

FIRST AMENDMENT TO DECLARATION  
OF  
PROTECTIVE AND RESTRICTIVE COVENANTS OF  
EAST COOPER TOWNHOUSE CONDOMINIUMS

THIS FIRST AMENDMENT TO THE DECLARATION OF PROTECTIVE AND RESTRICTIVE COVENANTS of East Cooper Townhouse Condominiums ("Amended Declaration") is made as of July 18, 1994, by East Cooper Limited Liability Company, a Colorado limited liability company ("Declarant").

RECITALS

A. Declarant is the Owner of certain real estate located in the City of Aspen, County of Pitkin, State of Colorado, which is more particularly described on Exhibit A attached as a part hereof, and;

B. Declarant has previously executed and recorded in the Office of the Pitkin County Clerk and Recorder the Declaration of Protective and Restrictive Covenants of East Cooper Townhouse Condominiums at Book 730 and Page 315 (the "Declaration"); and

C. Declarant now wishes to make certain additions, deletions and modifications to the Declaration.

Section 1.3 ("Definitions") shall be amended to include the following definition:

(t) Eligible Mortgage Holder. "Eligible Mortgage Holder" shall mean any holder of a first priority mortgage on a Unit who has submitted a written request that the Association notify him of any proposed action requiring the consent of a specified percentage of eligible mortgage holders.

Section 5.11 ("Conveyance or Encumbrance of Common Elements") of the Declaration shall be amended to read as follows:

Portions of the Common Elements may be conveyed or made subject to a security interest by the Association if persons entitled to cast at least eighty percent of the votes in the Association, including eighty percent of the votes allocated to the Units not owned by the Declarant agree to that action. However, all Owners of Units to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a security interest. Proceeds of any such sale or security interest are an asset of the Association. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the Common Elements shall be void unless the Unit to which such interest is allocated is also transferred.

Section 5.15 of the Declaration ("Working Fund") shall be amended to read as follows:

The Association or Declarant shall require the first Owner of each Unit to make a non-refundable payment to the Association in an amount which is at least equal to two months of estimated common charges for each Unit, with such charges to be shared on a pro rata basis, and shall be computed by the percentage allocable to such Unit as set forth on Exhibit B attached hereto and incorporated herein, which sum shall be held, without interest, by the Association as a working fund to meet unforeseen expenditures or to purchase any additional equipment or services. The working fund shall be collected and transferred to the Association at the time of closing of the sale of a Unit by Declarant. During the period of declarant control, Declarant shall not use the working fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

Section 6.10 of the Declaration ("Liability of Owners, Purchasers and Encumbrances") shall be amended to read as follows:

The amount of any assessment, charge, fine or penalty payable with respect to any Unit Owner or Unit shall be a joint and several obligation to the Association of such Unit Owner and such Unit Owner's heirs, personal representatives, successors and assigns. A party acquiring fee simple title to a Unit shall not be jointly and severally liable with the former Unit Owner for any such amounts which had accrued and were payable at the time of the acquisition of fee simple title to the Unit unless the party acquiring fee simple to the Unit agrees to assume such obligations. Each such amount, together with interest thereon, may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same. Notwithstanding the foregoing, the holder of a mortgage, deed of trust or other lien on a Unit shall not be liable for any such assessment, charge, fine, or penalty. A lien for an unpaid assessment will not be affected by the sale or transfer of the Unit, unless a foreclosure of a first priority mortgage is involved, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but will not relieve any subsequent unit owner from paying further assessments.

Section 11.1 of the Declaration ("Responsibilities of the Association") shall be amended to read as follows:

The Association is responsible for Maintenance of, as a Common Expense:

(a) all Common Elements; and

(b) Project Buildings, to the following extent: the Association shall maintain all of the exterior portions of the Project Building, including without limitation, the roof, siding, all exterior windows and doors, but excluding any decorative flower boxes and other ornamentation; the perimeter walls of the Project Buildings to the extent of any structural deficiencies; the foundation of the Project Buildings; and any repairs to plumbing, gas, water, electrical, sewage and water lines located outside the perimeter walls of the Project Buildings. The Association shall also maintain the parking lot such that at all times travel across the twenty foot emergency access easement reflected on the Plat is in no way blocked or restricted by any accumulation of snow, debris, or any parked vehicles.

