

AFTER RECORDING RETURN TO:
Altitude Community Law, P.C.
555 Zang St., Suite 100
Lakewood, CO 80228

**AMENDMENT
TO THE
AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
ASPEN BROOK TOWNHOMES P.U.D.**

THIS AMENDMENT is made this ____ day of _____, 20__.

RECITALS

A. The Aspen Brook Townhomes P.U.D. community ("Community") was created by that certain Declaration of Covenants, Conditions and Restrictions for Aspen Brook Townhomes P.U.D. recorded in the real property records of the County of Larimer, State of Colorado, at Reception No. 90055842 on December 5, 1990, as amended and supplemented by documents of record ("Original Declaration"), which Original Declaration was amended and restated in its entirety by that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Aspen Brook Townhomes P.U.D. recorded in the real property records of the County of Larimer, State of Colorado, at Reception No. 20070033986 on May 4, 2007 (the "Amended and Restated Declaration").

B. The Amended and Restated Declaration provides for and allows for this Amendment to the Declaration of Covenants, Conditions and Restrictions for Aspen Brook Townhomes P.U.D. (the "Amendment") in Section 14.3, which provides as follows:

The consent of the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of those First Mortgagees holding mortgages on Lots which have at least sixty-seven percent (67%) of the votes of the Lots subject to first mortgages shall be required to amend any material provisions of this Amended and Restated Declaration...

C. Section 16.1 of the Amended and Restated Declaration provides as follows:

To the extent this Amended and Restated Declaration requires First Mortgagees to approve or consent to any amendment to this Amended and Restated Declaration, the Association may send a dated, notice and a copy of any proposed amendment by certified mail to each First Mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof. In addition, the

Association may cause the dated notice, together with information on how to obtain a copy of the proposed amendment, to be printed in full at least twice, on separate occasions at least one week apart, in a newspaper of general circulation in Larimer County. A First Mortgagee that does not deliver to the Association a negative response within sixty (60) days after the date of the notice shall be deemed to have approved the proposed amendment.

D. All Owners are aware of the provisions of the Amended and Restated Declaration allowing for amendment, by virtue of the record notice of the Amended and Restated Declaration, by acts and disclosures, newsletters or notices of the Association and by other means.

E. This Amendment has been prepared and determined by the Association and by the Owners that have approved this Amendment to be reasonable and not burdensome.

F. The purposes of this Amendment are to: (1) remove references to the Lodge, the Exterior Maintenance Fund, Exterior Maintenance Assessments, and Insurance Assessments; (2) revise provisions regarding easements for vacant Lots; (3) revise insurance obligations of the Owners and the Association; and (4) correct typographical errors and provisions that were never applicable to the Community.

G. The undersigned, being the President and Secretary of the Association, hereby certify that Owners of Lots to which at least 67% of the votes in the Association are allocated and those First Mortgagees holding mortgages on Lots which have at least 67% of the votes of the Lots subject to first mortgages have consented and agreed to this Amendment. Alternatively, the Association has obtained approval for this proposed Amendment pursuant to the terms and conditions of the Colorado Common Interest Ownership Act.

H. As amended by this Amendment, the Amended and Restated Declaration is referred to as the "Declaration."

NOW THEREFORE,

I. Amendments. The Amended and Restated Declaration is hereby amended as follows:

(a) **Repeal and Restatement**. Section 2.6 is hereby repealed in its entirety and the following Section 2.6 is substituted:

2.6 **BUILDING** means a structure containing one (1) Dwelling Unit constructed on a single Lot.

