

**FIRST AMENDMENT TO THE
AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND RESERVATIONS FOR KISSING CAMELS**

This FIRST AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS FOR KISSING CAMELS amends that certain *Amended and Restated Declaration of Covenants, Conditions, Restrictions and Reservations for Kissing Camels* recorded in the records of the Clerk and Recorder of El Paso County, Colorado on February 26, 2004 under Reception No. 204032677 (the "Declaration"). Terms used herein, unless otherwise defined, shall have the same meaning as set forth in Section 2.2 of the Declaration.

I. Amendments. The Declaration is hereby amended as follows:

(a) **Repeal and Restatement.**

All references within the Declaration to "Architectural Control Committee" shall hereinafter refer to "Architectural Review Committee."

(b) **Repeal and Restatement.** Article 9, Section 9.2(d) is hereby repealed in its entirety and the following Section 9.2(d) is substituted:

(d) Landscaping for new construction or landscaping that is substantially different from that previously approved by the Architectural Review Committee under the provisions of this Article 9.

(c) **Repeal and Restatement.** Article 9, Section 9.4 is hereby repealed in its entirety and the following Section 9.4 is substituted:

Section 9.4 Committee Appointment. The Architectural Review Committee shall consist of at least three individuals and shall have exclusive jurisdiction over all original construction and all modifications, additions, or alterations, made on to or to existing structures on Units or containing Units and the adjacent open space on any portion of the Real Estate. The Executive Board shall appoint the members of the Architectural Review Committee, who shall serve and may be removed in the Executive Board's sole and absolute discretion.

(d) **Addition.** The following Article 15 is hereby added:

**ARTICLE 15
ALTERNATE DISPUTE RESOLUTION**

Section 15.1 Alternate Dispute Resolution. The Association (including its officers, directors, committee members, and other volunteers) and all Owners

("Bound Parties," or singularly, "Bound Party") agree to encourage the amicable resolution of certain disputes involving the Association without the emotional and financial costs of litigation. Accordingly, other than exempt claims as set forth in Article 15.2 below, the Bound Parties covenant and agree to submit all claims, grievances, controversies or disputes arising out of or relating to those specific matters set forth below in this Section 15.1 (hereinafter "Claims") to the dispute resolution procedures set forth and established in this Article 15:

- (a) the interpretation, application or enforcement of the Governing Documents; or
- (b) the failure of the Association, its board or committees to properly conduct elections, properly conduct meetings, or establish adequate reserve funds; or
- (c) the authority of the Association or its Board to take or not take any action under the Governing Documents; or
- (d) the performance or non-performance of any Bound Party of any of the respective obligations or responsibilities under the Governing Documents to or on behalf of a Bound Party; or
- (e) the rights, duties or obligations of any Bound Party under the Governing Documents relating to the design approval or construction process of Improvements on Property by either the Association or Owners.
- (f) the use of court proceedings to collect assessments including foreclosure or enforcement of the covenants shall be specifically excluded from the requirements of this Article 15.

Section 15.2 Exempt Claims. The provisions of this Article 15 shall not apply to, and Claims shall not include, any of the following:

- (a) A proceeding to perfect a lien for reasonable monetary penalties, or a proceeding to collect delinquent assessments, any action or suit by the Association to foreclose any lien in favor of the Association, if permitted by applicable law, or to determine the priority of any lien for assessments as such lien relates to other liens or encumbrances in favor of individuals and/or entities who are not Bound Parties (e.g., taxing authorities, mortgagees, and judgment creditors);
- (b) Any cause of action by the Association solely to obtain a temporary restraining order (or emergency equitable relief) and such other ancillary relief as a court may deem necessary in order to maintain

the status quo and preserve the Association's ability to enforce the provisions of Article 8 and Article 9 of these Declarations;

(c) Any cause of action between Owners which does not include the Association as a party, if such cause of action would constitute a cause of action independent of the Governing Documents;

(d) Any claim, grievance, controversy, disagreement or dispute that primarily involves (i) title to a Unit or Common Area, (ii) the interpretation or enforcement of any express or implied warranty made in connection with the sale of a Unit, (iii) the eviction of a tenant from a Unit, and (iv) any dispute over a Party Wall;

(e) Any action taken arising out of any separate written contract between Owners, Owners and any Person not subject to the Governing Documents or Owners and any Related Person which would constitute a cause of action under applicable law in the absence of the Governing Documents;

(f) Any cause of action in which any indispensable party is not a Bound Party;

(g) Any cause of action as to which any applicable statute of limitations would expire within thirty (30) days of giving the Notice required in Section 15.3, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may be reasonably be necessary to comply with this Article 15.

