



DOWNTOWN PROSPECT

DECLARATION of Charter, Easements, Covenants and Restrictions

Burlington Neighborhood, a Colorado Limited Liability Company to be known as the "Founder," makes this Declaration on the 30th day of November, 2001.

STATEMENT OF PURPOSE:

- A. Prospect is a new mixed-use community in Boulder County, Colorado. The Master Plan for Prospect calls for creation of a new community, with walkable streets, plazas and greens, and a range of housing types and businesses. The Master Plan comprises both the Neighborhood, which is the primarily residential portion, and Downtown Prospect, which brings together a mixture of commercial and residential uses.
- B. Downtown Prospect is designed to combine various uses in dynamic fashion. At street level, Downtown Prospect mixes retail stores, restaurants and service establishments. Pushcarts, kiosks and special events add further variety to the street scene. Offices, artists' workshops and studios and other uses may fill in the outlying portions of Downtown Prospect and the second floor of the core area. Residential units for those who enjoy the stimulation of an urbanized environment top most of the buildings and bring life to the area around the clock.
- C. The master plan and its execution allows residents of Prospect to freely walk or bicycle from their homes to the shops and restaurants in Downtown Prospect.
- D. The Founder hopes and intends the following:
 - That residents of Prospect will enjoy the conveniences and activity offered by Downtown Prospect and the vitality it lends the entire community.

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- That the occupants of the residential units within Downtown Prospect will enjoy the recreational facilities and community spirit offered by Prospect.
 - That all residents of Prospect will work together cooperatively to improve their community.
- E. All of Prospect shall be subject to the Master Deed Restrictions, which, among other things, establish architectural review.
- F. The Neighborhood is governed by a separate Declaration of Charter, Easements, Covenants and Restrictions originally recorded at Volume // // // // Page // * of the public records of Boulder County, Colorado (as amended from time to time, the "Residential Declaration"). *Reception No. 1645265
- G. The special circumstances of Downtown Prospect require a new declaration and association to allow both its inclusion as an integral part of Prospect and its efficient operation as a busy commercial area. Accordingly, the Founder intends to establish this Downtown Prospect Declaration to establish Downtown Prospect Association and a Merchants' Council, to regulate Downtown Prospect and to provide for its maintenance.
- H. This Declaration for Downtown Prospect is not intended to be subject to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statute §38-33.3-101 et. seq. The residential units within Downtown Prospect shall be submitted to the Residential Declaration, by separate Supplemental Declaration, and are members of the Residential Association, rather than the Downtown Prospect Association. However, this Downtown Prospect Declaration provides residential unit owners with certain easements for access and use of their property and Downtown Prospect Commons, and regulates the uses of their property.

DECLARATION:

The Founder hereby establishes Downtown Prospect as all of that property in Boulder County, Colorado, described on Exhibit A, and submits Downtown Prospect to this Downtown Prospect Declaration, which shall run with the land and be binding upon all parties having any right, title or interest in it, and which shall inure to the benefit of every owner of Downtown Prospect or any portion of it and to the benefit of the Founder.

ARTICLE I: | Definitions

1.1 Articles. "Articles" are the Articles of Incorporation of Downtown Prospect Association, which are attached as Exhibit B to this Declaration.



- 1.2 Assessments. "Assessments" is the collective term for the following charges:
 - (a) General Assessment. The "General Assessment" is the amount distributed among all Members to meet Downtown Prospect Association's annual budgeted expenses, as described in Section 10.2.
 - (b) Percentage Assessment. A "Percentage Assessment" based on gross sales may be charged to Commercial Units with retail businesses in accordance with Section 10.3.
 - (c) Zone Assessment. A "Zone Assessment" as discussed in Section 10.4 pays for special services or capital improvements approved by a Zone.
 - (d) Individual Unit Assessment. An "Individual Unit Assessment" is a charge made to a particular Unit Owner for charges relating only to that Unit, as provided in Section 10.5.
 - (e) Special Assessment. A "Special Assessment" may be charged to each Unit for capital improvements or emergency expenses.

- 1.3 Board. "Board" is the Board of Directors of Downtown Prospect Association.

- 1.4 Bylaws. "Bylaws" are the Bylaws of Downtown Prospect Association. The form of the initial Bylaws, as proposed, is attached as Exhibit C to this Declaration.

- 1.5 Commercial Unit. A "Commercial Unit" is defined as a permanent, separately leasable, enclosed space that is not intended for residential use. Downtown Prospect Association may designate Commercial Unit boundaries, based on uniform rules consistently applied.

- 1.6 Commons. "Commons" comprise the real property and nonexclusive easement rights granted by the Founder under this Declaration for the common use and enjoyment of all Owners. "Commons" also include any improvements on that real property or easement areas, all personal property for the Owners' common use, and any other property of any type specifically designated as Commons. The Commons may include sidewalks and other portions of privately-owned lots which are designed and approved by the Design Review Board for use by all Owners, if an easement is so granted. It is anticipated that the Commons may include plazas and squares, streets, parking areas, walkways, landscaped areas, public restrooms and other facilities. The Commons are not dedicated for use by the general public.

- 1.7 Design Review Board. The "Design Review Board" is the panel established by the Master Deed Restrictions to review building design and modification.

- 1.19 Downtown Prospect. Downtown Prospect is all that property which has been made subject to this Declaration.



