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Doris L Brill - Summit County Recorder

TOWNHOME DECLARATION
FOR
PROSPECT POINT

TABLE OF CONTENTS

	<u>PAGE</u>
ARTICLE 1	
DEFINITIONS	1
ARTICLE 2	
GRANT AND SUBMISSION	4
2.1 Legal Description	4
2.2 Division of Premises into Fee Simple Estates, General Common Elements and Future Development Areas	4
2.3 Right to Create Additional Townhome Units	4
2.4 Appurtenant Easement, Agreement and Licenses	4
ARTICLE 3	
USE AND OCCUPANCY OF TOWNHOME UNITS	5
3.1 Inseparability of a Townhome Unit/Partition	5
3.2 Title to a Townhome Unit	5
3.3 Notice to Assessor	6
3.4 Limited Use and Right to Lease	6
3.5 Fees for Recreational Facilities	6
ARTICLE 4	
DESCRIPTION OF A TOWNHOME UNIT	6
4.1 Prior to Recordation	6
4.2 Subsequent to Recordation	6
4.3 Sufficiency of Description	6
ARTICLE 5	
MAP	7
ARTICLE 6	
GENERAL COMMON ELEMENTS; ENCROACHMENTS	7
6.1 Partition	7
6.2 Use of General Common Elements	7
6.3 Easements for Encroachments	7
ARTICLE 7	
MECHANIC'S LIENS AND INDEMNIFICATION	8
ARTICLE 8	
ADMINISTRATION AND MANAGEMENT; THE ASSOCIATION; PERIOD OF DECLARANT CONTROL	8
8.1 Management By Association	8
8.2 Delegation of Management to Managing Agent	9

PAGE

8.3 Declarant Control of the Association 9
8.4 Election by Owners 9
8.5 Delivery of Documents by Declarant 10

ARTICLE 9

MAINTENANCE AND REPAIRS; RIGHT OF ACCESS 11
9.1 General Common Elements 11
9.2 Party Walls. 11
9.3 Exterior Maintenance Area 11
9.4 Townhome Units 12
9.5 Owner Caused Damage 12
9.6 Declarant's Right to Maintain 12

ARTICLE 10

ASSESSMENTS, COLLECTION AND LIENS 13
10.1 Assessments for Common Expenses 13
10.2 Collection 13
10.3 Liens for Non-Payment 13
10.4 Foreclosure of Liens 13
10.5 No Waiver or Abandonment; No Offset 13
10.6 Transfer of a Townhome Unit 14
10.7 Request for Assessment Statement 14
10.8 Lienor's Right to Pay Assessments 14
10.9 Allocation of Interests 14

ARTICLE 11

INSURANCE 14
11.1 Coverage 14
11.2 Owner's Insurance 15
11.3 Insurable Value 15
11.4 Named Insured and Required Provisions 15

ARTICLE 12

APPOINTMENT OF ATTORNEY-IN-FACT 16

ARTICLE 13

DAMAGE OR DESTRUCTION 16
13.1 Proceeds Sufficient to Repair 16
13.2 Insufficient Proceeds - Non-Material Damage 16
13.3 Insufficient Proceeds - Material Damage 17
13.4 Damage to More Than One Townhome Unit 18
13.5 No Liability on First Lienors 18

ARTICLE 14
OBSOLESCENCE 18
 14.1 Renovation of a Building 18
 14.2 Renovation of General Common Elements 18

ARTICLE 15
CONDEMNATION 18
 15.1 Total Taking 18
 15.2 Total Taking of a Building or Buildings 19
 15.3 Partial Taking 19

ARTICLE 16
QUALITY OF WORK 19

ARTICLE 17
AMENDMENT OR REVOCATION 19

ARTICLE 18
PROPERTY FOR COMMON USE 20

ARTICLE 19
REGISTRATION BY OWNER OF MAILING ADDRESS; NOTICES 20
 19.1 Registration 20
 19.2 Notice of Transfer 20
 19.3 Delivery of Notice 20

ARTICLE 20
DURATION OF OWNERSHIP 21

ARTICLE 21
ARCHITECTURAL CONTROL 21

ARTICLE 22
SPECIAL DECLARANT RIGHTS, DEVELOPMENT RIGHTS AND GENERAL RESERVATIONS 21
 22.1 Easements, Reservation, Etc 21
 22.2 Right to Maintain Sales Offices and Models 22
 22.3 Relocation of Sales Offices and Models 22
 22.4 Parking Spaces 22
 22.5 Certain Amendments by Declarant 22
 22.6 Development Rights to Construct Additional Buildings 22

ARTICLE 23

FIRST LIENOR PROVISIONS 23

23.1 Notices of Action 23

23.2 Special FNMA/FHLMC Provisions 24

23.3 Implied Approval 24

23.4 Books and Records 24

23.5 HUD/VA Approval 25

ARTICLE 24

MISCELLANEOUS 25

24.1 Severability 25

24.2 The Act 25

24.3 References 25

24.4 Governing Law 25

24.5 Captions and Recitals 25

24.6 Attachments 25

24.7 Conflicts with Articles and Bylaws 25

24.8 Transfer of Declarant's Rights 25

TOWNHOME DECLARATION
FOR
PROSPECT POINT

RECITALS

Prospect Point LLC, a Colorado limited liability company ("Declarant"), is the owner of the Land (as hereinafter defined) situate in the County of Summit, State of Colorado. Declarant desires to establish a Planned Community/Common Interest Community under the Colorado Common Interest Ownership Act and to define the character, duration, rights, obligations and limitations of ownership. Declarant has plans for the construction of eleven (11) Buildings (as hereinafter defined) on the Land to be known as "PROSPECT POINT TOWNHOMES," which Buildings shall consist of up to forty (40) separately developed Townhome Units (as hereinafter defined). A Map (as hereinafter defined) shall be recorded in Summit County, Colorado, showing the location of the Buildings and the Townhome Units on the Land, which is hereby made subject to this Declaration. The PROSPECT POINT TOWNHOMES Common Interest Community is to be a part of a planned community known as PROSPECT POINT created by a Master Declaration for Prospect Point.

DECLARATION

Declarant does hereby establish a Planned Community for the ownership of real property estates in fee simple as a Common Interest Community under the Act (as hereinafter defined), consisting of the Townhome Units and the General Common Elements (as hereinafter defined). Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the Land, shall be a burden and a benefit to Declarant and to its successors and assigns and to any person or persons acquiring or owning an interest in the Land and improvements built thereon, and to their heirs, personal representatives, successors and assigns.

ARTICLE 1
DEFINITIONS

As used in this Declaration, unless otherwise expressly provided:

(a) "Act" means the Colorado Common Interest Ownership Act, Section 38-33.3-101 et seq., Colorado Revised Statutes, 1973, as amended from time to time.

(b) "Articles" means the articles of incorporation of the Association, as amended from time to time.

(c) "Association" means The Prospect Point Townhomes Homeowners' Association, Inc., a Colorado nonprofit corporation, the members of which shall be all of the Owners. The Association shall be the record title holder of all of the General Common Elements.

(d) "Board of Directors" or "Board" means the governing body of the Association.

(e) "Building" means one of the building improvements known as Prospect Point Townhomes located on the Land. "Buildings" means several or all of such building improvements as the context requires.

(f) "Bylaws" means the bylaws of the Association, as amended from time to time.

(g) "County" means Summit County, Colorado.

(h) "Declarant" means Prospect Point LLC, a Colorado limited liability company, and any successor to whom or to which all of the rights, obligations and interests of Declarant hereunder may be assigned by an assignment or deed designating such successor as a successor Declarant and filed for record in the real property records of the County signed by the successor and the then Declarant.

(i) "Declaration" means this instrument and all amendments or supplements thereto hereafter recorded in the records of the County.

(j) "Development Rights" means those rights granted under the Act including:

- (1) The right to add real estate to the Project;
- (2) The right to create or incorporate additional Townhome Units and General Common Elements within the Project;
- (3) The right to construct utility lines, pipes, wires, ducts, conduits and other facilities, and grant easements to public utility companies and to convey improvements within those easements; and
- (4) The right to subdivide Townhome Units or convert Townhome Units to General Common Elements.

(k) "Exterior Maintenance Areas" means the outside surfaces of all Buildings in which Townhome Units are located (excluding doors, windows and roofs), front yards, if any, of all Townhome Units and driveways of all Townhome Units.

(l) "First Lienor" means the holder of a promissory note, payment of which is secured by a first Mortgage. In any case where a percentage vote of First Lienors is required such vote shall be based on one vote for each first Mortgage owned.

(m) "General Common Elements" means all of the Project other than the Townhome Units themselves, including without limitation any improvement or property designated on the Map as "General Common Elements" or "G.C.E."

(n) "General Common Expenses" means: (i) all expenses expressly declared to be General Common Expenses by this Declaration or by the Bylaws; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the General Common Elements and maintaining and repairing the Exterior Maintenance Areas; (iii) insurance premiums for the insurance carried under Article 11; and (iv) all expenses lawfully determined to be General Common Expenses by the Board of Directors. Notwithstanding the foregoing, any expense incurred by Declarant in connection with the initial construction of the Townhome Units shall not be a General Common Expense.

(o) "Land" means the real property described in Attachment A.

(p) "Map" means the map described in Article 5 and all amendments or supplements thereto hereafter filed for record in the County.

(q) "Mortgage" means a mortgage or deed of trust encumbering an interest in a Townhome Unit.

(r) "Mortgagee" means the holder of a promissory note, payment of which is secured by a Mortgage.

(s) "Owner" means any individual, corporation, partnership, association, trust or other legal entity, or combination of legal entities, that is the record owner of an undivided fee simple interest in one or more Townhome Units.

