

WHEN RECORDED, PLEASE RETURN TO:  
Harry E. McCoy II  
Fox, Edwards & Plumb  
2000 Beneficial Life Tower  
36 South State Street  
Salt Lake City, Utah 84111

Entry No. 148128 Book M 117  
RECORDED 8-2-78 at 2:40M Page 249  
REQUEST of Western States Title  
FEE \$ 92.00 WANDA Y. SPRIGGS, SUMMIT CO. RECORDER  
INDEXED \_\_\_\_\_ By Wanda Y. Spriggs  
ABSTRACT \_\_\_\_\_

PROSPECTOR SQUARE CONDOMINIUMS  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS AND  
BYLAWS

This Declaration of Covenants, Conditions and Restrictions, hereinafter called "Declaration," and the Bylaws which are attached hereto as Appendix B and made a part hereof, are made and executed in Salt Lake County, Utah, this 25 day of JULY, 1978 by K & M, Inc., a Utah corporation with its principal place of business in Salt Lake County, Utah, hereinafter called "Declarant," for itself, its successors, grantees and assigns, pursuant to the provisions of the Utah Condominium Ownership Act, Sec. 57-8-1, et seq., Utah Code Annotated 1953, as amended, hereinafter referred to as "the Condominium Act."

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Summit County, hereinafter referred to as the "Land," more particularly described in Section 3 hereof; and

WHEREAS, there are certain Buildings (hereinafter defined) and other improvements now existing upon the Land, all of which are included within the Property (hereinafter defined), and it is the desire and intention of Declarant to submit the Property to a condominium regime and to sell and convey the same to various purchasers, subject to the covenants, conditions and restrictions herein reserved to be kept and observed; and

WHEREAS, Declarant is the owner of certain Additional Land (hereinafter defined) located in Summit County as to which Declarant desires to reserve an Option (hereinafter defined) to expand the Property to include said Additional Land within the condominium regime created hereby in accordance with certain provisions of the Condominium Act; and

WHEREAS, Declarant desires and intends by filing this Declaration to submit the Property to the provisions of the Condominium Act as a condominium project and to impose upon the

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*Notice of Lien & Notice of Default*  
# 343858 Ad. 616-88 12-13  
*Notice of Lien & Notice of Default*  
# 385789, BK 747, Pg 304  
*Notice of Lien & Notice of Default*  
# 412134, BK 828, Pg 374  
# 412135, BK 828, Pg 375  
# 412137, BK 828, Pg 377

*The Amended Notice of Lien is*  
# 312540 Ad. 534 P. 291  
*(to Unit 937 Bldg. by Unit)*

*See Amendment to Declarations*  
# 148407 Bk 1117 P. 724-7  
*See Second Amended Declarations of Covenants*  
# 151587 Bk 1124 P. 403-17  
*See Third Amended Declaration of Covenants*  
# 155665 Bk 1133 P. 8-10

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Property mutually beneficial restrictions under a general plan of improvement for the benefit of the Property and owners thereof;

NOW THEREFORE, Declarant does hereby publish and declare that all of the Property described above is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of the Property and the creation of individual condominiums, and shall be deemed to run with the Land and shall be a burden and a benefit to Declarant, its successors and assigns, and any person acquiring or owning an interest in the Property, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. Name of the Condominium Property. The name by which this condominium project shall be known is "Prospector Square Condominiums," hereinafter referred to as "Prospector Square."

2. Definitions. The terms used in this Declaration and in the Bylaws shall be as defined in the Condominium Act, unless otherwise indicated by the context, except as follows:

(a) "Additional Land" shall mean that land hereinafter described which may be added to the condominium project in accordance with provisions of this Declaration and the Condominium Act.

(b) "Building" shall mean those structures located on the land containing units.

(c) "Mortgage" shall mean a deed of trust as well as a mortgage.

(d) "Mortgagee" shall mean a beneficiary under or holder of a deed of trust as well as a mortgage.

(e) "Option" shall mean the option hereinafter reserved to Declarant to add Additional Land to the condominium project created by this Declaration.

(f) "Property" shall mean and include the Land, the Buildings, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto and all articles of personal property intended for use in connection therewith.

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(g) "Village I" shall mean the Land described in Section 3.A and the Buildings located thereon containing Units.

(h) "Village II" shall mean that portion of the Additional Land designated as Parcel 1 in Section 4(a) of this Declaration, together with any Buildings containing Units located thereon.

3. Detailed Description.

A. Description of Land. The Land is located in Summit County within the corporate limits of Park City, and is more particularly described as follows:

Beginning at the Northwest corner of Lot 44 of the amended plat of Prospector Square Subdivision, a subdivision located in the Northeast quarter of Section 9, Township 2 South, Range 4 East, Salt Lake Base and Meridian, and running thence North  $64^{\circ} 24'$  East 79.00 feet along the Northerly boundary of said Lot 44, to a point of a 367.00 foot radius curve to the right, the radius point of which is South  $25^{\circ} 36'$  East 367.00 feet; thence Northeasterly along the arc of said curve and Northerly boundary of Lot 44, 163.98 feet to a point of tangency; thence East 174.47 feet along said Northerly boundary of Lot 44 to a point of a 66.00 foot radius curve to the left, the radius point of which is North 66.00 feet; thence Northeasterly along the arc of said curve 103.67 feet; thence East 25.00 feet; thence South  $16^{\circ} 50' 12''$  East 143.38 feet to the Northerly right-of-way line of the Union Pacific Railroad; thence South  $73^{\circ} 09' 48''$  West 193.05 feet along said Northerly right-of-way line to a point of a 1482.40 foot radius curve to the left, the radius point of which is South  $16^{\circ} 50' 12''$  East 1482.40 feet; thence Southwesterly along the arc of said curve and Northerly right-of-way line 226.39 feet to a point of tangency; thence South  $64^{\circ} 24' 48''$  West along said Northerly right-of-way line 67.36 feet; thence North  $25^{\circ} 36'$  West 186.19 feet to the point of beginning. Contains 1.743 acres.

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B. Description of Buildings. Prospector Square consists of three (3) Buildings designated respectively Buildings 1, 2 and 3, containing Units, located within the boundaries of the Land described in subparagraph A, together with uncovered parking facilities and open space and walkways. Building 1 consists of three stories and contains 42 Units. Building 2 consists of three stories and contains 45 Units. Building 3 consists of two stories and contains 20 Units. All Buildings are of frame construction with concrete foundations.

C. Description of Units. The Unit number, Building location and square footage of each Unit are as set forth in Appendix A attached hereto and made a part hereof. Access to the Common Areas and Facilities from each Unit is direct from each Unit and by walkways in the Common Areas and Facilities. The boundary line of each Unit shall be the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floors, and uppermost ceilings, and the interior surfaces of doors, window frames, door frames and trim. Each Unit shall include both the portions of the Buildings that are not Common or Limited Common Areas and Facilities within such boundary lines and the space so encompassed. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the walls, floors and ceilings of the Unit.

