

**MASTER DECLARATION  
FOR  
PROSPECT POINT**

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**MASTER 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 Town of Frisco, County of Summit, State of Colorado. Declarant desires to establish a Planned Community as a Common Interest Community under the Colorado Common Interest Ownership Act and to define the character, duration, rights, obligations and limitations of planned community ownership. Declarant has executed plans for the construction of twenty-two (22) Buildings (as hereinafter defined) and related improvements on the Land to be known as "PROSPECT POINT." When completed PROSPECT POINT shall consist of: (A) up to ninety (90) separately designated Condominium Units (as hereinafter defined) to be known as Villas at Prospect Point, to be constructed on the portion of the Land known as the Condominium Land (as hereinafter defined); (B) up to forty (40) separately described Townhome Units (as hereinafter defined) to be known as Prospect Point Townhomes to be constructed on the portion of the Land known as the Townhome Land (as hereinafter defined); and (C) certain Master Common Elements (as hereinafter defined) to be owned by the Master Association (as hereinafter defined) for the benefit of the owners of the Condominium Units and the Townhome Units (collectively, the "Owners"). The purpose of this Declaration is to create the PROSPECT POINT planned community and to define the ownership and use of the Master Common Elements. A Map (as hereinafter defined) shall be recorded in Summit County, Colorado showing the location of the Land, the Condominium Land, the Townhome Land and the Master Common Elements. A separate condominium common interest community has already been created (within the Planned Community hereby created) by the Condominium Declaration (as hereinafter defined) relating solely to the Condominium Land and it is Declarant's intent that a separate Planned Community be created (within the Planned Community hereby created) by the Townhome Declaration (as hereinafter defined) relating solely to the Townhome Land.

**DECLARATION**

Declarant does hereby establish a plan for the Land as a Planned Community/Common Interest Community under the Act (as hereinafter defined), including ownership of the Master Common Elements either by easement deed or in fee simple by the Master Association. 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 Master Association, as amended from time to time.

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

(d) "Building" means one of the building improvements built or to be built on the Condominium Land or the Townhome Land. "Buildings" means several or all of such building improvements as the context requires.

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

(f) "Condominium Declaration" means that certain Condominium Declaration for Villas at Prospect Point heretofore recorded in the records of the County on September 29, 1995 at Reception No. 500202 and all amendments or supplements thereto, pursuant to which there has been created a separate condominium common interest community under the Act, which separate community is intended to be a part of the planned community known as Prospect Point described in this Declaration.

(g) "Condominium Land" means the portion of the Land to be known as Villas at Prospect Point Condominiums as depicted on the Map.

(h) "Condominium Unit" shall have the meaning ascribed thereto in the Condominium Declaration.

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

(j) "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.

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

(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 Lienor is required such vote shall be based on one (1) vote for each first Mortgage owned.

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

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

(o) "Master Association" means Prospect Point Master Homeowners Association, Inc., a Colorado nonprofit corporation, the members of which shall be all of the Owners.

(p) "Master Common Elements" means the roadways, paths, driveways, parking areas, yards and gardens described as Master Common Elements on Attachment A and any and all improvements, excluding those owned by any public utility, therein or thereon from time to time.

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

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

(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 Condominium Units or Townhome Units.

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

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

(v) "Premises" or "Project" means the planned community project composed of the Land, and all improvements now or hereafter located on or in the Master Common Elements.

(w) "Sharing Ratio" of an Owner is a percentage equal to one-half (1/2) of the Sharing Ratio of such Owner under either the Condominium Declaration or the Townhome Declaration, as applicable. 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.

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

(y) "Townhome Declaration" means that certain Townhome Declaration for Prospect Point and all amendments or supplements thereto hereafter recorded in the records of the County, pursuant to which a separate planned common interest community is to be created on the Townhome Land pursuant to the Act, which separate community is intended to be a part of the planned community created by this Declaration.