(t) "Party Wall" means any common wall adjoining two Townhomes and shall be deemed to include the footings underlying, any utility lines within, and the portion of any roof covering a common wall.

(u) "Period of Special Rights" shall mean the seven (7) year period commencing on the date of recordation of this Declaration in the real property records of the County.

(v) "Period of Declarant Control" shall have the meaning ascribed thereto in Section 8.3 below.

(w) "Premises" or "Project" means the townhome project composed of the Land, the Buildings, and all other improvements now or hereafter located on the Land.

(x) "Sharing Ratio" of an Owner is the percentage of General Common Expenses allocated to his Townhome Unit. Any reference to "relative Sharing Ratio" shall mean the proportion that the Sharing Ratio of an Owner in a specified group bears to the Sharing Ratios of all Owners in such group. In the event that Sharing Ratios change during any fiscal period, costs allocated to any Owner for such period shall be appropriately averaged based on the relative lengths of time in such period before and after such change.

(y) "Town Code" means the Town of Frisco Municipal Code, as amended.

(z) "Townhome Unit" means a plot of land subject to this Declaration, and designated as a Townhome Unit on the Map, including all the improvements thereon, together with all easements and rights-of-way appurtenant thereto and an undivided fifty percent (50%) interest in any Party Wall shared by such improvements and any adjacent townhome improvements. A Townhome Unit specifically includes any yard area, garage and driveway exclusively allocated thereto as set forth on the Map.

ARTICLE 2 GRANT AND SUBMISSION

2.1 Legal Description. Declarant hereby grants, conveys and submits to common interest ownership all its right, title and interest in the real property located in the Town of Frisco, Summit County, Colorado, as more particularly described in Attachment A hereto, all of which real property (and all additions and improvement thereto and less any withdrawals therefrom) is herein referred to collectively as "Prospect Point Townhomes."

2.2 Division of Premises into Fee Simple Estates, General Common Elements and Future Development Areas. The Premises shall be divided into: (i) separate fee simple estates, each consisting of a Townhome Unit as defined herein and designated as set forth on the Map and on Attachment B hereto, and (ii) General Common Elements, as set forth on the Map, together with all improvements thereon and all easements and rights-of-way located thereon or appurtenant thereto as provided therein. The Map as initially recorded may indicate that certain areas are for "future development," and some of the Townhome Units and General Common Elements may be located in such areas.

2.3 Right to Create Additional Townhome Units. As more particularly described in Section 22.6 below, Declarant reserves the right to create, from time to time within the Period of Special Rights, within the "future development area" described in the Map additional Townhome Units (provided that the number of Townhome Units in the Project shall at no time exceed forty (40) in the aggregate) by recorded supplemental declarations and amendments to the Map, which shall not require the consent of the then existing Owners, the Association or any Owner's mortgagee. Nothing herein, however, shall obligate the Declarant to create such additional Townhome Units. All Owners, by acceptance of a deed to, or other conveyance of, their Townhome Units, thereby automatically consent to any such creation of additional Townhome Units and shall evidence such consent in writing if requested to do so by the Declarant at any time (provided, however, that the refusal to give such written consent shall not avoid the general effect of this provision). If Declarant has not exercised its development rights with respect to the "future development area" within the Period of Special Rights, Declarant shall convey any such "future development area" to the Association for use as General Common Elements.

2.4 Appurtenant Easement, Agreement and Licenses. There shall be appurtenant to and a part of the General Common Elements the rights and obligations of the following easements and agreements:

(a) Easements shown on the Map or otherwise of record and appurtenant to the subject property;

(b) An easement hereby created in gross upon, across, over, in and under the Property for the benefit of the Townhome Units and the structures and improvements situated thereon, including the Party Walls, for ingress and egress, drainage, snow removal, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable tv and electricity. Said easement in gross includes future utility services not presently available to the Townhome Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Townhome Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property.

(c) A non-exclusive easement hereby created for ingress and egress purposes over and across those portions, if any, of any Townhome Units that are used as a common driveway. No Owner shall hinder or permit his guests to hinder reasonable access by any other Owner and his guests to the Townhome Units and parking areas. Whether or not a common driveway exists, under no circumstances will any Owner park, or permit his guests to park, any vehicle in any driveway directly in front of any other Owner's Townhome Unit; and if there are common driveways, no parking of any vehicle by any Owner or his guests in the driveway directly in front of such Owner's Townhome Unit shall be deemed to hinder or interfere with any non-exclusive ingress and egress easement over such driveway, as described above, for the benefit of any other Owner.

ARTICLE 3 USE AND OCCUPANCY OF TOWNHOME UNITS

3.1 Inseparability of a Townhome Unit/Partition. (a) Each Townhome Unit may be conveyed, leased, devised or encumbered only as a Townhome Unit.

(b) Co-Owners of a Townhome Unit shall have the right to bring a partition action pursuant to Section 38-28-101 et seq. of Colorado Revised Statutes, 1973, as amended requesting the sale of the Townhome Unit and the division of the proceeds among the co-Owners; however, no physical division of the Townhome Unit shall be permitted as part of a partition action, and no partition action shall affect any other Townhome Unit or the General Common Elements.

3.2 Title to a Townhome Unit. Title to a Townhome Unit may be held individually or in any form of concurrent ownership recognized in Colorado except timeshare co-ownership, which form of concurrent ownership, however created, is hereby expressly prohibited. In case of any permitted concurrent ownership, each co-Owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Townhome Unit in which such co-owner owns an interest.

3.3 Notice to Assessor. On or before the first sale of a Townhome Unit, Declarant shall give written notice to the assessor of the County in the manner provided in the Act, so that each Townhome Unit will be separately assessed and taxed.

3.4 Limited Use and Right to Lease. The Townhome Units shall be used and occupied solely for dwelling or lodging purposes, including parking of vehicles and storage in garage portions of Townhome Units and other uses customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes; provided, however, that an Owner may use his Townhome Unit for a professional or home occupation, so long as the applicable zoning for the Project, including the Town Code, permits such use, there is not external evidence thereof, and no unreasonable inconvenience to other Owners is created thereby. Provided that this Restriction in use shall be subject to reasonable interpretation by the Board from time to time in rules and decisions promulgated by the Board pursuant to Sections 8.1 hereof. Owners may rent or lease their Townhome Units to others for these purposes.

3.5 Fees for Recreational Facilities. The Association shall have the right to charge reasonable admission and other fees for the use of any recreational facility situate upon or which is a part of the General Common Elements.

ARTICLE 4 DESCRIPTION OF A TOWNHOME UNIT

4.1 Prior to Recordation. Every contract of sale, deed, lease, deed of trust, mortgage, will or other instrument affecting a Townhome Unit, written prior to the filing of this Declaration or the Map for record, shall legally describe the Townhome Unit by its identifying Townhome Unit number, followed by the name of the Project and reference to this Declaration and the Map to be filed for record.

4.2 Subsequent to Recordation. Subsequent to the filing of this Declaration and the Map, every contract for sale, deed, lease, deed of trust, mortgage, will or other instrument affecting a Townhome Unit shall legally describe the Townhome Unit as follows:

Townhome Unit No. _____, Prospect Point Townhomes, according to the Townhome Declaration for Prospect Point, recorded on _____, 1995, at Reception No. _____ (or Book _____ at Page _____) of the records of Summit County, Colorado, and the Map for Prospect Point Townhomes recorded on _____, 19__ at Reception No. _____ (or Book _____ at Page _____) of the records of Summit County, Colorado, as amended from time to time.

4.3 Sufficiency of Description. Every description made pursuant to this Article 4 shall be good and sufficient for all purposes to sell, convey, transfer, encumber, lease or otherwise affect the Townhome Unit. Each such description shall be construed to include a non-exclusive right of ingress and egress through and for use of the General Common Elements,

subject to rules and regulations adopted by the association pursuant to Section 8.1 hereof. The reference to the Map and Declaration in any instrument shall be deemed to include any supplements or amendments thereto without specific reference.

ARTICLE 5 MAP

Prior to any conveyance by Declarant of a Townhome Unit, Declarant shall cause to be filed for record in the County the Map, appropriately certified, which shall be deemed a part of this Declaration and shall contain all the information required by Section 38-33.3-209 of the Act, including without limitation: (a) the legal description of the surface of the Land; (b) the linear measurements and location, with reference to the exterior boundaries, of the Land and of all improvements built or to be built on the Land; and (c) the designation by number or other symbol of each Townhome Unit. The Map may initially be filed for record simultaneously herewith. The Map shall be amended from time to time to reflect the completion of additional Buildings and the creation of additional Townhome Units as permitted by Declarant's development rights. Declarant reserves the right to amend the Map and any supplements thereto from time to time to conform it to the actual location of each of the Buildings and the Townhome Units, including all parts thereof, and to establish, vacate and relocate easements.

ARTICLE 6 GENERAL COMMON ELEMENTS; ENCROACHMENTS

6.1 Partition. The General Common Elements shall be owned by the Association. No Owner shall assert any right of partition with respect to the General Common Elements. Nothing herein shall preclude conveyance or encumbrance of General Common Elements by the Association as provided in Section 38-33.3-312 of the Act, subject to the provisions of the Articles and Bylaws.

6.2 Use of General Common Elements. Each Owner, without hindering, impeding or imposing upon the rights of the other Owners, shall be entitled to use the General Common Elements in accordance with the purpose for which they are intended and in accordance with rules and regulations duly established from time to time by the Association.

