



AMENDED AND RESTATED  
CONDOMINIUM DECLARATION  
FOR  
KISSING CAMELS TOWNHOMES

This Amended and Restated Condominium Declaration for Kissing Camels Townhomes (the "Amended Declaration") is made and entered into effective this 21<sup>ST</sup> day of January, 2008.

RECITALS

This Amended Declaration is made with respect to the following facts:

- A. On or about April 19, 1979, Hillcrest Corporation, in its capacity as Declarant, executed and had recorded that certain instrument entitled "Condominium Declaration for Kissing Camels Townhomes" at Book 3165, Page 498 of the official records of El Paso County, Colorado (the "Condominium Declaration"). The Condominium Declaration imposed certain covenants, conditions, easements, restrictions and reservations on the real property described therein.
- B. The Condominium Declaration was amended by instrument recorded June 14, 1995 in Book 6665 at Page 774 of the records of El Paso County, Colorado. The Condominium Declaration and Amendment are hereinafter collectively referred to as the "Original Declaration."
- C. The Hillcrest Corporation has previously transferred all of its rights as Declarant to the Condominium Homeowners Association of Kissing Camels Townhomes, Inc. (the "Homeowners Association").
- D. The Original Declaration is subordinate to that certain Lease Agreement dated August 4, 1978, as modified by Addendum to Lease dated November 13, 1978, by Addendum dated March 2, 1979, and by Third Addendum to Lease Agreement and Purchase Option dated January 2, 2008, collectively, the "Ground Lease."
- E. The Homeowners Association was incorporated on or about April 21, 1998, and has been and continues to be a not-for-profit corporation duly organized under the laws of the State of Colorado. The Homeowners Association was formed for the purpose of replacing Declarant and managing and overseeing the operation, repair and maintenance of the Condominium Project.

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- F. The Original Declaration provides that it may be amended upon the consent of the Owners representing the aggregate ownership interest of the fraction, 37/49, or more, in the general common elements.
- G. The Association has entered into a Third Addendum to Lease Agreement and Purchase Option which Third Amendment grants to the Association the unilateral right to purchase fee title to all of the real property which is currently subject to the Ground Lease.
- H. The Association and Owners desire to update and amend the Original Declaration to address the eventual purchase of the real property and to address certain other matters as herein set forth.
- I. More than the requisite number of Owners of the Condominium Units located within the Kissing Camels Townhomes have voted to amend and re-state the Original Declaration as hereinafter set forth.

NOW, THEREFORE, pursuant to the vote of the Owners, the Association hereby declares that the Original Declaration shall be amended and re-stated, in its entirety, as follows:

#### ARTICLE I. DEFINITIONS

- 1 The following definitions shall apply unless the context expressly provides otherwise.
  - 1.1 "Act" means the Colorado Common Interest Ownership Act, Colorado Revised Statutes, §38-33.3-101, *et seq.*, as amended or supplemented from time to time.
  - 1.2 "Association of Unit Owners" or "Association" means the Condominium Homeowners Association of Kissing Camels Townhomes, a Colorado non-profit, membership corporation, and any successor to that entity by whatever name, charged with the duties and obligations of administering the Condominium Project.
  - 1.3 "Board of Directors" or "Board" means the directors elected pursuant to the By-Laws to govern the affairs of the Association.
  - 1.4 "Building" means the single building or structure containing the units as shown on the Map.
  - 1.5 "By-Laws" means the By-Laws of the Association which establish the methods and procedures of the Association's operation, as such By-Laws may be amended from time to time by the Board of Directors.
  - 1.6 "Common Expenses" means and includes all expenses and charges levied by and for the benefit of the Association pursuant to the Governing Documents, including, without limitation, all expenses of administration and operation of the Condominium

Project, the expenses of maintenance, repair or replacements the Common Elements, all amounts necessary to fund reasonable reserves, and all other expenses agreed upon by the Owners.

- 1.7 "Condominium Project" or "Project" means (i) the Association's leasehold in and purchase right to the real property, exclusive of improvements thereon, described in Exhibit "A" attached hereto, and (ii) the Buildings, improvements and Condominium Units constructed on said real property and owned by the Association. Upon the Association's exercise of its right to purchase the real property, said Property shall become part of the Condominium Project.
- 1.8 "Condominium Unit" means a Unit, together with an undivided interest, appurtenant thereto, in the General Common Elements and the exclusive right to use the Limited Common Elements made appurtenant to such Unit by this Amended Declaration.
- 1.9 "Declaration" or "Amended Declaration" means this Amended and Restated Declaration and supplements thereto, if any, as the same may hereafter be amended.
- 1.10 "General Common Elements" means and includes:
  - 1.10.1 A Leasehold Estate, for a term ending December 31, 2057, in the real property, exclusive of improvements thereon, described in Exhibit "A" attached hereto, created by Lease Agreement dated August 4, 1978 and recorded April 19, 1979 in Book 3165 at Page 475, as amended by Addendum thereto dated November 13, 1978 and recorded April 19, 1979, in Book 3165 at Page 490, as further amended by an additional Addendum thereto dated March 2, 1979 in Book 3165 at Page 495, and as further amended by a Third Addendum to Lease Agreement and Purchase Option dated January 2, 2008, and recorded on January 14, 2008 under Reception #208005202 of the official records El Paso County, CO. Upon exercise of the above described Purchase Option, the LEASEHOLD ESTATE interest shall be converted to a FEE SIMPLE interest;
  - 1.10.2 The foundations, columns, girders, beams, supports, main walls, roof (except as otherwise provided for herein), lanais, parking areas, walks, walkways, retaining walls and landscaped areas;
  - 1.10.3 The mechanical installations of the Buildings consisting of the equipment and materials making up any central services existing for common use, such as, but not necessarily limited to, power, light, gas, hot and cold water, and heating;
  - 1.10.4 Any tanks, pumps, motors, fans and compressors, existing for common use;
  - 1.10.5 Such enclosed air spaces in the Buildings as are provided for community or common use; and

