governing board of the Subdivision POA.

Section d. *Special Assessments for Capital Investments.* In addition to the annual assessments authorized above, the Subdivision POA may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or re-placement of a capital improvement upon the Common Area, including fixtures and personal

property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section e. Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.d. shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of members shall constitute a quorum. If the required quorum is not present, another meeting may be called subsequent to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) the required quorum of the preceding meeting. No subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Notice and quorum requirements for other meeting shall be established by the documents governing the Subdivision POA.

Section f. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. If two or more Lots are consolidated pursuant to County regulations with approval of the Stagecoach POA, the Owner of the consolidated Lot shall be liable for the same amount of assessments as if Lots had not been consolidated.

Section g. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on January 1 immediately following the incorporation of the Subdivision POA. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Subdivision POA shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The governing board of the Subdivision POA shall establish the due dates. The Subdivision POA shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Subdivision POA setting forth whether the assessments on a specific Lot have been paid.

Section h. Effect of Nonpayment of Assessments: Remedies of the Subdivision POA. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight percent (8%) per annum. The Subdivision POA may bring an action at law against the Owner personally obligated to pay the same, or foreclose its lien against the Lot. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his or her Lot.

Section i. Subordination of the Lien to the Mortgages. The lien of the assessment provided for herein shall be prior to the lien of any first mortgage to the extent of an amount equal to the annual assessments based on a periodic budget adopted by the Subdivision POA as provided above, which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the Subdivision POA or any party holding a lien senior to

any part of the Subdivision POA lien created under this section of an action or nonjudicial foreclosure either to enforce or extinguish the lien. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

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

ARTICLE 5 RESTRICTIONS ON USE

Section 5.1 *Restrictions on Use.* Use and enjoyment of each Lot shall be subject to the following restrictions and such additional restrictions as are accepted by the Owners by a vote of two-thirds of all Owners:

Section 5.1.1. *Utility & Power Restrictions*

(A) No overhead electric & telecommunications lines or cables are permitted on, through or along the perimeter airspace of the Lots.

(B) Electric power to any Lot shall be limited to alternative sustainable, renewable so-called "green" off-grid power sources until such time as the Subdivision POA allows the local utility grid provider to install buried cable to provide electric power within the entire Property and all such "green" homesites have special meters that allow credit for any power flowback to grid at predetermined rates.

(C) Examples of allowable alternative "green" power sources are, but not limited to, the following:

- 1) Photovoltaic (PV) solar-electric systems (roof mounted or detached).
- 2) Solar hot water heating system.
- 3) Geothermal heating system.
- 4) Mini-wind turbine electric generator system.
- 5) Fuel cell/battery/auxiliary electric generator system.

These sources may be used as primary and/or backup power systems in any combination for providing fully self-sufficient, grid-equivalent residential electric power.

Section 5.1.2. *Additional Architectural & View Impact Restrictions*

(A) Any and all residences, power structures, detached structures, and other man-made impacts as referenced in the Guideline Manual and the Stagecoach Covenants shall be concealed from view from adjacent Lots or public road using native vegetation & arborvitae such as sage, spruce, pine, aspen, etc.

(B) Prevailing Skyline Regulations shall be observed in the planning of residence construction in accordance with Routt County

Master Plan 2000 and the Guideline Manual.

(C) No trees shall be removed from a Lot or adjacent roadways/easements without prior written permission from Stagecoach ACC and the DACC, unless such removal is required by fire safety regulations or the trees are dead or diseased. Any approval of removal of live or undiseased trees during pre-approved construction shall be contingent upon the transplantation thereof elsewhere on the Lot or replacement in like kind immediately on or before completion of construction.

(D) No campers, trailers, moving-vans, recreational vehicles, tractors, etc. parked on or adjacent to a Lot unless parked or stored within a permitted outbuilding, except such temporary residences as may be allowed by the Stagecoach Covenants.

(E) No snowmobiles, all terrain vehicles, motorcycles, or similar vehicles shall be permitted to operate on, or adjacent to, a Lot, unless a temporary emergency situation, such as medical rescue, or snowplowing, exists.

(F) Contrasting exterior/roof color schemes of homestead involving bright colors against the surrounding natural subdued shades & hues are inappropriate and not permitted on a Lot. Examples of appropriate exterior home color schemes appear in the Guideline Manual, and the Stagecoach Master Plan 2000. Final approval by both the Stagecoach ACC and the DACC is required.