6.3 Easements for Encroachments. If any portion of the General Common Elements encroaches upon any Townhome Unit, or if any Townhome Unit encroaches upon any other Townhome Unit or upon any portion of the General Common Elements, as a result of the construction of any Building, or if any such encroachment shall occur hereafter as a result of settling or shifting of any Building, a valid easement shall exist for the encroachment and for the maintenance of the same so long as such Building stands. In the event any Building, any Townhome Unit, any adjoining Townhome Unit, or any adjoining Common Element, shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the General Common Elements upon any Townhome Unit or of any Townhome Unit upon any other Townhome Unit or upon any portion of the General Common Elements, due to such rebuilding,

shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such Building shall stand. Such encroachments and easements shall not be considered or determined to be encumbrances either on the General Common Elements or upon title to the Townhome Units so as to impair merchantability of title.

ARTICLE 7 MECHANIC'S LIENS AND INDEMNIFICATION

Subsequent to the completion of a Townhome Unit, no labor performed or materials furnished and incorporated into a Townhome Unit with the consent or at the request of an Owner, or his agent, contractor or subcontractor, shall be the basis for the filing of a mechanic's lien or any other lien or encumbrance against either the General Common Elements or the Townhome Unit of any other Owner not expressly consenting to or requesting the work or materials. Each Owner shall cancel and discharge of record, or bond by a surety company acceptable to the Association or other Owner or Owners, any claim or lien against the General Common Elements or Townhome Unit of any other Owner for construction performed or for labor, materials, services or other products incorporated in the Owner's Townhome Unit at such Owner's request; and further shall indemnify and hold harmless each of the other Owners and the Association from and against all costs, expenses, claims, losses or damages, including reasonable attorneys' fees, resulting therefrom.

ARTICLE 8 ADMINISTRATION AND MANAGEMENT; THE ASSOCIATION; PERIOD OF DECLARANT CONTROL

8.1 Management By Association. The Project shall be administered and managed by the Association pursuant to the Act, this Declaration and the Articles and Bylaws. Each Owner shall automatically be a member of the Association, shall remain a member until he ceases to be an Owner and shall have voting rights as set forth in the Bylaws. Each member shall comply strictly with the provisions of this Declaration and of the Articles and Bylaws. Each member shall be bound by and shall comply with rules, resolutions and decisions of the Association duly made or adopted from time to time in the manner set forth in the Articles or Bylaws. Failure of the member to comply with such provisions, rules, resolutions or decisions shall be grounds for an action to recover damages or to obtain injunctive relief, or both, maintainable by the Association on behalf of the other members or, in a proper case, by an aggrieved member. In addition, the Bylaws may authorize the Association, during the period of any delinquency, to take actions to enforce this Section, including but not limited to: (a) revocation of a delinquent member's right to use General Common Elements designed for recreational purposes, (b) causing suspension of utility service to a delinquent member's Townhome Unit, (c) suspension of a delinquent member's voting privileges, and (d) assessment of fines deemed appropriate by the Board of Directors, which fines shall be deemed special assessments against a delinquent member subject to the provisions of Article 10; however, no such enforcement actions shall affect the rights of a First Lienor, whose Mortgage was perfected prior to the occurrence of the subject delinquency.

8.2 Delegation of Management to Managing Agent. The Association, through a determination of its Board of Directors, may delegate to a real estate managing firm the powers of the Association to determine the budget for operation of the Project, to establish and collect fees for Common Expenses, to establish and collect reserve funds, to make special assessments, to establish books of account and maintain records for the operation of the Project, to supply statements of account to Owners or their Mortgagees upon request, to establish and from time to time amend such reasonable rules and regulations as may be necessary or convenient to carry out the intention of this Declaration, and to do any other acts or things that the Association is empowered to do under this Declaration or its Articles and Bylaws, subject to the terms of the Act; provided, however, that the determination of the Board of Directors to delegate the duties of the Association to such a managing agent shall not relieve the Association of any of its obligations under this Declaration or under the Articles and Bylaws. Such managing agent may be an affiliate of Declarant.

8.3 Declarant Control of the Association. Subject to Paragraph 8.4 hereof, there shall be a "Period of Declarant Control" during which a Declarant may appoint and remove the officers and members of the Board of Directors. The Period of Declarant Control commences upon the date of initial recording of the Map and terminates no later than the earlier of:

(a) Sixty (60) days after conveyance of seventy-five percent (75%) of all Townhome Units that may be created to Owners other than the Declarant; or ~~_____~~ *NEED 20*

(b) Two (2) years after the last conveyance of a Townhome Unit by the Declarant in the ordinary course of business to Owners other than Declarant; or

(c) Two (2) years after any right to add new Townhome Units was last exercised; or

(d) Five (5) years after the date of initial recording of the Map.

A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Period of Declarant Control. In that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

DOWNPMS
8.4 Election by Owners. (a) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Townhome Units to Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board of Directors shall be elected by Owners other than the Declarant.

DOWNPMS
(b) Not later than sixty (60) days after conveyance of fifty percent (50%) of the Townhome Units to Owners other than a Declarant, not less than thirty-three and one third percent (33 & 1/3%) of the members of the Board of Directors must be elected by Owners other than the Declarant.

(c) Not later than the termination of the Period of Declarant Control, the Owners shall elect a Board of Directors of at least three (3) members, at least a majority of whom shall be Owners other than Declarant. The Board of Directors shall elect the officers of the Association. The Owners' Board of Directors shall take office upon termination of the Period of Declarant Control upon election.

8.5 Delivery of Documents by Declarant. Within sixty (60) days after the Owners other than the Declarant elect a majority of the members of the Board of Directors, the Declarant shall deliver to the Board of Directors, without any charge to the Association, all property of the Owners and of the Association held by or controlled by the Declarant, including, without limitation, the following items:

(a) The original or a certified copy of the recorded Declaration, as amended, the Articles, together with a Certificate of Good Standing, Bylaws, minute books, other books and records, and any Rules and Regulations which may have been promulgated;

(b) An accounting for Association funds and financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends in accordance with §38-33.3-303(9)(b) of the Act;

(c) The Association funds or control thereof;

(d) All of the tangible personal property that has been represented by the Declarant to be the property of the Association and has been used exclusively in the operation and enjoyment of the General Common Elements, a copy of any plans and specifications used in the construction of improvements in the Project, and inventories of these properties;

(e) All insurance policies then in force in which the Owners, the Association, or its directors and officers are named as insured persons;

(f) Any other permits issued by governmental bodies applicable to the Project and which are currently in force or which were issued within one (1) year prior to the date on which Owners other than the Declarant took control of the Association;

(g) Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective;

(h) A roster of Owners and First Lienors and other persons entitled to notice pursuant to Section 23.1 hereof and their addresses and telephone numbers, if known, as shown on the Declarant's records;

(i) Employment contracts in which the Association is a contracting party; and

(j) Any service contract in which the Association is a contracting party or in which the Association of the Owners have any obligation to pay a fee to the persons performing the services.

ARTICLE 9
MAINTENANCE AND REPAIRS; RIGHT OF ACCESS

9.1 General Common Elements. (a) The General Common Elements, specifically including without limitation all landscaping as installed, recreational equipment, traffic control devices and signage which are or become General Common Elements, shall be administered, conserved, managed, maintained, repaired and replaced by the Association according to its procedures established from time to time. Such maintenance and repair shall include, but not be limited to, maintenance of landscaping to substantially the same standards as installed, and maintenance, resurfacing, repair and plowing of internal roadways and parking areas. The cost of such maintenance and repair of the General Common Elements shall be a General Common Expense of all Owners. No Owner shall have the right to make or cause to be made any additions, alterations or repairs to the General Common Elements.

(b) To perform the maintenance and repairs, the Association shall have the right of access to any Townhome Unit from time to time during reasonable hours, or at any time for the purpose of making emergency repairs therein necessary to prevent damage to the General Common Elements or to another Townhome Unit or Townhome Units. The costs of repairing any damage to a Townhome Unit resulting from entry therein for the purpose of repairing or maintaining the General Common Elements or preventing damage to the General Common Elements or another Townhome Unit, shall be a General Common Expense of all the Owners.

9.2 Party Walls.

(a) The cost of repair and maintenance of a Party Wall shall be shared equally by the Owners sharing such Party Wall. Each sharing Owner shall have sole discretion to determine the time and manner in which such maintenance shall be performed. Each sharing Owner shall have a perpetual easement in and to that part of the Project on which the Party Wall is located for Party Wall purposes, including maintenance, repair and inspection. No Owner shall alter or change the Party Wall in any manner, interior decoration excepted, and the Party Wall shall always remain in the same location as when erected.

(b) In the event of damage or destruction of a Party Wall from any cause, other than the negligence or willful misconduct of an Owner, the sharing Owners shall, as a common expense, repair or rebuild said wall to its previous condition, which specifically includes the previous sound transmission coefficient, and the sharing Owners, their successors and assigns shall have the right to the full use of said wall so repaired and rebuilt. If an Owner's negligence or willful misconduct shall cause damage to or destruction of such Party Wall, such negligent party shall bear the entire cost of repair and reconstruction.

9.3 Exterior Maintenance Area. The Exterior Maintenance Area that is part of a Townhome Unit shall be the property of the Owner of that Townhome Unit. However, in order to maintain a uniform appearance and a high standard of maintenance within the Project, the Association shall maintain the Exterior Maintenance Area, as more fully set forth below.

(a) The Association shall maintain the Exterior Maintenance Area of all Townhome Units including, but not limited to, painting of the exterior (including decks and

porches). The Association shall have the sole discretion to determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used to maintain the Townhome Units. Each Owner shall be responsible for repair or replacement of broken glass in doors and windows to such Owner's Townhome Unit, as well as any required roof replacement, maintenance and repair.

