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**AMENDED AND RESTATED
CONDOMINIUM DECLARATION**

FOR

KIPLING KLUB TOWNHOUSES

166 ⁰⁰ etc.

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THIS AMENDED AND RESTATED DECLARATION is made on the date hereinafter set forth by the KIPLING KLUB TOWNHOUSES ASSOCIATION, INC., a Colorado nonprofit corporation (the "Association").

RECITALS:

- A. MIKE A. LEPRINO, d/b/a COLUMBINE DEVELOPMENT, as "Declarant" and owner of certain real property, executed that Certain Condominium Declaration for Kipling Klub Townhouses recorded in the real property records of Jefferson County, Colorado on April 3, 1974 at Reception No. 74630336, at Book Number 2607, Page Number 243, ("Original Declaration").
- B. The Original Declaration imposed upon the real property described in the Original declaration and all property thereafter annexed, certain terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations, which run with and are binding upon said real property.
- C. By virtue of the Original Declaration, a Common Interest Community was created upon the real property and certain covenants, conditions, restrictions, easements, reservations, and rights-of-way set forth therein for the purpose of protecting the value and desirability of said real property and the Unit Owners of such Common Interest Community.
- D. The Owners and Association desire to amend and restate all provisions of the Original Declaration by virtue of this Amended and Restated Condominium Declaration for Kipling Klub Townhouses (the "Declaration"), and intend upon the recording of this Declaration that all prior recorded amendments, supplements, and instruments creating covenants, conditions, restrictions, and reservations on the real property shall be superseded by this Declaration.

NOW THEREFORE, the Original Declaration is Amended and Restated as follows:

ARTICLE 1. DEFINED TERMS

Section 1.1 Defined Terms.

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Each capitalized term in this Declaration or in the plat or map shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration.

1.1.1 Act shall mean and refer to the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 *et seq.* as it may be amended from time to time.

1.1.2 Articles shall mean and refer to the Articles of Incorporation of the Kipling Klub Townhouse Association, Inc., as amended.

1.1.3 Association shall mean and refer to Kipling Klub Townhouses Association, Inc., a Colorado nonprofit corporation, its successors and assigns, the Article and Bylaw of which, along with this Declaration and the Act, shall govern the administration of the Common Interest Community known as Kipling Klub Townhouses.

1.1.4 Board, or Executive Board shall mean and refer to the Board of Directors of the Association.

1.1.5 Building means a single building containing Units as shown on the Map.

1.1.6 Bylaws shall mean and refer to the Bylaws adopted by the Association, as amended from time to time.

1.1.7 Common Elements or General Common Elements shall mean and refer to the Property within this Common Interest Community and the improvements thereon except the Units; along with the structural components of the Buildings; such improvements as may be provided for the common use; service streets; green areas; provided, however, that each unit owner whose unit has sole access to a court, terrace, balcony or deck, if any, shall have an easement for the exclusive use thereof; all other parts of such land and the improvements thereon necessary or convenient to its existence, maintenance and safety which are normally and reasonably in common use, including the air above such land, all of which shall be owned, as tenants in common, by all of the Owners of the separate Units, each Owner of a Unit having an undivided interest in such Common Elements as is provided hereinafter. The Common Elements shall include, without limitation:

(a) Easements through Unit boundary walls, ceilings and floors for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the Common Elements.

(b) An easement of support in every portion of a Unit which contributes to the structural support of the Building.

(c) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.

(d) Any other parts of the Real Estate designated as Common Elements on the Map or in this Declaration.

1.1.8 Limited Common Elements means those parts of the Common Elements which are either limited to and reserved for the exclusive use of an Owner of a Condominium Unit or are limited to and reserved for the common use of more than one but fewer than all of the Condominium Unit owners.

1.1.9 Common Expenses means (i) all expenses declared to be Common Expenses by this Declaration, or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Elements or any other items for which the Association is responsible for maintaining; (iii) insurance premiums for the insurance carried (iv) all expenses lawfully determined to be common expenses by the Board of Directors of the Association.

1.1.10 Common Expense Assessments shall include, in supplementation to the definition of Common Expense Assessments included in the Act, late charges, attorneys' fees, fines and interest charged by the Association.

1.1.11 Eligible First Mortgagee means any First Mortgagee who has registered with the Association in accordance with Section 14.3 of this Declaration.

1.1.12 First Lien Security Interest shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of Jefferson County, Colorado, having priority of record over all other recorded liens except those governmental liens and Common Expense Assessment liens made superior by statute.

1.1.13 First Mortgage means any Mortgage upon a Unit which is not subject to any prior or senior lien or encumbrance, except liens for taxes or other liens which are given priority by statute.

1.1.14 First Mortgagee means any person or entity named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

1.1.15 Guest shall mean and refer to any agent, tenant, employee, guest, licensee or invitee of an Owner who enters upon the Property.

1.1.16 Manager or Managing Agent shall mean and refer to any person employed by the Association to perform the management and administrative functions of the Board. All references to the Board herein shall be deemed to include such Managing Agent to the extent of the authority delegated to it by the Board.

1.1.17 Map or Plat shall mean and refer to the Maps or Plats for Kipling Klub Townhouses, recorded in the records of the office of the Clerk and Recorder of Jefferson County, Colorado, and all amendments and supplements thereto, relating to the Property.

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1.1.18 Mortgage shall mean any Mortgage, deed of trust, or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

1.1.19 Mortgagee means any person or entity named as a Mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

1.1.20 Owner or Owners shall mean and refer to any record Owner (including a contract seller, but excluding a contract purchaser), whether one or more persons, of a fee simple interest in or to any Unit; but excluding any such person having an interest therein merely as a Mortgagee, unless such Mortgagee has acquired fee simple title thereto pursuant to foreclosure or any conveyance in lieu thereof.

1.1.21 Property means the real Property described in the Original Declaration and Supplements thereto, together with all easements, rights, and appurtenances thereto, and the Buildings and Improvements erected or to be erected thereon.

1.1.22 Unit means a physical portion of the Common Interest Community, designated for separate ownership, shown as a Unit on the recorded Plat or Map for the Common Interest Community, the boundaries of which are defined in the Plat or Map and in this Declaration.

