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James W. Kennicott  
Post Office Box 2339  
Park City, Utah 84060

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*Jim Kennicott*

AMENDED DECLARATION OF CONDOMINIUM  
FOR  
NEW CLAIM CONDOMINIUMS

*This document re-recorded to  
incorporate the Affidavit of  
Secretary previously recorded  
as a separate document.*

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**THIS AMENDMENT TO THE DECLARATION OF CONDOMINIUM AND THE BY-LAWS OF THE New Claim CONDOMINIUMS, made this 22nd day of June, 1991, by Unit Owners holding more than seventy-five percent (75%) of the undivided ownership interest in the Common Areas and Facilities of the New Claim Condominiums.**

**WITNESSETH:**

**WHEREAS, the Unit Owners hold more than seventy-five percent (75%) of the voting rights located on the real property described as:**

**New Claim Condominiums, a Utah condominium project, according to the Record of Survey Map and the Declaration of Condominium as amended on file and of record in the office of the Summit County Recorder.**

**and desire to provide for the preservation and enhancement of the property values, amenities and opportunities in said condominium project and for the maintenance of the Property and the improvements thereon, and to this end desire to subject the real property described above to this Amended Declaration and By-Laws, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;**

**NOW THEREFORE, the Unit Owners declare that the real property described above is and shall be held, transferred, sold, conveyed and occupied subject to the Amended Declaration and By-Laws, hereinafter set forth and hereby repeal the original Declaration of Condominium and By-Laws as filed with the office of the Summit County Recorder on December 16, 1983 as Entry No. 214249 in Book 282 at Pages 100 through 152 inclusive and replace such Declaration and By-Laws with the following Amended Declaration and By-Laws for the New Claim Condominiums, a Utah condominium project.**

**THIS AMENDED DECLARATION, containing covenants, conditions and restrictions relating to the New Claim Condominiums, a Utah condominium project, (hereinafter "New Claim Condominiums"), is made on the date set forth in the attached Certificate of the Secretary by the owners of more than sixty-six and two thirds percent (66.67%) (hereinafter "Owners") of the ownership interests in the common areas and facilities of the New Claim Condominiums, for themselves, their successors, grantees, heirs and assigns, pursuant to the Utah Condominium Ownership Act.**

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## RECITALS

### I

The New Claim Condominiums are located on real property in Summit County more particularly described in Exhibit "A" to this Amended Declaration which is attached hereto and made a part hereof by this reference.

### II

By filing this Amended Declaration and the previously filed Record of Survey Map, Owners desire to submit the real property described in Exhibit "A" and the said buildings and other improvements to be constructed thereon to the provisions of the Utah Condominium Ownership Act as a project known as the New Claim Condominiums.

### III

Owners desire that units in the New Claim Condominiums be sold, transferred, and exchanged, together with undivided interests in the Common Areas and Facilities of the project, subject to the covenants, limitations, conditions, and restrictions contained herein.

## DECLARATION

NOW, THEREFORE, for such purposes, Owners hereby make the following Declaration containing covenants, conditions, limitations and restrictions relating to the project which, pursuant to the provisions of the Utah Condominium Ownership Act, shall be enforceable equitable servitudes and shall run with the land.

1. Name. The name of the project shall be New Claim Condominiums, a Utah condominium project.

2. Definitions. The terms used herein shall have the meanings stated in the Utah Condominium Ownership Act and as given in this Section two unless the context requires otherwise.

a. The words "The Act" shall mean and refer to the Utah Condominium Ownership Act §§ 57-8-1 et seq., Utah Code, as amended.

b. The words "Association of Unit Owners" or "Association" shall mean and refer to the New Claim Condominium Homeowners' Association, Inc., a Utah Non-profit corporation, of which all of the Unit Owners are members. A copy of the Articles of Incorporation are attached hereto as Exhibit "B" and made a part hereof by this reference.

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c. The words "Common Areas and Facilities" shall mean and refer to:

- (1) The land described in Exhibit "A" hereto;
- (2) That portion of the Property not specifically included in the respective Units as herein defined;
- (3) All foundations, columns, girders, beam supports, main walls, hallways, common entryways, roofs, stairways, exterior walkways, streets, such recreational areas and facilities as may be provided, yards, fences, service and parking areas and entrances and exits, and in general all other apparatus, installations and other parts of the Property necessary or convenient to the existence, maintenance and safety of the Common Areas and Facilities or normally in common use;
- (4) Those areas specifically set forth and designated in the Survey Map as "Common ownership" or "Limited Common Area"; and
- (6) All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein.

d. The words "Common Expenses" shall mean and refer to all expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities, except as expressly limited; to all things, items and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Declaration, the By-Laws, such rules and regulations pertaining to the Project as the Association or the Management Committee may from time to time adopt, and such other determinations and agreements lawfully made and/or entered into by the Management Committee.

e. The word "Condominium" shall mean and refer to the ownership of a single unit in the Project, together with an undivided interest in the Common Areas and Facilities of the Project.

f. The words "Condominium Project" or "Project" shall mean and refer to the entire property, as defined below, together with all rights, obligations and organizations established by this Declaration and the By-Laws.

g. The word "Declaration" shall mean and refer to this instrument.

h. The words "Limited Common Areas and Facilities" or "Limited Common Areas" shall mean and refer to those Common Areas and Facilities designated herein or on the Survey Map as reserved for the use of a certain Unit to the exclusion of the other Units including certain parking stalls and decks which lead to and/or are associated with certain Units.

(i) The words "Management Committee" shall mean and refer to the committee

as provided in this Declaration and the By-Laws hereto attached as Exhibit "C" and made a part hereof by this reference. Said committee is charged with and shall have the responsibility and authority to make and enforce all of the reasonable rules and regulations covering the operation and maintenance of the Project.

(j) The word "Manager" shall mean and refer to the person, persons or corporation selected by the Management Committee to manage the affairs of the Project.

(k) The words "Survey Map" or "Map" shall mean and refer to the Record of Survey Maps of the phases of New Claim Condominiums recorded in the office of the Summit County Recorder.

(l) The word "Mortgage" shall mean and refer to both a first mortgage on any Unit and a first deed of trust on any Unit.

(m) The word "Mortgagee" shall mean and refer to both the mortgagee under a first mortgage and the beneficiary under a first deed of trust.

(n) The word "Property" shall mean and refer to the land, the buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

(o) The word "Unit" shall mean and refer to one of the Condominium Units designated as a Unit on the Survey Map. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning apparatus, fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows, window screens and window frames, interior and exterior, doors and door frames and trim, interior or exterior, consisting of, among other things, and as appropriate, wallpaper, paint, and floor coverings. All pipes, wires, conduits, cables, or other public utility lines or installations constituting a part of the Unit and serving only the Unit shall be considered part of the Unit.

(p) The words "Unit Number" shall mean and refer to the number, letter or combination thereof designating the Unit in this Declaration or the Survey Map.

(q) The words "Unit Owner" or "Owner" shall mean and refer to the person or persons owning a Unit of the New Claim Condominiums in fee simple and an undivided interest in the Common Areas and Facilities as shown in the records of the Summit County Recorder. Notwithstanding any theory related to a mortgage, deed of trust, or similar instrument, the term Unit Owner or Owner shall not mean or include any mortgagee or any beneficiary under a deed of trust unless and until such party has acquired fee simple title pursuant to a foreclosure or any arrangement or proceeding in lieu thereof.

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(r) All definitions set forth in the Act, to the extent applicable to and not inconsistent with the definitions set forth herein, are hereby incorporated herein by reference and made a part hereof as if expressly set forth herein.

3. Submission to Condominium Ownership. The Unit Owners hereby submit the Property, tract of land, buildings and other improvements constructed thereon or hereafter to be constructed, together with all appurtenances thereto, to the provisions of the Act as a Condominium Project and this Declaration is submitted in accordance with the terms and the provisions of the Act and shall be construed in accordance therewith. It is the intention of the Unit Owners that the provisions of the Act shall apply to the Property.

4. Covenants to Run with the Land. This Declaration, contains conditions, covenants and restrictions relating to the Project which shall be enforceable equitable servitudes which shall run with the land and this Declaration and its servitudes shall be binding upon the Unit Owners, their grantees, mortgagees, successors, heirs, executors, administrators, devisees and assigns.

