

**FOURTH AMENDMENT TO
DECLARATION OF CONDOMINIUM
FOR
ASPEN HIGHLANDS CONDOMINIUMS**

THIS FOURTH AMENDMENT TO DECLARATION OF CONDOMINIUM FOR ASPEN HIGHLANDS CONDOMINIUMS (this "Fourth Amendment") dated as of November 29, 2005, shall be effective upon recordation and is made by ASPEN HIGHLANDS CONDOMINIUM ASSOCIATION, INC. (the "Association").

RECITALS

WHEREAS, the Declarant recorded that certain Declaration of Condominium for Aspen Highlands Condominiums on January 11, 2001 at Reception No. 450454 in the Office of the Clerk and Recorder of Pitkin County, Colorado ("Initial Declaration"). The Initial Declaration has been amended by (i) that certain First Amendment to Declaration of Condominium for Aspen Highlands Condominiums recorded on July 2, 2001, at Reception No. 456026 in the Office of the Clerk and Recorder of Pitkin County, Colorado ("First Amendment"), (ii) that certain Second Amendment to Declaration of Condominium for Aspen Highlands Condominiums recorded on October 9, 2001, at Reception No. 459556 in the Office of the Clerk and Recorder of Pitkin County, Colorado ("Second Amendment"), and (iii) that certain Third Amendment to Declaration of Condominium for Aspen Highlands Condominiums recorded on January 27, 2005, at Reception No. 506406 in the Office of the Clerk and Recorder of Pitkin County, Colorado ("Third Amendment"). In addition, the Initial Declaration has been supplemented by that certain First Supplement to Declaration of Condominium for Aspen Highlands Condominiums recorded on June 11, 2002, at Reception No. 468555 in the Office of the Clerk and Recorder of Pitkin County, Colorado ("First Supplement"). The Initial Declaration, as amended by the First Amendment, the Second Amendment, and the Third Amendment and as supplemented by the First Supplement, is hereby referred to as the "Declaration". Any capitalized term used in this Fourth Amendment without definition shall have the meaning given that term in the Declaration; and

WHEREAS, Association is the nonprofit corporation and owners' association formed pursuant to the Declaration; and

WHEREAS, the Declaration created and defined certain covenants, conditions, restrictions and easements for the Aspen Highlands Condominiums; and

WHEREAS, the Owners desire to approve an amendment to the Declaration in certain respects as more particularly provided herein; and

WHEREAS, pursuant to Section 22.3 of the Declaration, the Declaration may be amended upon the written consent of Owners representing a majority of the total number of votes entitled to be cast on Association matters, including at least a majority of the total number of votes allocated to the Residential Owners and a majority of the total votes allocated to the Commercial Owners; and

WHEREAS, pursuant to C.R.S. § 38-33.3-217(4), because this amendment authorizes an increase in the number of units or a change to the boundaries of certain units or the allocated interests of a unit, this Amendment requires the consent of unit owners of units to which at least sixty-seven percent of the votes in the association, including sixty-seven percent of the votes allocated to units not owned by Declarant, are allocated; and

WHEREAS, pursuant to C.R.S. § 38-33.3-217(4.5), because this Amendment permits a change in the uses to which units are restricted, this Amendment requires the consent of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated; and

WHEREAS, pursuant to C.R.S. § 38-33-312, because this Amendment authorizes a conveyance of common elements, this Amendment requires the consent of unit owners of units to which at least sixty-seven percent of the votes in the association, including sixty-seven percent of the votes allocated to units not owned by Declarant, are allocated.

AMENDMENT

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. **Section 3.7:** A new Section 3.7 shall be added as follows:

Section 3.7 Conversion of Commercial Units to Residential Units.

Commercial Units C-2101, C-2103, C-2104, C-4102, and C-4111 (each a "**Conversion Unit**") may be converted from a Commercial Unit to a Residential Unit within the category of Tourist Accommodation Units, and any Limited Common Elements appurtenant to such Conversion Unit may be converted from Limited Common Element-Commercial (LCE-C) to Unit Space, Limited Common Element-Residential (LCE-R) or Limited Common Elements-Tourist Accommodation (LCE-TA). Upon approval by the Executive Board, the Declarant, or any other Owner of one or more Conversion Unit with the express written consent of the Declarant, may convert such Conversion Unit to a Residential Unit and may convert any appurtenant LCE-C to LCE-R, LCE-TA or to unit space within the new Residential Unit. Any Conversion Unit converted pursuant to this Section 3.7 shall not initially be submitted to a Plan of Fractional Ownership unless otherwise specified by the Declarant. Notwithstanding the foregoing, Declarant reserves the right to submit any Conversion Unit that is converted to a Tourist Accommodation Unit to the Plan of Fractional Ownership pursuant to the terms and provisions of Article 23. All action required to undertake any such change in use may be authorized, approved and executed by the President of the Association on behalf of the Executive Board.