D. Description of Common Areas and Facilities. The Common Areas and Facilities shall mean all Land and all portions of the Property not contained within any Unit or within the Limited Common Areas and Facilities; including, but not by way of limitation, roofs, foundations, pipes, ducts, flues, chutes, floors, ceilings, conduits, wires and other utility installations to the outlets; bearing walls, perimeter walls, columns and girders to the undecorated and/or unfinished interior surfaces thereof, regardless of location; hallways, stairways, walkways, gardens and other areas and facilities which are now or hereafter contained within the Property; all installations of power, lights, and hot and cold water existing for common use, and all other parts of the Property necessary or convenient to its existence, maintenance and safety or normally in common use and all areas and facilities designated as Common Areas and Facilities in the Condominium Act.

E. Description of Limited Common Areas and Facilities. "Limited Common Areas and Facilities" shall mean all balconies, patios, special corridors, terraces, storage areas, and individual room heaters adjacent to or associated

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with one or more particular Units and intended for the exclusive use of such Units. All areas of the Property which do not fall within the above definition of Limited Common Areas and Facilities or of Unit shall be deemed to be part of the Common Areas and Facilities as set forth in subparagraph D above.

F. Percentage of Ownership and Voting Rights. The percentage of undivided interest in the Common Areas and Facilities appertaining to each Unit and its Unit Owner for all purposes, including voting, is set forth in Appendix A attached hereto and made a part hereof as if herein set forth in full.

The percentage of undivided interest of each Unit approximately reflects the square footage size of such Unit divided by the aggregate total square footages of all Units.

4. Option to Expand Prospector Square. Declarant hereby reserves the Option to expand Prospector Square without the prior consent of the Unit Owners or the Association of Unit Owners at any time prior to the expiration of seven (7) years from the date of recording of this Declaration and the Exhibits thereto. The terms and conditions of the Option shall be as follows:

(a) The real property subject to this Option is sometimes hereinafter referred to as "Additional Land" and is more particularly described as follows:

Parcel 1: Beginning at a point South 1957.76 feet and West 273.56 feet from the Northeast corner of Section 9, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being on the Northerly right-of-way line of the Union Pacific Railroad, and running thence North 16° 29' West 411.28 feet to a point on a 1766.00 foot radius curve to the left, the radius point of which is North 9° 00' 48" West 1766.00 feet; thence Northeasterly along the arc of said curve and Southerly right-of-way line of Sidewinder Drive 246.20 feet to a point of tangency; thence North 73° 00' East along the said Southerly right-of-way line 375.07 feet; thence South 17° 00' East 345.91 feet to the Northerly right-of-way line of the Union Pacific Railroad; thence South 73° 09' 48" West along said Northerly right-of-way 325.84 feet; thence South 0° 04' 58" West along said Northerly right-of-way line 52.26 feet; thence South 73° 09' 48" West along said Northerly right-of-way line 282.99 feet to the point of beginning. Contains 5.294 acres.

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Parcel 2: Lot 43, Prospector Square Subdivision, according to the official plat thereof filed in the office of the Summit County Recorder.

(b) The Option must be exercised as to each of the parcels described in (a) above in their entirety and in order as listed, first, Parcel 1, and then Parcel 2, or as to both Parcels 1 and 2 simultaneously. Declarant shall not be permitted to exercise this Option as to portions of either of the above-described parcels. This Declaration shall not be deemed to constitute any lien, encumbrance, restriction or limitation upon any portion of the Additional Land unless and until such portion is added to Prospector Square in accordance with the Condominium Act and the provisions hereof.

(c) Declarant shall not be restricted in the location of improvements on the Additional Land or in the maximum number of Units that may be created on the Additional Land, except as may be required by applicable zoning requirements, ordinances or regulations.

(d) The Units to be located on the Additional Land shall be subject to the same uses as provided in Section 5 hereof.

(e) The Buildings and the Units contained therein to be built on the Additional Land shall be compatible with the existing Buildings on the Land in terms of quality of construction, principle materials to be used and architectural style. No structures other than Buildings containing Units will be erected on the Additional Land. Further improvements shall be limited to parking areas, walkways and landscaping of the Common Areas and Facilities contained in the Additional Land; provided, however, Declarant reserves the right to add additional Limited Common Areas and Facilities to the Additional Land without limitation.

(f) The Units and the Buildings to be built on the Additional Land may, in the sole discretion of Declarant, be dissimilar to the Units in the Buildings on the Land.

(g) The percentages of undivided interest in the Common Areas and Facilities for all Units in Prospector Square shall be changed at the time Declarant records an amended Record of Survey Map reflecting Declarant's exercise of the Option in accordance with the formula set forth in Subparagraph (h) below. Said changes shall be reflected in an amended

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Appendix A. to this Declaration to be filed with the Summit County Recorder simultaneously with the filing of the amended Record of Survey Map.

(h) The following formula shall be used by Declarant in calculating the revised Unit percentages of undivided interest upon exercise of the Option. For purposes of the calculation, "square footage" shall mean the floor area of a Unit encompassed by the perimeter walls of a Unit rounded off to the nearest whole foot.

$$\frac{\text{Square Footage Area of Unit}}{\text{Aggregate Total Square Footages All Units, including those added by Option}} = \frac{\text{Unit Percentage of Undivided Interest in Prospector Square}}{\text{Prospector Square}}$$

The estimated percentages of undivided interest for the initial 107 Units if 204 additional Units are constructed on Parcel 1 are listed on Appendix A; provided, however, Declarant herewith reserves the right to amend such estimates to reflect the actual percentages derived hereunder. Declarant also herewith reserves the right to adjust the resulting percentages of all Units as may be necessary to assure that the total percentage of undivided interest equals 100 percent as required by the Condominium Act.

(i) Each Unit Owner by the acceptance of a deed to a Unit in Prospector Square shall be deemed to have consented to the provisions of this section regarding the Option of Declarant to expand the condominium project, and to have agreed to the adjustment of Unit percentages of undivided interest in accordance with Subparagraph (h) hereof. After the filing for record of the amended Appendix A to this Declaration and the amended Record of Survey Map reflecting Declarant's exercise of the Option, title to each Unit thereby created within the Additional Land and its appurtenant percentage of undivided interest in the Common Areas and Facilities shall be vested in and held by Declarant and none of the other Unit Owners shall have any claim or title to or interest in such Unit or its appurtenant percentage of undivided interest.

5. Statement of Purposes, Use and Restrictions. The Units, Common Areas and Facilities and Limited Common Areas and Facilities shall be occupied and used as follows:

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(a) A Unit Owner shall not occupy or use his Unit, or permit the same or any part thereof to be occupied or used, for any purpose other than for the personal use for dwelling purposes by the Unit Owner and the Unit Owner's family or the Unit Owner's guests, renters or lessees.

(b) No commercial business shall be permitted within the Property, but this shall not be deemed to prohibit a Unit Owner from renting his Unit on either a transient or long-term basis.