5. Description of the Property.

a. Description of Land. The land is that parcel located in Summit County, State of Utah described in Exhibit "A" hereto.

b. Description of Improvements. The significant improvements contained or to be contained in the Project include those buildings described in the Survey Map.

c. Description and Legal Status of Units. The Survey Map shows the unit number for each Unit, its location, the Limited Common Areas and Facilities reserved for its use, and the Common Areas and Facilities to which it has immediate access. All Units of whatever type, shall be capable of being independently owned, encumbered and conveyed. The boundary lines of each Unit are the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, all window screens, interior and exterior surfaces of doors, window panes, window frames, door frames and trim. Each Unit shall include both the portions of the building that are not 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 interior walls, floors and ceilings, non-supporting interior walls and all utility pipes, lines, systems, fixtures or appliances found within the boundary lines of the Unit and servicing only that Unit.

d. Common Areas and Facilities. Except as otherwise provided in this Declaration, the Common Areas and Facilities shall consist of the areas and facilities described in the definitions and constitute in general all of the parts of the Property except the Units. Without limiting the generality of the foregoing, the Common Areas and Facilities shall include, by way of illustration and not by way of limitation, the following, whether located within the bounds of a Unit or not:

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(1) All structural parts of the buildings, including, without limitation, foundations, columns, joists, beams, supports, supporting walls, floors, ceilings and roofs;

(2) Parking areas, landscaping elements, driveways, walkways and recreational areas;

(3) Any utility pipe, line or system servicing more than a single Unit, and all ducts, wires, cables, conduits and other accessories used therewith;

(4) All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities on the Survey Map.

6. Alterations. No alteration or modification of the Common Areas and Facilities or any Limited Common Area shall be constructed or allowed to remain on the Project unless such alteration is approved in advance of construction by a vote of not less than seventy-five percent of the undivided ownership interest in the Common Areas and Facilities owned by Unit Owners in good standing.

7. Statements of Purpose and Restrictions on Use.

a. The purposes of the Project are to provide residential housing for Unit Owners and to tenants and guests, all in accordance with the provisions of the Act.

b. Restrictions on Use. The Units and Common Areas and Facilities and Limited Common Areas shall be used and occupied as hereinafter set forth:

(1) Each of the Units shall be occupied by the Unit Owner, the Unit Owner's family, servants, guests or tenants as a private residence and for no other purpose. Parking spaces shall be used by the Unit Owners, their families, servants, guests or tenants for the parking of motor vehicles or storage of such other items as the Management Committee may approve and for no other purpose. No driveway or parking area shall be used for the parking of any trailer, mobile home, boat, snowmobile, motorhome or camper which has been detached from a vehicle. The Common Areas and Facilities shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Units.

(2) Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rate of insurance on the buildings or the contents thereof beyond that customarily applicable for condominium residential use, or will result in the cancellation of insurance on the buildings or contents thereof, without the prior written consent of the Management Committee. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Areas and Facilities which is in violation of any law, ordinance or regulation of any governmental authority.

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(3) No Unit Owner shall permit or cause anything, including, without limitation, a sign, awning, air conditioner, canopy, shutter, radio or television antenna or satellite dish, to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Management Committee.

(4) No noxious or offensive activity shall be carried on in any Unit or in the Common Areas and Facilities, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to another Unit Owner or occupant of a Unit.

(5) Nothing shall be done in any Unit or in, on or to the Common Areas and Facilities which will impair the structural integrity of the buildings or any part thereof, or which would structurally change the buildings or any part thereof or which would alter the uniform appearance of any building, except as is otherwise provided herein.

(6) No animals, rabbits, rodents, livestock, fowl or poultry of any kind shall be raised, bred, or kept in any unit or in the common areas or limited common areas.

(7) The Common Areas and Facilities shall be kept free and clear of all rubbish, debris and other unsightly materials.

(8) No admission fees, charges for use, leases or other income generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas and Facilities or any Limited Common Area, except for lease of portions of the Common Area by the Management Committee for the benefit of the Association the monetary benefits of which shall be used to offset operating and maintenance costs for the Project.

8. Person to Receive Service of Process. The person to receive service of process as required in the Act is James W. Kennicott, 1647 Shortline Road, Post Office Box 2339, Park City, Utah 84060. The person to receive process may be changed by the Management Committee by recordation of an appropriate instrument.

9. Ownership and Use.

a. Ownership of a Unit. Except with respect to any of the Common Areas and Facilities located within the bounds of a Unit, each Unit Owner shall be entitled to exclusive ownership and possession of the Unit Owner's Unit and to the ownership of the undivided interest in the Common Areas and Facilities in the percentage expressed in Exhibit "B".

b. Nature of Restrictions on Ownership and Use. Each Unit Owner shall have and enjoy the benefits, rights and privileges of fee simple ownership of that Unit Owner's Unit. There shall be no requirements concerning who may own a Unit, it being intended that a Unit may be owned as any other property rights by persons, corporations, partnerships or trusts and

in the form of joint tenancy or tenancy in common. The Unit Owners may rent or lease their Units with their appurtenant rights subject to terms and conditions determined solely by the Unit Owner and the Unit Owner's lessee or tenant, except that all Unit Owners, tenants and other occupants and users of the Project shall be subject to the terms of the Act, this Declaration, the By-Laws and any rules and regulations adopted by the Management Committee.

c. Prohibition against Subdivision of a Unit. No Unit Owner by deed, plat or otherwise shall subdivide or in any manner cause the ownership of his Unit to be separated into physical or temporal tracts or parcels smaller than the whole Unit as shown on the Survey Map and no Limited Common Area which is incident to any Unit shall be sold or otherwise conveyed separately from such Unit.

d. Ownership of Common Areas and Facilities. The Common Areas and Facilities are described and identified in Section 5 (d) of this Declaration. Said Common Areas and Facilities shall be owned by the Unit Owners as tenants in common. No percentage of undivided ownership interest in the Common Areas and Facilities shall be separated from the Unit to which it relates; and even though not specifically mentioned in the instrument of transfer, such percentage of undivided ownership interest shall automatically accompany the transfer of the Unit to which it relates.

e. Use of Common Areas and Facilities. Except with respect to Limited Common Areas, each Unit Owner in good standing as defined in Article 11 below, may use the Common Areas and Facilities in accordance with the purposes for which they are intended, but subject to the Act, this Declaration, the By-Laws and the rules and regulations established by the Management Committee. The Common Areas and Facilities shall be used only in a manner which is consistent with their community nature and with the use restrictions applicable to the Units in the Project.

f. Computation of Undivided Interest. The percentage of undivided ownership interest in the Common Areas and Facilities which is appurtenant to each Unit has been computed by determining the ratio between the square footage of the Unit and the aggregate square footage of all Units in the Project. Substantially identical Units have been assigned the same percentage ownership interest and the total of all undivided ownership interests equals 100%. A Unit Owner's percentage of ownership interest in the Common Areas and Facilities shall be the same for all purposes, including voting and assessment of common expenses.

10. Use of the Limited Common Areas and Facilities. A Unit Owner's exclusive right of occupancy and use of the Limited Common Areas and Facilities reserved for the Unit Owner's Unit shall be subject to and in accordance with the Act, this Declaration, the By-Laws and the rules and regulations. Any Limited Common Area shall be leased only to persons who reside in the Project or used by the family, servants, or guests thereof on a temporary basis. No alteration or modification of any Limited Common Area shall be constructed or allowed to remain on the Project unless such alteration is approved in advance of construction by a vote of not less than seventy-five percent of the undivided ownership interest in the Common Areas and

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Facilities owned by Unit Owners in good standing.