Section 15.3 Claim Resolution Procedures. All Claims shall be resolved using the following procedures in lieu of litigation:

(a) Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") shall notify each Respondent and the Executive Board in writing of the Claim (the "Notice"), stating plainly and concisely (i) the nature of the Claim, including the date, time, location, persons involved, and Respondent's role in the Claim, (ii) the basis of the Claim (i.e., the provisions of the Governing Document or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(c) If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation. Claimant shall provide a list of three (3) mediators from the Fourth Judicial District Office of Dispute Resolution for El Paso County. If the parties cannot agree on a mediator within ten (10) days of the submission of such list, a mediator at the Judicial Arbitrator Group, Inc. ("JAG") shall be designated by the presiding officer at JAG.

(d) If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons or entities not a Party to the foregoing proceedings. In addition, the abandonment of the Claim will be an absolute defense to bringing the action in any other forum or including the claim in any other cause of action or Claim under this Article 15.

(e) If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the parties met, that the Parties are at an impasse, and the date that mediation was terminated.

(f) Each Party shall, within ten (10) days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(g) If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim

within twenty (20) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with JAG's Commercial or Construction Industry Arbitration Rules, as appropriate, or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided nothing herein shall release or discharge Respondent from any liability to persons not a party to the foregoing proceedings. In addition, the abandonment of the Claim will be an absolute defense to bringing the action in any other forum or including the claim in any other cause of action or Claim under this Article 15.

(h) To the extent necessary or advisable, a Party shall inform first mortgagees or any other parties who hold a Security Interest in any Real Property of any Claims that impact or may impact their contractual relation and shall hold the Association completely harmless from any failure to do so or failure to adhere to any Owner requirements contractually necessary between them and their mortgagees or the holder of any Security Interest;

(i) This Article is an agreement of the Bound Parties to arbitrate all Claims and is specifically enforceable under the applicable arbitration law of the State of Colorado. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado;

(j) If the Claims are resolved through negotiation or mediation as provided above, each Bound Party shall bear all of its own costs incurred in resolving the Claims, including its attorney fees and mediation expenses, unless the Bound Parties otherwise agree. If the Claims are not resolved through negotiation or mediation as provided above and the Claims go to binding arbitration, the "Prevailing Party" shall receive as a part of its Award from the opposing Party(ies) all of its costs, including attorney fees, costs for other representatives in resolving such Claim, and any expenses incurred as a result of the dispute resolution procedures of this Article 15;

(k) For purposes of subparagraph (j) above, if the Award is equal or more favorable to Claimant than Claimant's Settlement Demand, the Claimant shall be deemed to be the Prevailing Party; if the Award is equal to or less favorable to Claimant than any Respondent's Settlement Offer, such Respondent shall be deemed to be the Prevailing Party. If neither of the above apply, neither party shall be deemed a Prevailing Party and each shall bear its own costs and expenses, including attorney fees;


(l) If the Parties agree to resolve any Claim through negotiation or mediation as set forth above, and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with the Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without need to comply with the provisions of this Article 15. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the noncomplying Party (or if more than one noncomplying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including without limitation, attorney fees and costs;

(m) Nothing contained within this Article 15, and specifically the provisions of Section 15.3 (j), (k) and (l), shall amend, limit or diminish the protections and liability limitations granted to the Association under the provisions of Article 5, Section 5.9 of the Declaration.

II. No Other Amendments. Except as specifically amended by the terms of this First Amendment to the Amended and Restated Declaration of the Covenants, Conditions, Restrictions, and Reservations for Kissing Camels, the Declaration remains in full force and effect.

IN WITNESS WHEREOF, this First Amendment to the Amended and Restated Declaration of the Covenants, Conditions, Restrictions, and Reservations for Kissing Camels is executed by the undersigned as certification of its approval by the Executive Board.

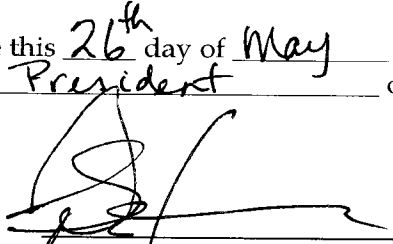
KISSING CAMELS PROPERTY OWNERS ASSOCIATION, a Colorado nonprofit corporation

By: 
MATT A. COLEMAN

STATE OF COLORADO)
) ss.
COUNTY OF El Paso)

The foregoing was acknowledged before me this 26th day of May, 2022, by Matt Coleman, as President of Kissing Camels Property Owners Association.

Witness my hand and official seal
My commission expires: 11/27/2022


Notary Public

DIANE E HAMPSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19974014766
MY COMMISSION EXPIRES NOVEMBER 27, 2022