(b) The Association shall maintain only front yard landscaping of the Townhome Units, including but not limited to, lawns, trees and shrubs, and all driveways (and the maintenance included under this Section shall include snow plowing services). The maintenance provided under this Section shall be performed at such time and in such manner as the Association shall determine. Each Owner shall be responsible for back yard landscaping, walls, gates and sidewalks (including snow shoveling) with respect to his Townhome Unit.

(c) The Association shall not have any obligations with respect to maintenance or repair of Exterior Maintenance Areas except as specifically set forth herein. In the event of any dispute between an Owner and the Association as to responsibility for an Exterior Maintenance Area item, a vote by the majority of the Owners shall be controlling.

9.4 Townhome Units. Except as specifically set forth in Sections 9.2 and 9.3 above, each Owner shall be responsible for maintenance and repair of all portions of his Townhome Unit, including fixtures and improvements and all utility lines and equipment located therein and serving such Townhome Unit only. In performing such maintenance or repair, or in improving or altering a Townhome Unit, an Owner shall obtain all necessary permits and licenses, and shall comply with all applicable laws, rules and regulations, including the rules and regulations of the Association. Notwithstanding the foregoing, no Owner shall do any maintenance, repair or improvement work that impairs the structural soundness of the Building in which such Owner's Townhome Unit is located or that interferes with any easement. No Owner shall make any addition or any other alteration to the Party Walls (interior decoration excepted) or any portion of the Exterior Maintenance Area or General Common Elements without the express consent of the Association. Each Owner shall also pay his own utilities including electric, gas, phone, sewer, water and cable TV.

9.5 Owner Caused Damage. Notwithstanding the foregoing, if damage to the Party Walls, the Exterior Maintenance Area, the General Common Elements or to any Townhome Unit is caused by the negligence or intentional act of an Owner, or if entry into a Townhome Unit is required because of any Owner's negligence or intentional act, such Owner shall pay, or reimburse the Association, for all costs of repairing such damage and shall be liable to the Association and the other Owners for all additional losses or expenses suffered as a result of his negligence or intentional acts, including without limitation reasonable attorneys' fees.

9.6 Declarant's Right to Maintain. If, in the sole judgment of Declarant, the Association has failed to maintain the General Common Elements or the Exterior Maintenance Areas in good order and repair, Declarant may, after five days' notice to the Association, perform all work necessary to maintain the General Common Elements in good order and repair and Declarant shall have access to any Townhome Unit for such purposes. The Association shall reimburse Declarant for the cost of such work, which shall be a General Common Expense of all Owners payable as set forth herein. Declarant's right to maintain contained in this

Section 9.6 shall terminate when Declarant no longer holds any interest in any Townhome Unit in the Project.

ARTICLE 10 ASSESSMENTS, COLLECTION AND LIENS

10.1 Assessments for Common Expenses. Except as set forth in Article 9, each Owner shall pay his pro rata share of the General Common Expenses. Such proration shall be made on the basis of each Owner's Sharing Ratio.

10.2 Collection. The Bylaws shall empower the Board of Directors to fix, determine, levy and collect from the Owners periodic and special assessments to meet the General Common Expenses and to create a contingency reserve therefor. The Bylaws shall also establish the procedures by which the assessments shall be made known to and paid by the Owners. An action may be brought by the Association to recover unpaid assessments, together with interest thereon at a default rate fixed by the Board from time to time, from the Owner liable for payment thereof, with or without foreclosing or waiving the lien described in Section 10.3 below. The Declarant and, by acceptance of a deed to a Townhome Unit, each Owner personally covenant and agree to pay their allocable shares of assessments made by the Association from time to time pursuant to this Declaration.

10.3 Liens for Non-Payment. All sums assessed but unpaid for an Owner's share of the General Common Expenses shall constitute a lien on such Owner's Townhome Unit in favor of the Association as provided in Section 38-33.3-316 of the Act. All liens for non-payment of assessments shall be superior to all other liens and encumbrances, except as provided in such Section of the Act and except for previously filed liens of the Prospect Point Master Homeowners Association..

10.4 Foreclosure of Liens. The Association's lien shall attach from the date when the unpaid assessment shall become due and may be foreclosed by the Association in like manner as a mortgage on real property upon the recording of a notice or claim thereof executed by the Association setting forth the amount of the unpaid indebtedness, the name of the Owner and a description of the Townhome Unit. In any lien foreclosure action, the Owner shall be required to pay the costs and expenses of the proceeding, including without limitation reasonable attorneys' fees. During the period of foreclosure the Owner of the Townhome Unit subject to the action shall be required to pay a reasonable rental to the Association. The Association shall be entitled to purchase the Townhome Unit at the foreclosure sale or by deed in lieu of foreclosure, and to acquire, hold, lease, mortgage or convey the same.

10.5 No Waiver or Abandonment; No Offset. No Owner shall exempt himself from liability for payment of such Owner's share of the General Common Expenses either by waiver of the use or enjoyment of any of the General Common Elements or by abandonment of such Owner's Townhome Unit. All assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason, including, without limitation, any claim that the Association or the Board of Directors is not properly exercising

its duties and powers under this Declaration (except that the Declarant is exempt from the requirements of this sentence).

10.6 Transfer of a Townhome Unit. Except as provided in the next sentence below, in the event of a sale or other transfer of a Townhome Unit with respect to which sums assessed shall be unpaid, the purchaser or other transferee of an interest in the Townhome Unit shall be jointly and severally liable with the seller or transferor thereof for the unpaid assessments. In the event of a transfer in connection with foreclosure, or conveyance by deed in lieu thereof, of a Mortgage, the lien of which is superior to the assessment lien herein described, the transfer shall be made free and clear of any lien for such unpaid assessments, except to the extent provided in Section 38-33.3-316 of the Act, but such transfer shall not relieve the prior Owner of personal liability for any unpaid assessments or the purchaser from any liability for subsequent assessments.

10.7 Request for Assessment Statement. Upon written request of any Owner, Mortgagee, prospective Mortgagee, purchaser or other prospective transferee of a Townhome Unit, the Association shall issue a written statement setting forth the amount of all unpaid assessments, if any, with respect to such Townhome Unit, the amount of the current periodic assessment for General Common Expenses, the date on which such assessments became or shall become due and the amount of any credit for prepaid expenses. This statement, for which a reasonable fee may be charged, shall be binding upon the Association in favor of any person who may rely thereon in good faith. Unless an assessment statement shall be prepared within 10 days after the Association receives a written request therefor by any party entitled to make such a request other than an Owner, all unpaid assessments that became due prior to the date of the Association's receipt of the request shall be subordinated to the lien or other interest of the person requesting the statement.

10.8 Lienor's Right to Pay Assessments. Any party in favor of whom a lien on a Townhome Unit has been created may, but shall not be required to, pay in full any unpaid assessments with respect to the Townhome Unit, and upon payment the party shall have a lien on the Townhome Unit for the amount so paid of the same rank as the assessment lien theretofore existing.

10.9 Allocation of Interests. The table showing the Townhome Unit numbers and their Sharing Ratios is attached as Attachment B.

ARTICLE 11 INSURANCE

11.1 Coverage. On behalf of the Owners, the Association shall obtain and maintain at all times the insurance required by Section 38-33.3-313 of the Act, which shall include, without limitation, to the extent reasonably available, the following insurance coverage:

(a) insurance coverage on the General Common Elements against loss or damage by fire, with extended coverage (including without limitation insurance against loss or damage by vandalism or malicious mischief) in approximately the amount, less applicable

deductibles, of the maximum insurable value of each of such General Common Elements; together with the following endorsements if they are commonly required by prudent institutional mortgage investors: Guaranteed Replacement Cost Endorsement, Agreed Amount Endorsement, Inflation Guard Endorsement, Construction Code Endorsement, Demolition Cost Endorsement, Contingent Liability From Operation of Building Laws Endorsement, and an Increased Cost of Construction Endorsement;

(b) general public liability and property damage insurance coverage against claims for bodily injury or death or property damage occurring upon or in the General Common Elements, in limits of not less than \$500,000 in respect of bodily injury or death to any one person and not less than \$1,000,000 for bodily injury or death to any number of persons arising out of one accident or disaster, and in limits of not less than \$100,000 for damage to property, and if higher limits shall at any time be determined by the Board as necessary to protect against possible tort liability, such higher limits shall be carried;

(c) fidelity bond insurance for any Owner or Association employee who either handles money or is responsible for funds held or administered by the Association; and

(d) insurance coverage in such amounts as the Association may consider necessary or advisable against such other insurable hazards related to common interest ownership projects.

11.2 Owner's Insurance. Each Owner shall obtain and maintain at his expense insurance coverage for the full insurable value (as described below) of his Townhome Unit, the furnishings or other items of personal property in such Owner's Townhome Unit and for liability for injury, death or damage that may occur inside such Owner's Townhome Unit. Any such policy shall contain wavers of subrogation and shall be so written that the liability of the carriers issuing any insurance obtained by the Association shall not be affected or diminished thereby.

11.3 Insurable Value. The full insurable value of each Townhome Unit shall be the full replacement cost of the Townhome Unit, exclusive of land, excavations, foundations and other items normally excluded from property policies, without deduction for depreciation. The maximum insurable value of each Townhome Unit shall be determined by the Association by means of one or more written appraisals made by competent, disinterested appraisers; however, appraisals need not be obtained more frequently than at three-year intervals. Copies of such appraisals shall be furnished to each Owner and each First Lienor requesting the same in writing.

