

DISTRICT COURT, COUNTY OF ROUTT,
STATE OF COLORADO

Court Address: 1955 Shield Drive
Steamboat Springs, CO 80477

Phone Number: (970) 879-5020

Petitioner:

Stagecoach Property Owners' Association,
a Colorado nonprofit corporation

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▲ COURT USE ONLY ▲

Case Number:

Div.: Ctrm.:

**PETITION FOR COURT APPROVAL OF PROPOSED DECLARATION
AMENDMENT PURSUANT TO C.R.S. §38-33.3-217(7)**

COMES NOW Stagecoach Property Owners' Association, a Colorado nonprofit corporation (the "Association"), by and through its attorneys, HindmanSanchez P.C., and requests that the District Court for Routt County, Colorado grant and approve the following petition pursuant to Colorado Revised Statute, Section 38-33.3-217(7)(e).

INTRODUCTION

The Association is a single family owners' association established and presently governed by:

- (a) the Stagecoach Declaration of Covenants, Conditions and Restrictions, recorded in the real property records of Routt County, Colorado, at Reception No. 229787 on December 7, 1971 ("Declaration");
- (b) the Bylaws of the Stagecoach Property Owners Association; and
- (c) the Articles of Incorporation of Stagecoach Property Owners' Association, filed with the Colorado Secretary of State on July 10, 1972,

all of which are attached hereto and incorporated by reference in Exhibit "A".

1. The Association is a common interest community as defined by the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-103(8).
2. The Petition process of §38-33.3-217(7) is applicable to the Association and the Stagecoach community.
3. The Association seeks Court approval of Proposed Covenant Amendments (the "Proposed Amendment") pursuant to C.R.S. §38-33.3-217(7) because it has been unable to obtain the Owner approval for amendments required by its governing documents. The Association has obtained approval from approximately 35% of the Lot Owners, which approval is over half of the current Declaration's required approval of an instrument signed by not less than 67% of the Lot Owners (lowered from 75% pursuant to C.R.S. 38-33.3-217(1)(a)), and which approval meets one of the criteria under C.R.S. §38-33.3-217(7).
4. The Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et seq.* ("CCIOA"), establishes a petition process by which the Association may petition the District Court for the County in which the common interest community is located for approval of the proposed amendment to the Declaration. The process of the statute requires the Association to submit a summary of the following information to the Court:
 - (a) the amendment process required by the existing Declaration;
 - (b) the proposed amendment to the existing Declaration;

- (c) the effect of and reason for the proposed amendment, including circumstances which make the amendment necessary or advisable;
- (d) the results of any vote taken with respect to the proposed amendment; and
- (e) any other matters that will be useful to the Court in deciding whether to grant the petition.

See C.R.S. §38-33.3-217(7)(b)(I).

5. Additionally, the Association must submit to the Court the following exhibits:
 - (a) The existing Declaration as originally recorded and any amendments to the existing Declaration; (See a portion of Exhibit "A")
 - (b) The text of the proposed amendment; (See Exhibit "B")
 - (c) Copies of the prior notices required to be sent; (See Exhibit "C"), and
 - (d) Any other documents that the Association believes will be useful to the Court in deciding whether to grant the petition (See Exhibit "D").

See C.R.S. §38-33.3-217(7)(b)(II).

6. Within 3 days of filing of this Petition, the Court is required to schedule a hearing no less than 45 days and no more than 60 days after the filing of the Petition. See C.R.S. §38-33.3-217(7)(c).
7. No later than 10 days after the date for hearing a petition is set, the Association is required to provide notice to all Owners, lenders, the Federal Housing Administration and the Veterans Administration (if they are entitled to vote on the proposed amendment), and any declarant. The Association must then file with the Court the list of names and addresses of the persons and entities who have been notified of the Petition and a copy of the notice.

8. At the hearing, the Court is required to grant the Petition if:
 - (a) No more than 33% of the Owners or lenders entitled by the Declaration to vote have filed written objections to the proposed amendments with the Court prior to the hearing;
 - (b) Neither the Federal Housing Administration nor the Veterans Administration filed written objections to the proposed amendments with the Court prior to the hearing, if they are entitled to approve the proposed amendment;
 - (c) No declarant has filed written objections to the proposed amendments with the Court prior to the hearing;
 - (d) The proposed amendments do not terminate the Declaration; and
 - (e) The proposed amendments do not change the allocated interests of the Owners (percentage ownership of common area, percentage share of the common expense liability, and votes allocated to each lot).

See C.R.S. §38-33.3-217(7)(e).

SUMMARY PURSUANT TO SECTION 217(7)(b)(I)

Process for Amending the Declaration

9. Section 38-33.3-217(7)(b)(I)(A) requires the Association to summarize the amendment procedures required by the existing Declaration, including a statement of the circumstances that make the amendments necessary or advisable.
10. The existing Declaration ("Declaration"), see a portion of Exhibit "A", provides, in Article VI, Section c, that the Declaration may be amended by a written instrument signed by not less than 67% of the Lot Owners (lowered from 75% pursuant to C.R.S. 38-33.3-217(1)(a)).