Section 11.3 of the Declaration ("Responsibilities of Owners") shall be amended to read as follows:

Each Owner is responsible for providing all Maintenance, repair and replacement of such Owner's Unit at his own expense. For a Unit Owner such responsibility shall include, without limitation, maintenance of the interior surfaces of the walls, ceilings, doors and floors of a Unit and any finished or additional surfaces, decoration or materials, such as carpets, wallpaper, countertops, painting or staining, plug-in appliances and personalty of any kind in a Unit. Each Unit Owner is also responsible, at his own expense, for cleaning all doors to his Unit; the interior faces of all glass surfaces of his Unit; and all machines, attachments, installations and fixtures within his Unit. A Unit Owner shall also be responsible for the costs of any Maintenance to the Common Elements or another Unit which is necessitated by the Owner's negligence, as determined by the Executive Board.

Article 13 of the Declaration ("INSURANCE") shall be deleted in its entirety and in its place, the following provisions shall control.

Section 13.1. Insurance Requirements Generally

(a) Commencing not later than the time of the first conveyance of a Unit to a person other than Declarant, the Association shall obtain and maintain in full force and effect at all times certain property, liability and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to do insurance business in the State of Colorado. All such insurance, to the extent possible, shall name the Association as the insured, in its individual capacity and also either as attorney-in-fact or trustee for all Unit Owners.

(b) The cost and expense of all insurance obtained by the Association, except insurance covering additions, alterations or improvements made to a Unit by a Unit Owner or other insurance obtained at the request of and specifically benefitting any particular Unit Owner, shall be a Common Expense to be covered by assessments as elsewhere provided in this Declaration.

Section 13.2. Property Insurance.

(a) Acceptable Policies. Any property insurance policy obtained by the Association for the Project must be written by either Lloyd's of London, or an insurance carrier with a B general policyholder's rating or a financial performance index of six (6) or better in the Best's Key Rating Guide, or an "A" or better rating from Demotech, Inc. In the event that the carrier does not meet any of the above rating requirements, a carrier which is covered by 100% reinsurance with a company that does meet the above rating requirements shall be deemed acceptable.

(b) The Association shall obtain and maintain property insurance insuring the Common Elements including fixtures, building service equipment and common personal property and supplies that are considered part of the Common Elements and each Unit against loss or damage by fire and such other hazards as are normally covered under standard extended coverage policies, and all other perils customarily covered for similar types of projects, including those covered by the standard "all risk" endorsement or the "broad form" covered causes of loss but excluding those that are normally excluded from coverage, such as land, foundations and excavations. Any such policy must meet the requirements described below.

(c) The total amount of any property 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 shall include the Units, including the finished interior surfaces of the walls, floors, and ceilings of the Units. The insurance shall also include

improvements, betterments, fixtures, equipment and other personal property inside a Unit or installed by a Unit Owner, but any increased charge resulting from improvements, betterments, fixtures, equipment or other personal property installed by a Unit Owner shall be assessed by the Association to such Unit Owner.

(d) Endorsements Required. The following endorsements shall be required for the Project:

- i. An Inflation Guard Endorsement, if available.
- ii. A Building Ordinance or Law Endorsement, if the enforcement of any building, zoning, or land-use law will result in any damage, increased cost of repairs or reconstruction, or additional demolition or removal costs. The endorsement shall provide for contingent liability from the operation of building laws, demolition costs, and increased costs of construction; and

(f) Policy Requirements. The policy of property insurance obtained by the Association shall include the following provisions:

- i. Any Insurance Trust Agreement will be recognized;
- ii. The insurer waives its rights to subrogation under the policy against any Unit Owner or member of his household;
- iii. No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy of property insurance or be a condition to recovery under the policy of property insurance.
- iv. If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

(g) Named Insured. Any policy of property insurance shall show the Association or an authorized representative of the Association, including its insurance trustee, as the named insured. The loss payable clause of such policy shall show the Association or the insurance trustee as a trustee for each Unit Owner and the holder of each Unit's mortgage. The policy of property insurance must also contain the standard mortgage clause and must name as mortgagee either the Federal National Mortgage Association ("Fannie Mae") or the servicers for the mortgages or share loans held by Fannie Mae on Units in the Project.

(h) Notices of Changes or Cancellation. The policy of property insurance shall require the insurer to notify in writing the Association (or the insurance trustee) and each first

priority mortgage holder named in the mortgage clause at least ten (10) days before it cancels or substantially changes the Project's coverage.