(c) There shall be no obstruction of the Common Areas and Facilities. Except in the case of designated storage areas, nothing shall be stored in the Common Areas and Facilities without the prior written consent of the Management Committee.

(d) Nothing shall be done or kept in any Unit, Parking Unit, or in the Common Areas and Facilities or Limited Common Areas and Facilities which will increase the rate of insurance on the Property without the prior written consent of the Management Committee. No Owner shall permit anything to be done or kept in his Unit, Common Areas and Facilities or in the Limited Common Areas and Facilities which will result in the cancellation of insurance of any Unit, or any part of the Common Areas and Facilities or Limited Common Areas and Facilities, or which would be in violation of any law. No waste will be committed of the Common Areas and Facilities or Limited Common Areas and Facilities.

(e) No sign of any kind shall be displayed to the public view or from any Unit or from the Common Areas and Facilities or Limited Common Areas and Facilities without the prior written consent of the Management Committee.

(f) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Areas and Facilities or Limited Common Areas and Facilities.

(g) No noxious or offensive activity shall be carried on in any Unit, in the Common Areas and Facilities or Limited Common Areas and Facilities, nor shall anything be done therein which may be or become an annoyance or nuisance to other Unit Owners.

(h) Nothing shall be altered or constructed in or removed from the Common Areas and Facilities or Limited Common Areas and Facilities, except upon the prior written consent of the Management Committee.

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(i) There shall be no violation of rules for the use of the Common Areas and Facilities or Limited Common Areas and Facilities adopted by the Management Committee and furnished in writing to the Owners, and the Management Committee is authorized to adopt such rules.

(j) None of the rights and obligations of the Unit Owners created herein, or by the deeds conveying the Condominiums shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of a Unit Owner or Owners if said encroachment occurred due to the willful conduct of said Unit Owner or Owners.

(k) Declarant, and persons it may select, shall have the right of ingress and egress over, upon and across the Common Areas and Facilities and Limited Common Areas and Facilities and the right to store materials thereon and make such other use thereof as may be reasonably necessary and incident to sale of the Units and operation of the Units and Common Areas and Facilities in connection with the overall development of Prospector Square as a condominium project. Declarant and its duly authorized agents, representatives and employees may maintain a sales office and a maximum of not exceed four model Units on the Land or the Additional Land during the sale of the Units. Declarant shall have the right to change the location of model Units from time to time in its sole discretion and in addition to the four model Units may maintain one additional Unit as a sales office until such time as it has ceased to use model Units on the Land or the Additional Land. Any furnishings or other improvements to such Units shall remain the sole property of Declarant and shall be removed by Declarant within fourteen days of cessation of use of such model Unit or sales office.

6. Agent for Service of Process. Until such time as Declarant transfers the right and responsibility to elect a Management Committee to the Unit Owners as provided in the Bylaws, the name and address of the person in Park City, Utah, for the service of notice or process in matters pertaining to the Property as provided under the Condominium Act is:

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Gordon Sloan  
2576 Doc Holliday Drive  
Park City, Utah 84060

Thereafter the person to receive service of notice or process shall be any member of the Management Committee residing in Summit County, Utah, as listed in the Affidavit filed with the Recorder of Summit County.

7. Damage or Destruction; Sale. In the event that any Buildings and/or other improvements on the Land are damaged or destroyed by fire or other casualty or disaster, such Buildings and/or other improvements shall be promptly repaired, restored or reconstructed to the extent required to restore them to substantially the same condition in which they existed prior to the occurrence of the damage or destruction, with each Unit and the Common Areas and Facilities having the same vertical and horizontal boundaries. Such repairs, restoration or reconstruction shall be paid for out of any insurance proceeds received on account of the damage or destruction; provided, however, that if the insurance proceeds are not sufficient for such purpose, the deficiency shall be assessed as a Common Expense.

Notwithstanding the foregoing, in the event that Buildings containing 75 percent or more of the Units are destroyed and the Unit Owners by an affirmative vote of at least 75 percent of the total voting power file notice with the Management Committee within 90 days after such destruction that they do not desire that the Buildings be reconstructed or restored, the Management Committee shall record, with the Recorder of Summit County, Utah, a notice setting forth such facts, and upon the recording of such notice:

(a) the Property shall be deemed to be owned in common by the Unit Owners;

(b) the undivided interest in the Property owned in common which shall appertain to each Unit Owner shall be the percentage of undivided interest previously owned by such Unit Owner in the Common Areas and Facilities;

(c) any liens affecting any of the Condominiums shall be deemed to be transferred in accordance with the existing priorities to the percentage of undivided interest of the Unit Owner in the Property; and

(d) the Property shall be subject to an action for partition at the suit of any Unit Owner, in which event the

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net proceeds of sale (the Property not being susceptible of fair partition without depreciating the value thereof), together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among all the Unit Owners in proportion to their respective percentages of undivided interest in the Common Areas and Facilities, after first paying out of the respective shares of the Unit Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Unit Owner.

Notwithstanding all other provisions of this Declaration, the Unit Owners may, by an affirmative vote of the total voting power at a meeting of the Association of Unit Owners duly called for such purpose, elect to sell or otherwise dispose of the Property. Such action shall be binding upon all Unit Owners and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale.

8. Subdivision or Combination. Except as this Declaration may be amended as provided herein and subject to the requirements of any applicable laws or regulations of governmental authorities, no subdivision or combination of any Unit or Units or of the Common Areas and Facilities or Limited Common Areas and Facilities may be accomplished except pursuant to unanimous vote of the Unit Owners at a meeting called for the notified purpose of consideration thereof or upon receipt by the Management Committee of the written consent of all Unit Owners. If so approved, any such subdivision or combination shall be reflected in a recorded revised Declaration and Record of Survey Map consistent therewith, and such subdivision or combination shall be ineffective for any purpose until recorded in compliance with all such laws and regulations. All expenses for such preparation and recording of the revised Declaration shall be borne by the persons requesting the same and shall not be a Common Expense of the Property.

9. Bylaws. The Bylaws set forth in Appendix B hereof may be amended by an instrument in writing signed and acknowledged by Unit Owners holding 75 percent of the total voting power, which amendment shall be effective upon recordation with the Recorder of Summit County, Utah, as an amendment to the Bylaws.

10. Voting. At any meeting of the Association of Unit Owners, each Unit Owner, including Declarant, either in person or by proxy, shall be entitled to cast a number of votes in behalf of his Unit or Units corresponding with the percentage of undivided interest in the Common Areas and Facilities as listed in Appendix A. Where there is more than one record Unit Owner, any or all of

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such persons may attend any meeting of the Association of Unit Owners, but it shall be necessary for those present to act unanimously in order to cast the votes to which they are entitled. Declarant shall be entitled to vote with respect to any Condominium owned by it.

11. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered 48 hours after a copy of same has been deposited in the U.S. Postal Service, first class postage prepaid, addressed to each such person at the address given by such person to the Management Committee for the purpose of service of such notice or to the Unit of such person if no such address has been given. Such address may be changed from time to time by notice in writing to the Management Committee.