- 1.10.6 All other parts of the Buildings and of the entire premises necessary or convenient for their existence, maintenance and safety or normally in common use.
- 1.11 "Governing Documents" means the documents creating and governing the Condominium Project including, without limitation, this Amended and Restated Declaration, the Articles of Incorporation, the By-Laws and any rules, regulations, policies or procedures adopted pursuant to such documents by the Association or the Board of Directors and its authorized committees.
- 1.12 "Ground Lease" or "Lease" shall refer to that certain Lease Agreement dated August 4, 1978 and recorded on April 19, 1979 in Book 3165 at Page 475, El Paso County records, between Hill Development Corporation, a Delaware corporation, as Landlord, and Declarant, as Tenant, as amended by Addendum thereto dated November 13, 1978 and recorded April 19, 1979, in Book 3165 at Page 490, as further amended by an additional Addendum thereto dated March 2, 1979 and recorded April 19, 1979 in Book 3165 at Page 495, and as further amended by a Third Addendum to Lease Agreement and Purchase Option dated January 2, 2008, and recorded on January 14, 2008 under Reception #208005202 of the official records El Paso County, CO.
- 1.13 "Limited Common Elements" means any parts of the General Common Elements reserved for use by fewer than all the Owners of individual Units, as shown on the Map or as may be subsequently determined by the Association of Unit Owners, such as, but not limited to, balconies or lanais (including privacy walls, if any), appurtenant to Units.
- 1.14 "Map" or "Condominium Map" means and includes the engineering survey of the land recorded on April 19, 1979 in Plat Book 2 at Page 9, under Reception #546688, of the El Paso County records which depicts and locates therein all of the improvements, the floor and elevation plans including any amendments thereto. The Map shall also include any other drawing or diagrammatic plan depicting a part or all of the Property and improvements thereon.
- 1.15 "Mortgage" shall mean any mortgage, deed of trust, or other document pledging or encumbering a Condominium Unit as security for the payment or repayment of a debt or obligation.
- 1.16 "Mortgagee" means any person, corporation, partnership, trust, company, association, or other legal entity which takes, owns, holds or receives a mortgage.
- 1.17 "Owner" or "Unit Owner" means a person, firm, corporation, partnership, association or other legal entity or any combination thereof, who owns one or more Condominium Units.
- 1.18 "Property" means and includes the real property described on Exhibit "A" and subject to this Declaration.

- 1.19 "Rules" means all rules, regulations, policies, procedures, covenants, guidelines, conditions standards and restrictions as the same may be duly adopted from time to time by the Board of Directors of the Association.
- 1.20 "Unit" means one individual air space which is contained within the unfinished perimeter walls, floors, ceilings, windows and doors of each unit as shown on the Condominium Map to be filed for record, together with all fixtures and improvements therein contained, but not including any structural components of the Building or other General Common Elements, if any, located within the Unit.

## ARTICLE II. DESCRIPTION AND ESTATES

- 2.1 Description of Estates. The Condominium Project consists of 49 separate estates, each being an estate for years, co-terminus with the Ground Lease, as amended, and otherwise ending December 31, 2057, until the option to purchase is duly exercised, in a Unit, and in the appurtenant undivided interest in the General Common Elements in the fractional interest provided for in Exhibit "B" attached hereto and incorporated herein by reference, which said General Common Elements shall include an appurtenant undivided LEASEHOLD ESTATE, or upon the exercise by the Association of the option to purchase the real property is exercised, said property shall become an appurtenant undivided FEE SIMPLE ESTATE in the real property described in Exhibit "A" attached hereto, which undivided interest shall be inseparable from the other General Common Elements and appurtenant to each Unit in the same fractional interest as the other General Common Elements and provided for in Exhibit "B" attached hereto.
- 2.2 Legal Description. In accordance with the Condominium Map and this Amended Declaration, every contract, deed, lease, mortgage, deed of trust, will or other instrument affecting title will legally describe a Condominium Unit as follows:

An Estate for Years in Condominium Unit No. \_\_\_\_, Building, Kissing Camels Townhomes, a Condominium, in accordance with the Declaration recorded on April 19, 1979 in Book 3165 at Page 498, and the Condominium Map recorded on April 19, 1979 in Book 2 at Page 9, and the Ground Lease recorded on April 19, 1979 in Book 3165 at Page 475, as amended by Addendum to said Lease recorded on April 19, 1979 in Book 3165 at Page 490, as further amended by an additional Addendum to said Lease recorded on April 19, 1979 in Book 3165 at Page 495, and as further amended by a Third Addendum to Lease Agreement and Purchase Option dated January 2, 2008, and recorded on January 14, 20087 under Reception #208005202 of the official records El Paso County, CO, together with and including the exclusive right to use Parking Space No. \_\_\_\_\_, as depicted on the Condominium Map recorded on April 19, 1979 in Book 2 at Page 9, under Reception No. 546688 of said records.

Upon the exercise of the option to purchase and the conveyance of the real property to the Association, the language "an Estate for Years" in the above legal description shall be replaced with "a Fee Simple Estate."

Every such description shall be deemed good and sufficient for all purposes to effectually convey, assign, encumber or otherwise transfer ownership and possession of a Condominium Unit so numbered, whether by deed of general conveyance, assignment, mortgage, deed of trust or other document.

- 2.3 Interest in Common Elements. Each Unit and its undivided interest in the General Common Elements and any Limited Common Elements appurtenant thereto shall be inseparable and may be conveyed, leased or encumbered only as a Condominium Unit.
- 2.4 Joint Ownership. A Condominium Unit may be held and owned by more than one person as joint tenants or as tenants-in-common, or in any real property tenancy relationship recognized under the laws of Colorado.

### ARTICLE III. CONDOMINIUM MAP

The Condominium Map which sets forth the legal description of the Condominium Project and Units was recorded on April 19, 1979 in Plat Book 2 at Page 9, under Reception #546688 of the records of El Paso County, Colorado. The linear measurements of the real property and Units shall be governed by the Map which Map is incorporated herein by reference. The legal description of the two parcels described on the Map have been combined into a single legal description, as set forth on Exhibit A attached hereto.

### ARTICLE IV. POSSESSION AND USE

- 4.1 General Ownership. Each Owner shall be entitled to exclusive ownership and possession of his Unit except as otherwise herein specifically provided. Each Owner may use the General Common Elements in common with the other Unit Owners, and the Limited Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of other Owners. The Association may adopt rules and regulations governing the use of General and Limited Common Elements and pursuant to which Limited Common Elements are located to the exclusive use of the Owners of particular Units, provided such rules and regulations shall be uniform and non-discriminatory. The Owner of a Condominium Unit shall have the exclusive use of the balcony or patio, if any, immediately adjacent to such Owner's Condominium Unit.
- 4.2 Residential Use. In order to protect and enhance the residential character of the Project, each Condominium Unit shall be used and occupied solely for the purpose of lodging or as a single-family residential dwelling by the Owner or by the Owner's family, guests, agents, employees, invitees and tenants. With the exception of a Mortgagee in possession of the Condominium Unit following a default in a first mortgage or first deed of trust, a foreclosure proceeding or any deed or other

arrangement in lieu of foreclosure of a first mortgage or first deed of trust, no Owner shall be permitted to lease a Unit for transient or hotel purposes. No Owner may lease less than the entire Unit. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the By-Laws of the Association, and that any failure by the lessee to comply with the terms of such document shall be a default under the lease. All leases shall be required to be in writing. Other than that set forth above, there are no restrictions on the right of any Owner to lease his Unit.