(z) "Townhome Land" means the portion of the Land to be known as the Prospect Point Townhomes as depicted on the Map.

(aa) "Townhome Unit" shall have the meaning ascribed thereto in the Townhome Declaration.

(ab) "Units" means the Condominium Units and the Townhome Units.

## ARTICLE 2 CREATION OF PLANNED COMMUNITY

Declarant hereby creates a planned community on the Land and submits all of its right, title and interest in the Premises to the Act as herein provided.

## ARTICLE 3 DIVISION OF LAND

The Land is hereby divided into the Condominium Land, the Townhome Land and the Master Common Elements. The Condominium Land shall be further divided into Condominium Units as set forth in the Condominium Declaration; and the Townhome Land shall be further divided into Townhome Units as set forth in the Townhome Declaration. Declarant shall give written notice to the assessor of the County in the manner provided in the Act, so that each of the Condominium Land, the Townhome Land and the Master Common Elements will be separately assessed and taxed.

## ARTICLE 4 USE OF LAND

Each Owner, without hindering, impeding or imposing upon the rights of the other Owners, shall be entitled to use the Master 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 Master Association. The Master Association shall not use any of the Master

Common Elements for any purpose other than for the benefit of the Owners. The Master Association shall have the right to charge reasonable admission and other fees for the use of any recreational facility hereafter situated upon or a part of the Master Common Elements. Except as specifically set forth elsewhere in this Declaration, the Master Association shall have no right with respect to use of the Condominium Land or the Townhome Land, which use shall be governed by the Condominium Declaration and Townhome Declaration, respectively.

## ARTICLE 5 MAP

Declarant has filed or shall cause to be filed for record in the County a final plat of Prospect Point (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. Declarant reserves the right to amend the Map and any supplements thereto from time to time to reflect construction of improvements and to establish, vacate and relocate easements over, through and across the Master Common Elements. Separate maps shall be filed pursuant to the Condominium Declaration with respect to the Condominium Land and pursuant to the Townhome Declaration with respect to the Townhome Land.

## ARTICLE 6 MASTER COMMON ELEMENTS; ENCROACHMENTS

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

6.2 Easements for Encroachments. If any portion of the Master Common Elements encroaches upon either the Condominium Land or the Townhome Land as a result of the construction of any improvement, or if any such encroachment shall occur hereafter as a result of settling or shifting of any improvement, a valid easement shall exist for the encroachment and for the maintenance of the same so long as such improvement stands. In the event any improvement 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 Master Common Elements upon either the Condominium Land or the Townhome Land, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such improvements shall exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Master Common Elements or upon title to the Condominium Land or the Townhome Land so as to impair merchantability of title.



**ARTICLE 7**  
**MECHANIC'S LIENS AND INDEMNIFICATION**

No labor performed or materials furnished and incorporated into any improvements on the Condominium Land shall be the basis for the filing of a mechanic's lien or any other lien or encumbrance against either the Master Common Elements or the Townhome Land; no labor performed or materials furnished and incorporated into any improvements on the Townhome Land shall be the basis for the filing of a mechanic's lien or any other lien or encumbrance against either the Master Common Elements or the Condominium Land; and no labor performed or materials furnished and incorporated into any improvements on the Master Common Elements shall be the basis for the filing of a mechanic's lien or any other lien or encumbrance against either the Condominium Land or the Townhome Land.