Section 13.3. Commercial General Liability Insurance. The Association shall obtain and maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the entire Project, including all Common Elements, public ways, and any other areas that are under its supervision in the amount of at least \$1,000,000.00 for each occurrence, including bodily injury and/or property damage that results from the operation, maintenance, or use of the Common Elements, insuring the Executive Board, the Association, the management agent (if any), and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as a Unit Owner and board member.

(a) The Unit Owners shall be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements and all Units. In the event that the policy of commercial liability insurance obtained by the Association does not include "severability of interest" in its terms, the Association shall procure a specific endorsement to preclude the insurer's denial of a Unit Owner's claim because of negligent acts of the Association or of other Unit Owners.

(b) The policy of commercial liability insurance shall require the insurer to notify in writing the Association (or insurance trustee) and each first priority mortgage holder or the holder of a share loan at least ten (10) days before it cancels or substantially changes the Project's coverage.

(c) The policy of commercial liability insurance shall cover claims of one or more insured parties against other insured parties.

(d) Policy Requirements. The policy of commercial liability insurance obtained by the Association shall include the following provisions:

i. Each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association

ii. Any Insurance Trust Agreement will be recognized;

iii. The insurer waives its rights to subrogation under the policy against any Unit Owner or member of his household;

iv. No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy of commercial property insurance or be a condition to recovery under the policy of property insurance; and

v. If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 13.4. Insurance by Owners. Except to the extent coverage therefor may be obtained by the Association and be satisfactory to a Unit Owner, each Unit Owner shall be responsible for obtaining insurance he deems desirable, including insurance covering furnishings, improvements and personal Property belonging to that Unit Owner and covering personal liability of that Unit Owner.

Section 13.5. Unavailability of Insurance - Notice. If the insurance described in Sections 13.2 and 13.3 is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association shall promptly cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners and mortgage holders.

Section 13.6. Application of Proceeds. Any loss covered by the Property insurance policy described in this Section 13 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association Unit Owners and lienholders as their interests may appear. Subject to the provisions of this Article 13, the proceeds must be disbursed first for the repair or restoration of the damaged Property, and the Association, Unit Owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored or the Project is terminated. In the event of a surplus, proceeds shall go to the Owners in proportion to their interests in the Common Elements.

Section 13.7. Other Insurance by Association. The Association shall also have the power or authority to obtain and maintain other and additional insurance coverage, fidelity bonds or insurance covering employees and agents of the Association and insurance indemnifying officers, directors, employees and agents of the Association.

Section 13.8. Owner-Increased Premiums. In the event that, as a consequence of the hazardous use of any Unit, or of any Owner-installed improvements to any Unit, the premiums of any policy of insurance purchased by the Association are increased, or a special policy is required, the cost of such increase or specific policy shall be assessed to the Owner of such Unit.

Section 13.9. Policies and Procedures. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to Real Property, it shall have the authority to assess negligent Unit Owners causing such loss or benefitting from such repair or restoration all deductibles paid by the Association. In the event that more than one Unit is damaged by a loss, the Association in its reasonable discretion may assess each Unit Owner a pro rata share of any deductible paid by the Association.

Section 13.10. Certificate of Insurance - Renewal. An insurer that has issued an insurance policy for the insurance described in Sections 13.2 and 13.3 shall issue certificates or memoranda of insurance to the Association, and, upon request, to any Unit Owner or holder of a security interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, and each Unit Owner and each holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

Section 13.11 Destruction or Damage to Property

(a) Any portion of the Project for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the Association unless the Project is terminated; or repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or eighty percent (80%) of the Unit Owners, including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, as well as all Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of the Units that are subject to mortgages held by Eligible Mortgage Holders vote not to rebuild, to the extent such required approval by Eligible Mortgage Holders is permitted under Colorado law; or, prior to the conveyance of any such Unit to a person other than Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Project rightfully demands all or a substantial part of the insurance proceeds.

(b) The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the Project is not repaired or replaced, the insurance proceeds



attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt must be distributed to the holders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Unit Owners or lienholders, as their interests may appear in proportion to the Common Element interests of all the Units.