- 4.3 **Temporary Buildings.** No structures of a temporary character (except as may be necessary during re-construction), trailer (other than delivery vehicles), tent, shack, garage, barn or other out-buildings shall be used or permitted to be kept or stored on any portion of the Condominium Project at any time, either temporarily or permanently.
- 4.4 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on the Condominium Project, except that dogs, cats or other household pets may be kept, subject to rules and regulations that are from time to time adopted or amended by the Association. No animal of any kind shall be permitted which makes an unreasonable amount of noise or odor or otherwise is a nuisance to neighbors or the neighborhood. No animals shall be kept, bred or maintained within the Project for any commercial purposes.
- 4.5 **Signs.** No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or maintained on the Condominium Project, nor shall the Condominium Project be used in any way or for any purpose which may endanger the health or reasonably disturb the Owner of any Condominium Unit or any resident thereof. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for a Unit Owner to erect a single sign advertising the sale of a Condominium Unit so long as said sign is of customary and reasonable format.
- 4.6 **Nuisances.** No noxious or offensive activity shall be allowed to be carried on within the Condominium Project, nor any use or practice which is the source of annoyance to residents, or which interferes with the peaceful enjoyment or possession and proper use of the Condominium Project by its residents. All parts of the Condominium Project shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard to exist. No Unit Owner shall permit any use of his Unit or make use of the Common Elements which will increase the rate of insurance upon the Condominium Project. The Association may adopt rules and regulations relative to abatement and enjoinder of nuisances.
- 4.7 **Unlawful Use.** No immoral, improper, offensive or unlawful use shall be permitted or made of the Condominium Project or any part thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction shall be observed.
- 4.8 **Rules and Regulations.** Rules and regulations may be adopted by the Board of Directors of the Association concerning and governing the use of the General and

Limited Common Elements; provided, however, that such rules and regulations shall be uniform and non-discriminatory.

- 4.9 Alterations. No exterior additions, alterations or decorating to the Buildings, nor changes in fences, hedges, walls and other structures shall be commenced, erected or maintained until the plans and specifications showing the nature, kind, shape, heights, materials, location and approximate cost of same shall have been submitted to and approved in writing by the Board of Directors of the Association, or by a representative designated by it, as to the conformity and harmony of external design and location with existing structures on the property. An Owner shall not make structural modifications or alterations to his Unit or installations located therein without previously notifying the Association in writing through the Managing Agent or, if no Managing Agent is employed, then through the President of the Board of Directors. The Association shall have the obligation to answer within 30 days after receipt of such notice, and failure to do so within that time shall mean that there is no objection to the proposed modification or alteration. It is understood that the herein restriction is for the mutual benefit of all Unit Owners, to protect the structural elements and/or improvements that may affect the Common Elements. No Owner shall have the right to alter the General Common Elements.
- 4.10 Vehicles. No commercial or recreational vehicle, boat, trailer, camper, tractor, or motor home shall be stored or parked overnight on any street or parking area, except in an Owner's garage. No unused or inoperative motor vehicles shall be permitted to be parked on any street or in any parking area. An unused vehicle shall be any vehicle which is not properly licensed or registered or has remained immobile for more than a week, as determined by the Board of Directors.
- 4.11 Adult Community. The Condominium Project is an adult community. No Units shall be conveyed to or occupied by families having minor children, and no minor children shall be permitted to use the General or Limited Common Elements except on a supervised basis as casual guests of an adult Owner.

#### ARTICLE V. PARTITION

- 5.1 Common Elements. The General Common Elements shall be owned in common by all of the Owners of the Condominium Units, and shall remain undivided, and no Owner shall bring any action for partition or division thereof. Violation of this provision shall entitle the Association to personally collect, jointly and severally from the parties violating the same, the actual attorney's fees, costs and other damages the Association incurs in connection therewith. Further, all Owners and the Association, covenant that they shall neither by act nor omission seek to abandon, subdivide, encumber, sell or transfer the General Common Elements without first obtaining the written consent of all holders of first mortgages or deeds of trust of individual Condominium Units. Any action without the written consent of all of said Mortgagees holding first mortgages or first deeds of trust shall be null and void.



- 5.2 Units. No Owner of a Condominium Unit shall partition or subdivide any such Condominium Unit so as to convey to a prospective owner an interest in less than an entire Condominium Unit.

## VI. EASEMENTS AND ENCROACHMENTS

- 6.1 Easements or Encroachments. If any portion of the General Common Elements encroaches upon a Unit or Units by reason of damage, destruction, settling, shifting, repair or reconstruction, a valid easement for the encroachment and for its maintenance, so long as it stands, shall and does exist. If any portion of a Unit or Units encroaches upon the General Common Elements by reason of damage, destruction, settling, shifting, repair or reconstruction, a valid easement for such encroachment shall and does exist. For title or other purposes, no such encroachment and easement shall be considered or determined to be an encumbrance either on the General Common Elements or the Units. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of an Owner.
- 6.2 Building Easements. If, at the time of the initial conveyance of title to a Condominium Unit, there exists within such Condominium Unit water lines or sanitary sewer lines, which lines serve the Unit or Units directly adjacent to the Condominium Unit being conveyed, then and in that event, there is hereby reserved, for the benefit of the Owner(s) of the Unit(s) being then served by such lines, an easement to maintain and repair such existing water and sanitary sewer lines, together with a right of access to such lines for necessary repairs and replacements. All costs and expenses necessary to maintain and repair said lines shall be borne by the Owner(s) of the Unit(s) being served by such lines.
- 6.3 Easements for Other Utilities. There is hereby reserved for the benefit of the Owners and future owners of the Condominium Units; a right-of-way and easement for all existing utility lines or pipes including, but not limited to, water lines, sewer lines, gas lines, telephone lines, cable television lines, heat lines and such other utility lines and incidental equipment thereon. An easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain on the Common Elements, maintenance and storage facilities for the use of the Association.
- 6.4 Restoration of Utilities. If any utility line referred to in ¶6.3 above is destroyed or damaged, the Association shall cause the same to be restored forthwith. Notwithstanding any other provision in this Declaration, an Owner who, by its own negligence or willful act, causes damages to any of the utility lines described in ¶6.2 above, shall bear the costs of restoration thereof, and other damages allowed by law.

- 6.5 **Map, Easements and Restrictions.** All easements shown on the Condominium Map or in any notes thereto, are hereby dedicated to the benefit of the Association and all of the Owners subject to the restrictions and conditions therefore, as provided on the Map and in this Amended Declaration and further subject to the rights of any holders of any such easements recorded prior to the Map. The Association shall maintain the easements consistent with the restrictions described on the Map, and the Board of Directors shall establish Rules governing the use and maintenance thereof.
- 6.6 **Right of Entry to Units:** The Association shall have the irrevocable right, to be exercised by the Managing Agent or Board of Directors of the Association, or their designated agents or representatives, to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the General Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the General Common Elements or to another Unit.