1.1.23 Condominium Unit means the fee simple interest and title in and to a Unit together with the undivided interest in the Common Elements and the appurtenant Limited Common Elements thereto.

ARTICLE 2. NAMES/DESCRIPTION OF REAL ESTATE

Section 2.1 Name and Type.

The type of Common Interest Community is a Condominium. The Common Interest Community is located in the City of Lakewood, County of Jefferson, State of Colorado. The name of the Common Interest Community is the "Kipling Klub Townhouses." The name of the Association is "Kipling Klub Townhouses Association, Inc."

Section 2.2 Utility, Map and Plat Easements.

Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon a recorded Plat or Map of the Common Interest Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.3 Division of Property into Condominium Units.

The real property described in Exhibit "A" and the improvements thereon are hereby divided into the fee simple estates as is set forth on the attached Exhibit "B" which by these references are made a part hereof. Each such estate shall consist of the separately designated Units and the undivided interest in and to the Common Elements appurtenant to each Unit as set forth herein.

(a) Unit owners shall have the right to (i) physically combine the space within one Unit with the space within one or more adjoining units or (ii) to combine a part of or combination of the parts of the space within one Unit with part or parts of the space within one or more of the adjoining Units. Any such physical changes to Units shall be reflected by an amendment to Exhibit "B" and the Map, which amendments shall set forth the reapportioned undivided interests of the affected Units; provided, however, that no such physical changes shall be made without the written consent of the mortgagee(s) of the affected Unit(s); and provided, further that the cost and expense incurred for legal, architectural or engineering fees relative to preparation of such amendment shall be borne by that person requesting physical change to the Unit(s).

Section 2.4 Unit Boundaries.

Each Unit shall consist of one individual air space which is contained within the perimeter walls, floors, ceilings, windows and doors of the Unit as shown on the Map, together with all fixtures and improvements contained therein but not including any of the structural components of the buildings, if any, located within the Unit.

(a) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the perimeter walls, floors, or ceilings are a part of the common elements. Any non-load bearing walls, dividers or partitions located within the interior of a Unit are a part of the Unit.

(b) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

(c) Subject to the provisions of paragraph (b) of this section, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit. (d) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, and patios and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries are Limited Common Elements allocated exclusively to that Unit.

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Section 2.5 Limited Common Elements.

A portion of the General Common Elements is reserved for the exclusive use of the individual Owners of the respective Units, and such areas are referred to as "Limited Common Elements." The Limited Common Elements so reserved shall be identified on the Map; provided, however, that any court, patio, balcony or deck which is accessible from, associated with and which adjoins a unit and any other limited common elements so identified on the map shall, without further reference thereto, be used in connection with such unit to the exclusion of the use thereof by the other owners of the general common elements, except by invitation. Any enclosed garage space or spaces which are not otherwise part of a Unit, or any covered parking space or spaces bearing the same numerical designation as that of a Unit as shown on the Map shall be a Limited Common Element appurtenant to that Unit.

Section 2.6 Description of Condominium Units.

(a) Every contract, deed, lease, mortgage, trust deed, will or other instrument may legally describe a condominium unit by its identifying unit designation, the building symbol, followed by the name of this condominium, with further reference to the Map and Declaration thereof filed for record. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Unit, but also the General Common Elements and the Limited Common Elements appurtenant thereto. Each such description shall be construed to include a perpetual non-exclusive easement for ingress and egress to and from an owner's Unit on, over and across any private street and exclusive use of the Limited Common Elements appurtenant to his Unit.

(b) The reference to the Declaration in any instrument shall be deemed to include any supplements or amendments to the Declaration. The reference to the Map in any instrument shall be deemed to refer to the Map depicting the Building in which the Condominium Unit is located and the Map or Maps which aggregately depict the entire condominium project.

Section 2.7 Form of ownership - Title.

A Condominium Unit may be held and owned in any real property tenancy relationship recognized under the laws of the state of Colorado.

Section 2.8 Inseparability of a Condominium Unit.

Each unit, the appurtenant undivided interest in the general common elements and the appurtenant limited common elements shall together comprise one condominium unit, shall be inseparable and may be conveyed, leased, devised or encumbered only as a condominium unit, provided, however that any enclosed garage space which is part of a Unit or any enclosed garage space or covered parking space

which is designated as a Limited Common Element appurtenant to any Unit may be separately leased by the Unit's Owner subject to the provisions of this Declaration and the Rules and Regulations promulgated by the Board of Directors. 7

Section 2.9 Separate Assessment and Taxation of Condominium Units

Each Condominium Unit and the undivided interest in the Common Elements appurtenant thereto shall be deemed a parcel and subject to separate assessments and taxation.

Section 2.10 Allocated Interests.

Except as otherwise provided in this Declaration, each Condominium Unit subject to the provisions of this Declaration has an equal, undivided interest in the Common Elements, and, except as otherwise provided all Common Expense Assessments shall be assessed against all Units equally. The votes in the Association are allocated as one vote for each Unit.

Section 2.11 Non-Partitionability of General Common Elements.

The general common elements shall be owned in common by all of the owners of the units and shall remain undivided except in the event of termination of the Common Interest Community, and no owners shall bring any action for partition or division of the general common elements. Nothing contained herein shall be construed as limitation of the rights of partition of a condominium unit between the owners thereof, but such partition shall not affect any other condominium unit.

ARTICLE 3 EASEMENTS

Section 3.1 Maintenance Easements for the Association and Unit Owners.

(a) The Owners shall have the irrevocable right, to be exercised by the managing Agent, or Board of Directors of the Association, 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 Common Elements therein or accessible therefrom; provided, however, that such right of access shall be immediate for making emergency repairs therein in order to prevent damage to the Common Elements or to another Unit. Except in the case of an emergency, access to a Unit shall be made during reasonable times and after at least twenty-four (24) hours notice to the Owner.