11. Voting - Owners in Good Standing - Multiple Ownership.

a. The vote attributable to and exercisable in connection with a Unit may be exercised only if all assessments due in connection with such Unit have been paid in full not less than ten (10) business days prior to the time such vote is taken. A Unit on which all assessments then due have been paid in full not less than ten (10) business days prior to the time a vote is taken, shall be deemed to be a Unit "in good standing" and entitled to vote.

b. For purposes of determining whether a quorum exists, only those Units which are in good standing in conformity with (a) above shall be counted.

c. For purposes of determining whether a certain percentage of the ownership interests have voted for (or against) a resolution, that percentage shall be determined by dividing the percentage of ownership interest voting for (or against) by the total percentage of the ownership interests in the Common Areas and Facilities of the Units in good standing in conformity with (a) above.

d. The By-Laws of the Association shall provide that the Secretary shall enclose a list of Units in good standing and a list of Units not in good standing with any Notice of Meeting and that the Secretary shall prepare a list of Units in good standing and a list of Units not in good standing just prior to the time set for such meeting and make such lists available for inspection by the other officers and Owners at such meeting.

e. No portion of this Article 11 shall be construed to prevent a Unit from casting its vote subject to a verification of its status as a Unit in good standing. Such a vote shall be noted in the minutes and the Unit Owner shall be required to present to the Secretary proof of good standing for review by the Management Committee. In the event that it is determined by a review of the Association records that such Unit was in good standing as of the time such vote was taken, the vote shall be counted. Until such a determination of good standing has been made by the Management Committee, such vote shall not be counted. In the event that it is determined by a review of the Association records that such Unit was not in good standing as of the time such vote was taken, the vote shall not be counted.

f. The vote attributable to and exercisable in connection with a Unit shall be the percentage of undivided ownership interest in the Common Areas and Facilities which is appurtenant to such Unit. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any meeting by any of such Owners shall be conclusively presumed to be the vote attributable to the Unit unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum is present.

**12. Management.**

**a. Management Committee.** The business, property and affairs of the Property shall be managed, operated and maintained by the Management Committee of the Association as agent for the Unit Owners. The Management Committee shall have, and is hereby granted, the following authority and powers:

(1) The authority, without the vote or consent of the Unit Owners or of any other person, to grant or create, on such terms as it deems advisable, utility and similar easements, over, under, across and through the Common Areas and Facilities; provided that work performed pursuant to such easements must be done in a workmanlike manner and any damage to any Unit must be repaired and the Unit restored to its condition prior to such damage;

(2) The authority to execute and record, on behalf of all Unit Owners, any amendment to this Declaration or the By-Laws or the Survey Map, which has been approved by the necessary vote or consent to authorize such amendment;

(3) The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessary under the circumstances has been previously obtained;

(4) The power and authority to convey or transfer any interest in real property, so long as any vote or consent necessary under the circumstances has been previously obtained;

(5) The power and authority to purchase or otherwise acquire and accept title to, any interest in real property, so long as any vote or consent necessary under the circumstances has been previously obtained;

(6) The power and authority to add any interest in real property obtained pursuant to paragraph (5) above to the Project, so long as any vote or consent necessary under the circumstances has been previously obtained;

(7) The authority to promulgate such reasonable rules and regulations as may be necessary or desirable to aid the Management Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners; and

(8) The power and authority to perform any other acts and to enter into any transaction which may be reasonably necessary for the Management Committee to perform its functions as agent for the Unit Owners, including, but not limited to, the power to bring suit or respond to a suit.

**b. Composition of the Management Committee.** The Management Committee

shall be comprised of three (3) Unit Owners who shall serve staggered three (3) year terms.

c. Responsibility. The Management Committee shall be responsible for the control, operation and management of the Project in accordance with the Act, this Declaration, the By-Laws and the rules and regulations and any agreements or arrangements lawfully made or entered into by the Management Committee.

d. Additional Facilities. The Management Committee shall, subject to any necessary approval, have the authority to provide such facilities, in addition to those for which provision has already been made, as it may deem to be in the best interests of the Unit Owners and to effect the necessary amendment of documents and the Survey Map in connection therewith.

e. Name. The Management Committee shall be known as the New Claim Condominium Management Committee.

f. Manager. The Management Committee may carry out any of its functions which are properly the subject of delegation through a Project Manager. Any Manager so engaged is to be an independent contractor and not an agent or employee of the Management Committee, shall be responsible for managing the Project for the benefit of the Management Committee and the Unit Owners, and shall to the extent permitted by law and the terms of the agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself. Any agreement for professional management which may be entered into by the Management Committee or the Association shall call for a term not exceeding one (1) year, renewable by agreement of the parties for successive one (1) year periods, and shall provide that for cause such management agreement may be terminated by the Management Committee or the Association upon not more than thirty (30) days written notice without payment of any termination fee and shall further provide that such agreement may be terminated by either party without cause upon ninety (90) days written notice without payment of any termination fee.

### 13. Easements.

a. Each Unit shall be subject to such easements as may be necessary for the installation, maintenance, repair or replacement of any Common Areas and Facilities located within the boundaries of such Unit.

b. In the event, by reason of the construction, reconstruction, repair, settlement, movement or shifting of any building, or any error in survey, any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon any part of any Unit or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Areas and Facilities or upon any other Unit, valid easements for such encroachment and the maintenance of such encroachment shall exist for the benefit of such Unit or the Common Areas and Facilities, as the case may be, for so long as all or any part of the building containing any such

Unit shall remain standing; provided, however, that in no event shall a valid easement or any encroachment be created in favor of any Unit Owner or in favor of the Unit Owners as owners of the Common Areas and Facilities, if such encroachment occurred due to the willful conduct of such Unit Owner or Unit Owners.

14. Change in Ownership. The Management Committee shall maintain up-to-date records showing the name and address of each person who is a Unit Owner and the Unit owned by such Unit Owner. In the event of any transfer of any fee or undivided fee interest in a Unit, either the transferor or the transferee shall furnish the Management Committee with evidence establishing that the transfer has occurred and that the Deed or other instrument of transfer is of record in the office of the Summit County Recorder. Upon such transfer the transferee shall be responsible for payment of a fee to defray the Association's costs of processing the new account in an amount to be established by the Management Committee from time to time. Provided, however, that no such fee shall apply to a transfer of title occasioned by a foreclosure of a first mortgage or first deed of trust. The Management Committee may for all purposes act and rely on the information concerning Unit Owners and Unit ownership which is thus acquired by it or, at its option, the Management Committee may act and rely on current ownership information respecting any Unit which is obtained from the office of the Summit County Recorder. The address of a Unit Owner shall be deemed to be the address of the Unit owned by such person unless the Management Committee is otherwise notified in writing by such Unit Owner.

15. Assessments.

a. Common Expense Assessments. Every Unit Owner shall pay a proportionate share of the common expenses. The Units shall be assessed on the basis of their respective percentages of undivided interest in the Common Areas and Facilities. Payment of such common expenses shall be in such amounts and at such times as the Management Committee determines in accordance with the Act, this Declaration, the By-Laws and rules and regulations. There shall be a lien for non-payment of common area expenses as provided by the Act.

b. Special Assessments. The Management Committee or the Association may from time to time assess the Unit Owners special assessments for repairs, maintenance, operating expenses or capitol improvements. The Units shall be assessed on the basis of their respective percentages of undivided interest in the Common Areas and Facilities. There shall be a lien for non-payment of a special assessment as provided by the Act.

c. Minority Ownership Interest Protection.

i. Until such time as one owner owns more than ninety percent (90%) of the ownership interest in the Common Areas and Facilities, owners of ten percent (10%) or more of the ownership interest in the Common Areas and Facilities shall have the right to elect one (1) board member for every two (2) board members elected by the owner of a majority of the ownership interest in the Common Areas and Facilities.

ii. The following actions may only be taken upon the affirmative vote of all of the members of the Board of Directors:

(1) Any assessment for capital improvements in excess of Five Thousand Dollars (\$5,000.00) levied against the units in the New Claim Condominiums, except for assessments required for emergency repairs or necessary to maintain the structural integrity of the building or mandated by a lawful order of a governmental body or required by law;

(2) Any special assessment in excess of an amount equal to three (3) months installments on the regular assessment levied against the units in the New Claim Condominiums subject to the same exceptions set forth in subsection (1) preceding;

(3) More than one special assessment levied in any calendar year against the units in the New Claim Condominiums subject to the same exceptions set forth in subsection (1) above;

(4) Any increase in the annual assessment levied against units in the New Claim Condominiums of more than ten percent (10%) in any year over the previous year's assessment but excluding from such calculation increases due to utility costs, real estate taxes and insurance; or

(5) Any amendment to this Article 15, Article 11 or By-Law II.