(b) **Repeal and Restatement**. Section 6.2 is hereby repealed in its entirety and the following Section 6.2 is substituted:

6.2 PURPOSE AND BASIS OF ASSESSMENTS.

a) Annual Assessment for Common Expenses. The Board of Directors shall assess against each Lot and the Owner of the Lot an Annual Assessment for Common Expenses. The Annual Assessment for Lots on which a house has not yet been built will be one-fourth (25%) of the Annual Assessment for Lots on which a house has been built. Said Annual Assessment may include the establishment and maintenance of a reserve fund for the maintenance, replacement, reconstruction and repair of those portions of the Common Areas which the Association has a duty to replace, repair, maintain and/or reconstruct on a periodic basis. Such Annual Assessment shall be paid by the Owners in the proportion that the number of Lots owned by an Owner bears to the total number of Lots within the Properties.

b) Exterior Maintenance. The Owner of each Dwelling Unit is solely responsible for the cost of maintaining and repairing his or her Lot and Dwelling Unit, including the Service Lines which may extend beyond the boundary of the Lot.

c) Individual Assessments. The Board of Directors shall have the right to individually assess any Lot and the Owner or Owners of such Lot amounts assessed under paragraphs 7.14, 8.4, 8.10, 8.13, 9.3, 12.15, 13.1, 13.2, and 13.3 hereof. No Individual Assessment shall be assessed until: (i) the Owner or Owners to be charged have been given thirty (30) days' notice as to the reason for the assessment, (ii) the Owner or Owners to be charged have had an opportunity for a hearing before the Board of Directors, and (iii) the Board of Directors levies the assessment by an affirmative vote of a majority of all members of the Board of Directors.

d) Fines. The Board of Directors shall have the right to levy a fine against an Owner or Owners for each violation of this Amended and Restated Declaration, the Bylaws, the Amended and Restated Articles and the Rules and Policies of the Association. No such fine shall be levied until the Owner or Owners: (i) have been given notice as to the reason of the fine, (ii) the Owner or Owners to be charged have had the opportunity for a hearing before the Board of Directors, and (iii) the Board of Directors levies the fine by an affirmative vote of a majority of all members of the Board of Directors.

Fines may be levied in a reasonable amount as determined from time to time by the Board of Directors in its discretion and uniformly applied.

e) Levy of Assessments. At least thirty (30) days prior to the close of the Association's fiscal year, the Board of Directors shall determine the Annual Assessment for Common Expenses, all of which shall be payable annually by the Owners. Notice of such Assessment shall be sent to every Owner subject thereto.

The omission or failure of the Board of Directors to levy the Assessments for any period shall not be deemed a waiver, modification, or a release of the Owners from their obligation to pay Assessments.

Fines and Individual Assessments may be levied at any time as required.

f) Non-exemption. No Owner may waive or otherwise escape liability for any assessments provided for herein by the non-use of the Common Areas or abandonment of his or her Lot.

(c) **Repeal and Restatement. Section 6.4(b) is hereby repealed in its entirety and the following Section 6.4(b) is substituted:**

b) The Annual Assessment for Common Expenses shall be levied and paid on an annual basis. Special Assessments and Insurance Assessments shall be due and payable as established by the Board of Directors.

(d) **Repeal and Restatement. Section 8.1 is hereby repealed in its entirety and the following Section 8.1 is substituted:**

8.1 LAND USE AND BUILDING TYPE. No Lot within the Properties shall be used for any purpose other than residential and vacation purposes. No residential structure shall be erected on any part of the Properties which is not compatible with other Buildings within the Properties and approved in writing by the Committee in accordance with ARTICLE SEVEN hereinabove.

(e) **Repeal and Restatement. Section 8.3 is hereby repealed in its entirety and the following Section 8.3 is substituted:**

8.3 TRASH. All Owners shall deposit all of his or her trash, garbage, or other refuse in a dumpster or dumpsters provided by the Association. Each Owner shall keep his or her private patio or deck at all times in a neat and clean condition. No trash, litter, junk, boxes, containers, bottles, cans, lumber or other building materials shall be permitted to remain exposed upon any Lot if it is visible from any neighboring Lot or from the street or Common Areas except that building materials may be temporarily kept on a Lot during an active construction project for a period not to exceed 30 days. The Board of Directors shall have the right, through its agent and employees, upon thirty (30) days' notice to the Owner thereof, and after a hearing before the Board of Directors, and approval by a vote of a majority of the entire total vote of the Board of Directors, to enter upon any Lot and remove such unsightly objects and materials. The cost of such removal shall be chargeable to such Owner as an Individual Assessment in accordance with Paragraph 6.2 (c) of this Declaration.