11.4 Named Insured and Required Provisions. All insurance required to be carried under this Article 11 (excluding property insurance on furnishings and personalty under Section 11.2) shall be carried in favor of the Association, the Board, any managing agent, the agents, employees and officers of the Association and any managing agent, the Owners and all First Lienors, as their respective interests may appear. All policies of insurance against damage to the Buildings or any Townhome Unit shall provide that losses shall be payable to and adjusted with the Association. The Association shall hold and apply the proceeds of such insurance as set forth in this Declaration. Each insurance policy shall provide that no cancellation thereof

may be made by the insurance carrier without having first given 30 days' prior written notice thereof to the Association, the Owners and all First Lienors. Each insurance policy shall also provide that in case of violation of any provision thereof by one or more (but less than all) of the Owners, the coverage of such policy shall be suspended or invalidated only as to the interest of the Owner or Owners committing the violation and not as to the interest of any other insured party. All policies of physical damage insurance shall contain waivers of subrogation and of any defense based on co-insurance. Duplicate originals of all policies of physical damage insurance and of all renewals thereof, together with proof of payment of premiums, shall be delivered to all First Lienors making written request therefor, at least 10 days prior to expiration of the then current policies. Nothing herein shall preclude the Association from joining with Villas at Prospect Point Condominium Association, Inc., or Prospect Point Master Homeowners Association, Inc., or both, to obtain joint insurance coverage if economically feasible.

ARTICLE 12 APPOINTMENT OF ATTORNEY-IN-FACT

Each Owner by his acceptance of the deed or other conveyance vesting in him an interest in a Townhome Unit does irrevocably constitute and appoint (a) the Association with full power of substitution as his true and lawful attorney in his name, place and stead to deal with such interest upon damage to or destruction, obsolescence or condemnation of all or any part of the Premises as hereinafter provided, and (b) Declarant with full power of substitution as his true and lawful attorney in his name, place and stead to deal with such interest in order to effectuate the reservations contained in Articles 5 and 22, each with full power, right and authorization to execute, acknowledge and deliver any contract, deed, proof of loss, release or other instrument affecting the interest of such Owner, and to take any other action, that the Association or Declarant may consider necessary or advisable to give effect to the provisions of this Declaration. If requested to do so by the Association or Declarant, each Owner shall execute and deliver a written instrument confirming such appointment. The action of the Association in settling any damage or condemnation claim shall be final and binding on all Owners. No Owner shall have any rights against the Association or any of its officers or directors with respect thereto except in the case of fraud, willful misconduct or gross negligence.

ARTICLE 13 DAMAGE OR DESTRUCTION

13.1 Proceeds Sufficient to Repair. If any Townhome Unit or any part thereof is damaged or destroyed by any cause whatever and, in the reasonable judgment of the Association, the proceeds of insurance are sufficient to pay all the costs of repairing and restoring the Townhome Unit, the Association (as attorney-in-fact for the Owner) shall cause the Townhome Unit to be repaired and restored, applying the proceeds of insurance for that purpose.

13.2 Insufficient Proceeds - Non-Material Damage. If any Townhome Unit or any part thereof is damaged or destroyed by any cause whatever and, in the reasonable judgment of the Association, the anticipated proceeds of insurance are not sufficient to pay the costs of repairing and restoring the Townhome Unit, and if the excess of such costs over the anticipated insurance

proceeds are less than 10% of the maximum insurable value last determined under Section 11.3, then the Association (as attorney-in-fact for the Owner) shall promptly cause the Townhome Unit to be repaired and restored, and the difference between the insurance proceeds and the costs of repair and restoration shall be an expense of the Owner of the Townhome Unit and shall be assessed and paid by such Owner.

13.3 Insufficient Proceeds - Material Damage. (a) If any Townhome Unit or any part thereof is damaged or destroyed by any cause whatever and, in the reasonable judgment of the Association, the anticipated proceeds of insurance are not sufficient to pay the costs of repairing and restoring the Townhome Unit, and if the excess of such costs are 10% or more of the maximum insurable value last determined under Section 11.3, then (unless within 100 days after the date of such damage or destruction a plan, acceptable to the Association, for repairing and restoring the Townhome Unit shall be approved by the Owner of such Townhome Unit and by the First Lienor of such Townhome Unit) the Association (as attorney-in-fact for the Owner) shall execute and record in the County real estate records a notice of such facts, and thereafter shall sell the Townhome Unit. Unless the buyer requests otherwise (and such request is specified in the deed), escrows with the Association sufficient funds to repair and restore the Townhome Unit and approves a plan therefor, acceptable to the Association, such sale shall be free and clear of the provisions of this Declaration and the Map, which shall wholly terminate and expire with respect to such portion of the Premises upon the closing of such sale. If necessary, as shall be determined by the Association, such sale shall include a grant from the Association or reservation to the Association, as appropriate, of reasonable easements for ingress, egress and utilities. This Declaration and the Map, however, shall remain in full force and effect with respect to the balance of the Land and all other Buildings and improvements, and the Sharing Ratios appurtenant to all Townhome Units remaining subject to this Declaration shall automatically be proportionately increased.

(b) The proceeds of insurance and the proceeds of such sale of a Townhome Unit shall be collected by the Association, applied first to the payment of the costs and expenses of the sale and then applied by the Association for the following purposes in the order indicated: (i) for payment of the balance of the lien of any first Mortgage on the Townhome Unit; (ii) for payment of taxes and special assessment liens in favor of any assessing entity; (iii) for payment of unpaid General Common Expenses; (iv) for payment of junior liens and encumbrances in the order of and to the extent of their priority and (v) the balance remaining, if any, shall be paid to the Owner. The provisions of this paragraph shall not be construed as limiting in any way the right of a First Lienor (in case the proceeds allocated under clause (i) above shall be insufficient to pay the indebtedness secured by such First Lienor's lien) to assert and enforce any personal liability for such deficiency of the person or persons responsible for payment of such indebtedness.

(c) If within 100 days after the date of such damage or destruction a plan for repairing and restoring the damaged or destroyed Building shall be approved by the Owner and by the First Lienor of such Townhome Unit, or if the buyer of the Townhome Unit escrows sufficient funds to repair and restore the Townhome Unit as provided in subsection 13.3(a) above and approves an acceptable plan therefor, the Association (as attorney-in-fact for such Owner or buyer) shall promptly cause such repairs and restoration to be made according to such plan.

13.4 Damage to More Than One Townhome Unit. If there is damage to more than one Townhome Unit in a Building as a result of a casualty, the Association may, at its option, combine insurance proceeds for restoration of common walls and the like in an equitable manner.

13.5 No Liability on First Lienors. Nothing contained in this Article 13 shall be construed as imposing any liability whatever on any First Lienor to pay all or any part of the costs of repair or restoration.

ARTICLE 14 OBSOLESCENCE

14.1 Renovation of a Building. If at any time the Owners with 80% or more of the total Sharing Ratios appurtenant to Townhome Units in any Building and 80% or more of all First Lienors of such Townhome Units shall agree that the such Building has become obsolete and shall approve a plan for its renovation or restoration, the Association (as attorney-in-fact for such Owners) shall promptly cause such renovation or restoration to be made according to such plan. All Owners with interests in such Building shall be bound by the terms of such plan, and the costs of the work shall be an expense of the Owners of such Building only and shall be assessed and paid by such Owners in accordance with their relative Sharing Ratios. No Owner of a Townhome Unit in any other Building shall be required to pay any of the costs of such renovation or restoration on account of such ownership. Any increase in insurance costs to the Association as a result of renovation or restoration of a Building shall be borne solely by the Owners of the Townhome Units in such Building in accordance with their relative Sharing Ratios.

14.2 Renovation of General Common Elements. If at any time the Owners with 80% or more of the total Sharing Ratios and 80% or more of all First Lienors shall agree that any of the improvements constituting General Common Elements have become obsolete and shall approve a plan for their renovation or restoration, the Association shall promptly cause such renovation or restoration to be made according to such plan. All Owners shall be bound by the terms of such plan, and the costs of the work shall be a General Common Expense, to be assessed and paid as provided in Article 10.

ARTICLE 15 CONDEMNATION

15.1 Total Taking. If the entire Premises shall be taken for any public or quasi-public use, under any statute, by right of eminent domain or by purchase in lieu thereof, or if all or any material part of all of the Buildings shall be so taken, or if any part of the Land shall be so taken and the part remaining shall be insufficient for purposes of the Project, as determined by the Association, the Association (for itself and as attorney-in-fact for the Owners) shall collect the award made in such taking and shall sell the part of the Land remaining after the taking, if any, free and clear of the provisions of this Declaration and the Map. Such provisions shall wholly terminate and expire upon the recording of a notice by the Association setting forth all

of such facts. The award and the proceeds of such sale, if any, shall be collected, applied and divided among the Owners by the Association in the manner provided in Section 13.3.

15.2 Total Taking of a Building or Buildings. (a) If all or any material part of one or more, but fewer than all, of the Buildings shall be taken, but the remaining part of the Premises shall be sufficient for the purposes of the Project with respect to the remaining Buildings, as determined by the Association, the Association (as attorney-in-fact for such Owners) shall collect the award made in such taking and shall sell the part of the Land underlying the Building[s] taken free and clear of the provisions of this Declaration and the Map, which shall wholly terminate and expire with respect to such portion of the Premises upon the closing of such sale. If necessary, as shall be determined by the Association, such sale shall include a grant from the Association or reservation to the Association, as appropriate, of reasonable easements for ingress, egress and utilities. The award and the proceeds of such sale, if any, shall be collected, applied and divided by the Association among the Owners of Townhome Units in the Buildings taken in the manner provided in Section 13.3.