In order to convert a Conversion Unit to a Residential Unit, and to convert any appurtenant LCE-C to LCE-R, LCE-TA, or to unit space within the new Residential Unit, the Owner(s) of such Conversion Unit(s) shall submit an application to the Executive Board, which application shall be executed by such owner and shall include (a) evidence that all approvals for the proposed change in use required by the City of Aspen or any other governmental agency having jurisdiction over the Project have been obtained; (b) the proposed reallocation of Allocated Interests appurtenant to the Conversion Unit and other Units within the Project; (c) the proposed reallocation of parking spaces pursuant to Section 5.3.1, (d) the proposed form of amendment to the Declaration, including the Map, as may be necessary to evidence such reallocation; (e) a deposit against attorneys' fees and costs which the Executive Board and/or the Association may incur in reviewing and effectuating the transaction, in an amount reasonably estimated by the Executive Board; (f) evidence satisfactory to the Executive Board that the Owner(s) of the Conversion Unit(s) has obtained or caused to be obtained all requisite insurance in connection with any construction required to effect the proposed action; (g) indemnification of the

Association by the Owner(s) for any and all matters relating to the proposed action; and (h) such other information as may be reasonably requested by the Executive Board.

If, in connection with a conversion of any Conversion Unit pursuant to this Fourth Amendment, an Owner proposes to combine any Conversion Units, one or more of which has appurtenant LCE-C, the Executive Board, as authorized, approved and executed by the President of the Association on behalf of the Executive Board, shall have the authority to convey such LCE-C to the Owner of such Conversion Unit(s).

For purposes of reallocating the Allocated Interests in connection with a conversion of a Conversion Unit to a Residential Unit, or in connection with incorporation of any LCE-C into Unit space, each applicable Conversion Unit, together with the Corridor LCE-C and Restroom LCE-C, shall be deemed to contain the following square footage:

- Unit C-2101: 621 square feet
- Unit C-2103: 647 square feet
- Unit C-2104: 2,959 square feet
- Unit C-4102: 3,303 square feet
- Unit C-4111: 2,813 square feet

Corridor LCE-C adjacent to Units C-2101 and C-2103: 320.6 square feet

Restroom LCE-C adjacent to Units C-2101 and C-2103: 213.3 square feet

In the event the actual square footage of any Conversion Unit or LCE-C identified above exceeds the square footage of such area set forth above by more than five percent (5%), the procedure for converting such Conversion Unit(s) established by this Fourth Amendment shall not be available, and the Owner(s) of such Conversion Unit(s) must comply with all applicable provisions of the Declaration and Colorado law in order to convert the Conversion Unit to a Residential Unit.

The resulting Allocated Interests in the event of conversion of any Conversion Unit shall be reallocated as follows:

- (i) **Tourist Accommodation Units Allocation:**
 - a. First, the Allocated Interests of Tourist Accommodation Units in the Project shall be calculated pursuant to the mathematical calculation set forth on Exhibit B of the Declaration by adding the square footage set forth above of the applicable Conversion Unit(s) and the square footage set forth above of any LCE-C that is converted into Unit space pursuant to this Fourth Amendment to the present total square footage of all Tourist Accommodation Units. In the event any LCE-C that is not, prior to the request for conversion, included in the calculation of the total square feet of all units is converted into Unit space pursuant to this Fourth Amendment, the square footage of such LCE-C to be converted into Unit space shall be added to the current total square footage of all Units for purposes of the calculation of Allocated Interests of Tourist Accommodation Units in the Project set forth on Exhibit B of the Declaration.

b. **Second, the Allocated Interest of a given Tourist Accommodation Unit in the Project shall be calculated as follows:**

i. **First, for any Conversion Unit that is converted to a Residential Unit pursuant to this Fourth Amendment, such Unit's Allocated Interest shall be calculated by dividing the square footage of such Conversion Unit (including any LCE-C that is converted into unit space hereunder) by the total square footage of all Tourist Accommodation Units**

ii. **Second, the remaining Allocated Interests of the Tourist Accommodation Units shall be divided among the remaining Tourist Accommodation Units pursuant to the mathematical calculation set forth on Exhibit B of the Declaration.**

(ii) **Commercial Units Allocation: The square footage of the applicable Conversion Unit(s) shall be subtracted from the current total square footage of all Commercial Units, and the mathematical formula set forth on Exhibit B of the Declaration shall be applied to all remaining Commercial Units to determine the Allocated Interest of all remaining Commercial Units.**

(iii) **Deed Restricted Residential Units: The Allocated Interest of Deed Restricted Residential Units shall be calculated by dividing (i) the square footage of the subject Deed Restricted Residential Unit by (ii) the total square footage of all Units, provided however that in the event any LCE-C that is not presently included in the calculation of the total square feet of all units is converted into Unit space pursuant to this Fourth Amendment, the square footage of such LCE-C to be converted into Unit space shall be added to the current total square footage of all Units for purposes of the calculation of Allocated Interests of Deed Restricted Residential Units set forth on Exhibit B of the Declaration .**