## VII. ASSOCIATION OPERATION AND MEMBERSHIP

- 7.1 **Administration and Authority:** The business and administration of the Condominium Project shall be managed by the Association. The Association shall be governed by the Act and other laws of the State of Colorado, this Declaration and all other Governing Documents. The Board of Directors is authorized to exercise all powers, duties and authority vested in or obligated to or by the Association.
- 7.2 **Powers and Duties:** The Association shall have all the powers, authority and duties permitted to be exercised by a unit owners' association under the Act. Such powers are incorporated herein by reference and include, without limitation, the following:
- 7.2.1 Any and all authority necessary and proper to manage the business and affairs of the Association, including the power to promulgate and publish rules and regulations with which each Unit Owner shall strictly comply;
  - 7.2.2 The power to own, operate, manage, lease, encumber, maintain, repair, reconstruct, replace, improve and otherwise deal with the Association properties and General and Limited Common Elements.
  - 7.2.3 The right to engage a professional property manager;
  - 7.2.4 Any and all powers reasonably necessary to govern, manage, maintain, repair, administer and regulate the Project and to perform all of the duties required of it. Notwithstanding the above, the Association shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Project and to perform all of the duties required of it. Notwithstanding the above, unless all of the first Mortgagees of Condominium Units have given

their prior written approval, the Association shall not be empowered or entitled to:

7.2.4.1 By act or omission, seek to abandon or terminate the condominium regime.

7.2.4.2 Partition or subdivide any Condominium Unit.

7.2.4.3 By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements.

7.2.4.4 Use hazard insurance proceeds for loss to the improvement for other than the repair, replacement or reconstruction of such improvements.

7.2.4.5 Abandon management of the Condominium Project.

- 7.3 **Membership:** Any person on becoming an Owner of a Condominium Unit shall automatically become a member of the Association and be subject to the Articles of Incorporation, this Amended Declaration, and to the By-Laws. Such membership shall terminate without any Association action whenever such person ceases to own a Condominium Unit, but such termination shall not relieve or release any such former Owner from any liability or obligations incurred under or in any connection with the Association during the period of such ownership and membership in this Association, or impair any rights or remedies which the Board of Directors of the Association or others may have against such former Owner and member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto. No certificates of stock shall be issued by the Association, but the Board of Directors may, if it so elects, issue one membership card to the Owner(s) of a Condominium Unit. Such membership card shall be surrendered whenever ownership of the Condominium Unit designated thereon shall terminate.
- 7.4 **Voting.** Each Owner of a Unit shall be entitled to vote only such Owner's percentage share of ownership in each Unit owned by him multiplied by the undivided fractional interest in the General Common Elements appurtenant to such Units.
- 7.5 **Books and Records.** Any holder of a first Mortgage or first deed of trust shall have the right to examine the books and records of the Association during normal business hours, shall receive an annual audited (not necessarily certified) financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association and will also receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

## ARTICLE VIII. ACCESS, MAINTENANCE AND REPAIRS

- 8.1 Right of Entry. In addition to any other rights granted to the Association hereinabove, the Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to the Governing Documents, to exercise the right of self-help pursuant to the By-Laws, and to inspect for the purpose of ensuring compliance with this Amended Declaration, the By-Laws and Rules, if any, which right may be exercised by any member of the Board of Directors of the Association, its officers, agents, employees and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and any damage caused by entry shall be repaired by the Association as a Common Expense provided, however, that if such damage is caused by negligent or other tortious conduct of a unit owner, members of his family, his agent, employee, invitee, licensee or tenant, then such Owner shall be responsible for such damage. The damaged improvements shall be restored to substantially the same condition which existed prior to the damage. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.
- 8.2 Owners' Responsibilities. Except as provided in ¶8.5 below, each Owner shall maintain in good repair the interior of his own Unit, including its fixtures. All fixtures and equipment installed within the Unit, commencing at a point where the utility lines, pipe, wires, conduits or systems enter the Unit shall be maintained and kept in repair by the Owner thereof. It shall also be each Owner's sole responsibility to maintain and repair the air-conditioning compressor serving such Unit and which is located adjacent to each Building in which the Condominium Unit is located. Said air-conditioning compressors are Limited Common Elements appurtenant to the Unit to which they serve, and each Owner is hereby granted an easement across the General Common Elements so that he may comply with the maintenance obligations imposed upon him relative to the maintenance of said air-conditioning compressor. No Owner shall do anything that will impair the structural soundness or integrity of the Building, or impair any easement or hereditament.
- 8.3 Association's Responsibilities. Except as otherwise specifically provided in this Amended Declaration, the Board of Directors shall be solely responsible for determining the specifications, scope, extent and nature of the Association's maintenance responsibilities. Notwithstanding the above, the Association shall maintain and keep the General and Limited Common Elements in good condition and repair, including without limitation, all landscaping and other flora, open space and improvements, such as all roads, parking areas, driveways, walls, signs, sidewalks, drainage facilities and irrigation systems, situated upon the Common Elements.
- 8.4 No Liability. The Association shall not be liable for any failure of water supply, or other service to be obtained and paid for by the Association hereunder, or for injury or damage to person or property caused by the elements, or by another Owner or

person on the Project, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of the Building or from any of its pipes, drains, conduits, appliances or equipment, or from any other place, unless caused by the gross negligence of the Association or its agents.

- 8.5 Common Elements. The Association shall have the duty of maintaining and repairing all of the Common Elements within the Project except heating, air conditioning and hot water heating units which are Limited Common Elements appurtenant to a Unit. The cost of said maintenance and repair shall be a common expense of all of the Owners. The Association shall not need the prior approval of its members to cause such maintenance or repairs to be accomplished, notwithstanding the cost thereof.
- 8.6 Sanitary Sewer. The Association shall have the obligation and shall be required to operate, repair and maintain all sanitary sewer lines situated on the property described on Exhibit "A" to the point of connection with the sanitary sewer line of the public utility serving the real property with water and sewer service. In addition, it shall be the Association's duty and responsibility to operate, repair and maintain the left station which is a part of said sanitary sewer lines.
- 8.7 Association Services. The Association shall provide to the Owners the following services which shall be paid for out of the common expense assessment, to-wit:
- 8.7.1 Maintenance of the Common Elements, except as otherwise provided;
  - 8.7.2 Administration and management of the Project;
  - 8.7.3 Providing common heating and lighting;
  - 8.7.4 Obtaining the insurance required in ARTICLE XII hereof;
  - 8.7.5 Enforcement of the covenants, conditions and restrictions set forth in the Declaration, enforcement of the Association's rules and regulations, and collection of all obligations owed to the Association by the Owners;
  - 8.7.6 Acting as attorney-in-fact in the event of damage or destruction as provided for in ARTICLE XIII hereof; and
  - 8.7.7 Performing all other acts permitted or required by the Governing Documents.
  - 8.7.8 Notwithstanding the above, the Association reserves the right to hire one or more persons or entities including a Managing Agent, contractors, and employees to perform such services provided, however, that any contract in regard to the hiring or employing of such Managing Agents, contractors or employees shall not be for a term in excess of one year, renewable by agreement of the parties for successive one-year periods, and shall provide that the same may be terminable upon 30 days' written notice thereof, for

cause, and terminable upon 60 days' written notice thereof without cause.