(b) This Declaration and any Map, however, shall remain in full force and effect with respect to the balance of the Premises and the Sharing Ratios appurtenant to all Townhome Units remaining subject to this Declaration shall automatically be proportionately increased.

15.3 Partial Taking. Subject to the provisions of Section 38-33.3-107 of the Act, if there shall be a partial taking only, if no material part of any Building shall be taken, and if the remaining part of the Premises shall be sufficient for the purposes of the Project, as determined by the Association, the Association (as attorney-in-fact for such Owners) shall collect the award and shall promptly and without delay cause the balance of the Premises not so taken to be restored as nearly as possible to its condition prior to the taking, applying the award to that purpose. Any part of the award not required for such restoration shall be divided by the Association and distributed among the Owners in accordance to their Sharing Ratios.

ARTICLE 16 QUALITY OF WORK

Any repairs, renovation or restoration of the Land or any Townhome Unit by the Association (as attorney-in-fact for such Owners) shall be done in such manner as to make the Land or the Townhome Unit after such work is completed as close in value as it was immediately before the occurrence requiring the work to be done as is reasonably possible. Furthermore all such repairs, renovation or restoration shall be done in compliance with all applicable laws, rules and regulations, including the rules and regulations of the Association.

ARTICLE 17 AMENDMENT OR REVOCATION

This Declaration may be amended (a) by Declarant at any time prior to the filing of the Map or thereafter as provided in Section 22.5, (b) upon the written approval in recordable form

of the Owners of 80% or more of the total Interests in General Common Elements and 67% or more of all First Lienors, except that the provisions of Article 22 with respect to rights of Declarant may only be amended with Declarant's consent and Section 3.1 and Attachment B relating to Interests in the General Common Elements may be amended only upon approval of the Owners of 100% of the Interests in General Common Elements and all First Lienors in the applicable Townhome Units, and (c) otherwise as specifically provided in the Act. Any lien that is subordinate to this Declaration shall also be automatically subordinated to any amendment to this Declaration approved or adopted in accordance with the provisions of this Article 17. This Declaration may be revoked by Declarant at any time prior to the filing of the Map, and thereafter this Declaration shall be revoked only upon sale of all or part of the Premises pursuant to Sections 13.3, 14.3, 15.1 or 15.2, or upon the unanimous written approval in recordable form of 80% or more of all Owners and 80% or more of all First Lienors in accordance with the provisions of Section 38-33.3-218 of the Act. Notwithstanding anything herein to the contrary, a First Lienor shall be deemed to have given any requested consent or approval if such First Lienor fails to respond to any written request within thirty (30) days after delivery of such request by certified or registered mail, return receipt requested.

ARTICLE 18 PROPERTY FOR COMMON USE

Subject to any restrictions set forth in the Act, the Association may acquire and hold for the use and benefit of all the Owners, real or personal (tangible and intangible) property and may dispose of the same by sale or otherwise, and the same shall be dealt with as and shall become part of the General Common Elements.

ARTICLE 19 REGISTRATION BY OWNER OF MAILING ADDRESS; NOTICES

19.1 Registration. Each Owner shall register his mailing address with the Association promptly after his purchase of a Townhome Unit; and shall register any change in his mailing address with the Association promptly after such change.

19.2 Notice of Transfer. If any Owner, other than Declarant, sells, leases or otherwise transfers an interest in his Townhome Unit, such Owner shall deliver to the Association within five days after completion of the sale, lease or other transfer a written notice stating the full name of the new owner, tenant or transferee, the number of the Townhome Unit transferred, the forwarding address of such Owner and the mailing address of the new owner, tenant or transferee (if different from the subject Townhome Unit); and, if the transfer was a lease transaction, such Owner shall also deliver to the Association a copy of the lease.

19.3 Delivery of Notice. Any bill, statement, notice, demand or communication intended to be served upon an Owner shall be in writing and shall be deemed sufficiently given if delivered personally or sent by United States mail, postage prepaid, and except for monthly statements and other routine notices, sent by registered or certified mail, addressed in the name of the Owner at his mailing address as registered with the Association. All notices, demands

or other communication intended to be served upon the Association shall be in writing and shall be deemed sufficiently given if delivered personally to an officer of the Association or sent by certified or registered United States mail, postage prepaid, to the address of the Association as designated in the Bylaws.

ARTICLE 20 DURATION OF OWNERSHIP

The separate estates created by this Declaration and the Map shall continue until this Declaration shall be revoked or until its provisions shall terminate with respect to all or any portion of the Project as provided herein.

ARTICLE 21 ARCHITECTURAL CONTROL

No Building, fence, wall or other structure shall be commenced, erected or maintained upon the Land, nor shall any exterior addition to or change or alteration in any Townhome Unit or other existing improvement on the Land be made until the plans and specification showing the nature, kind, shape, height, color, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors, or by an architectural committee composed of three or more representatives appointed by the Board (which shall serve at the pleasure of the Board). In the event the Board, or its designated committee, fails to approve or disapprove such design and location within 30 days after such plans and specifications have been submitted to it, approval shall be deemed given.

ARTICLE 22 SPECIAL DECLARANT RIGHTS, DEVELOPMENT RIGHTS AND GENERAL RESERVATIONS

22.1 Easements, Reservation, Etc. Declarant reserves for the Period of Special Rights (a) the right to dedicate any access roads and streets serving this Project for and to public use; to establish easements, reservations and exceptions consistent with the common interest ownership of the Project and for the best interests of the Owners and the Association, which easements, reservations and exceptions shall be in addition to those set forth on Attachment C hereto; (b) an easement over the General Common Elements, to the extent necessary for construction of additional improvements, which may include recreational facilities that will become General Common Elements; and (c) the right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across any portion of the Property for the purpose of furnishing utility and other services to Townhome Units and improvements constructed on the Property or to be constructed on that portion of the Project designated on the Map as "future development area.". The operating expenses of such improvements will be General Common Expenses. Declarant, however, has no obligations to construct additional improvements.

22.2 Right to Maintain Sales Offices and Models. Declarant also reserves the right to maintain sales offices, management offices and models, and to maintain one or more advertising signs, as Declarant deems appropriate, during the period Declarant is actively engaged in selling the Townhome Units. Declarant reserves the right to place such sales offices, management offices and models in any Townhome Unit owned by Declarant and on any portion of the General Common Elements, in such number, of such size and in such locations as Declarant deems appropriate. Declarant reserves the right to place such advertising signs on any unimproved part of the General Common Elements, in such number, of such size and in such locations as Declarant deems appropriate.

22.3 Relocation of Sales Offices and Models. Declarant may from time to time relocate models, management offices and sales offices to different locations within the Project. Upon the relocation of a model, management office or sales office that was placed on a portion of the General Common Elements, Declarant may remove all personal property and fixtures therefrom. Any fixtures not so removed shall thereafter be deemed General Common Elements, and any personal property not so removed shall be deemed the property of the Association.

22.4 Parking Spaces. So long as Declarant shall be selling Townhome Units in the Project, Declarant shall have the right to restrict the use of the General Common Elements parking spaces. Such use shall include reserving such spaces for use by prospective Townhome Unit purchasers, Declarant's employees and others engaged in sales, maintenance, construction or management activities.

22.5 Certain Amendments by Declarant. Declarant reserves the right to amend, without the consent of Owners or First Lienors this Declaration, The Map, the Association's Articles or Bylaws, any time within the limitations set forth herein, as follows:

(a) to make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement;

(b) to comply with any requirements of the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development/Federal Housing Administration, the Veteran's Administration or any similar governmental or quasi-governmental agency or to induce any of such agencies to make, purchase, sell, insure or guarantee first Mortgages;

(c) to comply with any requirements of the Act;

(d) to reflect the addition of Townhome Units or easements upon exercise of development rights as provided in Section 22.6.

22.6 Development Rights to Construct Additional Buildings. The Declarant reserves the development right, at its sole cost and expense, to build additional Buildings within the Project, provided that the total number of Buildings shall not exceed eleven (11), and in such additional Buildings to create additional Townhome Units, provided that the total number of Townhome Units in the Project shall not exceed forty (40). The Declarant further reserves the

right to own, encumber and sell for its own account such newly constructed Buildings and the Townhome Units created therein, subject to the terms and conditions of this Declaration. A deed or deed of trust executed by the Declarant shall be sufficient for all purposes to convey or encumber title to any Building constructed or Townhome Unit created by Declarant pursuant to this Section 22.6. Any additional Buildings must be built within the areas denominated as "future development" areas on the Plat of the Land to be hereafter recorded, and the right to build such additional Buildings must be exercised (including recordation of supplements to the Map with respect to newly-created Townhome Units) within the Period of Special Rights. This development right may be exercised separately with respect to each additional Building; and no assurances are made with respect to the exact boundaries of particular Buildings or the order in which individual Buildings shall be constructed. Exercise of a particular development right to construct a particular Building shall not require Declarant to exercise any other development right with respect to construction of any other Building. So long as Declarant retains any right to build, but has not yet built, a Building on any Parcel identified above, Declarant shall be responsible for maintenance costs with respect to such Parcel and such costs shall not be included as General Common Expenses.

ARTICLE 23 FIRST LIENOR PROVISIONS

The following provisions are for the benefit of all persons or entities who or that are holders, insurers, or guarantors of holders of first Mortgages recorded against Townhome Units within the Project and have delivered a written request to the Association containing its name, address, the legal description and address of the Townhome Unit encumbered. To the extent applicable, necessary, or proper, the provisions of this Article 23 apply to this Declaration and to the Articles and Bylaws of the Association.

