EAGLE COUNTY, CO
TEAK J SIMONTON
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THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PITKIN CREEK TOWNHOUSES NOW KNOWN AS THE FALLS TOWNHOUSES

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KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS a certain Declaration of Covenants, Conditions, and Restrictions for Pitkin Creek Townhouses was recorded in Book 282 at Page 203 of the real property records of Eagle County, Colorado as reception no. 178610, as subsequently amended by a certain First Amendment to Declaration of Covenants, Conditions, and Restrictions and a Second Amendment to said Declaration of Covenants, Conditions, and Restrictions; and

WHEREAS, pursuant to the provisions of CRS 38-33.3-217, the owners of not less than sixty-seven (67%) of the Owners, as defined in the Declaration, have consented to the adoption of this Third Amendment to the Declaration of Covenants, Conditions and Restrictions; and

WHEREAS, the holders of not less than sixty-seven (67%) of the recorded first mortgages on the Townhouse Units, have consented to, or been deemed tohave consented to, the adoption of this Third Amendment to the Declaration of Covenants, Conditions and Restrictions; and

NOW, THEREFORE, the foregoing do hereby agree, publish and declare as follows:

1.0 Article VIII ("Insurance") of the Declaration is revoked in its entirely and replaced with the following:

ARTICLE VIII

INSURANCE

1. Insurance to be Obtained. The Association shall obtain and maintain at all times, to the extent reasonably obtainable, insurance policies covering the followings risks:

return to

Brian E. O'Reilly P. C.
P. O. Box 5780
Avon, Colorado 81620

(a) Property. Property insurance on the Common Area and the Townhouse Units for broad form covered cases of loss; the total amount of the insurance must be not less than the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property insurance policies. Such insurance must include all personal property owned by the Association and any improvements and fixtures located upon the Common Area, but not located elsewhere, and such insurance shall include all structural portions and buildings' service equipment which are attached to the Townhouse Units. Notwithstanding any other language of the Declaration to the contrary, such insurance does not have to insure any fixtures or appliances within a Townhouse Unit. For the purposes of this Article VIII, those "fixtures" or "appliances" which do not have to be insured by the Association shall include, without limitation, all of the following: refrigerators, dishwashers, humidifiers, faucets, water softeners, water heaters, toilets, bathtubs, sinks, showers, steam showers, stoves, washers, dryers, and the utility lines within any Unit serving those fixtures which do not serve any other Unit.

(b) Such insurance shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a one hundred percent (100%) of current replacement cost basis, without deduction for depreciation or co-insurance, and including, to the extent available and applicable, an "Agreed Amount" and "Inflation Guard Endorsement," a "Demolition Costs Endorsement," a "Building Ordinance or Law Endorsement", "Increased cost of construction endorsement" and a "Contingent Liability from Operation of Building Laws Endorsement", or the equivalent. The insurance maintained by the Association pursuant to this section shall afford protection against at least the following:

(i) loss or damage by fire and all other hazards that are covered by the standard extended coverage endorsement, including without limitation endorsements for vandalism and malicious mischief, and

(ii) all other perils customarily covered for similar types of townhouse projects, including, without limitation, standard "all risk" endorsements.

(c) Public Liability. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Areas deemed sufficient, in the judgment of the Board, but not less than any amount specified herein, insuring the Board, the Association, the management agent,and their respective employees, and all persons acting as agents. The insurance shall cover claims of one or more insured parties against other insured parties. Such insurance shall be in such amounts as the Executive Board of the Association may from time to time determine, but not in an amount less than $2,000,000.00 per occurrence covering claims for personal injury, bodily injury and/or for property damage. To the extent reasonably obtainable, coverage shall include, without limitation, liability for personal injuries, operation of automobiles (whether owned, non-owned or hired) on behalf of the Association, and activities in connection with the ownership, operation, maintenance or other use of the Common Areas and the Townhouse Units, by the Association, its officers, directors, agents, employees, representatives and the Owners, off-premises employee coverage, water damage liability, contractual liability, bailee's liability for property of others, and any legal liability that results from lawsuits related to employment contracts to which the Association is a party.

(d) Workers' Compensation. Workers' Compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(e) Fidelity Insurance. The Association shall purchase and maintain blanket fidelity insurance covering losses resulting from dishonest or fraudulent acts or omissions committed by the Association's directors, managers, including without limitation, any person employed as an independent contractor for the purpose of managing the Association, and any employee thereof, trustees, employees, volunteers, or anyone who manages the funds collected and held for the benefit of the Owners; provided, however, any managing agent which handles funds for the Association shall be covered by its own fidelity insurance policy, which must provide the same coverage required of the Association. Such policy shall also cover destruction or disappearance of money or securities, and forgery. Such policy shall cover any person or entity handling funds of the Association, including, but not limited to, employees of the professional manager which should also be covered by its own fidelity bond, and any such professional manager shall submit evidence thereof to the Association. Such fidelity coverage or bonds shall name the Association as the named insured and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(f) Officer's and Director's Personal Liability Insurance. To the extent obtainable, appropriate officer's and director's personal liability insurance shall be obtained by the Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

(g) Flood. If the Property is located in an area identified by the Secretary of Housing and Urban Development or the Director of the Federal Emergency Management Agency as an area having special flood hazards and the sale of Flood Insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Property in an amount which is lesser of the maximum amount of insurance available under the Act or one hundred percent (100%) of the current replacement cost of all buildings and other insurable common and individual property owned in common by the Townhouse Unit Owners and located within the Property.

(h) Other Insurance. In addition, the Executive Board may obtain any other insurance against such other risks, of a similar or dissimilar nature, which the Board shall deem appropriate with respect to the Project.

(i) Notice of Unavailability. If any insurance described in this Declaration is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and First Mortgagees as provided herein.