12. Mortgage Protection. Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon any Condominium shall be subject to, and shall not affect the rights of the holder of, the indebtedness secured by any recorded first Mortgage (meaning a Mortgage with first priority over other Mortgages) upon such Condominium made in good faith and for value, provided that after the foreclosure of any such Mortgage there may be a lien created pursuant to Article VI.B of the Bylaws on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as a Unit Owner after the date of such foreclosure sale;

(b) No amendment to this Section shall affect the rights of the holder of any such Mortgage recorded prior to the recordation of such amendment who does not join in the execution thereof;

(c) By subordination agreement executed by a majority of the Management Committee, the benefits of paragraphs (a) and (b) above may be extended to Mortgagees not otherwise entitled thereto.

13. Exclusive Ownership and Possession by Unit Owner. Each Unit Owner shall be entitled to exclusive ownership and possession of his Unit. Each Unit Owner shall have an undivided interest in the Common Areas and Facilities as listed in Appendix A. From and after the exercise or expiration of the Option reserved by Declarant pursuant to Section 4 hereof, the percentage of undivided interest of each Unit in the Common Areas and Facilities

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as expressed in Appendix A shall be permanent and shall not be altered without the consent of all Unit Owners expressed in an amended Appendix A duly recorded. The percentage of undivided interest in the Common Areas and Facilities shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Unit Owner may use the Common Areas and Facilities in accordance with the purposes for which they are intended, so long as he does not hinder or encroach upon the lawful rights of the other Unit Owners.

A Unit Owner shall not be deemed to own the undecorated and/or unfinished interior surfaces of the perimeter walls, floors, ceilings, windows and doors bounding his Unit, nor shall a Unit Owner be deemed to own the utilities running through his Unit which are utilized for, or serve, more than one Unit, except as a tenant in common with the other Unit Owners. A Unit Owner, however, shall be deemed to own the decorated and/or finished interior surfaces of the perimeter walls, floors, ceilings, windows, and doors bounding his Unit and shall have the obligations set forth in Section 15 hereof with respect thereto.

14. Use of Parking Areas. The Property has or will have open parking areas. Said areas shall be Common Areas and Facilities not generally assigned to specific Units. The use and occupancy of the parking areas shall be for the parking of automobiles, motorcycles, and other wheeled conveyances. The Management Committee may by rule and regulation provide for the efficient and best use of such parking areas.

15. Certain Obligations of Owners. Except for those portions (if any) which the Management Committee is required to maintain and repair hereunder, each Unit Owner shall at his expense keep the interior of his Unit, its equipment, furniture and furnishings, and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his Unit. In addition to decorating and keeping the interior of the Unit in good repair, the Unit Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, lighting fixtures, appliances, carpeting and other furniture and furnishings that may be in or connected with the Unit. The Unit Owner shall also, at his own expense, keep the Limited Common Areas and Facilities appurtenant to his Unit or Units in a clean and sanitary condition.

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The Management Committee shall not be responsible to the Unit Owner for loss or damage by theft or otherwise of articles which may be stored by the Unit Owner in his Unit or the Limited Common Areas and Facilities appurtenant thereto.

The Unit Owner shall promptly discharge any lien (other than Mortgage liens) which may hereafter be filed against his Condominium.

16. Prohibition Against Structural Changes by Unit Owner. No Unit Owner shall, without first obtaining written consent of the Management Committee, make or permit to be made any structural alteration, improvement or addition in or to his Unit or in or to the Common Areas and Facilities. No Unit Owner shall do any act or work that will impair the structural soundness or integrity of the Buildings or safety of the Property or impair any easement or hereditament without the written consent of all Unit Owners. No Unit Owner shall paint or decorate any portion of the exterior of the Buildings or other Common Areas and Facilities without first obtaining written consent of the Management Committee.

17. Entry for Repairs. The Management Committee and their respective agents may enter any Unit when necessary in connection with any maintenance, landscaping or construction for which the Management Committee is responsible. Such entry shall be made with as little inconvenience to the Unit Owners as practicable, and any damage caused thereby shall be promptly repaired by the Management Committee out of the Common Expense Fund.

18. Failure to Insist on Strict Performance No Waiver. The failure of the Association of Unit Owners or Management Committee to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Management Committee of any assessment from a Unit Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Management Committee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Management Committee or its designee.

19. Limitation of Management Committee Liability. The Management Committee shall not be liable for any failure of any service to be obtained and paid for by the Management Committee

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hereunder, or for injury or damage to person or property caused by the elements or by another Unit Owner or person, or resulting from electricity, water or rain which may leak or flow from outside or from any parts of the Buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place, unless caused by gross negligence of the Management Committee. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Areas and Facilities or from any action taken to comply with any law, ordinance or order of a governmental authority.

20. Indemnification of Management Committee Members. Each member of the Management Committee shall be indemnified by the Unit Owners against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved, by reason of his being or having been a member of the Management Committee, or any settlement thereof, whether or not he is a member of the Management Committee at the time such expenses are incurred, except in such cases wherein the member of the Management Committee 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 Management Committee approves such settlement as being for the best interests of Prospector Square.

21. Insurance. The Management Committee shall obtain and maintain at all times insurance of the type and kind and in at least the amounts provided in the Bylaws and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium properties similar in construction, design and use to Prospector Square. Such insurance shall be governed by the following provisions:

(a) Exclusive authority to adjust losses under policies hereafter in force on the Property shall be vested in, and the proceeds thereof payable to, the Management Committee or its authorized representative as insurance trustee.

(b) In no event shall the insurance coverage obtained and maintained by the Management Committee hereunder be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees.

(c) Each Unit Owner may obtain additional insurance at his own expense, provided however, that no Unit Owner shall be entitled to exercise his right to maintain insurance

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coverage in such a way as to decrease the amount which the Management Committee, on behalf of all of the Unit Owners, may realize under any insurance policy which the Management Committee may have in force on the Property at any particular time.

(d) Each Unit Owner shall notify the Management Committee of all improvements made by the Unit Owner to his Unit, the value of which is in excess of \$1,000.

(e) Any Unit Owner who obtains individual insurance policies covering any portion of the Property, other than personal property belonging to such Unit Owner, shall file a copy of such individual policy or policies with the Management Committee within 30 days after purchase of such insurance.

(f) The Management Committee shall make every effort to secure insurance policies that will provide for the following:

- (1) A waiver of subrogation by the insurer as to any claims against the Management Committee, the Unit Owners and their respective servants, agents and guests;
- (2) That the master policy on the Property cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Unit Owners;
- (3) That the master policy on the Property cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Management Committee without prior demand in writing that the Management Committee cure the defect;
- (4) That any "no other insurance" clause in the master policy on the Property exclude individual Unit Owners' policies from consideration.