2. **Section 5.3.1 Amendment. A new unnumbered third paragraph shall be added to Section 5.3.1 as follows:**

In connection with any conversion of a Conversion Unit to a Residential Unit within the category of a Tourist Accommodation Unit, the Executive Board may, upon receipt of evidence from the Owner of such Conversion Unit(s) of all required governmental approvals and approval from the Declarant, reallocate the number of parking spaces set forth in this Section 5.3.1. The Executive Board is further authorized to enter into binding use agreements with the Owner(s) of such Conversion Unit granting the right of exclusive use of any parking space(s) that are allocated for use solely by the Tourist Accommodation Owners as LCE-TA to the Owner(s) of such Conversion Unit and their successors and assigns.

3. **Section 13.2 Amendment: The second sentence of Section 13.2 ("Commercial Uses") of the Declaration is hereby deleted and replaced with the following:**

Among the uses permitted under Section 13.1, are (i) ski and snowboard sales and rental shops, (ii) restaurant/bars (including outdoor decks associated therewith); and (iii) with

respect to any Conversion Unit only, and upon compliance with procedures set forth in Section 3.7 above, all residential uses permitted under Section 13.3 below.

4. Section 19.5.3 Amendment. Section 19.5.3 of the Declaration is hereby deleted and replaced with the following:

Interior, non-structural changes or alteration of Units that are not visible or discernable from the exterior of a Unit may be undertaken solely by the Owner thereof with the exception of Owners of Fractional Ownership Interests, it being acknowledged that interior, non-structural changes to Plan Units may be undertaken by the Tourist Accommodation Directors pursuant to Section 23.8 below.

5. Exhibit B Amendment. The formula set forth on Exhibit B relating to the Allocated Interests of Tourist Accommodation Units shall be deleted and replaced with the following:

Tourist Accommodation Units. To determine the Allocated Interest of a given Tourist Accommodation Unit in the Project, the following mathematical formula applies:

Total square footage of all Tourist Accommodation Units / total square footage of all Units = Allocated Interests of Tourist Accommodation Units in the Project.

TA Units that are not Plan Units

[Total square footage of such Unit / total square footage of all Tourist Accommodation Units] times Allocated Interests of Tourist Accommodation Units in the Project

TA Units that are Plan Units

Allocated Interests of Tourist Accommodation Units in the Project *minus* total Allocated Interests of all Tourist Accommodation Units that are not Plan Units = (total number of two-bedroom Tourist Accommodation Units times X + (total number of three-bedroom Tourist Accommodation Units) times 110% of X.

X represents the Allocated Interest of a two-bedroom Plan Unit

110% of X represents the Allocated Interest of a three-bedroom Plan Unit

All two-bedroom Plan Units will have the same Allocated Interests and all three-bedroom Plan Units will have the same Allocated Interests.

6. Definitions. Any capitalized term used herein without definition shall have the meaning ascribed to it in the Declaration.

7. Governing Law. This Fourth Amendment will be governed by and interpreted in accordance with the laws of the State of Colorado.

8. Counterparts. This Fourth Amendment may be executed in counterpart copies which, when taken together, will evidence the entire agreement of the parties.

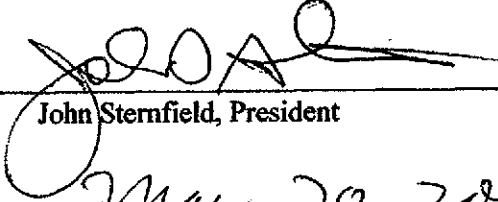
9. Conflicts Between Documents. This Fourth Amendment hereby supersedes and controls over any contrary provision contained in the Declaration. In case of conflict between the Declaration as amended hereby and the Articles and the Bylaws of the Association, the Declaration, as amended, shall control.

10. Declaration. Except as specifically set forth in this Fourth Amendment, the Declaration remains unchanged and in full force and effect. This Fourth Amendment shall hereafter be interpreted for all purposes as part of the Declaration.

IN WITNESS WHEREOF, the undersigned, representing the Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent of the votes allocated to units not owned by Declarant, are allocated have executed this Fourth Amendment on the day and year written below.

[Signatures on attached pages]

THE UNDERSIGNED, being the President of the Aspen Highlands Condominium Association, Inc., hereby consents to the above Fourth Amendment to Declaration of Condominium for Aspen Highlands Condominiums:

By: 
John Sternfield, President

Date: May 20, 2006

STATE OF California)
COUNTY OF Santa Clara) ss.

The foregoing instrument was acknowledged before me this 20th day of May, 2006, by John Sternfield as _____ of _____.

My commission expires: Oct 7, 2006

[SEAL]




Notary Public