16. Destruction or Damage. In the event of destruction or damage of part or all of the improvements in the Condominium Project, the procedures of this Section shall apply.

a. Insurance Proceeds Sufficient. If proceeds of the insurance maintained by the Management Committee are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.

b. Less than 75% Destruction. If less than seventy-five percent (75%) of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Management Committee are not alone sufficient to repair or reconstruct the damaged or destroyed improvement, restoration shall be carried out and all of the Units shall be assessed for any deficiency on the basis of their respective percentages of undivided interest in the Common Areas and Facilities.

c. More than 75% Destruction: Election to Restore. If more than seventy-five percent (75%) of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Management Committee are not alone sufficient to repair or reconstruct the damaged or destroyed improvement, and if the Unit Owners, within 100 days after the destruction or damage by a vote of at least seventy-five percent (75%) of the entire undivided ownership interest in the Common Areas and Facilities, elect to repair or reconstruct the damaged or destroyed improvements, restoration shall be carried out and all of the Units



shall be assessed for any deficiency on the basis of their respective percentages of undivided interest in the Common Areas and Facilities.

d. More than 75% Destruction: No Election to Restore. If more than seventy-five percent (75%) of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Management Committee are not alone sufficient to repair or reconstruct the damaged or destroyed improvement, and if the Unit Owners do not, within 100 days after the destruction or damage by a vote of at least seventy-five percent (75%) of the entire undivided ownership interest in the Common Areas and Facilities, elect to repair or reconstruct the damaged or destroyed improvements, the Management Committee shall promptly record in the office of the Summit County Recorder a notice setting forth such facts. Upon recording of such notice the provisions of subsections (1) through (4) inclusive of § 57-8-31, Utah Code, as amended, or any successor to that statute, shall apply and shall govern the rights of all parties having an interest in the project or any of the Units.

e. Determination of Percentage. Any reconstruction or repair which is required to be carried out by this section shall be accomplished at the instance and direction of the Management Committee. Any determination required to be made by this section regarding the extent of damage to or destruction of Project improvements shall be based upon the dollar value of the improvements before such destruction or damage and the dollar cost or restoration and shall be calculated based upon the average of two appraisals, independently arrived at by qualified MAI appraisers selected by the Management Committee.

17. Taxes. It is understood that under the Act each Unit, together with its percentage of undivided ownership interest in the Common Areas and Facilities, is deemed a parcel and subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law. Each Unit Owner shall pay and discharge any and all taxes which may be assessed against such Unit Owner's Unit.

18. Insurance.

a. Hazard Insurance. The Management Committee or the Association shall at all times maintain in full force and effect hazard insurance meeting the following requirements:

(1) A multi-peril policy covering the entire Project (both Units and Common Areas and Facilities) shall be maintained. Such policy shall provide coverage against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as are customarily covered with respect to condominium projects similar to the Project in construction, location and use. At a minimum such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage specified in the policy, but not less than one hundred percent (100%) of the full insurable value (based upon replacement cost). Such policy shall include an "Agreed Amount" endorsement or its equivalent, a "Demolition" endorsement or its

equivalent, an "Increased Cost of Construction" endorsement or its equivalent, and a "Contingent Liability from Operation of Building Laws" endorsement or its equivalent.

(2) Should a steam boiler or steam boilers ever come to be installed on the Project, there shall be maintained boiler explosion insurance and a broad form policy of repair and replacement boiler and machinery insurance policy. Said insurance shall, at a minimum provide coverage in the amount of Fifty Thousand Dollars (\$50,000.00) adjusted for inflation from a base year of 1991 per accident per location.

(3) If the Project is or comes to be located in a locale identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, a blanket policy of flood insurance on the Project shall be obtained and maintained. The minimum amount of such coverage shall be the lesser of the maximum amount of insurance available under the National Flood Insurance Act of 1968 or the aggregate of the unpaid principal balances of the mortgages affecting the Units. Such policy shall be in the form of the standard policy issued by the members of the National Flood Insurers' Association or in the form of a policy which meets the criteria established by the Flood Insurance Administration.

(4) The named insured under each policy required to be maintained by subsections (1) and (2) above shall be in form and substance as follows: the New Claim Condominiums Homeowners' Association, Inc., a Utah non-profit corporation or its authorized representative, for the use and benefit of the individual Unit Owners.

(5) Each such policy shall include the standard mortgage clause (without contribution) which either shall be endorsed to provided that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear or shall be otherwise be endorsed to protect the interests of mortgagees. In addition the mortgagee clause shall provide that the insurance carrier shall notify each mortgagee in writing at least thirty (30) days in advance of the effective date of any reduction in coverage under or cancellation of the policy.

(6) Each such policy shall provide that, notwithstanding any provision thereof which gives the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable if it is in conflict with any requirement of law or without prior written approval of the Association.

b. Fidelity Insurance. The Management Committee or the Association shall at all times maintain in force fidelity coverage against the dishonest acts on the part of managers and employees of managers, trustees, directors, employees, officers, Management Committee members or volunteers responsible for handling funds belonging to the Association or the Management Committee or administered by the Management Committee. The fidelity bond or insurance shall name the Association as the obligee or insured and shall be written in an amount sufficient to afford the protection reasonably necessary, but in no event less than one hundred

fifty percent (150%) of the Project's estimated annual operating expenses, including reserves. Such fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar designation.

c. Liability Insurance. The Management Committee or the Association shall at all times maintain in force a comprehensive policy of public liability insurance covering all of the Common Areas and Facilities. Such insurance shall include a "Severability of Interest" endorsement or its equivalent which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of other Unit Owners, the Management Committee or the Association. The coverage provided by such policy of public liability insurance shall include coverage against water damage liability, liability of non-owned and hired automobiles, liability for property of others, and such other risks as are customarily covered with respect to condominium projects similar to the Project in construction, location and use. The limits of liability under such policy shall not be less than \$1,000,000.00 for all claims for personal injury and/or property damage arising out of a single occurrence.

d. General Requirements Concerning Insurance. Each insurance policy or fidelity bond maintained pursuant to the foregoing subsections (a) through (c) inclusive shall be written by an insurance carrier licensed in the State of Utah and which has a Best's financial rating of Class AA or better. No such policy or fidelity bond shall be maintained where: (1) under the terms of the carrier's charter, by-laws, bond or policy, contributions may be required from, or assessments may be made against, a Unit Owner, a mortgagee, the Management Committee, the Association, a Unit, the Common Areas and Facilities, or the Project; (2) under the terms of the carrier's charter, by-laws, bond or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members; (3) the bond or policy contains any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds; or (4) the bond or policy provides that the insurance thereunder shall be brought into contribution with insurance purchased by the individual Unit Owners or their mortgagees. Each such fidelity bond or policy shall provide that: (1) coverage shall not be prejudiced by any act or neglect of the Unit Owners when such act or neglect is not within the control of the Association or the Management Committee; (2) coverage shall not be prejudiced by any failure by the Association or the Management Committee to comply with any warranty or condition with regard to any portion of the Project over which the Association or the Management Committee have no control; (3) coverage may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to any and all named insureds, including any mortgagee who is a named insured; and (4) the insurer waives any right to subrogation it might have as to any and all claims against the Association, the Management Committee, and any Unit Owner, and/or their respective agents, employees or tenants. If due to changed circumstances, excessive cost, or any other reason, any of the insurance coverage required to be obtained and maintained under subsections (a) through (c) above can not reasonably be secured, with respect to such coverage the Association or the Management Committee shall obtain and maintain such substitute, different or other coverage as may be reasonable and prudent under the circumstances as they

then exist.

e. Additional Provisions. The following additional provisions shall apply with respect to insurance:

(1) In addition to the insurance described above, the Management Committee shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with condominium projects similar to the Project in construction, location and use;

(2) The Management Committee shall have the authority to adjust losses;

(3) Insurance secured and maintained by the Management Committee shall not be brought into contribution with insurance held by the individual Unit Owners or their mortgagees;

(4) Each policy of insurance obtained by the Management Committee shall, if possible, provide: A waiver of the insurer's subrogation rights with respect to the Management Committee, the manager, the Unit Owners and their respective agents, servants, family members and guests; that it can not be canceled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Management Committee or the manager without a prior written demand that the defect be cured; that any "No Other Insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners;

(5) Any Unit Owner may obtain additional insurance at the Unit Owner's expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Management Committee. Any Unit Owner who obtains insurance covering any portion of the Project shall supply the Management Committee with a copy of such policy within thirty (30) days after acquiring such insurance; and

(6) Notwithstanding anything contained herein to the contrary, insurance coverages must meet the requirements of the Federal National Mortgage Association.