23.1 Notices of Action. Each such person shall be entitled to timely written notice of:

(a) any material condemnation loss or casualty loss which affects a material portion of the Project or any Townhome Unit in which there is a first mortgage held, insured, or guaranteed by such person;

(b) any delinquency in the payment of the General Common Expense owed by an Owner whose Townhome Unit is subject to a first Mortgage held, insured or guaranteed by such person, or any default by such Owner in any obligation under the Declaration, Articles or Bylaws if and when the Board of Directors has actual knowledge of such default, and such delinquency or default remains uncured after sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) any proposed action that would require the consent of a specified percentage of First Lienors.

23.2 Special FNMA/FHLMC Provisions. After the initial sale of any Townhome Unit and so long as required by either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, the following requirements apply in addition to and not in lieu of any other requirements contained herein or in the Bylaws. Unless at least sixty-seven percent (67%) of the First Lienors (based on one vote for each first mortgage owned) and Owners (other than Declarant) have given their prior written approval, the Association is not entitled to take any of the following actions:

(a) by act or omission seek to abandon or terminate the Project; seek to abandon, partition, subdivide, encumber, sell or transfer any common property owned directly or indirectly, by the Association (excluding the granting of permits, licenses and easements for public utilities, roads or other purposes reasonably necessary or useful for the property maintenance or operation of the Project or the Association); or partition or subdivide any Townhome Unit;

(b) except as specifically contemplated by Attachment B, change the Sharing Ratios, the method of determining assessments, dues or other charges which may be levied against an Owner, or the method of allocating distributions of hazard insurance proceeds or condemnation awards among Owners;

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to the architectural design or the exterior appearance of Townhome Units or the maintenance, repair and replacement of the General Common Elements;

(d) fail to maintain fire and extended coverage on insurable General Common Elements on a current replacement cost basis in an amount at not less than one hundred percent (100%) of the insurable value (based on current replacement cost), less applicable deductibles; and

(e) use hazard insurance proceeds for property losses for purposes other than repair, replacement or reconstruction of said property.

Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Section or make any such requirements less stringent, the Board of Directors, without approval of the Owners or First Lienors, may cause an amendment to this Section to be recorded to reflect such changes.

23.3 Implied Approval. Implied approval by a First Lienor shall be assumed when a First Lienor fails to submit a response to any written proposal for an amendment within thirty (30) days after such First Lienor receives proper notice of the proposal, provided this notice was delivered by certified or registered mail with return receipt requested.

23.4 Books and Records. Owners and First Lienors shall have the right to examine the books and records of the Association at the office of the Association in accordance with the procedure set forth in the Association's Bylaws.

23.5 HUD/VA Approval. Until the termination of the Period of Declarant Control, if at any time the Department of Housing and Urban Development has insurance or the Veterans Administration has a guarantee on one or more first Mortgages, the following actions will require the prior approval of the Department of Housing and Urban Development and/or the Veterans Administration as appropriate: annexation of additional properties; amendment of this Declaration other than those permitted by Section 22.5; any termination of the Common Interest Community created hereby; or any merger or consolidation of the Association.

ARTICLE 24 MISCELLANEOUS

24.1 Severability. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

24.2 The Act. The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law; and in the event of any conflict between the Act and this Declaration, the terms of the Act shall control.

24.3 References. References made in this Declaration, including by use of a pronoun, shall be deemed to include where applicable masculine, feminine, neuter, singular or plural. As used in this Declaration, "person" shall mean any natural person, corporation, partnership, trust, estate or other entity.

24.4 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Colorado.

24.5 Captions and Recitals. The captions of the Articles and Sections of this Declaration are for convenient reference only and shall not be considered or referred to in resolving questions of interpretation of this Declaration. The Recitals of this Declaration are included as an aid to interpretation of this Declaration, but do not themselves create, limit or define any rights or obligations hereunder.

24.6 Attachments. The Attachments referred to in this Declaration are hereby incorporated by this reference and constitute a part of this Agreement.

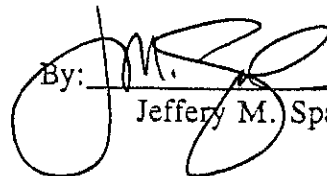
* 24.7 Conflicts with Articles and Bylaws. In the event of any conflict between the terms of this Declaration and the terms of the Articles or Bylaws, ~~the terms of this Declaration shall control.~~

24.8 Transfer of Declarant's Rights. Any rights of Declarant created or reserved under this Declaration may be transferred only by an instrument evidencing the transfer, signed by both transferor and transferee, and recorded in the real property records of the County.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration this 27th day of December, 1996.


PROSPECT POINT LLC, a Colorado limited liability company

By: Wintergreen Homes IV LLC, a Colorado limited liability company, Manager

By:  _____
Jeffery M. Spanel, Manager

The undersigned holder of a deed of trust upon the property covered by this Declaration hereby subordinates its interest in such property to the provisions of this Declaration.

COLORADO NATIONAL BANK, a national banking association

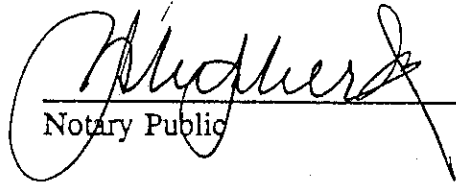
By:  _____
Name: Marcia C. Green
Title: Vice President

STATE OF COLORADO)
City and County of Denver) ss.

The foregoing instrument was acknowledged before me this 27th day of December, 1996, by Jeffery M. Spanel, as Manager of Wintergreen Homes IV LLC, a Colorado limited liability company, Manager of Prospect Point LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 11/10/98



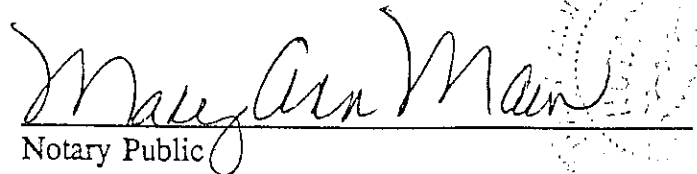
Notary Public

STATE OF COLORADO)
City and County of Denver) ss.

The foregoing instrument was acknowledged before me this 27th day of December, 1996, by Marcia C. Green as Vice President of Colorado National Bank, a national banking association.

Witness my hand and official seal.

My commission expires: March 22, 1997



Notary Public

ATTACHMENT A

(Attached to and made a part of Townhome Declaration
for Prospect Point)

Description of Real Property

The "Land" as used in this Declaration is the real property described as Lot 2, Prospect Point, Sections 23 and 26, T5S, R78 West of the 6th P.M., Town of Frisco, Summit County, Colorado.

ATTACHMENT B

(Attached to and made a part of Townhome Declaration for Prospect Point)

4 LEVELS

A. Assuming that all eleven Buildings are built as contemplated, the various Townhome Units shall have the Sharing Ratios set forth below upon completion of all Buildings and recording of supplements to the Map describing all Townhome Units.

MUNICIPAL UNIT #	MODEL TYPE AVAILABLE	SQUARE FOOTAGE WITH LOWER LEVEL	PERCENTAGE OF ASSOCIATION
Bldg. #1502-C	DR Unit	2180	2.57030%
Bldg. #1502-B	A Unit	1920	2.26375%
Bldg. #1502-A	D Unit	2180	2.57030%
Bldg. #1504-D	CR Unit	2340	2.75895%
Bldg. #1504-C	B Unit	1875	2.21069%
Bldg. #1504-B	BR Unit	1875	2.21069%
Bldg. #1504-A	C Unit	2340	2.75895%
Bldg. #1506-D	CR Unit	2340	2.75895%
Bldg. #1506-C	B Unit	1875	2.21069%
Bldg. #1506-B	BR Unit	1875	2.21069%
Bldg. #1506-A	C Unit	2340	2.75895%
Bldg. #1508-F	D Unit	2180	2.57030%
Bldg. #1508-E	A Unit	1920	2.26375%
Bldg. #1508-D	AR Unit	1920	2.26375%
Bldg. #1508-C	A Unit	1920	2.26375%
Bldg. #1508-B	AR Unit	1920	2.26375%
Bldg. #1508-A	D Unit	2180	2.57030%

MUNICIPAL UNIT #	MODEL TYPE AVAILABLE	SQUARE FOOTAGE WITH LOWER LEVEL	PERCENTAGE OF ASSOCIATION
Bldg. #1510-D	CR Unit	2340	2.75895%
Bldg. #1510-C	B Unit	1875	2.21069%
Bldg. #1510-B	BR Unit	1875	2.21069%
Bldg. #1510-A	C Unit	2340	2.75895%
Bldg. #1512-D	CR Unit	2340	2.75895%
Bldg. #1512-C	B Unit	1875	2.21069%
Bldg. #1512-B	BR Unit	1875	2.21069%
Bldg. #1512-A	C Unit	2340	2.75895%
Bldg. #1514-C	CR Unit	2340	2.75895%
Bldg. #1514-B	B Unit	1875	2.21069%
Bldg. #1514-A	C Unit	2340	2.75895%
Bldg. #1516-C	CR Unit	2340	2.75895%
Bldg. #1516-B	BR Unit	1875	2.21069%
Bldg. #1516-A	C Unit	2340	2.75895%
Bldg. #1518-C	CR Unit	2340	2.75895%
Bldg. #1518-B	B Unit	1875	2.21069%
Bldg. #1518-A	C Unit	2340	2.75895%
Bldg. #1520-C	CR Unit	2340	2.75895%
Bldg. #1520-B	BR Unit	1875	2.21069%
Bldg. #1520-A	C Unit	2340	2.75895%