(G) Metal roofing is not permitted on a Lot. Metal or plastic fences shall require express written consent of the DACC. Manufactured Homes which comply with the provisions of these Covenants and the Stagecoach Covenants are allowed.

(H) Other constructed fences on subject Lots shall also require express written consent of the DACC. Natural vegetation and landscaping are encouraged around open patios, gardens or surrounding yards in lieu of constructed fences.

(I) Single family residences must provide a minimum floor area of 1900 square feet and a maximum floor area no larger than 3200 square feet, excluding basement, computed in accordance with the Stagecoach Covenants. No duplexes or multi-family residences are allowed, unless prior consent of Declarant is obtained in writing, and are allowable under the Stagecoach Covenants, and applicable zoning and planning codes and regulations.

(I) Each Lot shall be used for, improved and devoted to first class residential use. This does not preclude use of a residence as a home office, artist studio or similar uses, so long as the use complies with County zoning regulations and the Stagecoach covenants. No residence shall be used as a hotel or other lodging or transient service or purpose. No residence shall be leased or rented except in its entirety. No residence shall be leased or rented for a term of less than nine (9) months. No subleasing is allowed.

Section 5.2.3. "Additional Safety Restrictions"

(A) Every finished homestead shall be equipped with at

least one (1) working portable fire extinguisher per level floor space, excluding basement. These are subject to annual inspection by the Stagecoach POA Safety Committee, if any, and the Safety Committee appointed by Declarant or Successor Declarant. In addition, unless the residence is constructed of fireproof materials, any residence 3000 square feet or larger shall be additionally equipped with portable foam fire protection system, or an equivalent system approved by the Safety Committee of the DACC and the Stagecoach POA, if any, for local access until such time as a local fire station is established. In addition, the addition of a monitored alarm system is strongly encouraged.

(B) Use of fireproof construction materials such as walls of cement, earthment, rammed earth and similar construction material, is strongly encouraged. All roofing material, except solar shake panels, shall be fire resistant (Class A) construction.

(C) Other than security lighting, no outdoor lighting system is permitted on subject lot(s). Security lighting shall mean low intensity (below 100 watt) lighting of intermittent duration (also known as motion detection-induced illumination) of residence entrances and pathways

(D) All trash must be stored in "bear-proof" sealed receptacles as approved by the DACC.

Section 5.2.4. "Additional Restrictions".

(A) The rights of quiet enjoyment on the Lots prevail; accordingly, loud animal barking, loud music or loud motors of any kind at any time are prohibited.

(B) Domestic pets must be leashed or confined at all times behind fences when outside the residence on a Lot. Owners are responsible for removing their own animals' excrement from all areas within the Property other than their own Lot, including adjacent roadway and easements.

(C) The DACC shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Lot.

ARTICLE 6. DESIGN REVIEW

No construction of an improvement on a Lot or alteration or additions to an improvement shall be made unless the plans and specifications (the "Plans") therefor are submitted to and approved in writing by the DACC and the Stagecoach ACC. The DACC shall exercise reasonable independent judgment as to whether the construction and modifications harmonize with existing surroundings and structures and topography pursuant to the standards set forth in the County planning and zoning ordinances and regulations, the Stagecoach Covenants, these Covenants, and the Guidelines, and the DACC has the absolute right to deny any requested construction, modification or alteration on the grounds it does not comply therewith. The DACC also has the absolute right to deny any requested construction, modification or alteration and any proposed fences on individual parcels which the DACC

reasonably determines does not conform to and harmonize with existing surroundings and structures and topography. In the event such Plans are submitted to the DACC and the DACC fails to approve or deny approval of such Plans in writing within thirty (30) days after such Plans are submitted to it, written approval will not be required and such Plans shall be deemed to be approved. The DACC may charge a reasonable fee to cover its costs and expenses incurred in reviewing the Plans.

**ARTICLE 7
DURATION OF COVENANTS AND AMENDMENT**

Section 7.1 Term. The covenants and restrictions of this Declaration shall run with and bind the land for twenty years and shall be automatically extended for successive twenty year periods, unless an instrument is signed revoking or terminating the Declaration pursuant to the provisions of Article 7.3 of this Declaration.