19. Payment of Expenses.

a. Each Unit Owner shall pay to the Management Committee the portion of the cash requirement deemed necessary by the Management Committee to manage and operate the Project which is allocated to the Unit Owner's Unit, upon the terms, at the time, and in the manner herein provided, without deduction or offset. Each installment shall be due on or before the first day of each month. If the Unit Owner shall fail to pay any installment within five (5) days of the time when the same shall become due, the Owner shall pay interest thereon at an annual rate which shall be the greater of eighteen percent (18%) or three percent (3%) above the prime rate then charged by New York banks, from the date on which the installment became due until the date of payment thereof, together with all costs and expenses, including, but not

limited to, attorney's fees, title report fees, recording fees, filing fees, and all other court costs or foreclosure costs, incurred in the collection of such unpaid common expenses. If a Unit Owner shall fail to pay any installment of common expenses within thirty (30) days of the due date, the Management Committee may in its sole discretion require payment of all arrearages plus an amount equal to twelve month's installments in advance within fifteen (15) days of written notice of such election by the Management Committee.

b. The cash requirements for each year or portion of a year, referred to in (a) above are hereby defined and deemed to be such aggregate sum as the Management Committee from time to time shall determine in its judgment. The cash requirements are to be paid by all of the Owners of the Project then in existence to enable the Management Committee to pay all estimated expenses and outlays of the Management Committee to the close of such year, growing out of or in connection with the maintenance and operation of the Project; which sum may include, among other things, the cost of management, special assessments, fire, casualty, flood, fidelity, public liability and other insurance or bond premiums, common lighting, snow removal, landscaping, and the care of the grounds, repairs and renovations to Common Areas and Facilities, and other services which are separately billed or metered to the individual Units by the utility or party furnishing such service, legal and accounting fees, management fees, expenses and liabilities incurred by the Management Committee under or by reason of this Declaration, the payment of any deficit remaining from the previous period, the creation of a reasonable contingency or reserve fund, as well as all other costs and expenses related to the Project. The Management Committee may from time to time up to the close of the year for which the cash requirements have been fixed or determined, increase or diminish the amount previously fixed or determined for the year. The Management Committee may include in the cash requirements for any year any liabilities or items of expense which accrued or became payable in the previous year, or which might have been included therein; and also any sums which the Management Committee may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.

c. The portion payable with respect to each Unit in and for each year or for a portion of a year shall be a sum equal to the aggregate amount of such cash requirements for such year or portion of such year, multiplied by the percentage of undivided interest in the Common Areas and Facilities appurtenant to such Unit, as shown in Exhibit "B". Such assessments, together with any additional sums accruing under this Declaration, shall be payable in equal monthly installments in advance, or in such payments and installments as shall be provided by the Management Committee.

d. The Management Committee shall have discretionary powers to prescribe the manner of maintaining and operating the Project and to determine the cash requirements to be paid by the Unit Owners under this Declaration. Every such reasonable determination within the bounds of the Act and this Declaration shall be final and conclusive as to the Unit Owners, and any expenditures made by the Management Committee within the bounds of the Act and this Declaration shall be deemed necessary and properly made as against the Unit Owners.

e. If a Unit Owner shall at any time let or sublet a Unit and shall default for the period of thirty (30) days in the payment of any assessment or any additional sum accruing under this Declaration, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant or property manager of the Unit Owner the rent due or becoming due and payment of such rent to the Management Committee shall be sufficient payment and discharge of such tenant or subtenant or property manager and the Unit Owner to the extent of the amount so paid.

f. Each monthly installment of the common expenses and each special assessment shall be a separate, distinct and personal obligation of the Unit Owner or Unit Owners of the Unit against which the same is assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses or a special assessment may be maintained without foreclosing or waiving the lien on the Unit securing payment of the assessment. Notwithstanding the foregoing, a lien shall be available to the Management Committee and the Association against any Unit for the amount of any installment of a common expense assessment or for the amount of any special assessment, or fine plus interest, costs and fees, including attorney's fees, upon recordation of a lien or notice of assessment as provided by the Act. Said lien shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

(1) Tax and special assessment liens on any Unit in favor of any tax assessment unit or special service district; and

(2) Encumbrances on the interest of the Unit Owner recorded prior to the date of such notice of assessment or lien which by law would be a prior lien.

Such lien for nonpayment of assessments may be enforced by sale by the Management Committee or the Association to be conducted in the manner provided in Utah law for the foreclosure of trust deeds with a power of sale or by judicial foreclosure. In any foreclosure the Unit Owner shall be required to pay the costs and expenses of such proceedings including attorney's fees. The Management Committee, the Manager or the Association shall have the power to bid in the Unit at foreclosure or other sale and to hold, lease, mortgage or convey the Unit.

g. In the event of foreclosure, the Unit Owner shall be required to pay a reasonable rental for the Unit, and the Management Committee or the Association shall be entitled to the appointment of a receiver to collect the rent.

h. A certificate executed and acknowledged by the Manager or the Management Committee stating the unpaid common expenses and special assessments then outstanding with respect to a Unit shall be conclusive upon the Management Committee and the Association 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 prospective Unit Owner or encumbrancee of any Unit upon request and payment of a fee equal to the fee

provided for in the Act.

i. Upon payment of delinquent assessments concerning which a notice of assessment or lien has been filed, the Management Committee shall cause to be recorded a further notice stating the satisfaction and the release of the lien.

j. In all cases where all or part of any assessments for common expenses and for any expenses of or advances by the Management Committee can not be promptly collected from persons or entities liable therefor under the Act or this Declaration, the Management Committee shall reassess the same as a common expense without prejudice to its rights of collection against such persons or entities.

k. For purposes of accounting procedures all sums paid by an Owner to the Management Committee shall be first applied to costs and fees, if any; then to fines, if any; then interest charges; and then to common expense assessments.

20. Mortgagee Protection.

a. From and after the time a mortgagee makes written request to the Management Committee or the Association therefor, the Management Committee or the Association shall notify such mortgagee in writing in the event that the owner of a Unit encumbered by a mortgage held or serviced by such mortgagee fails for a period of thirty (30) days to cure any failure on the part of such owner to perform any obligation under this Declaration or the Act.

b. The lien or claim against a Unit for unpaid assessments or charges levied by the Management Committee or the Association pursuant to this Declaration or the Act shall be subordinate to the mortgage affecting such Unit, and the mortgagee thereunder which comes into possession pursuant to a judicial or power of sale foreclosure of such Unit, shall take the same free and clear of such lien or claim for unpaid assessments or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the mortgage or exercise of a power of sale.

c. Unless all of the mortgagees of the individual Units have given their prior written approval, neither the Management Committee nor the Association shall be entitled by act, omission or otherwise:

(1) To abandon or terminate the Project or to abandon or terminate the arrangement which is established by this Declaration and the Survey Map (except as provided in Section 16 in the event of destruction or damage or Section 21 in the event of a taking under eminent domain;

(2) To partition or subdivide any Unit;

(3) To abandon, partition, subdivide, encumber, sell or transfer all or any

part of the Common Areas and Facilities (except for the granting of easements for utilities and similar purposes consistent with the intended use of the Common Areas and Facilities and except as provided in Section 16 in the event of destruction or damage;

(4) To use hazard insurance proceeds resulting from damage to any part of the Project (whether to Units or the Common Areas and Facilities) for purposes other than the repair, replacement or reconstruction of such improvements, except as provided in Section 16 in the event of destruction or damage;

(5) To change the pro-rata interests or obligations of any Unit which apply for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for determining the pro-rata share of ownership of each Unit in the Common Areas and Facilities;

(6) To alter the provisions of section 12 hereof in such a way as to diminish the protections afforded to the Unit Owners regarding the duration or terminability of agreements for managerial services;

(7) To terminate the professional management of the Project and assume self management by the Association or the Management Committee; or

(8) To alter the provisions of section 18 hereof in such a way as to diminish the insurance protection required to be afforded to the parties to be protected thereby, or to fail to maintain the insurance coverage described therein.