(b) Damage to the interior or any part of a unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements or as a result of emergency repairs within another Unit shall be a common expense of all of the owners; provided, however, that if such damage is caused by negligent or tortious act of a unit owner, members of his family, his agent, employee, invitee, licensee or tenant, then such unit owner shall be responsible and liable for all of such damage. All damaged improvements shall be restored substantially to the same

condition in which they existed prior to the damage. All maintenance, repairs and replacements of the general common elements, whether located inside or outside of units (unless necessitated by the negligence, misuse or tortious act of a unit owner, in which case such expense shall be charged to such unit owner), shall be the common expense of all of the owners. 8

Section 3.2 Emergency Easements.

A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter servicing the Common Interest Community, to enter upon any part of the Common Interest Community in the performance of their duties.

Section 3.3 Easements for Encroachments.

If any part of the Common Elements encroaches upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall encroach upon the Common Elements or upon another Unit, an easement for such encroachment and for the maintenance thereof shall and does exist. Such encroachments shall not be considered encumbrances either on the Common Elements or on any Unit for the purposes of marketability of title or otherwise. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Buildings, by error in the Map, by settling, rising or shifting of the earth or by changes in the position caused by reconstruction or repair of the property or any part thereof by the Association or its agents.

Section 3.4 Easements Deemed Appurtenant.

The easements, uses and rights herein created for the Owners shall be appurtenant to the Condominium Units of such Owners, respectively, and all conveyances of and other instruments affecting title to a Unit shall be deemed to grant and reserve said easements, uses and rights, without specific reference thereto.

Section 3.5 Owners' Easements of Enjoyment.

Every Owner shall have a right and easement access to their Unit and of enjoyment in and to any Common Elements and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

3.5.1 The right of the Association to promulgate and publish rules and regulations which each Owner and their Guests shall strictly comply with.

3.5.2 The right of the Association to suspend the voting rights and rights to use the Common Elements by an Owner for any period during which any assessment against their Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

3.5.3 The right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements, to the extent permitted by the Act.

3.5.4 The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

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3.5.6 The right of the Association to borrow money for the purpose of improving the Common Elements and facilities and to pledge future assessments or mortgage the Common Elements for that purpose, provided, however that the rights of such mortgage shall be subordinate to the rights of the homeowners.

Section 3.6 Delegation of Use.

Any Owner may delegate their right of enjoyment to the Common Elements and facilities to the members of their family and their Guests, or contract purchasers who reside at their Unit. Owner's shall be responsible for any damage to the Common Elements caused by the negligent or willful acts or omissions or misconduct of their family, Guests or contract purchasers pursuant to Article 6, section 6.11.

ARTICLE 4 THE ASSOCIATION

Section 4.1 Membership.

Every person who is an Owner of a recorded fee interest in any Unit which is subject to this Declaration shall be a member of the Association, including contract sellers. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for such membership. Where more than one person holds an interest in any Unit, all such persons shall be members.

Section 4.2 General Purposes and Powers of the Association.

The Association, through its Board of Directors, shall perform functions and manage the Common Interest Community as provided in this Declaration so as to further the interests of the residents, occupants, tenants and guests of the Common Interest Community and members of the Association. Unit Owners shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all powers necessary or desirable to effectuate such purposes, including all rights and privileges given to it expressly or which may be reasonably implied from this Declaration, the Articles, Bylaws or by law.

Section 4.3 Authority of the Association.

The business affairs of the Common Interest Community shall be managed by the Association. The Association shall be governed by the applicable sections of the Colorado Common Interest Ownership Act (the Act), this Declaration, its Articles of Incorporation and Bylaws, as amended from time to time, and any rules and regulations adopted by the Board. The Board may, by written resolution, delegate authority to a Manager or Managing Agent for the Association, provided no such delegation shall relieve the Board of final responsibility.

Section 4.4 Specific Powers.

The Association shall have the powers, authority and duties as follows and as necessary and proper to manage the business and affairs of the Common Interest Community. The Association shall have all of the powers, authority and duties permitted or set forth in the Act. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon Member vote affirmed by fifty-one percent (51%) of the eligible votes in the Association at a meeting called for that purpose. The Association shall have the right to pay for, acquire, hold, lease, encumber, convey or transfer real and personal property for the benefit of the Owners. The Association shall have the power to lease and grant easements, licenses and permits over any portion of the Common Elements or any Unit owned by the Association for utilities and other purposes. The Association shall have the power to institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Common Interest Community; provided, however, that the Association may not institute litigation against anyone other than an Owner or an Owner's guest without the approval of Members affirmed by fifty-one percent (51%) of the eligible votes in the Association at a meeting called for that purpose.

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Section 4.5 Indemnification.

To the full extent permitted by law, each Officer and Director of the Association shall be and are hereby indemnified by the Owners and the Association against all expenses and liabilities including attorney's fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an Officer or Director of the Association, or any settlements thereof, whether or not they are an Officer or Director of the Association at the time such expenses are incurred; except in such cases wherein such Officer or Director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association.

ARTICLE 5 MAINTENANCE

Section 5.1 Maintenance Responsibility for Owner's Unit.

(a) Each Owner shall be obligated to maintain, repair, replace and keep in good repair and condition the interior of the Unit including, without limitation, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces of the interior of the Unit. Each Owner shall be solely responsible for the maintenance, repair and replacement of any non-load bearing wall, divider or partition within the interior of the Unit. Each Owner shall be solely responsible for interior and exterior maintenance, repair and replacement of all doors and windows of his Unit, including the frames, subject, however to the Rules and Regulations promulgated by the Board of Directors. This section applies, without limitation, to entry doors and garage doors.