MUNICIPAL UNIT #	MODEL TYPE AVAILABLE	SQUARE FOOTAGE WITH LOWER LEVEL	PERCENTAGE OF ASSOCIATION
Bldg. #1522-C	CR Unit	2340	2.75895%
Bldg. #1522-B	BR Unit	1875	2.21069%
Bldg. #1522-A	C Unit	2340	2.75895%
TOTAL		84,815	100%

B. Prior to completion of all Buildings, and subject to Declarant's development right to complete all Buildings, Townhome Units in Buildings that are complete from time to time shall have a Sharing Ratio equal to the quotient of (i) the number of square feet in their respective Townhome Units, divided by (ii) the number of square feet in all Townhome Units in all Buildings then complete. Such Sharing Ratios shall be subsequently reduced upon completion of subsequent Townhome Units as evidenced by supplements to the Map from time to time reflecting such additional Townhome Units. For purposes hereof a Building shall be complete when a supplement to the Map for such Building has been appropriately recorded and a certificate of occupancy for such Building has been issued by the appropriate governmental authority. c/o —

0% of units complete

C. Declarant may alter the number of square feet in, or the configuration of, any Townhome Unit or Townhome Units and Declarant's determination of the number of square feet in any Townhome Unit shall be conclusive. The estimated number of square feet in each Townhome Unit is not binding on Declarant. However, Declarant may construct no more than eleven (11) Buildings and forty (40) Townhome Units. In the event changes from the estimates set forth in A. above are required to be made, final Sharing Ratios shall be computed based on the formula set forth in B. above. In addition, if, at the Developer's option, any Townhome Unit is subsequently converted to a General Common Element, the Sharing Ratio of the remaining Townhome Units shall be appropriately adjusted.

ATTACHMENT C

(Attached to and made a part of Townhome Declaration
for Prospect Point)

Easements, Reservations and Exceptions

1. Taxes for 1996 and subsequent years not yet due and payable.
2. Right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, and a right of way for ditches or canals constructed by the authority of the United States, as reserved in United States Patent recorded October 1, 1883 in Book 47 at Page 501.
3. Restrictions as contained in document from Charles Howard Giberson and Lura Belle Giberson to Associated Investment Company of El Paso, Texas recorded May 24, 1984 under Reception No. 278170, as follows:
 - 1) A building restriction whereby no building on the land shall have a height measured from the top of such building's foundation of more than 50 feet.
 - 2) Right for water from natural flow and irrigation which may continue to flow onto the subject premises through existing ditches and canals in the same manner as has been historically done in the past.
 - 3) Rights of way, easements, reservations and restrictions which are found in Lawyers Title Commitment A-4037, Schedule B, Section 2.
4. Restriction as contained in document from State Department of Highways to C.H. Giberson and Lura Belle Giberson recorded September 10, 1979 under Reception No. 196317.
5. Terms, conditions and provisions of access easement recorded July 26, 1962 under Reception No. 95289.
6. Master Declaration for Prospect Point recorded November 13, 1995 under Reception No. 503131 and Easement Deed to Prospect Point Master Homeowners Association recorded November 13, 1995 under Reception No. 503132.

FIRST AMENDMENT
TO
TOWNHOME DECLARATION
FOR
PROSPECT POINT

This First Amendment to Townhome Declaration for Prospect Point (this "Amendment"), dated May 21, 1997, is executed by PROSPECT POINT LLC, a Colorado limited liability company.

Recitals

A. Declarant has heretofore executed a Townhome Declaration for Prospect Point (the "Declaration"), recorded in the real property records of Summit County, Colorado on December 30, 1996 at Reception No. 530984, and affecting property described as Lot 2, Prospect Point, Sections 23 and 26, T5S, R78W of the 6th PM, Town of Frisco, Summit County, Colorado. Capitalized terms used in this Amendment without definition shall have the meanings ascribed thereto in the Declaration, except as amended hereby.

B. Article 17 of the Declaration provides that the Declaration may be amended solely by Declarant at any time prior to the filing of the Map. As of the date hereof, the Map has not been filed and no Townhome Unit has yet been created.

C. Declarant now desires to amend the Declaration in certain respects.

Amendments

The Declaration is hereby amended as follows:

1. Amendments to Article 1. Article 1 of the Declaration is hereby amended as follows:

A. The definition of "Association" is hereby amended to read in its entirety as follows:

(c) "Association" means the Prospect Point Townhomes Homeowners Association, Inc., a Colorado nonprofit corporation, the members of which shall be all of the Owners. The Association shall be the record title holder of all of the General Common Elements and all of the Limited Common Elements.

B. The definition of "General Common Expenses" is hereby amended to read in its entirety as follows:

(n) "General Common Expenses" means: (i) all expenses expressly declared to be General Common Expenses by this Declaration or by the Bylaws; (ii) all other expenses of administering, servicing, conserving, managing,



maintaining, repairing or replacing the General Common Elements and maintaining and repairing the Exterior Maintenance Areas; (iii) insurance premiums for the insurance carried under Article 11; (iv) all real estate taxes and assessments against any of the General Common Elements or any of the Limited Common Elements; and (v) all expenses lawfully determined to be General Common Expenses by the Board of Directors. Notwithstanding the foregoing, any expense incurred by Declarant in connection with the initial construction of the Townhome Units shall not be a General Common Expense.

C. The definition of "Townhome Unit" is hereby amended to read in its entirety as follows:

(z) "Townhome Unit" means any Townhouse, together with all easements and rights-of-way appurtenant thereto, an undivided fifty percent (50%) interest in any party wall shared by such Townhouse and any adjacent improvements, and all Limited Common Elements allocated solely to such Townhouse, including any yard area, garage and driveways, as set forth on the Map."

D. A new definition of "Townhouse" is hereby added to Article 1 of the Declaration as follows:

(aa) "Townhouse" means an individually owned residential unit within the Project, including the structure thereof from foundation to roof in an unbroken vertical plain, and the land on which the foundation of such residential unit is constructed, together with all Limited Common Elements specifically allocated thereto, as set forth on the Map.

E. A new definition of "Limited Common Element" is hereby added to Article 1 of the Declaration as follows:

(ab) "Limited Common Element" means certain land adjacent to a Townhouse assigned for the exclusive use and enjoyment of the Owner of such Townhouse (subject, however, to any easements, agreements or licenses described in Section 2.4 hereof), which Limited Common Elements include, without limitation, yards, driveways and deck and patio areas. Limited Common Elements shall specifically include any landscaping, fencing, blacktopping, decking or similar improvements; provided that all improvements to Limited Common Elements shall be subject to the rules and regulations of the Association from time to time in effect. All Limited Common Elements shall be owned by the Association, subject to the exclusive rights of Owners herein described.

2. Amendments to Section 2.2. The first sentence of Section 2.2 is hereby amended to read in its entirety as follows:

The Premises shall be divided into: (i) separate Townhome Units, each consisting of a fee simple estate in a Townhouse, as defined herein, together with

a right to use all Limited Common Elements allocated thereto as herein described, all as set forth on the Map and on Attachment B hereto; and (ii) General Common Elements as set forth on the Map, together with all improvements thereon, all easements and rights-of-way located thereon or appurtenant thereto, as provided herein or therein.

3. Amendment to Article 3. A new Section 3.6 is hereby added to the Declaration as follows:

3.6 Use of Limited Common Elements. Any Owner shall have the exclusive right to use of the Limited Common Elements included in his Townhome Unit, subject to the terms and provisions of this Declaration. Notwithstanding anything herein to the contrary, no Owners shall be permitted to build or construct any type of structure upon any Limited Common Elements, specifically excluding fences around backyards, decks and patios within backyards, which may include hot tubs, barbecues and similar amenities. However, all construction of such items shall be subject to all applicable local ordinances, rules and regulations and all rules and regulations adopted by the Association from time to time. Every Owner shall be responsible for maintenance of all Limited Common Elements that are part of such Owner's Townhome Unit, subject, however, to the provisions of Section 9.3 hereof.

4. Amendment to Article 4.

A. Section 4.2 of the Declaration is hereby amended to read in its entirety as follows:

4.2 Subsequent to Recordation. Subsequent to the filing of this Declaration and the Map, every contract for sale, deed, lease, deed of trust, mortgage, will or other instrument affecting a Townhome Unit shall legally describe the Townhome Unit as follows:

Townhome Unit No. _____, Prospect Point Townhomes, according to the Townhome Declaration for Prospect Point, recorded on December 30, 1996 at Reception No. 530984 of the records of Summit County, Colorado, as amended from time to time, and the Map for Prospect Point Townhomes recorded on _____, 19____, at Reception No. _____ of the records of Summit County, Colorado, as amended from time to time.

B. The second sentence of Section 4.3 is hereby amended to read in its entirety as follows:

Each such description shall be construed to include the fee simple title to the Townhouse that is part of such Townhome Unit, the exclusive right to use all Limited Common Elements that are a part of such Townhome Unit as provided

in this Declaration and a non-exclusive right of ingress and egress through and for use of the General Common Elements, subject to rules and regulations adopted by the Association pursuant to Section 8.1 hereof.

5. No Other Amendment. Except as specifically set forth above, the Declaration remains unamended and in full force and effect.

IN WITNESS WHEREOF, Declarant has executed this Amendment as of the day and year first above written.

PROSPECT POINT LLC, a Colorado limited liability company

By: WINTERGREEN HOMES IV LLC, a Colorado limited liability company, Manager

By: 

Name: Jeffery M. Spanel
Its: Manager

The undersigned holder of a deed of trust upon the property covered by the Declaration hereby subordinates its interest in such property to the provisions of the Declaration as amended by the foregoing Amendment.

COLORADO NATIONAL BANK, a national banking association

By: 

Name: Marcia Green

Title: Vice President