(f) **Repeal and Restatement.** Section 9.5 is hereby repealed in its entirety and the following Section 9.5 is substituted:

9.5 **EASEMENTS FOR VACANT LOTS.** An easement is reserved for Owners of vacant Lots over Common Areas to allow development on such Lots on such reasonable terms and conditions set forth by the Board.

(g) **Repeal and Restatement.** Article Twelve is hereby repealed in its entirety and the following Article Twelve is substituted:

ARTICLE TWELVE: INSURANCE

12.1 **INSURANCE ON THE LOTS.** Each Owner has the responsibility to obtain hazard insurance covering loss, damage or destruction by fire or other casualty to the improvements, installed or made to their Lot, or other property of that Owner located on such Lot, and liability insurance covering any injuries occurring to persons or property damages on a Lot.

12.2 **INSURANCE TO BE CARRIED BY THE ASSOCIATION.** The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth in this Declaration and as set forth in the Act, which insurance coverage shall include the following terms and shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

12.3 **HAZARD INSURANCE ON COMMON AREA.** The Association shall obtain hazard insurance covering loss, damage or destruction by fire or other casualty to any insurable improvements installed or made to any Common Areas and the other property of the Association.

12.4 **ASSOCIATION LIABILITY INSURANCE.** The Association shall obtain public liability and property damage liability insurance covering any Common Area, in such limits as the Board may determine from time to time, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries and operation of automobiles on behalf of the Association.

12.5 **ASSOCIATION FIDELITY INSURANCE.** The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees, as required by law.

12.6 ASSOCIATION WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees, if any, in the amounts and forms as may now or hereafter be required by law.

12.7 DIRECTORS' AND OFFICERS' PERSONAL LIABILITY INSURANCE. The Association shall obtain directors' and officers' personal liability insurance to protect the officers, directors, committee members and any person acting at the discretion of the Board from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

12.8 MISCELLANEOUS TERMS GOVERNING INSURANCE CARRIED BY THE ASSOCIATION. The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

(a) All policies of insurance shall provide that each Owner is an insured under the policy with respect to liability arising out of such Owner's membership in the Association.

(b) All policies of insurance shall contain waivers of subrogation against any Owner or member of his or her household.

(c) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without prior written notice to all of the Owners as provided by Colorado law and to the Association.

(d) All liability insurance shall name the Association, the Board, the manager or managing agent, if any, the officers of the Association, their successors and assigns and Owners as insureds.

(e) Prior to the Association obtaining any blanket policy of casualty insurance on any Common Area, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of any Common Area and any improvements thereon, without deduction for depreciation, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof.

(f) All policies of insurance of the Association shall be primary, providing the primary insurance of the loss, if there is other insurance in the name of the Owner.

(g) All policies of insurance shall provide that the insurance thereunder shall not be invalidated, suspended, voidable or have any condition of recovery due to an act or omission by any Owner.

12.9 OTHER ASSOCIATION INSURANCE. The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

12.10 INSURANCE PREMIUM. Insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the Annual Assessments levied by the Association.

12.11 ANNUAL INSURANCE REVIEW. The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

12.12 ADJUSTMENTS BY THE ASSOCIATION. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners and holders of first lien security interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association is not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

12.13 DUTY TO REPAIR. Any portion of the Community for which the Association is required to insure under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association, except as provided in the Act.

12.14 CONDEMNATION AND HAZARD INSURANCE ALLOCATIONS AND DISTRIBUTIONS. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

12.15 RESPONSIBILITY FOR PAYMENT OF DEDUCTIBLE AMOUNT. Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Area or other property insured by the Association unless the damage is caused by the negligent or willful act or omission of an Owner, his family, guests, renters, or invitees, in which case the Association shall seek reimbursement of the deductible

amount from the responsible party as an Individual Assessment, pursuant to Section 6.2(c) of the Declaration.