(b) Each Owner shall be responsible for maintenance, repair and replacement of the fencing, including any gates, which partially or fully encloses a Limited Common Element appurtenant to their Unit. The Association, however, has the right, but not the responsibility to modify, repair, replace or maintain any fence for which one or more Owners has maintenance responsibility under the provisions of this Declaration. Fences which are placed on the dividing line between the Limited Common Elements appurtenant to two Units shall be deemed party fences, and shall be subject to the provisions of Article 7 hereunder. When both Owners sharing responsibility for a party fence agree on maintenance, repair or replacement of a party fence, the Owners may perform such maintenance, repair or replacement, following approval by the Board, and apportion the costs in a manner agreed upon by both Owners. When Owners sharing responsibility for a party fence cannot agree on maintenance, repair or replacement of a party fence, either Owner may submit to the Board a written request for a hearing. Within sixty (60) days of receiving such a request, the Board shall hold a hearing. Notice of the hearing shall be sent to both affected Owners no less than ten (10) days before the hearing date pursuant to Section 14.3 of this Declaration. At such a hearing both Owners shall be given an opportunity to speak to the Board. The Board shall then make a final determination as to the type of maintenance, repair or replacement to be performed and apportion the costs thereof to the respective Owners. Any costs apportioned to an Owner for the maintenance, repair or replacement of a party fence under this section shall be deemed a default assessment under Section 6.9 of this Declaration. Maintenance, repair and replacement of fences shall be subject to the Rules and Regulations promulgated by the Board of Directors. //

(c) Each Owner shall be responsible for maintaining the Enclosed Patio Area appurtenant to his Unit in a clean, safe and sanitary condition, including any necessary snow or ice removal. Each Owner shall be responsible for the maintenance, repair and replacement of any improvement within the Enclosed Patio Area which was not provided as a component of the initial construction, including, without limitation, decks, shutters, awnings, and window boxes, subject, however to the Rules and Regulations promulgated by the Board of Directors. The Enclosed Patio Area shall mean and include any fully or partially enclosed patio, porch, deck, terrace or balcony which is accessible from an Owner's Unit which is a Limited Common Element for the use of that Unit.

(d) Each Owner shall be responsible for maintaining any covered parking space which is designated as a Limited Common Element appurtenant to any Unit in a clean, safe and sanitary condition, provided, however that the Association shall be responsible for any necessary snow and ice removal.

(e) Each Owner shall be obligated to maintain, repair, replace and keep in good repair and condition all fixtures and equipment installed within the Unit. Each Owner is responsible for the maintenance, repair, and replacement of any utility, plumbing, mechanical, or electrical fixture, wiring, piping, chute, flue, duct, conduit, or related or supporting system or components of the above, including sanitary sewer systems (which for brevity are herein and hereafter referred to as "Utilities"), which serve only that Owner's Unit. Owners shall be responsible for maintenance repair and

replacement under this section beginning at the point at which Utilities enter the Unit, provided, however, that Owners shall be responsible for maintenance, repair and replacement of electrical fixtures, wiring, components and conduit beginning at the individual electric meter serving the Owner's Unit. 12

(f) The Utilities running through any Unit which serve one or more other Units are general common elements. Such utilities shall not be disturbed or relocated by an owner without the written consent and approval of the Board of Directors. An owner's right to repair, alter and remodel the interior of his Unit shall be coupled with the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials of at least the same quality.

Section 5.2 Maintenance of the Common Elements.

(a) The maintenance and operation of the General Common Elements shall be the responsibility and the expense of the Association and a common expense of all of the condominium owners. Except as otherwise provided in this Declaration, The maintenance and operation of the Limited Common Elements shall be the responsibility and the expense of the Association and a common expense of all of the condominium owners. The Association shall have the right, but not the obligation to modify, repair, replace or maintain any Limited Common Element for which one or more Owners has maintenance responsibility under the provisions of this Declaration.

(b) The Board of Directors shall determine the specifications, scope, extent, schedule, nature and parameters of the Association's maintenance responsibilities.

(c) The Association's maintenance responsibilities shall include, without limitation, Common Element landscaping, providing removal of snow and any other materials from the Common Elements which might impair access to the Property or the Units; maintaining the roofs, gutters, downspouts and exterior surfaces of the Buildings, subject, however to the Owners' responsibility for maintenance of doors and windows; maintaining the interior, structural elements of the buildings, except as otherwise provided in this Declaration; and maintaining the improvements erected on the Common Elements, including, without limitation the pool, tennis court and clubhouse facilities.

Section 5.3 Obsolescence of Improvements /General Common Elements.

In the event that any of the improvements which are erected on, or a part of the General Common Elements become obsolete, as determined by the Board of Directors, the Association may elect to remove or replace such improvement. Any improvement removed pursuant to this Section shall be replaced with appropriate landscaping. No improvement may be removed or replaced without the written assent of no less than 51% of the eligible votes in the Association and the written assent of no less than 51% of the Eligible Mortgagees.

ARTICLE 6. COVENANT FOR COMMON EXPENSE ASSMENTS

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Section 6.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments.

Each Condominium Unit, and each Owner of a Condominium Unit, by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association annual Common Expense Assessments and such other assessments as imposed by the Association. Such assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Owner of such Unit at the time when the assessment or other charges became or fell due. The Association's annual Common Expense Assessments and such other assessments as imposed by the Association including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such assessment or charge is made. If any Assessment is payable in installments, each installment becomes a lien upon the day the installment is due. The personal obligation to pay any past due sums owed to the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for the payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Common Expense Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under this Declaration.

Section 6.2 Apportionment of Common Expenses.

Except as provided in this Declaration, all Common Expense Assessments shall be assessed against all Units equally.

Section 6.3 Purpose of Assessments.

The assessments levied by the Association through its Board of Directors shall be used exclusively for the purposes of promoting the health, safety, and welfare of the residents and guests of the Common Interest Community and the Members of the Association. The assessments may also be used to provide insurance of various types, and in such amounts deemed appropriate by the Board. Also, a portion of the assessments shall be used to provide a reserve fund for the replacement, repair, and maintenance of the Common Elements, and portions of the Buildings maintained by the Association which must be replaced on a periodic basis.

Section 6.4 Annual Assessment/Commencement of Common Expense Assessments.

The Common Expense Assessment may be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board.

The omission or failure of the Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Unit Owners from their obligation to pay.

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Section 6.5 Budget Approval.

The budget shall be submitted to the Owners for ratification at a meeting called for that purpose as set forth in the Bylaws, as the Bylaws may be amended from time to time. Unless a majority of the Members present, in person or by proxy, at such a meeting reject the budget, the budget is ratified whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a budget proposed by the Board of Directors.

Section 6.6 Special Assessments.

In addition to the Annual Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purposes of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Area or any Area which the Association maintains, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments. The Association shall not levy a Special Assessment without the approval of the Owners at a Special Meeting called pursuant to Section 6.7 of this Article. Notice in writing of the amount and time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

Section 6.7 Meetings for Approval of Special Assessments.