d. Any mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Management Committee, the Association, or of the Project. Any mortgagee shall have the right to designate a representative to attend all meetings of the Association. From and after the time a mortgagee makes written request to the Management Committee or the Association therefor, the Management Committee or the Association shall furnish to such mortgagee copies of such annual operating reports and other reports or writings summarizing or reflecting the financial position or history of the Project as may be prepared for distribution to or use by the Management Committee, the Association, or the Unit Owners and written notice of all meetings of the Association.

e. The Management Committee and the Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and Facilities and shall cause such reserve to be funded by regular assessments on an installment basis against the Units rather than by special assessments.

f. From and after the time a mortgagee makes written request to the Management Committee or the Association therefor, the Management Committee or the Association shall notify such mortgagee in writing in the event that there occurs any damage or loss to, or taking or anticipated condemnation of the Common Areas and Facilities involving an amount in excess



of, or reasonably estimated to be in excess of Ten Thousand Dollars (\$10,000.00); or any Unit involving an amount in excess of, or reasonably estimated to be in excess of One Thousand Dollars (\$1,000.00). Said notice shall be given within ten (10) days after the Management Committee or the Association learns of such damage, loss, taking or anticipated condemnation.

g. In the event another clause or provision of this Declaration deals with the same subject matter as is dealt with in any clause or provision of this section, the provision or clause which provides the greatest protection and security for a mortgagee shall control the rights, obligations, or limits of authority as the case may be, applicable to the Management Committee and the Association with respect to the subject matter concerned.

h. No amendment to this section which has the effect of diminishing the rights, protection or security afforded to mortgagees shall be accomplished or effective unless all of the mortgagees of the individual Units have given their prior written approval to such amendment. Any amendment to this section shall be accomplished by an instrument executed by the Management Committee and filed for record in the office of the Summit County Recorder. In any such instrument an officer of the Management Committee shall certify that any prior written approval of mortgagees required by this section as a condition to amendment has been obtained.

21. Eminent Domain. In the event that eminent domain proceedings are commenced against the Project or any portion thereof, the provisions of § 57-8-32.5, Utah Code, as amended, shall apply. The Management Committee shall give written notice of such proceedings to all mortgagees of record. No first lien priority of any mortgagee shall be diminished or otherwise disturbed by virtue of such proceedings.

22. Unit Maintenance.

a. Each Owner of a Unit at the Owner's expense shall keep the interior of such Unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecoration and painting which may at any time be necessary to maintain the good appearance of such Unit. Except to the extent that the Management Committee is protected by insurance against such injury, the Unit Owner shall repair all injury or damage to the Unit or building or buildings caused by the act or negligence of the Unit Owner or that of any tenant or subtenant, or any member of the Unit Owner's family or of the family of any tenant or subtenant and all such repairs, redecoration or painting shall be of a quality and kind equal to the original work. In addition to decorating and keeping the interior of the Unit in good repair, the Unit Owner shall be responsible for the maintenance, repair, and replacement of windows, window screens, window frames, interior and exterior, exterior doors, door frames and trim, maintenance, repair and replacement of any plumbing, fixtures, refrigerators, air conditioning and heating equipment, dishwashers, disposals, ranges, etc. that may be in or connected with the Unit, and the maintenance of Limited Common Areas associated with the Unit. Without the written permission of the Management Committee first obtained, a Unit Owner shall not make or permit to be made any structural alteration in or to the Unit, or in or to the Limited Common Areas associated with the Unit, or in or to the

exterior of the buildings, and shall not paint or decorate any portion of the exterior of the Unit or of the building in which the Unit is located, or replace or modify any window covering of the Unit in such a way as to alter the uniformity of color scheme of the building as viewed from the exterior.

b. Except as hereinafter provided, the Management Committee shall provide for such maintenance and operation of the Common Areas and Facilities and of the Limited Common Areas as may be reasonably necessary to keep them clean, functional, attractive and generally in good condition and repair. The Management Committee shall have no obligation regarding the maintenance or care of the Units.

23. Right of Entry. The Management Committee and its duly authorized agents shall have the right to enter any and all of the Units and the Limited Common Areas appurtenant thereto in case of an emergency originating in or threatening such Unit or any other portion of the Project, whether the Unit Owner or occupant thereof is present at the time. The Management Committee and its duly authorized agents shall also have the right to enter into any and all of the Units and Limited Common Areas at all reasonable times as required for the purpose of making necessary repairs on the Common Areas and Facilities of the Project or for the purpose of performing emergency installations located therein or thereon; provided, however, such emergency installations, alterations or repairs are necessary to prevent damage or threatened damage to a Unit or Units or Common Areas and Facilities or Limited Common Areas in the Project; and provided further that the Unit Owner affected by such entry or the Owner's property manager shall first be notified thereof, if such Owner or property manager is available and if time permits.

24. Administrative Rules and Regulations. The Management Committee shall have the power and authority adopt and establish by resolution such building, management and operational rules and regulations as it may deem necessary for the management, operation, maintenance and control of the Project. The Management Committee may, from time to time, by resolution alter, amend and repeal such rules and regulations. When a copy of any amendment or alteration or provision for repeal of any rule or regulation has been furnished to Unit Owners, such amendment, alteration or provision for repeal shall be taken to be part of such rules and regulations. Unit Owners shall at all times obey such rules and regulations and shall see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules and regulations shall apply and be binding upon all Unit Owners, tenant, subtenants, guests, agents, family members and other occupants of Units. The Management Committee shall have the power and authority to assess fines for infractions of the rules and regulations, which fines shall be assessed against the Unit and billed together with the installments of common expenses and which fines, if unpaid within five days of the due date of the installment of common expenses next due shall be subject to the same interest charges and collection costs as past due installments of common expenses. For purposes of accounting procedures all sums paid by an Owner to the Management Committee shall be first applied to interest charges; then to costs and fees, if any; then to fines, if any; and then to common expense assessments.

25. Obligation to Comply with Act, Declaration, By-Laws, Articles of Incorporation, Rules and Regulations. Each Unit Owner, tenant, subtenant or other occupant of a Unit shall comply with the provisions of the Act, this Declaration, the By-Laws, the Articles of Incorporation and the rules and regulations, all agreements and determinations lawfully made and/or entered into by the Management Committee or the Association, when acting in accordance with their authority, and any failure to comply with any of the provisions thereof shall be grounds for an action by the Management Committee or other aggrieved party for injunctive relief or to recover any loss or damage resulting therefrom.

26. Indemnification of Management Committee. Each member of the Management Committee shall be indemnified and held harmless by the Association against all costs, expenses and liabilities whatsoever, including, without limitation, attorney's fees reasonably incurred by such member in connection with any proceeding in which such member may become involved by reason of being or having been a member of the Management Committee; provided, however, the foregoing indemnification shall not apply if the loss or expense of liability involved resulted from the willful misconduct, gross negligence or other intentional act of the member.

27. Amendment. In addition to the amendment provisions contained in section 6 above, but subject to the provisions of section 20 above, this Declaration and/or the Survey Map may be amended upon the affirmative vote or approval and consent of Unit Owners holding not less than sixty-six and two-thirds percent (66.67%) of the undivided interests in the Common Areas and Facilities of the Units. Any amendment so authorized shall be accomplished by recordation of an instrument executed by the Management Committee. In said instrument the Management Committee shall certify that the vote or consent required by this section has occurred. Notwithstanding anything in this Declaration to the contrary, no amendment to this Declaration which has the effect of diminishing the rights, protection or security afforded to any mortgagee shall be accomplished or effected unless all of the mortgagees of the individual units have given their prior written approval to such amendment.

28. Consent in Lieu of Vote. In any case in which the Act or this Declaration requires the vote of a stated percentage of the undivided ownership interest in the Common Areas and Facilities or of Units in good standing for authorization or approval of a transaction or amendment, such a requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction or amendment from Unit Owners who collectively hold at least such stated percentage of undivided ownership interest. The following additional provision shall govern any application of this section:

a. All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Unit Owner;

b. Any change in ownership of a Unit in good standing which occurs after consent has been obtained from the Unit Owner having an interest therein shall not be considered or taken into account for any purpose; and

c. Unless the consents of all Unit Owners having an interest in the same Unit are secured, the consent of none of such Unit Owners shall be effective.