(g) The annual insurance review which the Management Committee is required to conduct as provided in Section E.3 of Article II of the Bylaws shall include an appraisal of the improvements in the Property by a representative of the insurance agent writing the master policy.

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22. No Partition. There shall be no judicial partition of the Property or any part thereof, nor shall Declarant or any person acquiring any interest in the Property or any part thereof seek any such judicial partition, until the happening of the conditions set forth in Section 7 of this Declaration in the case of damage or destruction or unless the Property has been removed from the provisions of the Condominium Act as provided in Section 57-8-22 of that Act; provided, however, that if any Condominium shall be owned by two or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants. Such partition shall not affect any other Condominium.

23. Enforcement. Each Unit Owner shall comply strictly with the provisions of this Declaration, the Bylaws and the rules, regulations and decisions issued pursuant thereto and as the same may be lawfully amended from time to time. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee on behalf of the Association of Unit Owners, or in a proper case, by an aggrieved Unit Owner.

24. Personal Property. The Management Committee may acquire and hold, for the benefit of the Association of Unit Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in such personal property shall be held by the Unit Owners in the same proportion as their respective undivided interests in the Common Areas and Facilities, and shall not be transferrable except with a transfer of a Condominium. A transfer of a Condominium shall vest in the transferee ownership of the transferor's beneficial interest in such personal property.

At the time when the first conveyances of Units are made by Declarant to the Unit Owners, Declarant shall execute and deliver a bill of sale to the Association of Unit Owners, transferring title to all items of personal property located on the Property and furnished by Declarant, which personal property is intended for the common use and enjoyment of the Unit Owners.

25. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project.

26. Amendment. Except as otherwise provided herein and except as prohibited by the Condominium Act, the provisions of this Declaration may be amended by an instrument in writing signed and acknowledged by Owners holding 75 percent of the voting power,

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which amendment shall be effective upon recordation with the Recorder of Summit County. Except as provided in Section 4 hereof, any amendment altering the percentages of undivided interest in the Common Areas and Facilities or voting rights shall require the approval of all Unit Owners.

27. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

28. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of this Declaration or the intent of any provision hereof.

29. Law Controlling. This Declaration and the Bylaws attached hereto shall be construed and controlled by and under the laws of the State of Utah.

30. Effective Date. This Declaration shall take effect when recorded with the Recorder of Summit County.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 25 day of July, 1978.

DECLARANT:

K & M, Inc.

Keith E. Turner  
President

ATTEST

Ernest L. Kendall

FINAL

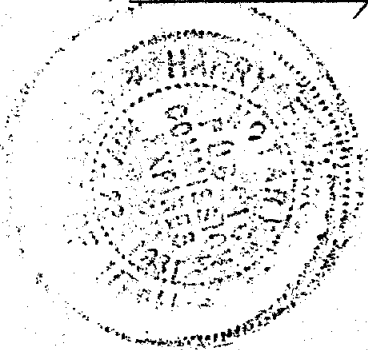
STATE OF UTAH )  
 ) : ss.  
COUNTY OF SALT LAKE )

On the 25 day of July, 1978,  
personally appeared before me Keith E. Garner and Eugene L.  
Kimball, who being by me duly sworn did say, each for himself,  
that he the said Keith E. Garner is the President, and he the  
said Eugene L. Kimball is the Secretary of K & M, Inc., and that  
the within and foregoing instrument was signed in behalf of said  
corporation by authority of a resolution of its Board of Directors,  
and said Keith E. Garner and Eugene L. Kimball each duly acknow-  
ledged to me that said corporation executed the same.

Wm E. McCoy II  
NOTARY PUBLIC  
Residing at: Salt Lake City, Ut.

My Commission Expires:

Nov. 22, 1981



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APPENDIX A  
PROSPECTOR SQUARE CONDOMINIUMS

<u>UNIT NUMBERS</u>	<u>AREA OF EACH UNIT</u>	<u>107 UNIT PROJECT PERCENTAGE INTEREST OF EACH UNIT</u>	<u>(ESTIMATED 311 UNIT PROJECT PERCENTAGE INTEREST OF EACH UNIT)</u>
1-100, 1-101, 1-102, 1-103, 1-104, 1-105, 1-106, 1-107, 1-108, 1-109, 1-110, 1-111, 1-112, 1-113, 1-114, 1-115, 1-116, 1-117, 1-118, 1-119, 1-120, 1-121, 1-122, 1-123, 1-124, 1-125, 1-126, 1-127, 1-128, 1-129, 1-130, 1-131, 1-132, 1-133, 1-134, 1-135, 1-136, 1-137, 1-138, 1-139, 1-140, 1-141, 1-142	295 sq. ft.	.915%	(.2626%)

2-200, 2-201, 2-202, 2-203, 2-204, 2-205, 2-206, 2-207, 2-208, 2-209, 2-210, 2-211, 2-212, 2-213, 2-214, 2-215, 2-216, 2-217, 2-218, 2-219, 2-220, 2-221, 2-222, 2-223, 2-224, 2-225, 2-226, 2-227, 2-228, 2-229, 2-230, 2-231, 2-232, 2-233, 2-234, 2-235, 2-236, 2-237, 2-238, 2-239, 2-240, 2-241, 2-242, 2-243, 2-244	295 sq. ft.	.915%	(.2626%)
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APPENDIX A

(Continued)

<u>UNIT NUMBERS</u>	<u>AREA OF EACH UNIT</u>	<u>107 UNIT PROJECT PERCENTAGE INTEREST OF EACH UNIT</u>	<u>(ESTIMATED 311 UNIT PROJECT PERCENTAGE INTEREST OF EACH UNIT)</u>
3-301, 3-302, 3-303, 3-304, 3-305, 3-306, 3-307, 3-308, 3-309, 3-311, 3-312, 3-313, 3-314, 3-315, 3-316, 3-317, 3-318, 3-319	315 sq. ft.	.976%	(.2803%)
3-310, 3-320	444 sq. ft.	1.4135%	(.3950%)

TOTAL AREA, 107 UNIT PROJECT: 32,223 sq. ft.

TOTAL PERCENTAGE INTEREST, 107 UNIT PROJECT: 100%

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APPENDIX B  
BYLAWS OF  
PROSPECTOR SQUARE CONDOMINIUMS

I. Application of Bylaws.

All present and future Unit Owners, Mortgagees, and occupants of Units and their lessees, renters, agents, servants, and guests, and any other persons who may use the facilities of the Property in any manner are subject to the Declaration, these Bylaws and Rules and Regulations made pursuant hereto, and any amendment to these Bylaws upon the same being passed and duly recorded.

The acceptance of a deed or conveyance, the entering into of a contract for purchase or a lease, or the act of occupancy of a Unit shall constitute an agreement that these Bylaws and any Rules and Regulations made pursuant hereto and the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with.

II. Management Committee.

The affairs of the Association of Unit Owners shall be conducted by a Management Committee composed of three (3) members.