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

8.1 Management By Master Association. The Master Common Elements shall be administered and managed by the Master Association pursuant to the Act, this Declaration and the Articles and Bylaws; provided that the Master Association shall have no obligation with respect to management of either the Condominium Land or the Townhome Land, which shall be respectively managed in accordance with the terms of the Condominium Declaration and the Townhome Declaration and the documents therein referred to. Each Owner shall automatically be a member of the Master Association, shall remain a member until he ceases to be an Owner and shall have voting rights as set forth in the Articles and 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 Master 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 Master Association on behalf of the other members or, in a proper case, by an aggrieved member. In addition, the Bylaws may authorize the Master 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 Master Common Elements designed for recreational purposes, (b) causing suspension of utility service to a delinquent member's Condominium Unit or 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 Master Association, through a determination of its Board of Directors, may delegate to a real estate managing firm the powers of the Master Association to determine the budget for operation of the Master Common Elements, to establish and collect fees for Master 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 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 Master 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 Master Association to such a managing agent shall not relieve the Master 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 Master 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:

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(a) Sixty (60) days after conveyance of seventy-five percent (75%) of all one hundred thirty (130) Units that may be created to Owners other than the Declarant; or

(b) Two (2) years after the last conveyance of a 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 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.

8.4 Election by Owners. (a) Not later than sixty (60) days after conveyance of a total of thirty-three (33) 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, which vote need not be by classes.

(b) Not later than sixty (60) days after conveyance of a total of sixty-five (65) 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, which vote need not be by classes.

(c) Not later than the termination of the Period of Declarant Control, the Owners shall elect a Board of Directors of at least four (4) members, at least a majority of whom shall be Owners other than Declarant. The Board of Directors shall elect the officers of the Master Association. The Owners' Board of Directors shall take office upon termination of the Period of Declarant Control upon election.

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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 Master Association, all property of the Owners and of the Master Association held by or controlled by the Declarant, including, without limitation, the following items:

(a) The original or a certified copy of this recorded Declaration, as amended, the original or a certified copy of the recorded deed of the Master Common Elements to the Master Association, 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 Master Association funds and financial statements from the date the Master 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 Master 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 Master Association and has been used exclusively in the operation and enjoyment of the Master 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 Master Association, or its directors and officers are named as insured persons;

(f) Any other permits issued by governmental bodies applicable to the Master Common Elements 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 Master Association;

(g) Written warranties of the contractor, subcontractors, suppliers and manufacturers (finalizing labor or services relating to the Master Common Elements) that are still effective;

(h) A roster of Owners and First Lienors and other persons entitled to notice pursuant to Section 20.1 hereof and their addresses and telephone numbers, if known, as shown on the Declarant's records;

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

(j) Any service contract in which the Master Association is a contracting party or in which the Master 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 Master Common Elements. (a) The Master Common Elements, specifically including without limitation all paving, landscaping as installed, recreational equipment, traffic control devices, lighting and signage which are or become Master Common Elements, shall be administered, conserved, managed, maintained, repaired and replaced by the Master 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 roadways and parking areas. The cost of such maintenance and repair of the Master Common Elements shall be a Master Common Expense of all Owners and shall be allocated to the Owners in accordance with their Sharing Ratios. No Owner shall have the right to make or cause to be made any additions, alterations or repairs to the Master Common Elements.

(b) To perform the maintenance and repairs, the Master Association shall have the right of access to both the Condominium Land and the Townhome Land and any improvements thereon 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 Master Common Elements. The costs of repairing any damage resulting from entry for the purpose of repairing or maintaining the Master Common Elements or preventing damage to the Master Common Elements shall be a Master Common Expense of all the Owners.

9.2 Owner Caused Damage. Notwithstanding the foregoing, if damage to the Master Common Elements is caused by the negligence or intentional act of an Owner, such Owner shall pay, or reimburse the Master Association, for all costs of repairing such damage and shall be liable to the Master 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.

9.3 Declarant's Right to Maintain. If, in the sole judgment of Declarant, the Master Association has failed to maintain the Master Common Elements in good order and repair, Declarant may, after five days' notice to the Master Association, perform all work necessary to maintain the General Common Elements in good order and repair. The Master Association shall reimburse Declarant for the cost of such work, which shall be a Master Common Expense of all Owners payable as set forth herein. Declarant's right to maintain contained in this Section 9.3 shall terminate when Declarant no longer holds any interest in any Unit in the Project.