A Special Meeting shall be held for the approval of the annual budget or for approval of any Special Assessment, provided however, that no meeting of the Owners shall be required for the approval of an emergency assessment pursuant to Section 6.8. Notice of special meetings shall be given in compliance with the Bylaws. The Association shall not levy a Special Assessment without the approval of two-thirds (2/3) of the Owners present, in person or by proxy at a meeting at which a quorum is present. The quorum at such meeting shall be fifty-one percent (51%) of the Owners entitled to vote. In the event a quorum is not obtained at any special meeting called pursuant to this Section, the meeting may be adjourned and rescheduled at which time the quorum shall be reduced by fifty percent (50%). No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6.8 Emergency Assessments

Upon the unanimous approval of the Board of Directors the Association shall have the power to levy an Emergency Assessment. An Emergency Assessment shall be levied only upon a finding by the Board that:

- (a) An expenditure is necessary to prevent imminent and substantial harm to the health or safety of one or more of the Unit Owners; or
- (b) An expenditure is necessary to prevent imminent and substantial harm to the Common Elements; or
- (c) An expenditure is necessary to prevent imminent and substantial harm or injury to third parties or to the property of third parties; and
- (d) Funds for such a necessary expenditure are not otherwise reasonably available to the Association.

Notice in writing of the amount and time for payment of the Emergency Assessment shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

Section 6.9 Individual Assessments

If any extraordinary maintenance, repair, or restoration work to Common Elements, and such extraordinary maintenance, repair or restoration will benefit fewer than all of the Units, the costs thereof may, at the discretion of the Board, be borne by the Owners of those affected Units only. Any extraordinary insurance costs incurred by the Association as a result of the value of a particular Owner's Residence or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) may, at the discretion of the Board, be assessed to that Owner.

Section 6.10 Default Assessments

All monetary fines assessed against an Owner pursuant to the Declaration, Bylaws, Articles of Incorporation or Rules and Regulations, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of an Owner shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

Section 6.11 Effect of Non-Payment of Assessments

Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid on or before the sixteenth day following the due date thereof, as established by the Board, shall bear interest at the rate of interest as may be determined, from time to time, by the Executive Board, and the Association may assess a reasonable late charge thereon as determined by the Executive Board. Failure to make payment within sixty (60) days of the due date thereof shall cause the

total amount of such Unit Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Association may bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Unit Owner's Unit. An action at law or in equity by the Association against a Unit Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and a Unit Owner abandons or leaves vacant his or her Unit, the Board may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without prior notice to the Unit Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien Security Interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act. Any Mortgagee of a Unit may pay any unpaid assessment pertaining to such Unit and, upon payment, shall have a lien on such Unit for the amounts so paid with the same priority as its Mortgage. 16

Section 6.12 Lien Priority.

The lien of the Association under this Article is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien Security Interest on the Unit (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under State or Federal law. Sale or transfer of any Unit shall not affect the lien for said assessments or charges except that the sale or transfer of any Unit pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of assessment charges as provided by applicable State law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any assessment charges thereafter becoming due, nor for the lien thereof.

Section 6.13 Owner's Negligence or Misconduct.

In the event that the need for maintenance, repair, or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent, or willful act or omission or misconduct of an Owner, the Owner's Guests, or the Owner's family, then

the expenses, costs and fees incurred by the Association for such maintenance, repair or replacement of the damage shall be a personal obligation of such Owner, and if not repaid to the Association within seven (7) days after the Association shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner and such expenses, costs and fees shall automatically become an assessment determined and levied against such Unit, and the Association may proceed in accordance with the applicable provisions of this Article. If, due to the act or neglect of an Owner, such owner's Guests or family, loss or damage shall be caused to any person or property, including any Unit, such Owner shall be liable and responsible for the damage or injury, except to the extent such damage or loss is covered by insurance obtained by the person suffering the injury. 17

ARTICLE 7 PARTY WALLS

Section 7.1 Party Wall Easements.

Mutual reciprocal easements are hereby established, declared, and granted for all party walls between Units, which reciprocal easements shall be for mutual support, and shall be governed by this Declaration. Every deed, whether or not expressly so stating, shall be deemed to convey and to be subject to such reciprocal easements.

Section 7.2 General Rules of Law to Apply.

Each wall which is built as a part of the original construction or restoration of the Buildings and placed on the dividing line between the Units shall constitute a party wall; further, each fence placed on the dividing line between Units shall also constitute a party fence, and, to the extent not inconsistent with the provisions of this Declaration, the general rule of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 7.3 Sharing of Repair and Maintenance.

The cost of reasonable repair and maintenance of any party wall shall be borne in proportion to their use of the wall by the Owners on either side of the party wall.

Section 7.4 Destruction by Fire or Other Casualty.

If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

Section 7.5 Weatherproofing.

Notwithstanding any other provision of this Article, an Owner who, by his negligent or willful act, causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

Section 7.6 Right to Contribute Runs with Land.

The right of any Owner to contribution from any other Owner shall be appurtenant to the land and shall pass to such Owner's successor in title.

Section 7.7 Arbitration.

In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator. The three arbitrators shall act as a Board of Arbitration and the decision shall be by a majority vote of the Board of Arbitration after an arbitration hearing. No legal action with respect to a party wall dispute shall be commenced or maintained unless and until the provisions of this arbitration clause have been met. The appointment of arbitrators hereunder shall be made within twenty (20) days after notice by one party to the other party that a dispute exists, which notice shall not be given after any applicable statute of limitations concerning such dispute shall have expired.

ARTICLE 8 RESTRICTIONS ON USE AND ALIENATION

Section 8.1 General Restrictions on Use.

The use of the Common Elements, Units and improvement thereon shall be subject to the restrictions set forth in Article 3, and to the restrictions set forth in this Declaration, the Bylaws and the Articles of Incorporation, and shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors.

Section 8.2 No Use in Violation of Law.

No use shall be made of the Common Elements, Units and improvements thereon which would in any manner violate the statutes, rules, regulations, orders or decrees of any court or governmental authority having jurisdiction over the Property.