2. Annual Review. At least annually, the Executive Board shall obtain an estimate of the full replacement value of all improvements what are required to be insured, including all buildings, improvements and service equipment located thereon, and of the Common Area improvements, including landscaping and underground facilities, but not including those items excluded by virtue of Article IX hereof, without deduction for depreciation, for the purpose of determining the amount of insurance required under that Section. The amount of such insurance shall be shown in the Association's annual report. Upon written challenge by the Owners of thirty percent (30%) or more of the Townhouse Units that the Association's estimate of maximum replacement value is too low, the Association will secure a certified appraisal of replacement value prepared by an M.A.I. appraiser and will conform the hazard insurance to the value indicated by that appraisal.

3.0 Form of Issuance.

(a) All insurance shall be carried in blanket policy form, shall name the Association as the insured, as trustee and as attorney-in-fact for the Townhouse Owners, and shall provide that the proceeds shall be paid to the Association for the benefit of and in trust for the Association, the Owners and their first mortgagees, as their interests may appear; shall additionally insure and identify the interest of each Owner and his First Mortgagee, if any, and shall provide a standard, non-contributory mortgage clause in favor of each First Mortgagee which has given the Association notice of its lien. Each Owner shall be an insured person under such policy with respect to liability arising out of such Owner's interest in the Common Areas.

(b) To the extent possible, all insurance policies shall:

(i) be obtained from companies duly authorized and licensed to do insurance business in the State of Colorado, and having at least a "B" general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide;

(ii) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, its Owners and members of their households;

(iii) provide that the insurance cannot be cancelled, invalidated, or suspended on account of the conduct of the Association, its officers, directors, employees, and agents;

(iv) provide for a waiver of any defense based on co-insurance;

(v) provide that the policy of insurance shall not be permitted to lapse, be terminated, cancelled or materially or substantially changed or modified without at least thirty (30) days prior written notice to the Association and the Owners and the first mortgagees which who have given notice of their liens or requested certificates of coverage;

(vi) provide that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(vii) provide that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance; and

(viii) provide that no assessments therefor may be made against First Mortgagees and any such assessments made against others shall not become a lien on the Property superior to the First Mortgagee.

(c) On written request the Association shall furnish by certificate, or otherwise, a copy of any insurance policy, identifying the interest of the Owner in question, to any Owner or First Mortgagee, together with proofs of payment or premiums. Further, an insurer that has issued an insurance policy for the insurance described in this Declaration shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or non-renewal has been mailed to the Association, and each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued, at their last-known addresses.

(d) Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and as are generally consistent with the requirements of First Mortgagees and any secondary lenders purchasing First Mortgages.

(e) The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, including the recovery of any Association insurance deductibles from Townhouse Owners, and any other matters of claims adjustment.

4. Owner's Personal Property and Liability Insurance. In order to protect the value of all of the Units, each Owner shall be required to obtain a Condominium Owner's insurance policy (commonly referred to as an HO6 policy) for such owner's benefit.

The minimum insurance coverage which must be obtained by each Unit Owner shall be as follows:

\$100,000.00 real property casualty loss insurance;
\$500,000.00 liability insurance covering personal injury or death;

$ 10,000.00 water and sewer backup insurance;
$ 15,000.00 assessment coverage.

The maximum deductible amount shall be $1,000.00, which amount may be increased by up to 5% per calendar year, effective January 1, 2009.

To the maximum extent allowed by law, such insurance shall contain waivers of subrogation and shall be so written that the insurance obtained by the Association shall not be affected or diminished thereby.

Notwithstanding the foregoing, the Association's Board of Directors may increase the amount of insurance required by the provisions of this Article at any time, upon thirty (30) days prior written notice to each Unit Owner, and each Unit Owner shall be required, not later than January 15th of each year, to provide proof that such Unit Owner has in force an owner's insurance policy which complies with the foregoing requirements. In the event that such proof is not provided to the Association, the Association may, but shall have no obligation to, provide such insurance coverage on behalf of any defaulting Unit Owner, in which case the costs thereof shall be billed to the Unit Owner as additional dues, which may be recovered by the Association in like manner as any other dues owed by the Unit Owner to the Association.

5. If the insurance described in this Article is not "reasonably available", or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States Mail, to all unit owners.

6. Notwithstanding any other language to the contrary, the Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, including the recovery of any Association insurance deductibles from Townhouse Owners, and any other matters of claims adjustment.

2.0 Article XI ("Amendment of Declaration") is revoked in its entirely and replaced with the following:

ARTICLE XI

AMENDMENT OF DECLARATION

1. Any provision of the Declaration of Covenants, Conditions and Restrictions, may be amended, revoked or supplemented, at any time by Owners holding not less than sixty-seven percent (67%) of the votes possible to be cast under the Declaration.

7.0 This Agreement may be executed in any number of counterparts.

IN WITNESS WHEREOF, the Association has caused this Amendment to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The

Bluffs Townhomes to be executed by its duly authorized President this 10 day of July, 2008.

THE FALLS AT VAIL TOWNHOUSE ASSOCIATION,
a Colorado non-profit corporation

By: ______________________
President

STATE OF COLORADO)
)
COUNTY OF EAGLE)

The foregoing Third Amendment to Declaration of Covenants, Conditions and Restrictions for Pitkin Creek Townhouses, now known as The falls Townhouses, was acknowledged before me this 10 day of July, 2008, by Dick Whiston as President of The Falls at Vail Townhouse Association.

Witness my hand and official seal. My commission expires: 4/11/09.

____
Notary Public

Bx 5780 Avon Co
Address

NOTARY PUBLIC
BRIAN E. O'REILLY
STATE OF COLORADO

2/26/08