Section 14.4 ("Amendment of Declaration and Map") shall be amended to read as follows:

Except as otherwise set forth herein, this Declaration and the Bylaws shall be amended if Unit Owners holding sixty-seven percent (67%) or more of the total votes outstanding and entitled to be cast under the Bylaws agree thereto by an executed instrument duly recorded in the office of the Clerk and Recorder of Pitkin County, Colorado. In the case of amendments of a material nature, approval shall also be obtained by all Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of the Units that are subject to mortgages held by Eligible Mortgage Holders, to the extent such required approval by Eligible Mortgage Holders is permitted under Colorado law. Except as otherwise specifically provided in this Declaration, the Map may only be amended if Owners holding one hundred percent (100%) or more of the total votes outstanding and entitled to be cast under the Bylaws agree thereto by an executed instrument duly recorded with the Pitkin County, Colorado Clerk and Recorder, and the consent shall also be obtained by all Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of the Units that are subject to mortgages held by Eligible Mortgage Holders, to the extent such required approval by Eligible Mortgage Holders is permitted under Colorado law.

A change to any of the provisions governing the following shall be considered as "Material":

- (a) voting rights;
- (b) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (c) reductions in reserves for maintenance, repair, and replacement of common elements;
- (d) responsibility for maintenance and repairs;

- (e) reallocation of interests in the General or Limited Common Elements, or rights to their use;
- (f) redefinition of any Unit boundaries;
- (g) Convertibility of Units into Common Elements, or vice versa;
- (h) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project;
- (i) property or fidelity insurance requirements;
- (j) imposition of any restrictions on the leasing of Units;
- (k) imposition of any restrictions on any Unit Owner's right to sell or transfer his Unit;
- (l) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in this Declaration;
- (m) any provisions that expressly benefit mortgage holders, insurers, or guarantors.

Section 15.6 of the Declaration ("Mortgagee Rights") shall be amended to read as follows:

Any Eligible Mortgage Holder, or insurer or guarantor of a first priority mortgage on a Unit will, upon request, be entitled to:

- (a) inspect the books and records of the Association during normal business hours;
- (b) receive financial statements of the Association within ninety (90) days following the end of any fiscal year;
- (c) receive written notice of meetings of the Association and be permitted to designate a representative to attend all such meetings;
- (d) receive written notice of any default on the part of its respective Mortgagor(s) regarding any obligations imposed under this Declaration which are not cured within thirty (30) days.

(e) receive timely written notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage;

(f) receive timely written notice of any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of a Unit on which it holds the mortgage;

(g) receive timely written notice of a lapse, cancellation, or material modification of any insurance policy maintained by the Association;

(h) receive timely written notice of any proposed action that requires the consent of a specific percentage of Eligible Mortgage Holders.

Section 15.10(a) ("Termination") shall be amended to read as follows:

(a) Except in the case of a taking of all the Units by eminent domain, or the substantial destruction or condemnation of the Project, the Association may be terminated only by agreement of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated as well as all Eligible Mortgage Holders who represent at least sixty-seven percent (67%) of the votes of the Units that are subject to mortgages held by Eligible Mortgage Holders vote not to rebuild, to the extent such required approval by Eligible Mortgage Holders is permitted under Colorado law. Implied from Eligible Mortgage Holders may be assumed by the Association when an Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment or termination of the Project within 30 days after it received notice of the proposal, provided such notice is delivered by certified or registered mail, with a "return receipt" requested.

The Declaration shall be amended to include Section 15.23 ("Lease Restrictions") which shall read as follows:

Any lease or rental agreement affecting the occupancy of a Unit shall be in writing and shall adopt and incorporate the provisions of this Declaration as well as Exhibit C attached to this Declaration ("Master Deed Restriction, Occupancy and Resale Deed Restriction,

Agreement for East Cooper Affordable Housing Development").

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by E.J. Olbright, as Manager of the Declarant, this 18 day of July, 1994.

DECLARANT:

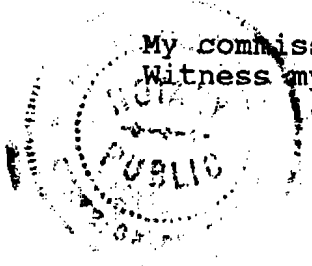
EAST COOPER LIMITED LIABILITY COMPANY,  
a Colorado limited liability company

By: [Signature]  
E. J. Olbright, Manager

STATE OF COLORADO )  
COUNTY OF Dominant ) SS

The foregoing instrument was acknowledged before me this 18th day of July, 1994, by E.J. Olbright as Manager of East Cooper Limited Liability Company, a Colorado limited liability company.

My commission expires: Sept. 16, 1995  
Witness my hand and official seal.



[Signature]  
Notary Public

olbright\3amend.02