Section 8.3 Free Access.

No Owner shall place any structures upon the General Common Elements, nor shall any Owner do any act which would temporarily or permanently deny free access to any part of the Common Elements to any or all Owners. No use shall ever be made of the Common Elements which will deny ingress and egress to those Owners having access to Units only over Common Elements and the right of ingress and egress to said Units is hereby expressly granted.

Section 8.4 Private Residential Use, Temporary Structures.

The Property is hereby restricted to private residential dwellings for residential use and uses related to the convenience and enjoyment of such residential use. No buildings or structures erected upon the Property shall be moved from other locations onto the Property. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding, shall be at any time used as a residence either temporarily or permanently.

Section 8.5 Animals.

No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Unit, except that dogs, cats or other commonly maintained household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any other resident. All household pets shall be controlled by their Owner and shall not be allowed in or on the Common Area or any facility located thereon except when properly leashed. Each Owner of a household pet shall be financially responsible and liable for any damage caused by said household pet or any expense incurred by the Association as a result of the keeping of such pet. 19

Section 8.6 Unsightly Objects, Business Activities.

No advertising sign (except one of not more than five square feet and containing the words "For Sale" or "For Rent" per Unit which is placed directly on or adjacent to such Unit), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Common Elements or any Unit. All clotheslines, equipment, garbage cans, wood piles or storage piles shall be kept within the Enclosed Patio Areas so as to conceal them from view of neighboring Units and streets. All rubbish, trash, or garbage shall be regularly removed from the Limited Common Elements appurtenant to each Unit, and shall not be allowed to accumulate thereon. Further, no business activities of any kind whatever shall be conducted in any Unit or in any portion of the Property, unless such business activity is of a type expressly permitted by the rules and regulations adopted by the Board of Directors. An Owner may apply for a temporary variance from the provisions of this Section by making proper application to the Board.

Section 8.7 Additions and Modifications.

No fences, hedges, walls, balconies, awning, decks or any other additions or modifications to the improvements shall be erected or maintained except as are installed in accordance with the initial construction of the buildings and upon receipt of prior written approval by the Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this prohibition is for the mutual benefit of all Owners and is necessary for the protection of said Owners.

Section 8.8 Planting and Gardening.

No Owner may plant, garden or landscape any portion of the General Common Elements without obtaining prior written approval of the Board of Directors. An Owner may plant or garden within the enclosed patio area appurtenant to his Unit, subject to the provisions of this Declaration, the Rules and Regulations promulgated by the Board of Directors, and provided that no materials may be planted which will exceed six (6) feet in height when mature.

Section 8.9 Antennae.

All exterior placement or installation of antenna, satellite dishes and other over-the-air reception devices less than one meter in diameter, designed for reception of video signals within the Property shall be subject to the rules and regulations to the extent

permitted by federal law. Devices over one meter in diameter, and radio reception devices may be installed only with the prior written approval of the Executive Board. 20

Section 8.10 Nuisances.

(a) The Owner of any Unit shall not suffer or permit any noxious or offensive activity to be conducted, carried on or practiced within his Unit or the Common Elements, or which constitute nuisance as provided by law, or that will detract from the residential value, reasonable enjoyment or quality of the Properties.

(b) No activities shall be conducted on the Properties and on improvements constructed on the Properties which might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the Properties and no open fires shall be lighted or permitted on the Properties except in a contained barbecue unit while attended and in use for cooking purposes. Owners shall be liable for any and all damage caused by fire resulting from the negligent use of a barbecue or other outdoor cooking appliance.

(c) No light shall be emitted from any Unit or the Common Elements which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Unit or Common Elements which is unreasonably loud or annoying; no odor shall be emitted on any Unit or Common Elements which is noxious or offensive to others.

Section 8.11 Parking.

(a) No parking or storage of any type of house trailer, camping trailer, boat trailer, running gear, boat, truck exceeding a rated load capacity of $\frac{3}{4}$ tons, self-contained motorized vehicle or accessories thereto shall be permitted on any, parking area, street, or drive, unless specifically designated by the Association therefore, unless contained in an enclosed garage. Such vehicles may be parked as a temporary expedience for loading, delivering, emergency, etc. (However, this restriction shall not restrict trucks or other commercial vehicles within the Properties which are necessary for the construction, repair or maintenance of the Units or the Common Elements.)

(b) All parking areas within the Property shall be subject to Rules and Regulations as promulgated by the Board of Directors.

Section 8.12 Abandoned or Inoperable Vehicles.

No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked within the Property except in an enclosed garage. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which has not driven under its own propulsion for a period of one (1) week or longer, or which does not have an operable propulsion system installed therein, or which has an invalid registration or expired license plates. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Owner thereof or shall be

conspicuously placed upon the vehicle. If the abandoned or inoperable vehicle is not removed within 72 hours after providing such notice, the Association shall have the right to remove the vehicle, and the owner thereof shall be solely responsible for all towing and storage charges as incurred by the Association. 21

Section 8.13 Leases.

Any Owner who leases his Unit shall be required to provide in his Lease that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Association's Articles of Incorporation and By-Laws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing and shall be for a minimum term of three (3) months.

Section 8.14 Separate Lease of Garage or Carport.

Any Owner may separately lease the enclosed garage space or spaces which are part of his Unit, or the covered parking space or spaces which are limited common elements appurtenant to the Unit as shown on the Map, provided, however that the lessee must be an Owner of one or more Units within the Kipling Klub Property during the entire term of the lease. Any such lease shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Association's Articles of Incorporation and By-Laws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. No lease under this Section may be for a term of longer than one year.

ARTICLE 9 INSURANCE

Section 9.1 Insurance Carried.

The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth herein, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. The Association shall maintain, to the extent reasonably available and necessary, policies with the following terms or provisions:

(a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Owner and shall provide that such policies may not be canceled or modified without at least thirty (30) days' prior written notice to all of the Owners, holders of First Mortgages and the Association.

(b) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all First Mortgagees at least ten (10) days prior to expiration of the then current policies.

(c) All liability insurance shall be carried in blanket form naming the Association, the Board, the manager or managing agent, if any, the officers of the Association, holders of first lien Security Interests, their successors and assigns, and Owners as insureds.