A. Election

At each annual meeting, subject to the provisions of Section K of this Article II, the Unit Owners shall elect members of the Management Committee for the forthcoming year; provided, however, the first Management Committee elected hereunder may be elected at a special meeting duly called, said Management Committee to serve until the first annual meeting held thereafter. At least 30 days prior to any annual meeting, the Management Committee shall select from the Unit Owners a Nominating Committee of not less than three members, and such Nominating Committee shall recommend to the annual meeting one nominee for each position on the Management Committee to be filled at that particular annual meeting. No Unit Owner serving on the Management Committee shall be eligible to serve on the said Nominating Committee. Nominations for the Management Committee may also be made by petition filed with the Secretary at least seven (7) days prior to the annual meeting, which petition shall be signed by ten (10) or more Unit Owners and include a letter signed by the nominee(s) named therein indicating his (their) willingness to serve as a member of the Management Committee if elected. At least two members of the Management Committee shall be required to be Unit Owners.

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B. Term

Members of the Management Committee shall serve for a term of two years; provided, however, that initially two of the three members of the first Management Committee elected shall serve for a one-year term. The other member shall serve for a two-year term. Thereafter, all members elected each year shall serve for a two-year term. The members of the Management Committee shall serve until their respective successors are elected, or until their death, resignation or removal.

C. Resignation and Removal

Any member of the Management Committee may resign at any time by giving written notice to the President and Management Committee, and any member may be removed from membership on the Management Committee by an affirmative vote of Unit Owners having 2/3 of the total voting power. Whenever there shall occur a vacancy on the Management Committee due to death, resignation, removal or any other cause, the remaining members shall elect a successor to serve until the next annual meeting of the Association of Unit Owners, at which time said vacancy shall be filled for the unexpired term.

D. Compensation

The Management Committee shall receive no compensation for their services unless expressly provided for by the Management Committee with the approval of Unit Owners having 2/3 of the total voting power.

E. Powers and Authority of the Management Committee

The Management Committee, for the benefit of Prospector Square and the Unit Owners, shall enforce the provisions of the Declaration, Bylaws and Rules and Regulations governing the Property and, subject to the provisions of Article V hereof, shall acquire or arrange for and pay for out of the Common Expense Fund the following:

1. Water, sewer, garbage collection, electrical, telephone and other necessary utility service for the Common Areas and Facilities;
2. Water, sewer, electrical, telephone and other necessary utility costs for Units and Limited Common Areas and Facilities which are not separately metered or charged, the cost thereof so far as practicable to be specially assessed to the Owners of the Units affected thereby;

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3. A policy or policies of fire insurance, with extended coverage endorsements, for the full insurable replacement value of the Units and Common Areas and Facilities, or such other fire and casualty insurance as the Management Committee shall determine gives substantially equal or greater protection to the Unit Owners and their Mortgagees. The limits and coverage of such policies shall be reviewed at least annually by the Management Committee and increased in its discretion. Insurance proceeds shall be payable and applicable as provided in Sections 7 and 21 of the Declaration;

4. A policy or policies of public liability insurance insuring the Management Committee, the Association of Unit Owners and the individual Unit Owners against any liability to any person or persons incident to the ownership and/or use of the Property. Such policy or policies shall be consistent with the provisions of Section 21 of the Declaration. Limits of liability under such insurance shall not be less than \$1,000,000 for any one or more persons injured in any one accident, and shall not be less than \$100,000 for property damage for each occurrence (such limits and coverage to be reviewed at least annually by the Management Committee and increased at its discretion). Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of any named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured;

5. Workmen's Compensation Insurance to the extent necessary to comply with any applicable laws;

6. The services of a Manager to manage its affairs as provided in Article IX hereof, to the extent deemed advisable by the Management Committee, as well as such other personnel as the Management Committee shall determine shall be necessary or proper for the operation of the Common Areas and Facilities, whether such personnel are employed directly by the Management Committee or are furnished by the Manager;

7. Legal and accounting services necessary or proper in the operation of the Common Areas and Facilities or the enforcement of the Declaration;

8. A fidelity bond naming the Manager and such other persons as may be designated by the Management Committee as principals and the Unit Owners as obligees in an amount to be determined by the Management Committee;

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9. Painting, maintenance, repair and all landscaping of the Common Areas and Facilities, and such furnishings and equipment for the Common Areas and Facilities as the Management Committee shall determine are necessary and proper, and the Management Committee shall have the exclusive right and duty to acquire the same for the Common Areas and Facilities; provided, however, that the interior surfaces of each Unit shall be painted, maintained and repaired by the Unit Owner thereof, all such maintenance to be at the sole cost and expense of that particular Unit Owner;

10. Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Management Committee is required to secure or pay for pursuant to the terms of the Declaration or Bylaws or which in its opinion shall be necessary or proper for the operation of the Common Areas and Facilities or for the enforcement of the Declaration, provided that if any such materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are provided for particular Units, the cost thereof shall be specially assessed to the owners of such Units;

11. Maintenance and repair of any Unit, if such maintenance or repair is reasonably necessary in the discretion of the Management Committee to protect the Common Areas and Facilities or preserve the appearance and/or value of the Property, and the Unit Owner of said Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity therefor delivered by the Management Committee to said Unit Owner, provided that the Management Committee shall levy a special assessment against the Condominium of such Unit Owner for the cost of said maintenance or repair;

12. The Management Committee shall have the exclusive right to contract for all goods, services and insurance, payment for which is to be made from the Common Expense Fund. This provision shall not be construed to prohibit the Management Committee from delegating such authority to the Manager as it deems proper.

F. Additional Powers of the Management Committee

The Management Committee shall have the right to acquire, operate, lease, manage and otherwise trade and deal with property real and personal, including Condominiums, as may be necessary or convenient in the operation and management of the Property, and in accomplishing the purposes set forth in the Declaration.

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G. Regular Meetings of the Management Committee

Two members of the Management Committee shall constitute a quorum and, if a quorum is present, the decision of a majority of those present shall be the act of the Management Committee. The Management Committee shall annually elect all of the officers of the Association of Unit Owners as set forth in Article IV of these Bylaws. The officers shall be elected at a meeting of the Management Committee to be called immediately following the annual meeting of the Association of Unit Owners.

H. Special Meetings of the Management Committee

Special meetings of the Management Committee may be called by or at the request of the President or by any two Management Committee members.

I. Notice of Meetings

Regular meetings of the Management Committee may be held without notice. The person or persons calling a special meeting of the Management Committee shall, at least ten days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called; if an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

J. Waiver of Notice

Any member of the Management Committee may, at any time, waive notice of any meeting of the Management Committee in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at a meeting shall constitute a waiver of notice of such meeting except where a member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the members of the Management Committee are present at any meeting thereof, no notice shall be required and any business may be transacted at such meeting.

K. Declarant's Option to Appoint

Until a date three years from the recording of the Declaration, the members of the Management Committee shall at Declarant's option be appointed by Declarant. Declarant shall have the option at any time after the date of the recording of the Declaration to turn over to the Association of Unit Owners the responsibility of electing all of the members of the Management Committee.