- 8.8 Vertical Utility Lines. With respect to the vertical utility lines, whether inside or outside of the individual Units, the Association shall be responsible for the maintenance and repair of such service lines.

#### ARTICLE IX. OWNERSHIP OF WALLS, PARTY WALLS AND UTILITIES

- 9.1 Ownership. No Owner shall be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding his Unit. An Owner shall be deemed to own and shall maintain the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings, doors and windows, consisting of paint, wallpaper and other furnishing materials and the interior non-supporting walls contained within the Units.
- 9.1.1 Mutual reciprocal easements are hereby established, declared and granted for all party walls hereafter between Units. Every deed, whether or not expressly so stated therein, shall be deemed to convey and be subject to such reciprocal easements.
- 9.1.2 Except for negligent or willful acts of an owner and, except for wallpaper, tile and other finishing materials, the cost of repair and maintenance of the party walls shall be an expense of the Association.
- 9.1.3 If a party wall is destroyed or damaged by fire or other casualty, the Association shall promptly restore such wall, without prejudice to the Association to seek contributions from an Owner for negligent or willful acts or omissions.

#### ARTICLE X. ASSESSMENTS

- 10.1 Obligation to Pay. Each Owner, by acceptance of a deed to a Unit, whether or not it shall be so expressed therein, shall be deemed to covenant and agree to pay to the Association his or her pro rata share of the actual expenses incurred by the Board of Directors or Managing Agent of the Association to meet the common expenses. The assessments shall be made in the pro rata portions as set forth on Exhibit "B" attached. Such assessments shall be the personal obligation of the Owner of the Unit at the time when the assessment became due. In addition to being a charge on each Unit, the assessment shall be a continuing lien upon the Unit against which such assessment is made. The personal obligation to pay any past-due sums shall not pass to a successor in title unless expressly assumed by such successor owner. Assessments for estimated common expenses shall be due monthly in advance on the first day of each month. The Managing Agent or Board of Directors shall prepare and deliver or mail to each Owner an itemized statement showing the various estimated or actual expenses for which assessments are made.

- 10.2 **Annual Budget.** The Common Expense Assessment shall be made on an annual basis, based upon the Association's advance budget of the cash requirements needed by the Association as determined by the Board of Directors or the Managing Agent to provide for the administration and performance of its duties during the assessment year. The budget shall be submitted to the Owners pursuant to the Act. At the end of each fiscal year, the budget expenses shall be reconciled with the expenses actually incurred, and any overages will be credited to each Unit's account.
- 10.3 **Purpose of Assessments.** In addition to such other purposes as set forth in the Act, assessments shall be used for the purposes of promoting the general health, safety and welfare of the Owners which may include, among other things, expenses of management, taxes and special assessments until separately assessed; fire insurance and extended coverage and vandalism and malicious mischief endorsement attached, issued in the amount of the maximum replacement value of all Condominium Units (including all fixtures, interior walls and partitions, decorated and finished surfaces of perimeter walls, floors and ceilings, doors, windows and other elements or materials comprising a part of the Units); casualty and public liability and other insurance premiums; landscaping and care of grounds, common light and heating; repairs and renovation, trash and garbage collections, snow removal, wages, water and sewer charges, expenses relating to the operation and maintenance of the recreational areas, if any, rental payments to the landlord on the Lease, legal and accounting fees, management fees, expenses and liabilities incurred by the Managing Agent or Board of Directors under or by reason of this Declaration and the Governing Documents, payment of any deficiency remaining from a previous period, creation of an adequate reserve fund for the maintenance, repair or replacement of the Common Elements that must be replaced on a periodic basis, together with a reasonable contingency or other reserve or surplus fund, as well as other costs and expenses relating to the General and/or Limited Common Elements. Omissions or failures to fix the assessment for any month shall not be deemed a waiver, modification or release of the Owners from their obligation to pay. Any reserve fund shall only be established through the payment of the monthly assessments for common expenses, rather than by special assessment.
- 10.4 **Responsibility of Owner.** Any common expenses which the Board of Directors of the Association determines to be of benefit to only one Owner or is caused by the misconduct of an Owner, shall be borne by such Owner(s); provided, however, the landscaped portions of any courtyard directly adjacent to a Condominium Unit shall be made by the Association, but the Association shall have no responsibility whatsoever to maintain any patios, lanais or decks.
- 10.5 **No Right to Waive or Set Off.** No Owner may exempt himself from liability for his contribution for the common expenses by waiver of the use or enjoyment of any of the Common Elements or by his abandonment of his Unit. All assessments shall be payable in the amounts specified and no set-offs or reduction shall be permitted for any reason including, without limitation, any claim that the Board of Directors is not properly exercising its duties and powers pursuant to this Declaration and the Governing Documents.

- 10.6 Special Assessments. The Association may, at any time, from time to time, determine, levy and assess a special assessment applicable to that assessment year for the purpose of defraying, in whole or in part, payments for any operating deficit and/or unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolition, replacement or maintenance of any Building or Common Element.
- 10.7 Lien Priority. All sums generally or specially assessed from time to time for the share of common expenses chargeable to any Condominium Unit and unpaid, plus interest thereon at eighteen percent (18%) per annum, shall constitute a lien on such Unit superior to all other liens and encumbrances whether in existence before the particular assessment or not, excepting only: (i) tax and special assessment liens of any governmental unit; and (ii) all sums on a recorded first mortgage or first deed of trust, including all unpaid obligatory sums provided by such encumbrances and including additional advances made thereon prior to the date such lien becomes choate. Any holder of a first mortgage or first deed of trust who comes into possession of a Unit pursuant to the remedies provided in a deed of trust or mortgage foreclosure of the mortgage or deed of trust or deed (or assignment) in lieu of foreclosure shall take the Unit free and clear of any claim for unpaid assessments or charges against the mortgaged Unit which accrue prior to the time such holder comes into possession of the Unit.
- 10.8 Notice of Assessment Lien. To evidence such lien, the Board of Directors or Managing Agent may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the description of and the name of the Owner of the Condominium Unit. Such notice shall be signed by one of the Board of Directors or by the Managing Agent, and may be recorded in the office of the Clerk and Recorder of the County of El Paso, State of Colorado. Such lien shall become choate on the due date of the assessment and shall be superior to all other liens except as hereinabove provided. Such lien may be enforced by foreclosure of the defaulting Owner's Condominium Unit by the Association in like manner as a mortgage on real property. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs, expenses and attorney's fees for filing the notice or claim of lien and all reasonable attorney's fees and costs in connection with the foreclosure. The Owner shall also be required to pay the Association the monthly assessments for the Condominium Unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid on the Condominium Unit at foreclosure sale and to acquire, hold, lease, mortgage and convey such Unit.
- 10.9 Payment by Encumbrancer. Any encumbrancer holding a lien on a Condominium Unit may, but will not be required to, pay any unpaid common expenses for such Unit and, thereupon, such encumbrancer shall have a lien on such Unit for the amounts paid of the same rank as the lien of his encumbrance.