**ARTICLE 10**  
**ASSESSMENTS, COLLECTION AND LIENS**

10.1 Assessments for Master Common Expenses. Except as set forth in Section 9.2, each Owner shall pay his pro rata share of the Master Common Expenses. Such proration shall be made on the basis of each Owner's Sharing Ratio.

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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 Master 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 Master 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 Unit, each Owner personally covenant and agree to pay their allocable shares of assessments made by the Master Association from time to time pursuant to this Declaration. The Master Association may delegate collections to a condominium association created pursuant to the Condominium Declaration and a townhome association created pursuant to the Townhome Declaration.

10.3 Liens for Non-Payment. All sums assessed but unpaid for an Owner's share of the Master Common Expenses shall constitute a lien on such Owner's Unit in favor of the Master 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 and encumbrances created by the Condominium Declaration or the Townhome Declaration.

10.4 Foreclosure of Liens. The Master Association's lien shall attach from the date when the unpaid assessment shall become due and may be foreclosed by the Master Association in like manner as a mortgage or real property upon the recording of a notice or claim thereof executed by the Master Association setting forth the amount of the unpaid indebtedness, the name of the Owner and a description of the 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 Unit subject to the action shall be required to pay a reasonable rental to the Master Association. The Master Association shall be entitled to purchase the 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 Master Common Expenses either by waiver of the use or enjoyment of any of the Master Common Elements or by abandonment of such Owner's 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 Master 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 Unit. Except as provided in the next sentence below, in the event of a sale or other transfer of a Unit with respect to which sums assessed shall be unpaid, the purchaser or other transferee of an interest in the 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 Unit, the Master Association shall issue a written statement setting forth the amount of all unpaid assessments, if any, with respect to such Unit, the amount of the current periodic assessment for Master 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 Master 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 Master 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 Master 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 Unit has been created may, but shall not be required to, pay in full any unpaid assessments hereunder with respect to the Unit, and upon payment the party shall have a lien on the Unit for the amount so paid of the same rank as the assessment lien theretofore existing.

## ARTICLE 11 INSURANCE

11.1 Coverage. On behalf of the Owners, the Master Association shall obtain and maintain at all times the insurance with respect to the Master Common Elements 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) property damage insurance coverage on any improvements included as part of the Master Common Elements with such endorsements as the Master Association may deem appropriate;

(b) general public liability and property damage insurance coverage against claims for bodily injury or death or property damage occurring upon or in the Master Common Elements, in limits of not less than \$500,00 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 Master Association employee who either handles money or is responsible for funds held or administered by the Master Association; and

(d) insurance coverage in such amounts as the Master Association may consider necessary or advisable against such other insurable hazards related to the Master Common Elements.

The Master Association shall have no obligation to carry any insurance relating to the Condominium Land or the Townhome Land.

11.2 Named Insured and Required Provisions. All insurance required to be carried under this Article 11 shall be carried in favor of the Master Association, the Board, any managing agent, the agents, employees and officers of the Master Association and any managing agent (to the extent of their insurable interest), the Owners and all First Lienors, as their respective interests may appear. All policies of insurance shall provide that losses shall be payable to and adjusted with the Master Association. The Master 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 Master 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.

## ARTICLE 12 DAMAGE OR DESTRUCTION

Any damage or destruction to all or any portion of the Condominium Land or improvements thereon shall be dealt with in accordance with the terms of the Condominium Declaration; and any damage or destruction to all or any portion of the Townhome Land or improvements thereon shall be dealt with in accordance with the terms of the Townhome Declaration. If any improvements that are part of the Master Common Elements are damaged or destroyed by any cause whatever and, in the reasonable judgment of the Master Association, the proceeds of insurance are sufficient to pay all the costs of repairing and restoring the improvements, the Master Association shall cause the improvements to be repaired and restored, applying the proceeds of insurance for that purpose. Any excess costs of repair and restoration shall be a Master Common Expense.