12.16 INSURANCE ASSESSMENTS. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. Notwithstanding the Special Assessment procedure set forth this Declaration, the insurance Assessment shall be ratified unless vetoed by Members holding at least 90% of the total votes entitled to be cast in the Association pursuant to Section 303(4) of the Act.

12.17 DAMAGE TO OR DESTRUCTION ON LOTS. In the event of damage to or destruction of structures or improvements on a Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure and improvements in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration, unless a determination not to rebuild is made by the Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with this Declaration.

(h) Repeal and Restatement. Section 13.2 (Maintenance of the Dwelling Units), which is erroneously labeled Section 12.2, is hereby repealed in its entirety and the following Section 13.2 is substituted:

13.2 MAINTENANCE OF THE DWELLING UNITS. All Dwelling Unit maintenance and repair, as well as maintenance of the balance of each Lot including, but not limited to, maintenance, repair, and replacement of water, sewer, gas, electric, telephone, television, internet and other utility Service Lines, systems and facilities that serve the Dwelling Unit from the main Association lines to the Dwelling Unit, whether located on the Lot or within adjacent Common Areas, shall be the sole responsibility and at the sole expense of the Owner of such Lot. However, to provide and maintain exterior harmony for all of the Lots and Dwelling Units located within the Properties, the Association shall have the right, but not the obligation, to maintain and repair the exterior of the Dwelling Unit located upon each Lot within the Properties, to include, but not be limited to, painting; repairing, replacing, and maintaining roofs, decks, gutters, downspouts, exterior building surfaces, individual patios or garden areas within patio walls, entry doors or door frames, and hardware; replacing glass in doors, windows, or screened surfaces; and maintaining, repairing and replacing Service Lines.

If the Association performs any maintenance or repair of any Dwelling Unit, Lot or Service Line, the Association shall charge the costs of such repair, maintenance, and/or replacement to the Owner of the Lot by an Individual Assessment against the Owner and the Lot in accordance with Paragraph 6.2(c) hereof. Determination of whether such repair or maintenance is necessary shall rest solely with the Board of Directors, which shall also have the sole responsibility for determining the kind and type of materials used in such repair and maintenance.

The Association shall have the right, but not the obligation, to require each Owner to deposit with the Association a reserve maintenance fund to be used by the Association to cover the cost of maintenance and repairs made by the Association pursuant to this Section 13.2. If a reserve fund is established, the Association shall have the right to draw on such fund to pay the cost of maintenance and repairs performed by the Association.

(i) **Repeal and Restatement.** Section 14.2 is hereby repealed in its entirety and the following Section 14.2 is substituted:

14.2 PAYMENT OF CHARGES. Mortgagees may purchase insurance on behalf of their borrower in the absence of adequate Owner insurance coverage.

(j) **Repeal and Restatement.** Sections 14.4(b) and (c) are hereby repealed in its entirety and the following Sections 14.4(b) and (c) are substituted:

(b) Fail to maintain hazard and extended coverage insurance on insurable Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(c) Use hazard insurance proceeds received for losses to any part of the Common Areas for other than repair, replacement, or reconstruction of such Common Areas;

(k) **Repeal and Restatement.** Section 17.2 is hereby repealed in its entirety and the following Section 17.2 is substituted:

17.2 SUCCESSORS AND ASSIGNS. This Amended and Restated Declaration shall be binding upon and shall inure to the benefit of the Association and each Owner and the heirs, personal representatives, successors and assigns of each of them.

II. **No Other Amendments.** Except as amended by the terms of this Amendment and previous amendments, the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment is executed by the undersigned.

Aspen Brook Townhomes Homeowners Association, Inc.,
a Colorado nonprofit corporation

By: _____
President

By: _____
Secretary

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing was acknowledged before me this ____ day of _____, 20__, by _____, as President of the Aspen Brook Townhomes Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.
My commission expires: _____

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing was acknowledged before me this ____ day of _____, 20__, by _____, as Secretary of the Aspen Brook Townhomes Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.
My commission expires: _____

Notary Public