#### ARTICLE XI. AMENDMENTS AND TERMINATION



- 11.1 Amendment by Owners. Except as otherwise herein provided, and subject to provisions elsewhere contained in this Amended Declaration requiring the consent of others, any provision, covenant, condition or restriction contained in this Amended Declaration may be revoked or amended from time to time upon approval of Owners representing the aggregate ownership interest of the fraction, 37/49, or more, in the General Common Elements and the Board of Directors by instrument(s) duly recorded. Provided, however, the undivided interest in the General Common Elements appurtenant to each Unit, as expressed in this Declaration shall have a permanent character and shall not be altered without the consent of all Condominium Unit Owners and all holders of recorded mortgages or deeds of trust as expressed in a duly recorded amendment to this Declaration.
- 11.2 Recording of Amendments. To be effective, all amendments to or termination of this Amended Declaration must be recorded in the records of the El Paso County Clerk and Recorder, and must contain evidence of approval thereof. A sworn statement by any officer of the Association purporting to know of his own knowledge that the requisite number of Owners have consented to such amendment or revocation, when duly recorded therewith, shall be *prima facie* evidence of such approval. No action to challenge the validity of an amendment adopted by the Association pursuant to this section may be brought more than one (1) year after said amendment is recorded.
- 11.3 Typographical or Clarification Amendment. If the Board of Directors shall determine that an amendment to this Declaration shall be necessary in order to make non-material changes, including without limitation, the correction of any technical, clerical or typographical error, then the Board of Directors shall have the authority and power to make and execute any such amendments without first obtaining the approval of any Owners.

## ARTICLE XII. INSURANCE

- 12.1 Association Insurance. The Board of Directors of the Association or Managing Agent shall obtain and maintain, to the extent obtainable, all policies of insurance of type and in form represented by the Act. All such policies shall be issued at standard premium rates established by the Colorado Insurance Commissioner, and written with companies licensed to do business in Colorado, and having a Best's Insurance report rating of AAA or better, covering the risks set forth below. The Board of Directors of the Association or Managing Agent shall not obtain any policy where: (1) under the terms of the insurance company's charter, by-laws or policy, contributions must be made by the insured to the insurance company for excess losses incurred by the insurance company; or (2) by the terms of the insurance company's charter, by-laws or charter, loss payments are contingent upon action by the company's Board of Directors, policy holders or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent Mortgagees or the mortgagor from collecting insurance proceeds.
- 12.1.1 Fire insurance with extended coverage and all risk endorsements, which endorsement shall include endorsements for vandalism, malicious mischief,

boiler explosion and machinery with a minimum endorsed amount of \$100,000.00 per accident per location, insuring the entire Condominium Project and any other property, the nature of which is a Common Element (including all of the Units, fixtures therein initially installed by the Declarant but not including furniture, furnishings or other personal property supplied by or installed by Unit Owners) together with all service equipment contained therein in an amount equal to the full replacement value, without deduction for depreciation, and which shall contain a standard non-contributory mortgage clause in favor of each Mortgagee of a Condominium Unit which shall provide that the loss, if any, thereunder, shall be payable to the Association for the use and benefit of Mortgagees as their interest may appear.

- 12.1.2 If the Condominium Project is located in an area identified by the Secretary of Housing and Urban Development 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 for the Condominium Project in an amount which is the lesser of the maximum amount of insurance available under the Act or the aggregate of the unpaid principal balances of the Mortgages on the Condominium Units comprising the Condominium Project.
- 12.1.3 Public liability and property damage insurance in such limits as the Board of Directors may from time to time determine, but not in an amount less than \$1,000,000.00 per injury per person per occurrence and umbrella liability limits of \$2,000,000.00 per occurrence, covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Project. Said policy shall also contain a "severability of interest endorsement." As long as the Ground Lease is in effect, the landlord under the lease shall be named as an additional insured under this policy, and the Association shall indemnify and hold said landlord harmless from and against any loss or damage in any way connected with the ownership, use or occupancy of any Condominium Unit.
- 12.1.4 Workmen's Compensation and employers' liability insurance and all other similar insurance in respect to employees of the Association in the amounts and in the form now or hereafter required by law.
- 12.1.5 The Association shall, if reasonably available, purchase in an amount not less than 150% of the Association's estimated annual operating expenses and reserves, fidelity coverage against dishonesty of employees, destruction or disappearance of money or securities, and forgery. Said policy shall also contain endorsements thereto covering any persons who serve the Association without compensation.
- 12.1.6 The Association may obtain insurance against such other risks, or a similar or dissimilar nature, as it shall deem appropriate with respect to the project,

including plate or other glass insurance and any personal property of the Association located thereon.

- 12.2 Waivers of Subrogation. All policies of insurance to the extent obtainable shall contain waivers of subrogation and waiver of any defense based on invalidity arising from any acts of a Condominium Unit Owner and shall provide that such policies may not be cancelled or modified without at least 10 days' prior written notice to all of the insureds, including Mortgagees. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to all Mortgagees at least 10 days prior to expiration of the then current policies. The insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Condominium Unit Owners, which policy or policies shall indemnify the interest of each Condominium Unit Owner (Owner's name and unit number designation).
- 12.3 Appraisal. Prior to obtaining any policy of fire insurance or renewal thereof, the Board of Directors shall obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraisal shall reasonably estimate the full replacement value of the entire condominium improvements without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of this insurance paragraph. In no event, shall the insurance policy contain a co-insurance clause for less than 90% of the full replacement cost. Determination of maximum replacement value shall be made annually by one or more written appraisals to be furnished by a person knowledgeable of replacement cost, and each Mortgagee shall be furnished with a copy thereof within 30 days after receipt of such written appraisals. Such amounts of insurance shall be contemporized annually in accordance with the currently determined maximum replacement value.
- 12.4 Coverage by Owners. Unit Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation and, provided further, that the liability of the carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carrier by any Unit Owner.
- 12.5 Personal Furnishings. Insurance coverage on contents, merchandise, furnishings, including carpet, draperies, oven, range, refrigerator, wallpaper, disposal and other items of personal or other property belonging to an Owner and public liability coverage within each Unit shall be the sole and direct responsibility of the Unit Owner thereof, and the Board of Directors, the Association and the Managing Agent shall have no responsibility therefore.
- 12.6 Notice of Damage. In the event that there shall be substantial damage or destruction to, or loss to, a Condominium Unit or substantial damage or destruction to, or loss to, the Common Elements, then Notice of such damage or loss shall be given by the Association to each first Mortgagee of said Unit within 10 days after the occurrence of such event.