## ARTICLE 13 CONDEMNATION

Any condemnation of all or any portion of the Condominium Land shall be dealt with in accordance with the terms of the Condominium Declaration; and any condemnation of all or any portion of the Townhome Land shall be treated in accordance with the terms of the

Townhome Declaration. All or any portion of the Master Common Elements are taken for any public or quasi-public use, under any statute, by right of eminent domain or by purchase in lieu thereof, the Master Association shall collect the award made in such taking and shall apply the proceeds thereof to the expenses of the Master Association. In the event that any taking substantially impairs utility easements or access to the Townhome Land, the Master Association shall have the right to establish easements over the Condominium Land as close as reasonably possible to the Master Common Elements so taken to provide easements and access to the Townhome Land; provided that any such newly established easements shall not unreasonably interfere with the use and enjoyment of the Condominium Land by the Condominium Owners. In the event of such an occurrence, the improvements on such easement areas shall thereafter be dealt with and managed by the Master Association as Master Common Elements.

#### **ARTICLE 14 QUALITY OF WORK**

Any repairs, renovation or restoration of the Master Common Elements by the Master Association shall be done in such manner as to make the Master Common Elements 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 Master Association.

#### **ARTICLE 15 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 19.4, (b) upon the written approval in recordable form of the Owners of 80% or more of the total Interests in Master Common Elements and 67% or more of all First Lienors, except that the provisions of Article 19 with respect to rights of Declarant may only be amended with Declarant's consent, 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 15. This Declaration may be revoked by Declarant at any time prior to the sale of any Unit, and thereafter this Declaration shall be revoked only upon sale of all or part of the Condominium Land in accordance with the Condominium Declaration or all or part of the Townhome Land in accordance with the Townhome Declaration (and then only with respect to the land sold), 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 16**  
**PROPERTY FOR COMMON USE**

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

**ARTICLE 17**  
**REGISTRATION BY OWNER OF MAILING ADDRESS; NOTICES**

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

17.2 Notice of Transfer. If any Owner, other than Declarant, sells, leases or otherwise transfers an interest in his Unit, such Owner shall deliver to the Master 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 Unit transferred, the forwarding address of such Owner and the mailing address of the new owner, tenant or transferee (if different from the subject Unit); and, if the transfer was a lease transaction, such Owner shall also deliver to the Master Association a copy of the lease.

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

17.4 Agreements with Condominium and Townhome Associations. The Master Association may enter into agreements with the associations created pursuant to the Condominium Declaration and the Townhome Declaration, such that registration with or notice to those associations constitutes registration with or notice to the Master Association, and obligating those associations to provide registration or transfer information to the Master Association promptly on request.

**ARTICLE 18**  
**DURATION OF PLANNED COMMUNITY OWNERSHIP**

The planned community created by this Declaration and the Map shall continue until terminated with respect to all or any portion of the Project as provided herein.

**ARTICLE 19**  
**SPECIAL DECLARANT RIGHTS, DEVELOPMENT**  
**RIGHTS AND GENERAL RESERVATIONS**

19.1 Easements, Reservation, Etc. Declarant reserves (a) for the Period of Special Rights, the right to dedicate any access roads and streets within the Master Common Elements for and to public use; to establish easements, reservations and exceptions consistent with the ownership of the Project and for the best interests of the Owners and the Master Association, which easements, reservations and exceptions shall be in addition to those set forth on Attachment B hereto, and (b) for the Period of Special Rights, an easement over parts of the Master Common Elements, to the extent necessary for construction of additional improvements, which may include recreational facilities that will become Master Common Elements. The operating expenses of such improvements will be Master Common Expenses. Declarant, however, has no obligations to construct additional improvements.

19.2 Right to Maintain Signs. Declarant also reserves the right, during the period Declarant is actively engaged in selling Units, to place advertising signs on any part of the Master Common Elements, in such number, of such size and in such locations as Declarant deems appropriate, provided that the costs of such signs and maintenance thereof shall not be a Master Common Expense.