(d) Prior to renewing casualty insurance and not less than every three (3) years, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Buildings and the Common Elements, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause for less than one hundred percent (100%) of the full insurable replacement cost. 22

(e) Owners may carry and are advised to carry other insurance on their Units and personal property on their Units for their benefit and at their expense, as set forth in Section 9.12, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by Owners and provided, further, that the policies of insurance carried by the Association shall be primary, even if an Owner has other insurance that covers the same loss or losses as covered by policies of the Association.

(f) All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 9.2 Casualty Insurance on the Buildings, Units and Common Elements.

The Association shall obtain adequate casualty insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for the Buildings and Common Elements, including the Units. The Association may provide additional insurance for the benefit of individual Units. The insurance obtained on the Units is not required to include improvements and betterments installed by Owners. If coverage purchased by the Association includes improvements and betterments installed by Owners, the cost thereof shall be assessed to each Owner in proportion to risk. All policies shall contain a standard non-contributory mortgage clause in favor of each First Mortgagee, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such First Mortgagee, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of Jefferson County. If obtainable, the Association shall also obtain the following and any additional endorsements deemed advisable by the Board of Directors:

- (a) an Inflation guard endorsement,
- (b) a Construction Code endorsement,
- (c) a demolition cost endorsement,
- (d) a contingent liability from operation of building laws endorsement, and/or
- (e) an increased cost of construction endorsement.

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Section 9.3 Liability Insurance.

The Association shall obtain adequate comprehensive policy of public liability and property damage liability insurance covering all of the Buildings, Common Elements and Units, including structural coverage of the Buildings and Units, in such limits as the Board may from time to time determine, but not in any amount less than One Million Dollars (\$ 1,000, 000.00) per injury, per person, and per occurrence, and in all cases 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 uses of the Units and the Common Elements. The foregoing liability insurance shall name the Association as the insured.

Section 9.4 Fidelity Insurance.

The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The clause "officers, directors, trustees and employees" shall not include any officer, director, agent or employee of any independent, professional manager or managing agent heretofore or hereafter employed by the Association. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 9.5 Other Insurance.

The Association may obtain insurance against such other risks, of similar or dissimilar nature, including workers' compensation insurance, officers' and directors' liability insurance, and flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 9.6 Insurance Premium.

Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 9.7 Managing Agent Insurance.

The Manager or Managing agent, if any, shall be adequately insured for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association, including worker's compensation, unemployment and fidelity coverage. 24

Section 9.8 Waiver of Claims Against Association.

As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another, the Board, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 9.9 Adjustments by the Association.

Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any First Mortgagee. The Association shall hold any insurance proceeds in trust for the Association, Owners and First Mortgagees as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Owners and First Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 9.10 Duty to Repair.

Any portion of the Property and Common Elements for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Owner.

Section 9.11 Condemnation and Casualty Insurance Allocation's and Distributions.

In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record.

Section 9.12 Insurance Obtained by Owners.

Each Owner shall be responsible for maintaining all insurance which covers his Unit, including all areas for which the Owner has a maintenance responsibility pursuant to Article 5 herein, as well as loss or damage to personal property in his Unit and liability for injury, death or damage occurring inside his Unit. Such personal property shall include, but is not limited to, all furnishing, fixtures, appliances and equipment within a Unit. Any such policy shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby.

Section 9.13 Claims.

The Board may, in its discretion, choose to submit a claim under the Association's insurance policy, if a claim is submitted, the payment of the deductible amount for claims which the Association is responsible for insuring, shall be as follows: 25

(a) The Association shall pay or absorb said deductible for any work, repairs or reconstruction for damage incurred to Common Elements or an area for which the Association has a maintenance responsibility, or to a Party Wall, or for damage to Common Elements or any area which the Association maintains that originates in the Common Elements, or for damages which originate from natural causes, unless said damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees, in which case the Association shall seek reimbursement in compliance with and under Section 6.12.

(b) The Owner shall pay or absorb said deductible for any work, repairs, reconstruction or replacement for damage incurred to the Common Elements or any area that the Association maintains, as the Association shall, in its sole discretion, determine to be the allocation of the responsibility for the deductible and the amounts to be paid.

(c) If a Unit is damaged, then the Owner of that Unit shall have primary responsibility, either directly or through his insurance company, for handling and paying for, any work, repairs, reconstruction or replacement.

ARTICLE 10 ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 9 upon their damage or destruction as provided in this Declaration, or a complete or partial taking or condemnation as provided in this Declaration. Acceptance by a grantee of a deed or other instrument of conveyance conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact. Furthermore, if so requested, an Owner shall execute a separate instrument specifically setting forth this appointment.

ARTICLE 11 DAMAGE OR DESTRUCTION**Section 11.1 The Role of the Board of Directors.**

Except as provided in Section 11.6., in the event of damage to or destruction of all or part of any Unit, Building, Common Area, improvement, or other property covered by insurance written in the name of the Association under this Declaration, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the

damaged property (the property insured by the Association pursuant to Article 9 is sometimes referred to as the "Association-Insured Property").

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Section 11.2 Estimate of Damages or Destruction.

As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Board of Directors shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Declaration shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

Section 11.3 Repair and Reconstruction.

As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to complete the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 11.4 Funds for Repair and Reconstruction.

The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement, and reconstruction of the Association-Insured Property. If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement, or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in the same manner if the amounts collected prove insufficient to complete the repair, replacement, or reconstruction.

Section 11.5 Disbursement of Funds for Repair and Reconstruction.

The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Unit, first to the Mortgagees and then to the Owners, as their interests appear.

ARTICLE 12 CONDEMNATION

Section 12.1 Rights of Owners.

Whenever all or any part of the Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Elements are conveyed in lieu of a taking under threat of condemnation by the Board of Directors acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 12.2 Partial Condemnation, Distribution of Award, Reconstruction.

The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common Area was conveyed. The award shall be disbursed equally among the Owners.

Section 12.3 Complete Condemnation.

If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the condominium regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Elements shall be distributed equally among the Owners.

ARTICLE 13 COVENANT ENFORCEMENT

Section 13.1 Who May Enforce.