### ARTICLE XIII DESTRUCTION OR DAMAGE

- 13.1 Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its destruction or obsolescence and to maintain, repair and improve the Buildings and General and Limited Common Elements.
- 13.2 Appointment of Board of Directors. Title to any Condominium Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed to a Unit shall constitute appointment of the attorney-in-fact herein required. All of the Owners irrevocably constitute and appoint the Association, their true and lawful attorney in their name, place and stead for the purpose of dealing with their property upon its destruction or obsolescence as hereinafter provided. As attorney-in-fact, the Association by its President and Secretary, or other duly authorized officers or agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a Unit Owner which is necessary or convenient to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subsections means restoring the improvements to substantially the same condition in which they existed prior to the damage, with each Unit and the General and Limited Common Elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacement unless the Owners and all first Mortgagees agree not to rebuild in accordance with the provisions hereinafter set forth.
- 13.2.1 In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association as attorney-in-fact, to such reconstruction and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right and power as attorney-in-fact to cause the repairs and restoration of the improvements.
- 13.2.2 If the insurance proceeds are insufficient to repair and reconstruct the improvement(s) and if such damage is not more than 50% of the total value of all of the Condominium Units, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact using the proceeds of insurance and the proceeds of an assessment to be made against the Owners of Units within the damaged Building and their Condominium Units. Such deficiency assessment shall be a common expense and made pro rata according to each Owner's fractional interest in the General Common Elements and shall be due and payable within 30 days after written notice thereof. The Association shall have full authority, right and power as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds for such purposes notwithstanding the failure of any Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided in ARTICLE X. In addition thereto, the Association,

as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such deficiency assessment within the time provided and, if not paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- 13.2.2.1 For payment of the balance due on any first mortgage;
- 13.2.2.2 For payment of general property taxes and special assessment liens in favor of any assessing entity;
- 13.2.2.3 For payment of unpaid Common Expenses;
- 13.2.2.4 For payment of junior liens and encumbrances in the order of and to the extent of their priority;
- 13.2.2.5 The balance remaining, if any, shall be paid to the Condominium Unit Owner.

13.2.3 If the insurance proceeds are in sufficient to repair and reconstruct the improvement(s), and if such damage is more than 50% of the total replacement cost of all of the Condominium Units in the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the Owners and their Condominium Units provided, however, that Owners representing an aggregate fractional ownership interest of 37/49 or more of the Common Elements and all of the Mortgagees holding first mortgages or first deeds of trust approve to said repair or reconstruct the improvements in writing; and if the aforesaid approval to repair or reconstruct is not obtained, the Association shall forthwith record a notice setting forth such fact or facts and, upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire Project shall be sold by the Association pursuant to the provisions of this paragraph, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, Articles of Incorporation and By-Laws. Assessments for Common Expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Owner's interest in the Common Elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Condominium Units. Each such account shall be further identified by the Condominium Unit designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact shall forthwith use and disburse the total amount of each of such accounts, without contribution from one account to another, toward the partial or full

payment of the lien or any first mortgage encumbering the Condominium Unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire Property. Such apportionment shall be based upon each Condominium Unit Owner's interest in the Common Elements. The total funds of each account shall be used and disbursed, without contribution from one account to another by the Association, as attorney-in-fact, for the same purposes and in the same order as provided in §13.2.2 above. In the event that the damage is to be repaired or reconstruction is to be made, then the provisions of §13.2.2 shall apply.

#### ARTICLE XIV CONDEMNATION

- 14.1 If, at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the Condominium Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.
- 14.2 All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award" shall be payable to the Association.
- 14.3 In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant thereto shall terminate and the Condemnation Award shall be apportioned among the Owners in proportion to their respective interests as set forth in Exhibit "B," unless a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner as provided in §13.2.2 above.
- 14.4 In the event that less than the entire condominium project is taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable, the Association shall reasonably and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds, and shall apportion the amounts so allocated among the Owners as follows: (a) the total amount allocated to taking of or injury to the Common Elements, shall be apportioned among the Owners on the basis of each Owner's interest, respectively, in the Common Elements; (b) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned; (c) the respective amounts allocated to the taking or injury to a particular Unit and to improvements an Owner has made within his own Unit shall be apportioned to the particular Unit involved, and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiations, judicial decree or

otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Distribution or apportioned proceeds shall be disbursed as soon as practicable in the same manner provided in §13.2.2.

- 14.5 Notice to Mortgagees. The Association shall notify each first Mortgagee of any Condominium Unit of the commencement of the condemnation proceedings and shall notify said Mortgagees in the event of the taking of all or any part of the Common Elements.

#### ARTICLE XV OBSOLESCENCE

- 15.1 Reconstruction. Owners representing an aggregate fractional ownership interest of 37/49 or more of the General Common Elements may agree that the Condominium Units are obsolete and adopt a plan for their removal or reconstruction, which plan must have unanimous approval of all holders of first mortgages and first deeds of trust. If such a plan is adopted, notice thereof executed by the Association shall be recorded, and the expenses of renewal and reconstruction shall be payable by all of the Owners as Common Expenses whether or not they have previously consented to the plan of renewal and reconstruction.
- 15.2 Sale. The Owners representing an aggregate fractional ownership interest of 37/49 or more of the General Common Elements may agree that the Condominium Units are obsolete and that the same should be sold. Such plan/agreement must have the unanimous approval of all holders of first mortgages and first deeds of trust. In such instance, the Association forthwith shall record a notice setting forth such fact or facts, and upon the recording of such notice, the entire premises shall be sold by the Association, as attorney-in -fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, the Articles of Incorporation and the By-Laws of the Association, The sales proceeds shall be apportioned among the owners on the basis of each Owner's percentage interest in the General Common Elements and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Unit. Each such account shall be in the name of the Association, and shall be further identified by the number of the Unit and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts, without contribution from one account to another, for the same purposes and in the same order as provided in §13.2.2.

#### ARTICLE XVI ENCUMBRANCES

Any Owner shall have the right, from time to time, to mortgage or encumber his interest in a Condominium Unit by deed of trust, mortgage or other security instrument, all of which for convenience are referred to hereinafter as "mortgages." A first mortgage shall be one which has first and paramount priority under applicable law. The Owner of a Condominium Unit may create junior mortgages only on the following conditions, which provisions shall be deemed part of such

mortgages regardless of specific reference or of any attempt to avoid such conditions: (1) that such mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for Common Expenses, and other obligations created by this Declaration, and by the Articles of Incorporation and the By-Laws of the Association; (2) that such junior mortgagee shall release, for the purpose of restoration of any improvements upon the mortgaged premises all of his right, title and interest in the proceeds under all insurance policies upon said premises affected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Association, and if not granted, may be executed by the Association as attorney-in-fact for the junior mortgagee.