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

19.4 Certain Amendments by Declarant. Declarant reserves the right to amend, without the consent of Owners or First Lienors this Declaration, the Map, the Master 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; or

- (c) to comply with any requirements of the Act.

19.5 Additional Development Rights. Additional development rights are reserved in the Condominium Declaration and the Townhome Declaration.

## ARTICLE 20 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 Units within the Project and have delivered a written request to the Master Association containing its name, address, the legal description and address of the Unit encumbered. To the extent applicable, necessary, or proper, the provisions of this Article 20 apply to this Declaration and to the Articles and Bylaws of the Master Association.

20.1 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 Master Common Elements;
- (b) any delinquency in the payment of the Master Common Expense owed by an Owner whose Unit is subject to a first Mortgage held, insured or guaranteed by such person, or any default by such Owner in any obligation under this 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 Master Association; and
- (d) any proposed action that would require the consent hereunder of a specified percentage of First Lienors.

20.2 Special FNMA/FHLMC Provisions. After the initial sale of any of the Units 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 Master 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 by the Master 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 Master Association or public dedications of access roads and streets); or partition or subdivide any of the Units;

(b) except as specifically necessitated by changes in sharing ratios under the Condominium Declaration or the Townhome Declaration, 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 maintenance, repair or replacement of the Master Common Elements;

(d) fail to maintain insurance coverage required by this Declaration; or

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

Should the Federal Home Loan Mortgage Corporation subsequently delete any of its 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.

20.3 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.

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

20.5 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 19.5; any termination of the Common Interest Community created hereby; or any merger or consolidation of the Association.

## ARTICLE 21 MISCELLANEOUS

21.1 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.

21.2 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.

21.3 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, limited liability company, trust, estate or other entity.

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

21.5 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.

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

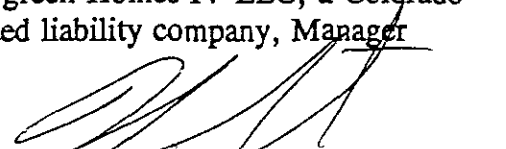
21.7 Conflicts with Articles and Bylaws. In the event of any conflict between the terms of this Declaration and the terms of the Articles or Bylaws, the terms of this Declaration shall control.

21.8 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 3<sup>rd</sup> day of November, 1995.

PROSPECT POINT LLC, a Colorado limited liability company

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

By:   
Name: Arthur Kleinstein  
Its: Manager

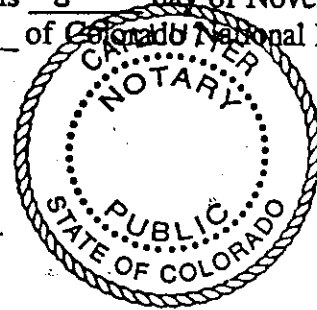


STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of November, 1995 by Marcia C. Green as Vice President of Colorado National Bank, a national banking association.

Witness my hand and official seal.

My commission expires: 10-7-96



Cayli Utter My Commission Expires 10-07-96  
Notary Public

Address:

950 17<sup>th</sup> Street  
Denver, Co 80202

ATTACHMENT A

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

Description of Land

Lots 1 and 2, Prospect Point, Town of Frisco, Summit County, Colorado

Description of Master Common Elements

Tracts 1-A, 1-B, 2-A, 2-B and 2-C, comprising portions of Lots 1 and 2,  
Prospect Point, Town of Frisco, Summit County, Colorado



## ATTACHMENT B

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

### Easements, Reservations and Exceptions

1. Taxes for 1994 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. Condominium Declaration for Villas at Prospect Point recorded September 29, 1995 under Reception No. 500202.
7. Townhome Declaration for Prospect Point Townhomes to be hereafter recorded.