Proposed Amendments and Effect and Reason for the Proposed Amendments

11. Sections 38-33.3-217(7)(b)(I)(B) and 38-33.3-217(7)(b)(1)(C) require the Association to summarize the proposed amendments and explain the effect and reason for the amendments.
12. The original Declarant went bankrupt prior to the completion of capital improvements including the infrastructure needed for all property Owners to develop their Lots in the Community; therefore, the reasons and purposes of the Proposed Declaration Amendment are to give the Association the authority to levy a special assessment against a specified group of Lots, provided the Owners of 2/3 of the specified Lots have approved the assessment, for purposes including but not limited to construction and repair of any type of infrastructure build by the Association, whether a road, electric utility, water and sanitation, etc. which serves their Lot.
13. The Association has proposed, and the effect of the Proposed Declaration Amendment would be, that the provisions contained within the Proposed Declaration Amendment would amend the existing Declaration to allow for the improvement for construction and repair of any type of infrastructure build by the Association, whether a road, electric utility, water and sanitation, etc., which serves an Owner's Lot at the request of Owners benefitting from such infrastructure build or repair. A copy of the Proposed Declaration Amendment is attached as Exhibit "B" hereto and incorporated by reference.
14. The Proposed Declaration Amendment would authorize the Association to levy a special assessment against a specified group of Lots, provided the Owners of 2/3 of the specified Lots have approved the assessment. The Proposed Declaration Amendment will encourage development in the community by allowing the Association to improve roads as needed upon the request of the Owners benefitting from that improved road.
15. The amendments are advisable as the Owners desire the amendments to allow the Association to levy a special assessment against a specified group of Lots, provided the Owners of 2/3 of the specified Lots have approved the assessment, for purposes including but not limited to construction and repair of new roads in the community.

16. No Declarant consent is required, as the Period of Declarant Control defined in Article III, Section b of the Original Declaration has terminated. See Exhibit E attached hereto for the Affidavit of Turnover of Developer/Declarant Control/Rights.

The Results of the Vote Taken

17. Article VI, Section c of the Declaration currently requires an instrument signed by not less than 67% of the Lot Owners (lowered from 75% pursuant to C.R.S. 38-33.3-217(1)(a)) for approval of amendments to the Declaration.
18. To date, the Association has obtained 774 affirmative votes from Lot Owners in favor of the Proposed Declaration Amendment. With 2235 Lots within the Association that are governed by the Declaration, 774 current affirmative votes equals approximately 35% of all Lot Owners.

CONCLUSION

19. The Association has complied with the notice, meeting and other requirements set forth in Section 38-33.3-217(7)(a). The Association notified its Owners of the Proposed Declaration Amendment on November 18, 2012, January 27, 2013, and May 15, 2013. See Exhibit "C" attached hereto and incorporated by reference.
20. The Proposed Declaration Amendment was presented to the Owners and discussed at length at a special meeting of the Owners of the Association held on June 15, 2013, at the regularly scheduled quarterly Board meeting on July 6, 2013, and at the Association's annual meeting held July 27, 2013. See minutes contained in Exhibit "D" attached hereto and incorporated by reference.
21. Members holding at least 50% of the votes required pursuant to Section 38-33.3-217(7)(a)(III) have approved the Proposed Declaration Amendment. With the votes to date, approximately 35% of the Lot Owners have approved the Proposed Declaration Amendment. Article VI, Section c of the Declaration requires approval from not less than 67% of the Lot Owners (lowered from 75% pursuant to C.R.S. 38-33.3-217(1)(a)).

22. The Colorado Court of Appeals in *Triple Crown at Observatory Village v. Village Homes of Colo.*, 13CA1390 (Colo. Ct. App. 2013) ruled that consents for amendments must be received by the nonprofit corporation within 60 days after the earliest dated writing (see attached case in Exhibit "D"). This matter, however, was differentiated by the December 17, 2013, Jefferson County District Court ruling for *Kings Mill Townhouses Subdivision - Filing No. 1 Association v. Home Owner et. al*, Case Number 2013CV32028, in which the Court found that the Triple Crown case does not extend to the court approval process described in C.R.S. 38-33.3-217(7) (see attached Order in Exhibit "D").
23. Neither the Federal Housing Administration nor the Veterans Administration is required to approve the Proposed Declaration Amendment.
24. The Declarant is no longer a registered a Colorado corporation in the State of Colorado and therefore cannot be notified of the Proposed Declaration Amendment.
25. The Proposed Declaration Amendment does not terminate the Declaration or change the allocated interests of the Owners.

WHEREFORE, the Association respectfully requests that this Court:

1. Set a date, within three (3) days of the filing of this Petition, for a hearing, at least 45 days but not more than 60 days from the date of the filing of the Petition, as required by Section 38-33.3-217(7)(c);
2. Conduct a hearing on the date set by the Court, or as continued or reset, to determine:
 - (a) Whether the Association has complied with the requirements of Section 38-33.3-217(7);
 - (b) Whether more than 33% of the Owners and/or lenders holding security interests on Lots within the Association have objected to the petition as required in Sections 38-33.3-217(7)(e)(II) and (V); and

- (c) Whether the Declarant or any other party with a right, has filed a written objection to the Petition pursuant to Section 38-33.3-217(7)(e).

3. After the hearing, enter an Order in favor of the Association approving the Proposed Declaration Amendment and requiring the Association to record the court approved Declaration Amendment in the real property records of Routt County, Colorado as required pursuant to Section 38-33.3-217(7)(f).

DATED this 15th day of October, 2015.

Respectfully submitted,

HindmanSanchez P.C.

[Original Signature on File]

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ATTORNEYS FOR PETITIONER

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