29. Lease of Unit. Any lease agreement or property management contract respecting a Unit shall be required to provide that the terms of the lease or contract shall be subject in all respects to the provisions of the Act, this Declaration, the Articles of Incorporation of the Association, the By-Laws and the rules and regulations, and that any failure by the tenant or subtenant or property manager to comply with the terms of such instruments, rules or regulations, shall be a default under the lease or contract. All leases and property management contracts shall be in writing and a copy of any such lease or contract shall be furnished to the Management Committee or its agent upon request by the Management Committee. Other than the foregoing there shall be no restriction on the right of any Unit Owner to lease or contract for management of a Unit. The Unit Owner shall notify the Management Committee in writing of the name or names of the property manager and the tenant or sub-tenants.

30. Legal Description of a Unit. Every conveyance or contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the number shown on the Survey Map with the appropriate reference to the Survey Map and the original Declaration and this Declaration, as each shall appear in the official records of Summit County, State of Utah, and shall be in substantially the following form:

Unit \_\_\_\_ as shown on the Record of Survey Map for the New Claim Condominiums, a Utah condominium project, as recorded in the office of the Summit County Recorder as Entry No. \_\_\_\_\_ in Book \_\_\_\_ at pages \_\_\_\_ through \_\_\_\_ inclusive, together with a \_\_\_\_ percent (\_\_\_\_%) undivided ownership interest in the Common Areas and Facilities of the New Claim Condominium project.

Subject to the covenants, conditions and restrictions of the Declaration of Condominium as amended and first recorded as Entry No. \_\_\_\_\_ in Book \_\_\_\_ at pages \_\_\_\_ through \_\_\_\_ inclusive in the office of the Summit County Recorder.

31. Severability. The invalidity of any one or more phrases, sentences, subparagraphs, paragraphs, subsections or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this instrument should be invalid or should operate to render this instrument invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections, or section or sections had not been inserted.

32. Gender and Number. The singular, wherever used herein, shall be construed to mean the plural when applicable, and necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships or individual persons, male or female, shall in all cases be assumed as though in each case fully expressed.

33. No Waiver. No provision contained in this Declaration, the By-Laws or the rules and regulations shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

34. Topical Headings. The topical headings contained in this Declaration and the By-Laws are for convenience only and do not define, limit or construe the contents of this Declaration or the By-laws.

35. Effective Date. This amended Declaration shall be effective upon recording.

**EXHIBIT "A"**  
**AMENDED DECLARATION OF CONDOMINIUM**  
**NEW CLAIM CONDOMINIUMS**

Legal Description

ALL OF LOTS 20A AND 20B OF PROSPECTOR SQUARE, according to the official plat thereof recorded in the office of the Recorder of Summit County.

TOGETHER WITH a perpetual easement for ingress and egress, over, under, and across the following described parcel for the purpose of constructing, maintaining and reconstructing an underground parking structure:

BEGINNING at the Northwest corner of Parking Lot D as shown on the amended plat of Prospector Square, recorded as Entry No. 125443 in the office of the Recorder of Summit County, Utah; thence South a distance of 18.67 feet to the TRUE POINT OF BEGINNING; thence East a distance of 10.00 feet; thence North a distance of 8.67 feet; thence East a distance of 200.00 feet; thence South a distance of 64.00 feet; thence West a distance of 200.00 feet; thence North a distance of 25.59 feet; thence North 45°00'00" West 6.24 feet; thence West a distance of 25.33 feet to the TRUE POINT OF BEGINNING.

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**EXHIBIT "B"**  
**AMENDED DECLARATION OF CONDOMINIUM**  
**NEW CLAIM CONDOMINIUMS**  
**-PERCENTAGE OWNERSHIP INTEREST IN COMMON AREAS-**

<u>UNIT NUMBER</u>	<u>PERCENTAGE OWNERSHIP INTEREST</u>
101 .....	1.32
102 .....	1.78
104 .....	1.79
105 .....	1.79
106 .....	1.79
107 .....	1.78
108 .....	1.15
109 .....	1.78
110 .....	1.78
111 .....	1.78
113 .....	1.80
114 .....	1.80
115 .....	1.78
201 .....	1.33
202 .....	1.81
203 .....	1.81
204 .....	1.81
205 .....	1.81
206 .....	1.80
207 .....	1.78
208 .....	1.28
209 .....	1.80
210 .....	1.78
211 .....	1.78
212 .....	1.81
213 .....	1.81
214 .....	1.79
215 .....	1.76
301 .....	1.33
302 .....	1.81
303 .....	1.81
304 .....	1.81
305 .....	1.81

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306	.....	1.80
307	.....	1.78
308	.....	1.28
309	.....	1.80
310	.....	1.78
311	.....	1.78
312	.....	1.81
313	.....	1.81
314	.....	1.79
315	.....	1.76
401	.....	1.33
402	.....	1.81
403	.....	1.81
404	.....	1.81
405	.....	1.81
406	.....	1.80
407	.....	1.78
408	.....	1.28
409	.....	1.80
410	.....	1.78
411	.....	1.78
412	.....	1.81
413	.....	1.81
414	.....	1.79
415	.....	<u>1.76</u>
TOTAL		100.00

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**EXHIBIT "C"**

**AMENDED BY-LAWS  
OF  
NEW CLAIM CONDOMINIUMS HOMEOWNERS' ASSOCIATION, INC.  
A Utah non-profit corporation**

The By-Laws of the New Claim Condominiums are hereby repealed in their entirety and replaced with the following By-Laws.

**I. IDENTITY**

1.1 These are the By-Laws of the New Claim Condominiums Homeowners' Association, Inc. duly made and provided for in accordance with the Utah Condominium Ownership Act for the governance of the New Claim Condominiums project. Any term used herein which is defined in the Amended Declaration of Condominium of the New Claim Condominiums to which these By-Laws are appended shall have the meaning ascribed thereto in said Amended Declaration.

**II. MEETINGS**

2.1 Place of Meetings. Meetings of the Association shall be held at such place within the State of Utah as the Management Committee shall specify in the meeting notice, except as otherwise specified herein.

2.2 Annual Meetings. The annual meetings of the Association shall be held at the project on the third Saturday of June in each year at 2:00 p.m.; provided however that whenever such date falls on a legal holiday, the meeting shall be held on the next succeeding day, and further provided that the Management Committee may by resolution fix the date of the annual meeting on such date as the Management Committee shall deem appropriate.

• 1991, Jim Kennicott

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**2.3 Special Meetings.** Special meetings of the Association may be called at any time by a majority of the Management Committee or by the Owners of any ten (10) Units. Such meeting shall be held on the project or at such other place as the notice shall and the written notice of such special meeting shall state the date, time and the matters to be considered at such special meeting.

**2.4 Notices.** Written notice stating the place, date and hour of all meetings of the Association and, in the case of a special meeting, the purpose or purposes of such special meeting, shall be delivered not less than ten (10) days nor more than fifty (50) days before the date of the meeting, either personally or by mail to each Unit Owner appearing on the records of the Association. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage pre-paid, addressed to the Unit Owner at his address as it appears in the records of the Association. Any Unit Owner may at any time waive any notice required to be given under these By-Laws, by statute or otherwise. The presence of a Unit Owner in person or by proxy shall be deemed such a waiver.

**2.5 Quorum.** At the meeting of the Association, those Unit Owners in good standing as determined by Article 11 (a) of the Amended Declaration present at such meeting shall constitute a quorum for any and all purposes, except where express provisions of the Act, the Amended Declaration or these By-Laws require a vote of a specified percentage of the Unit Owners in good standing, in which event a quorum shall be the percentage of interest required for such vote. In the absence of a quorum, the chairman of the meeting may adjourn the meeting from time to time, without notice other than by announcement at the meeting, until holders of the amount of interest requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally noticed.

**2.6 Voting.** When a quorum is present at any meeting, the vote of Owners of Units in good standing representing more than fifty percent (50%) of the undivided interest of the Units in good standing present at the meeting either in person or by proxy, shall decide any question of business brought before such meeting, including the election of the Management Committee, unless the question is one upon which, by express provision of these By-Laws or the Amended Declaration, a greater percentage of the vote of Units in good standing is required, in which case such express provision shall govern and control the decision of such question. All proxies shall be in writing, and in the case of proxies for the annual meeting, they shall be delivered to the Secretary at least five (5) days prior to said annual meeting. Proxies for special Unit Owners' meetings must be delivered to the Secretary at least two days prior to said special meeting.