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L. Notice of Election

After the first election of the Management Committee, Declarant shall execute, acknowledge and record an affidavit stating the names of all of the members of the Management Committee. Thereafter, any two persons who are designated of record as being members of the most recent Management Committee (regardless of whether or not they shall still be members) may execute, acknowledge and record an affidavit stating the names of all of the members of the then current Management Committee; provided, that, in the event of the disability or other incapacity of two such persons, Manager shall be empowered to execute the aforesaid affidavit. The most recently recorded of such affidavits shall be prima facie evidence that the persons named therein are all of the incumbent members of the Management Committee and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

M. Fiscal Year

The fiscal year shall be as determined by the Management Committee.

III. Meetings of the Association of Unit Owners.

The presence in person or by proxy at any meeting of the Association of Unit Owners of Unit Owners holding 25 percent of the total voting power, in response to notice to all Unit Owners of record properly given in accordance with Section 11 of the Declaration, shall constitute a quorum. In the event that the total number of Unit Owners present do not hold at least 25 percent of the total voting power, the meeting shall be adjourned for 24 hours, at which time it shall reconvene and any number of Unit Owners present at such subsequent meeting shall constitute a quorum. Unless otherwise expressly provided in the Declaration, any action may be taken at any meeting of the Association of Unit Owners upon the affirmative vote of a majority of the voting power of the Unit Owners present and voting provided that a quorum is present as provided for above.

A. Annual Meeting

There shall be a meeting of the Association of Unit Owners on the last Saturday of January of each year at 2:00 p.m. at Prospector Square or at such other reasonable place or time (not more than 60 days before or after such date) as may be designated by written notice of the Management Committee delivered to the Unit Owners not less than 60 days prior to the date fixed for said meeting. At or prior to such meeting, the Management Committee

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shall furnish to the Unit Owners a budget for the current fiscal year that shall itemize the estimated Common Expenses of the fiscal year with the estimated allocation thereof to each Unit Owner, and a statement of the Common Expenses, itemizing receipts and disbursements, for the preceding fiscal year, together with the allocation thereof to each Unit Owner.

B. Special Meetings

Special meetings of the Association of Unit Owners may be called at any time for the purpose of considering matters which, by the terms of the Declaration, require the approval of all or some of the Unit Owners, or for any other reasonable purpose. Said meetings shall be called by written notice, signed by a majority of the Management Committee or by the Unit Owners holding 1/3 of the total voting power and delivered not less than 30 days prior to the date fixed for said meeting. Said notices shall specify the date, time and place of the meeting, and the matters to be considered thereat.

C. Parliamentary Rules

Robert's Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the Declaration or these Bylaws.

IV. Officers of the Association.

The officers of the Association of Unit Owners shall be a President, Vice President, Secretary, and Treasurer. The offices of Secretary and Treasurer may, by direction of the Management Committee, be combined as one office. Any officer must be a Unit Owner. The President must be a member of the Management Committee. No officer shall receive compensation for serving as such. Officers shall be annually elected by, and may be removed and replaced by, the Management Committee. The Management Committee may in its discretion require that officers be subject to fidelity bond coverage.

A. President

The President shall preside at all meetings of the Association of Unit Owners and of the Management Committee and may exercise the powers of a presiding officer of an association including the appointment of committees.

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B. Vice President

The Vice President shall perform the functions of the President in the absence or inability of the President.

C. Secretary

The Secretary shall keep minutes of all proceedings of the Management Committee and of the meetings of the Association of Unit Owners and shall keep such books and records as may be necessary and appropriate for the records of the Association and its Management Committee.

D. Treasurer

The Treasurer shall be responsible for the fiscal affairs of the Association, but may delegate the daily handling of income and expense payments to the authorized Manager employed by the Association.

V. Maintenance, Repair and Replacement of Common Areas and Facilities.

It shall be the responsibility of the Management Committee to determine questions relating to the maintenance, repair and replacement of all Common Areas and Facilities. There shall be no structural alterations, capital additions to, or capital improvements of the Common Areas and Facilities requiring an expenditure in excess of \$10,000.00 without 30 days prior notice to all Unit Owners. Unless within the aforementioned 30 day period Unit Owners holding the majority of the total voting power of the Association of Unit Owners shall give notice of disapproval of such structural alterations, capital additions to, or capital improvements of the Common Areas and Facilities, the Unit Owners shall be deemed to have approved the same. Notwithstanding the foregoing, the Manager shall have the power to make any such structural alterations of, capital additions to, or capital improvements of the Common Areas and Facilities as are necessary in the Manager's reasonable judgment to restore, preserve or maintain the integrity of the Common Areas and Facilities without giving the Unit Owners notice and an opportunity to disapprove such action.

VI. Common Expenses.

A. Assessments

1. Within 30 days prior to the annual meeting, the Management Committee shall estimate the net charges to be

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paid during the current fiscal year, including a reasonable provision for contingencies and replacements and less any expected income and any surplus from the prior fiscal year's operation, together with the estimated utility costs for Units and Limited Common Areas and Facilities which are not separately metered or charged. Said "Estimated Cash Requirement" shall be approved at the annual meeting and assessed monthly to the Unit Owners pursuant to the Declaration and Appendix A thereof. Declarant will be liable for the amount of any assessment against Units owned by Declarant. If said estimated sum proves inadequate for any reason, including nonpayment of any Unit Owner's assessment, the Management Committee may at any time levy a further assessment, which shall be assessed to the Unit Owners in like proportion unless otherwise provided herein. Each Unit Owner shall be obligated to pay assessments made pursuant to this paragraph to the Management Committee on or before the first day of each month, or in such other reasonable manner as the Management Committee shall designate.

2. The monthly payments made by Unit Owners shall be kept in separate accounts as the Management Committee may deem proper, including accounts for general working capital, for the general operating reserve, and for a reserve fund for replacements and major maintenance.

3. The rights, duties and functions of the Management Committee set forth in this Article shall be exercised by Declarant for the period ending 30 days after the election of the first Management Committee hereunder.

4. All funds collected hereunder shall be expended for the purposes designated in the Declaration or Bylaws.

5. The omission by the Management Committee before the expiration of any fiscal year to fix the Estimated Cash Requirement hereunder for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of the Declaration or a release of the Unit Owner from the obligation to pay the assessments or any installment thereof for that or any subsequent year, but the Estimated Cash Requirement fixed for the preceding year shall continue until a new requirement is fixed. Amendments to this Article VI shall be effective only upon unanimous written consent of the Unit Owners and their Mortgagees. No Unit Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Areas and Facilities or by abandonment of his Unit.

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6. The Manager or Management Committee shall keep detailed, accurate records of the receipts and expenditures affecting the Common Areas and Facilities specifying and itemizing the maintenance and repair expenses of the Common Areas and Facilities and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by any Unit Owner at convenient hours of week days.