#### ARTICLE XVII PARKING

As shown on the Condominium Map, certain of the Condominium Units include, as part of such Unit, an attached garage for private automobile parking for the Owner(s) of such Unit. An Owner of a Condominium Unit which does not have, within the Unit, such garage, is entitled to the exclusive use of a parking space within the "carports" and detached "garages" shown on the Map and designated Limited Common Elements. Such parking space shall be assigned, by number shown on the Map, in the conveying documents to each individual Unit Owner so entitled. The Association shall be responsible for the maintenance of such "carports" and detached "garages" as Limited Common Elements.

#### ARTICLE XVIII ADDRESSES - NOTICES

Each Owner shall register his mailing address with the Association and, except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner as such registered mailing address, and such notices or demands shall be considered as having been served on the date so mailed. All notices, demands or other notices intended to be served upon the Board of Directors of the Association shall be sent by registered or certified mail, postage prepaid, to the Association at 5208 Kissing Camels Drive, #F-7, Colorado Springs, CO 80904, until such address is changed by notice of address change duly registered.

#### ARTICLE XIX MISCELLANEOUS

- 19.1 Severability. This Declaration shall be construed or reformed so as to give validity to all of its provisions. If any of the provisions of this Declaration or any section, paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word, in any other circumstances shall not be affected thereby.
- 19.2 Construction. In interpreting words in this Declaration, unless the context will otherwise provide or require, the singular will include the plural, the plural will include the singular, and the use of any gender will include all genders.



- 19.3 **Headings.** The headings are included only for purposes of convenience of reference only, and they are not intended to affect the meaning or interpretation of this Declaration, and shall not be held to limit, enlarge or change the meaning of the various sections.
- 19.4 **Waiver.** The failure of the Association, the Board or any officer to give notice of default or to exercise any right or remedy shall not constitute a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver will be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association.
- 19.5 **Legal Proceeding.** The failure of an Owner to comply with the terms of this Amended Declaration, the By-Laws or any rules and regulations duly adopted by the Board of Directors shall be grounds for relief which may include, without limitation, an action to recover monies due, damages, or a suit for injunctive relief, to foreclose a lien or any combination thereof. Relief may be sought by the Association, the Board of Directors, an officer, any professional manager or management firm or, by an aggrieved Unit Owner. In any proceeding brought against a Unit Owner for failure to comply with the Governing Documents, the Act or any rule or regulation, the prevailing party, in addition to any damages awarded, shall be entitled to recover the costs of the proceedings, including such attorney's fees as are reasonable.
- 19.6 **Limitation of Liability.** Neither the Association nor any officer or member of the Board will be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under the Association Documents if the action or failure to act was made in good faith. The Association will indemnify all of the officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law, and in the Articles of Incorporation and By-Laws.
- 19.7 **Conflicts between Documents.** In case of conflict between this Declaration and the Articles of Incorporation or the By-Laws, the terms and conditions of this Amended Declaration will control. In case of conflict between the Articles of Incorporation and the By-Laws, the Articles of Incorporation will control.
- 19.8 **Other Applicable Laws.** Unless properly excepted from the terms thereof by the express language of this Amended Declaration, the development, construction, use and occupancy of the Property shall be subject to all applicable local, state and federal laws, rules and regulations. In the event the terms and conditions of this Amended Declaration conflict with applicable zoning laws or subdivision ordinances, then the higher standard shall control.
- 19.9 **Gender.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.
- 19.10 **Lease.** As set forth above, the physical improvements constituting the Condominium Units are constructed upon the leasehold estate created by the lease

defined in §1.12 above. The leasehold estate is a General Common Element, the rental payments due under the Lease are paid as a General Common Expense, but each Owner shall be responsible to the landlord to pay its percentage of the monthly rental payments by paying the assessments set forth in ARTICLE X above. In lieu of paying a monthly assessment, an Owner shall have the right to prepay the Unit's share of the Lease. The amount of each lease share is \$33,750.00 which is equal to each Unit's pro rata amount of the total purchase consideration, plus closing costs, incurred by the Association to acquire the Property. Units which have not prepaid their share of the Lease and purchase shall, upon the sale of the Unit to a third party or by December 31, 2017, whichever shall first occur, shall be required to pay to the Association the Unit's lease share in the amount of \$33,750.00. In the event an Owner may fail to pay its monthly common expense assessment, then the Association may deduct from the rental payment due to the landlord that portion of the rental which is the responsibility of the Owner who has not paid its monthly common expense assessment, and said Owner shall be in default under the terms of the lease, subject to the default provisions provided in said Lease, including the possibility of said Owner losing any interest whatsoever in said Condominium Unit. The Association shall immediately inform the landlord of the name of any Condominium Unit Owner who has not paid his monthly common expense assessment and the legal description of that Owner's Condominium Unit. All Condominium Unit Owners shall be subject to the terms and conditions of the lease. Paragraph 5(c)(iii) of the lease provides that \$500.00 shall be paid to the landlord for each Condominium Unit re-sold by the then Owner of said Condominium Unit following the initial sale of such Unit by the Declarant. This \$500.00 payment will be the obligation of each Condominium Unit Owner to a subsequent owner.

- 19.11 Irrevocable Option to Purchase. Paragraph 9 of the Third Amendment To Lease and Option to Purchase grants to the Association, the irrevocable right to purchase all of the real property which is subject to the Lease on the terms set forth therein. Upon the payment in full of all amounts owing on the lessor's purchase money mortgage with ROCKY MOUNTAIN BANK & TRUST, the Association shall pay the option consideration to lessor whereupon the Association shall acquire fee title to said real property. Upon the acquisition of fee title, the Association shall have no further duties or obligations under the lease.

IN WITNESS WHEREOF, the Association, with the consent of its members, has executed this Amended and Restated Condominium Declaration for Kissing Camels Townhomes, effective on the day and year first above written.

CONDOMINIUM HOMEOWNERS ASSOCIATION  
OF KISSING CAMELS TOWNHOMES, INC.

By: Frances Jane Ainsworth  
Frances Jane Ainsworth, President

ATTEST:

Anne S. Foster  
Anne S. Foster, Secretary

STATE OF COLORADO )  
                                  :            ss.  
COUNTY OF EL PASO )

The above and foregoing instrument was acknowledged and subscribed to, this 21<sup>st</sup> day of January, 2008, by Frances Jane Ainsworth, as President, and by Anne S. Foster, as Secretary, of Condominium Homeowners Association of Kissing Camels Townhomes.

Mona Reeves  
Notary Public

Commission Expiration: 6.1.2011