Section 7.2 Amendment. This Declaration, or any provision of it, may be amended at any time by (a) Owners holding not less than sixty-seven percent (67%) of the Lots subject to this Declaration and (b) the consent of sixty-seven percent (67%) of First Mortgagees of Lots subject to First Mortgages as evidenced by executed and recorded instrument certifying the approval of the amendment by a sufficient number of Owners and First Mortgagees. This Declaration shall not be amended without the written consent of Declarant, so long as the Declarant owns more than 25 percent of the Lots. If Black Horse II Subdivision has been approved by the Federal Housing Administration and/or the Veterans Administration, the following actions shall require prior approval of the Federal Housing Administration and/or the Veterans Administration: annexation of additional properties, amendment of this Declaration and the assessment of a special assessment.

Section 7.3 Revocation. This Declaration shall not be revoked without (a) the consent of all of the Owners of the Lots subject to this Declaration and (b) the consent of sixty-seven percent (67%) of First Mortgagees of Lots subject to First Mortgages as evidenced by executed and recorded instrument certifying the approval of the revocation by a sufficient number of Owners and First Mortgagees.

**ARTICLE 8.
Enforcement and Validity**

Section 8.1 Enforcement. Except as otherwise provided in this Declaration, the DACC, Declarant or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. The prevailing party in any such suit or action shall be entitled to recover actual and punitive damages, together with attorneys fees and reasonable and necessary costs of the action including, by way of illustration and not of limitation, filing costs, expert and lay witness fees and expenses, and deposition costs. Failure by the DACC, Declarant or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of

the right to do so thereafter.

Section 8.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 8.3 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities then such provisions shall continue only until twenty-one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Dated: 10/26, 2002

DECLARANT:
Bushy Creek Associates, Inc.

By: Russell N. Dash
Russell N. Dashow
Its President

Russell N. Dash
Russell N. Dashow, individually

STATE OF Illinois)
COUNTY OF Cook) ss.

Russell N. Dashow as President of Bushy Creek Associates, Inc., a Colorado corporation, acknowledged the foregoing instrument before me this 26th day of Oct, 2002.

Witness my hand and official seal.

"OFFICIAL SEAL"
James A. Kottmeyer
Notary Public, State of Illinois
My Commission Exp. 03/20/2006

James A. Kottmeyer
Notary Public

My commission expires: 3/20/06

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

Russell N. Dashow acknowledged the foregoing instrument before me this 26th day of Oct, 2002.

Witness my hand and official seal.

"OFFICIAL SEAL"
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Notary Public, State of Illinois
My Commission Exp. 03/20/2006

James A. Kottmeyer
Notary Public

My commission expires: 3/20/06

EXHIBIT A
To Declaration of Protective Covenants
by Bushy Creek Associates, Inc.

Property Description

Lots owned by Bushy Creek Associates, Inc.:

Lots 1-10, 12, 17-18, 21, 23, 26-28, 31-33, 35-42, 48, 50-53, 55-57, 63-64, 66, 69-70, Black Horse II Subdivision.

Lots owned by Russell N. Dashow: Lots 47, 58, 60, 61, Black Horse II Subdivision

EXHIBIT B
To Declaration of Protective Covenants
by Bushy Creek Associates, Inc.

AGREEMENT FOR ANNEXATION OF LAND
TO DECLARATION OF PROTECTIVE COVENANTS

Bushy Creek Associates, Inc., Declarant under that certain Declaration of Protective Covenants of Bushy Creek Associates, Inc., which was recorded on the _____ day of _____, 200_, under reception no. _____ of the records of the Clerk & Recorder of Routt County, Colorado (the "Covenants") and _____, ("Owner") hereby agree that the following described lots in Black Horse II Subdivision, Stagecoach, Routt County Colorado hereby are annexed to the Property described in the Covenants:

[Insert description of Lots to be annexed]

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the Covenants, which are for the purpose of protecting the value and desirability thereof and which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part thereof.

In witness whereof, the undersigned Declarant and owner have hereunto set their hand and seal this _ day of _____, 200_.

DECLARANT:
Bushy Creek Associates, Inc.

By: _____
Russell N. Dashow
Its President

Owner

[INSERT ACKNOWLEDGEMENTS]