**2.7 Notice of Good Standing.** The Secretary shall enclose a list of Units in good standing and a list of Units not in good standing with any Notice of Meeting and the Secretary shall prepare a list of Units in good standing and a list of Units not in good standing just prior to the time set for such meeting and make such lists available for inspection by the other officers and Unit Owners at such meeting.

### III. MANAGEMENT COMMITTEE

3.1 Purpose and Powers. The business, property and affairs of the project shall be managed and governed by the Management Committee, which for the purposes of the Utah Non-profit Corporation and Association Act shall be synonymous with the "Governing Board" under such Act.

3.2 Election. The Management Committee shall be elected as provided in the Amended Declaration.

3.3 Vacancies. Vacancies on the Management Committee shall be filled by a vote of the majority of the remaining members of the Management Committee from the membership of the Association. A unit owner appointed to fill a vacancy on the Management Committee shall serve only until the next annual meeting of Unit Owners or until the next special meeting of Unit Owners at which members of the Management Committee are elected.

3.4 Regular Meetings. A regular annual meeting of the Management Committee shall be held immediately following the annual meeting of the Unit Owners at the same place as the annual meeting. Regular meetings other than the annual meeting may be held at such places and at such times as the president or the Management Committee may from time to time designate.

3.5 Special Meetings. Special meetings of the Management Committee shall be held whenever called by the president, vice-president, or by two or more members of the Management Committee. By unanimous consent of all members of the Management Committee meetings may be held without call or notice at any time or place.

3.6 Quorum. A majority of the members of the Management Committee then in office shall constitute a quorum for the transaction of business at any meeting of the Management Committee.

3.7 Compensation. Members of the Management Committee shall not receive any stated salary or compensation for service on the Management Committee; provided that nothing contained herein shall be construed to preclude any member of the Management Committee from receiving compensation for services rendered to the Association in any other capacity.

3.8 Waiver of Notice. Before or at any meeting of the Management Committee, any member of the Management Committee, may waive notice of such meeting in writing, and such waiver shall be deemed the equivalent of adequate notice of such meeting. Attendance by any member of the Management Committee at any meeting of the Management Committee shall be deemed to be a waiver of notice of such meeting.

3.9 Adjournments. The Management Committee may adjourn any meeting of the Management Committee for such time as may be prudent or necessary, provided that no meeting of the Management Committee shall be adjourned for longer than thirty (30) days.

#### IV. OFFICERS

4.1 Designation and Election. The principal officers of the Association shall be a president, a vice-president, and a secretary/treasurer, all of whom shall be appointed by the Management Committee. The Management Committee may appoint such assistant officers or other officers as the Management Committee deems necessary and desirable. Such appointment of officers shall take place at the annual meeting of the Management Committee following the annual meeting of Unit Owners; provided, however, that appointments of officers may also take place at any other meeting of the Management Committee.

4.2 Removal of Officers and Agents. All officers and agents shall be subject to removal, with or without cause, at any time, by the affirmative vote of a majority of the then members of the Management Committee.

4.3 President. The president shall be the chief executive of the Association, and shall exercise general supervision over its property and affairs. The president shall execute on behalf of the Association all conveyances, mortgages and contracts of material importance to the Association, and shall do and perform all acts and things which the Management Committee may require of the president. The president shall preside at all meeting of the Unit Owners and the Management Committee. The president shall have all the general powers and duties which are normally vested in the office of president of a corporation.

4.4 Vice-President. The vice-president shall take the place of the president and perform the president's duties whenever the president shall be absent or unable to act. The vice-president shall also perform such other acts and duties as prescribed from time to time by the Management Committee. If neither the president nor the vice-president is able to act, the Management Committee shall appoint some other member of the Association to act as president on an interim basis.

4.5 Secretary. The secretary shall keep the minutes of all meetings of the Management Committee and of the Unit Owners. The secretary shall have charge of all the books and papers of the Association and shall perform all of the duties of secretary set forth in the Articles of Incorporation, the Amended Declaration and these By-Laws.

4.6 Treasurer. The treasurer shall have responsibility for the funds and securities of the Association and the Association and shall be responsible for keeping full and accurate receipts and of all disbursements of the Association. The treasurer shall be responsible for the deposit of all monies and all other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Management Committee.

4.7 Compensation. The officers shall not receive any stated salary or compensation for service as an officer. Nothing contained herein shall be construed to preclude any officer from receiving compensation for services rendered to the Association in any other capacity; provided

that a resolution of the majority of the Management Committee, excluding such officer if such officer is also a member of the Management Committee, shall pass a resolution authorizing such services prior to such services being undertaken by such officer.

#### V. ACCOUNTING

5.1 Books and Accounts. The books and accounts of the Association shall be kept under the direction of the treasurer and in accordance with reasonable standards of accounting practice.

5.2 Report. At the close of each accounting year, the books and records of the Association shall be reviewed by a person or firm approved by the Unit Owners. Provided that a certified audit of the books and records of the Association by a Certified Public Accountant approved by the Unit Owners shall be made if Unit Owners representing sixty-six and two thirds percent (66.67%) of the ownership interests of Units in good standing determine to require a certified audit.

5.3 Inspection of Books. All books and records of the Association shall be available at the principal office of the Association and may be inspected by any Unit Owner, or the unit Owner's agent or attorney, at any time during normal business hours.

#### VI. RULES AND REGULATIONS

6.1 Promulgation of Rules and Regulations. The Management Committee shall have the power to adopt and establish, by resolution, such building, common area and facility, management and operational rules and regulations as it may deem necessary for the maintenance, operation, management and control of the project, and the Management Committee may from time to time, by resolution, alter, amend and repeal such rules and regulations. The Management Committee may, by resolution, establish fines and penalties for violation of the Declaration, these By-Laws and such rules and regulations as are in effect. Unit Owners shall at all times obey such rules and regulations and use their best efforts to obtain the faithful observance of such rules and regulations by their tenants, guests and family members. All provisions of the Utah Condominium Ownership Act with respect to rules and regulations are hereby incorporated herein by reference.

#### VII. AMENDMENT


7.1 Amendment of By-Laws. The By-Laws may be altered or amended in the same manner and subject to the same conditions as apply with respect to amendment of the Declaration.

**AFFIDAVIT OF THE SECRETARY  
FOR THE  
NEW CLAIM CONDOMINIUMS HOMEOWNERS' ASSOCIATION, INC.  
A Utah Non-Profit Corporation**

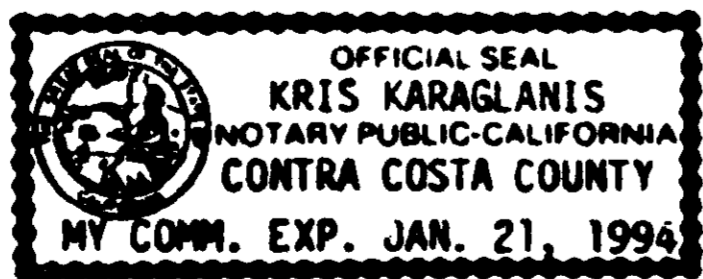
STATE OF CALIFORNIA    )  
  : SS.  
COUNTY OF                    )

Affiant, Robert Kolbly, being first duly sworn, deposes and says:

1. That he is the Secretary of the New Claim Condominium Owners' Association, Inc.
2. That pursuant to the Declaration of Condominium and the By-Laws of the New Claim Condominiums, a vote of the owners of the common areas and facilities of the New Claim Condominiums was taken on June 22, 1991 at the time and place set for the annual meeting of unit owners.
3. That affiant has retained the originals of all proxies voted at the annual meeting in the files of the corporation.
4. That Unit Owners holding more that seventy-five percent (75%) of the ownership interest in the Common Areas and Facilities voted to adopt the attached and within Amended Declaration and By-Laws as the Declaration and By-Laws of the New Claim Condominiums and the New Claim Condominium Owners Association, Inc.

  
ROBERT KOLBLY, Secretary

SUBSCRIBED AND SWORN TO BEFORE ME THIS 13 DAY OF July, 1991.



  
NOTARY PUBLIC

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RED NOTE AB  
345102  
91 AUG -8 PM 4:17  
ALAN SPRINGS  
SUMMIT COUNTY RECORDER  
REC'D BY 2  
*Jim K...  
K...  
H*