7. Anything contained herein to the contrary notwithstanding, the Management Committee shall at all times treat all funds of the Association of Unit Owners so as to avoid adverse income tax consequences, including, but not limited to applying surplus funds toward expenses so that no common profits accrue to the Association and maintaining any reserves of the Association in a manner that will not result in these sums being treated as taxable income to the Association.

B. Default in Payment of Assessments

Each assessment (including all monthly installments under Article VI.A.1) and each special assessment shall be separate, distinct and personal debts and obligations of the Unit Owner against whom the same are assessed at the time the assessments are made and shall be collectible as such. The Management Committee shall have the right to impose a reasonable late charge for nonpayment of Common Expense payments within 15 days of the date such payments became due. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment, whether regular or special, assessed to the Unit Owner of any Condominium plus interest at the highest legal rate permitted by Utah law and costs, including reasonable attorneys' fees, shall become a lien upon such Condominium upon recordation of a notice of assessment by the Management Committee. The said lien for nonpayment of Common Expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

1. Tax and special assessment liens on the Condominium in favor of any taxing authority, and

2. All sums unpaid on a first Mortgage of record on the Condominium.

A certificate executed and acknowledged by a majority of the Management Committee stating the indebtedness secured by the lien provided for under this Section B upon any Condominium shall be

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conclusive upon the Management Committee and the Unit Owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Unit Owner or any encumbrancer or prospective encumbrancer of a Condominium upon request at a reasonable fee. Unless the request for a certificate of indebtedness shall be complied with within ten days, all unpaid Common Expenses which became due prior to the date of the making of such request shall be subordinate to the lien held by the person making the request. Any encumbrancer holding a lien on a Condominium may pay any unpaid Common Expenses payable with respect to such Condominium and upon such payment such encumbrancer shall have a lien on such Condominium for the amounts paid of the same rank as the lien of his encumbrance.

Upon payment or other satisfaction of a delinquent assessment concerning which such a certificate has been so recorded, the Management Committee shall cause to be recorded in the same manner as the certificate of indebtedness a further certificate stating the satisfaction and the release of the lien thereof. Such lien for nonpayment of assessment may be enforced by sale by the Management Committee or by a bank or trust company, attorney, or title insurance company authorized by the Management Committee, such sale to be conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law. In any foreclosure or sale, the Unit Owner shall be required to pay the costs and expenses of such proceedings and reasonable attorney's fees.

In case of foreclosure, the Unit Owner shall be required to pay a reasonable rental for the Condominium and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Management Committee or the Manager acting on its behalf shall have the power to buy in the Condominium at foreclosure or other sale and to hold, lease, mortgage and convey the Condominium.

#### VII. Abatement and Enjoyment of Violations by Unit Owners.

The violation of any Rules or Regulations adopted by the Management Committee or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the Management Committee the right, in addition to any other rights set forth in these Bylaws:

A. to enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at

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the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Management Committee shall not thereby be deemed guilty in any manner of trespass; or

B. to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

VIII. Rental or Lease of Units by Unit Owners.

Any Unit Owner who rents or leases his Unit shall file with the Management Committee or Manager a copy of the rental or lease agreement affecting said Unit. The provisions of Article VII shall apply with equal force to renters or lessees of Units.

Any Unit Owner who rents or leases his Unit shall be responsible for the conduct of his tenants, and upon written notice from the Management Committee or the Manager said Unit Owner shall be responsible for correcting violations of the Declaration, Bylaws, or Rules and Regulations of Prospector Square committed by such tenants.

If a Unit Owner fails to correct violations by tenants within 72 hours of such notice, the Management Committee or Manager shall be deemed to be the agent of the Unit Owner and empowered to take any enforcement action the Unit Owner would be entitled to take, the cost of such action to be assessed to the Unit Owner and payable within 30 days of assessment. Such costs shall be collected and enforced in the same manner as common assessments under Article VI. B. of these Bylaws.

The power of the Management Committee or Manager hereunder shall include but not be limited to any and all legal remedies available under the laws of the State of Utah. Any Unit Owner by the act of renting or leasing his Unit shall be deemed to have consented to these procedures and shall indemnify and save harmless the Management Committee and the Manager from and against any and all liability therefor. It is expressly understood that the remedies available to the Management Committee or Manager shall include but not be limited to the right to seek eviction of the tenant without any liability to the Unit Owner.

IX. Manager.

Declarant or any successor Management Committee may delegate any of its duties, powers or functions (including but not limited to the authority to give the certificate provided for in Article VI.B hereof and the authority to give the subordination agreements

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provided for in Section 12 of the Declaration) for such period of time and pursuant to such terms and conditions as either deems advisable to any person or firm designated to act as Manager of the project. Any such delegation which extends beyond the term of office of the delegator shall be binding upon the successor Management Committee. Neither Declarant nor the members of the Management Committee shall be liable for any omission or improper exercise by the Manager of any of such duties, powers or functions so delegated by written instrument executed by Declarant or a majority of the Management Committee as the case may be.

X. Special Committees.

The Management Committee by resolution may designate one or more special committees, each committee to consist of two or more Unit Owners, which, to the extent provided in said resolution, shall have and may exercise the powers set forth in said resolution. Such Special Committee or Committees shall have such name or names as may be determined from time to time by the Management Committee. Such Special Committees shall keep regular minutes of their proceedings and report the same to the Management Committee when required. The members of such Special Committee or Committees designated shall be appointed by the Management Committee. The Management Committee may appoint Unit Owners to fill vacancies on any of said Special Committees occasioned by death, resignation, removal or inability to act for any extended period of time.

XI. Rules and Regulations.

The Management Committee shall have the right to adopt and amend such Rules and Regulations as may be authorized by the Condominium Act and Declaration for the purpose of governing the details of the operation and use of the Common Areas and Facilities and setting forth restrictions on, and requirements respecting the use and maintenance of Units and Common Areas and Facilities. Copies of the Rules and Regulations shall be furnished to each Unit Owner prior to the time the same shall become effective.

XII. Audit.

Any Unit Owner may at any reasonable time at his own expense cause an audit or inspection to be made of the books of account of the Manager or Management Committee pertaining to the Property. The Management Committee, as a Common Expense, shall obtain an annual certified audit of the books of account pertaining to the Property and furnish copies thereof to the Unit Owners.

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XIII. Terms.

The terms used herein shall have the same meanings as provided in the Declaration and the Condominium Act.

XIV. Amendment of Bylaws.

These Bylaws may be amended by an instrument in writing signed and acknowledged by the record Unit Owners holding 75% of the total voting power which amendment shall be effective upon recordation with the Recorder of Summit County, Utah; provided, however, that any amendment which would prohibit the rental or lease of Condominiums by Unit Owners shall require the approval of all record Unit Owners.

XV. Interpretation.

The provisions of these Bylaws shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium property. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

XVI. Severability.

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

XVII. Captions.

The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these Bylaws nor the intent of any provision hereof.

XVIII. Effective Date.

These Bylaws shall take effect upon recording of the Declaration of which they are a part.

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