Enforcement of this Declaration shall be by the Association or by an Owner by any proceeding at law or in equity against any person or persons violating or attempting to violate any provision of this Declaration, either to restrain violation and/or to recover damages, and such Owner's Unit to enforce any lien created by this Declaration. The omission or failure of the Association or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 13.2 Notice of Violation.

In the event of a failure or refusal to comply strictly with any provision of this Declaration, a notice shall be mailed by the Association, its agent or the Board of Directors to such violator setting forth the nature of the violation. Such notice shall also state the action required by the Owner to cure the violation, the time required for such action and the nature of the action contemplated by the Association if the violation is not cured by the Owner. Any action taken by the Association to correct such violation shall be at the sole cost and expense of such Owner (including any attorney fees incurred in conjunction therewith), and the Association shall charge and assess, as provided in Article 6, such Owner for the full cost thereof.

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Section 13.3 Violation of Covenants Creates Liens.

A violation of this Declaration shall create a lien against an Owner's Unit. The Association may elect to prepare and record a Notice of Lien with respect to each such Notice of Violation.

Section 13.4 Covenant Enforcement - Remedies.

The remedies provided in the Governing Documents for the enforcement of this Declaration are cumulative and the selection of less than all methods of enforcement shall not constitute an election of remedies so as to preclude other methods of enforcement subsequently or simultaneously.

Section 13.5 Limitations on this Article.

Nothing in this Article is intended to limit or contravene, nor shall any provision thereof be construed to limit or contravene, any appropriate provision of the Governing Documents.

Section 13.6 Covenant Enforcement - Temporary or Permanent Restraining Orders.

In the event of the recording of a Notice of Violation, the Association may, in addition to other remedies, commence an action for an injunction and for damages and for the issuance of a temporary or permanent restraining order. By acceptance of a conveyance as an Owner, said Owner waives any further notice of application to court for a temporary or permanent restraining order and waives the requirement of the posting of any bond as a condition thereof. The rules of court and statutes of the State of Colorado are expressly waived in the foregoing particulars. The within waiver shall extend to all persons or entities deriving any interest in said land by or through said Owner, including lienors and encumbrances

ARTICLE 14 MISCELLANEOUS AND GENERAL PROVISIONS

Section 14.1 Term of Declaration.

The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 14.2 Amendment of Declaration by Lot Owners.

Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of at least sixty percent (60%) of the votes in the Association. Said votes may be obtained in any method allowed by the Governing Documents of the Association. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Jefferson County, of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

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Section 14.3 Registration.

Each Owner and each First Mortgagee shall register his or her mailing address with the Association. Unless otherwise provided in the Act, the Declaration, Articles or Bylaws of the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner or upon a First Mortgagee shall be sent by Certified Mail, postage prepaid, addressed in the name of the Owner at such registered mailing address.

All demands or other notices intended to be served upon the Board of the Association, or the Association itself shall be sent by Certified Mail, postage prepaid, to Community Management Specialists, Inc., 444 Lincoln Street, Denver, Colorado 80203, until such address is changed by a notice of address change mailed to each Owner by the Association.

Section 14.4 Interpretation.

The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the administration of the Lots and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 14.5 Singular Includes the Plural.

Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 14.6 Captions.

All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 14.7 Challenge to this Amendment.

All challenges to the validity of this amendment must be made within one (1) year after the date of recording of this document.

Section 14.8 Severability.

Invalidation of any one of these covenants or restrictions by judgment or order shall in no way affect any other provisions which shall remain in full force and effect.

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The undersigned, being the President and Secretary of Kipling Klub Townhouses Association, Inc., (the "Association") hereby certify that the Association has obtained written approval of this Amended and Restated Condominium Declaration for Kipling Klub Townhouses from sixty percent (60%) of the Owners of Units within the Kipling Klub Community, and from sixty percent (60%) of the holders of recorded first mortgages or deeds of trust as evidenced by written instruments filed with the records of the Association.

KIPLING KLUB TOWN
HOMEOWNERS ASSOCIATION, INC.,
a Colorado nonprofit corporation

BY: Tari Kloss
President

ATTEST:

BY: Jinda Conway
Secretary

POOR COPY

EXHIBIT A

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DESCRIPTION OF
PROPERTY

Block 3 and Block 4, Sun Valley
West Filing No. 6, Jefferson County,
Colorado

EXHIBIT B
DESCRIPTION OF
UNITS

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KIPLING KLUB TOWNHOUSES

Building 1

- Unit 1039
- Unit 1041
- Unit 1043
- Unit 1045
- Unit 1047

Building 2

- Unit 1049
- Unit 1051
- Unit 1053
- Unit 1055

Building 3

- Unit 1019
- Unit 1021
- Unit 1023
- Unit 1025
- Unit 1027
- Unit 1029
- Unit 1031
- Unit 1033
- Unit 1035
- Unit 1037

Building 4

- Unit 1001
- Unit 1003
- Unit 1005
- Unit 1007
- Unit 1009
- Unit 1011
- Unit 1013
- Unit 1015

Building 5

- Unit 979
- Unit 981
- Unit 983
- Unit 985
- Unit 987
- Unit 989

Building 6

- Unit 991
- Unit 993
- Unit 995
- Unit 997
- Unit 999

Building 7

- Unit 951
- Unit 953
- Unit 955
- Unit 957
- Unit 959
- Unit 961
- Unit 963
- Unit 965
- Unit 967
- Unit 969
- Unit 971
- Unit 973
- Unit 975
- Unit 977

Building 8

Unit 964
Unit 968
Unit 972
Unit 978
Unit 982
Unit 988

Building 9

Unit 992
Unit 998
Unit 1018
Unit 1020

Building 10

Unit 1022
Unit 1024
Unit 1026
Unit 1028
Unit 1030
Unit 1032

Building 11

Unit 1034
Unit 1036
Unit 1038
Unit 1040

Building 12

Unit 950
Unit 952
Unit 954
Unit 956
Unit 958
Unit 960
Unit 962
Unit 1000
Unit 1002
Unit 1004
Unit 1006
Unit 1008
Unit 1010
Unit 1012
Unit 1014
Unit 1016

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