1.20 Downtown Prospect Association. Downtown Prospect Association is the Downtown Prospect Association, Inc. a Colorado not-for-profit corporation. The articles of incorporation and bylaws for Downtown Prospect Association are attached as Exhibits B and C to this Downtown Prospect Declaration. Downtown Prospect Association membership comprises owners of commercial property. Downtown Prospect Association is not intended to be deemed a residential homeowners' association under Colorado Common Interest Ownership Act as set forth in Colorado Revised Statute § 38-33.3-101 et. seq.

1.21 Downtown Prospect Declaration. "Downtown Prospect Declaration" is this instrument.

1.8 Founder. The "Founder" is Burlington Neighborhood, a Colorado Limited Liability Company, its successors and assigns, or any successor or assign of all or substantially all of its interests in the development of Prospect. The Founder may also be an Owner for so long as the Founder is record owner of any Unit.

1.9 Master Deed Restrictions. All of Prospect is subject to the "Master Deed Restrictions," which the Founder has recorded at Official Records Book Page * of the public records of Boulder County, Colorado. The Master Deed Restrictions establish architectural control, reserve certain rights to the Founder and place other restrictions on the use of the property. *Reception No. 1645264

1.10 Merchants' Council. The "Merchants' Council" is established by Article VIII of this Downtown Prospect Declaration to promote business activity. The Merchants' Council is unincorporated but may be incorporated at a later time.

1.11 Member. Each Commercial Unit Owner is a "Member" of Downtown Prospect Association, as provided in Article VII of this Declaration. Temporary Unit Owners and lot owners who pay assessments shall also be considered Members.

1.12 Mortgagee. A "Mortgagee" is any institutional lender that holds a bona fide first mortgage encumbering a Unit as security for the performance of an obligation. The term "institutional lender" specifically includes a bank, savings and loan association, a mortgage lending company, an insurance company, and the Federal National Mortgage Association or similar agency.

1.13 Owner. "Owner" is the record owner, whether one or more persons or entities, of the fee simple title to any Unit. Owners shall not include those having such interest merely as security for the performance of an obligation.

1.14 Residential Association. The Residential Association is the Prospect Owners' Association, Inc., a Colorado not-for-profit corporation established by the Residential Declaration.



recorded in the county's public records. The supplemental declaration may modify or add to the provisions of this Downtown Prospect Declaration if needed to reflect the different character of the additional property.

2.3 Withdrawal of Property. The Founder reserves the right to withdraw property from Downtown Prospect so long as all Owners within the area to be withdrawn consent, and appropriate access to the remaining portions of Downtown Prospect is preserved.

ARTICLE III: | Relationship to Residential Association

3.1 Recorded Instrument. Residential Units are made subject to the Residential Declaration in accordance with the terms of the Supplemental Declaration to the Residential Declaration, recorded or to be recorded in the public records of Boulder County, Colorado.

3.2. Residential Association Membership. As described in that Supplemental Declaration, Owners of Residential Units shall be members of the Residential Association, shall pay mandatory assessments to the Residential Association secured by a lien on the Unit and shall have the right to use the recreational facilities of Prospect. Residential Unit Owners shall not be members of Downtown Prospect Association.

3.3 Cooperation. Owners of Residential Units shall not be members of Downtown Prospect Association, and Downtown Prospect Association shall have no power to assess or lien Residential Units. Where this Declaration would impose an Individual Unit Assessment, Downtown Prospect Association may request the cooperation of the Residential Association which may, after notice and hearing, impose the Individual Unit Assessment.

3.4 Limitation. The Residential Association shall have no responsibility for maintenance of Downtown Prospect or regulation of its Commons, which shall be the responsibility of Downtown Prospect Association. If in any instance the provisions of this Downtown Prospect Declaration are in conflict with the provisions of the Residential Declaration, the provisions of Downtown Prospect Declaration shall apply.

ARTICLE IV: | Master Deed Restrictions; Design Review

4.1 Master Deed Restrictions. The Master Deed Restrictions establish the Prospect Design Code as the guide for all construction within Prospect, provide for a Town Architect to administer the Prospect Design Code, and create the Prospect Design Review Board. All construction or modification, any tree removal or any material alteration of the landscaping or topography of any Lot or Commons must be approved in advance by the Prospect Design Review Board.



4.2 Assignment to Association. The Master Deed Restrictions provide for the Founder to appoint the Town Architect and the other members of the Design Review Board during the development period. As provided in the Master Deed Restrictions, at the end of the development period, a separate Design Review Board for Downtown Prospect shall be established. The Founder may assign to Downtown Prospect Association the right to select the members of Downtown Prospect Design Review Board. Upon such assignment or if for any reason the Founder is unable or unwilling to perform its powers under Articles II and III of the Master Deed Restrictions, the provisions of Articles II and III of the Master Deed Restrictions shall become part of this Declaration as if originally included. At that time, Downtown Prospect Association shall have and assume the responsibility of appointing a Town Architect and members of Downtown Prospect Design Review Board and enforcing all violations of Articles II and III of the Master Deed Restrictions within Downtown Prospect with all of its powers under the Master Deed Restrictions and this Declaration.

ARTICLE V: | Commons: Easements, Maintenance and Regulation

5.1 Owners' Easement of Enjoyment.

(a) Generally. All Owners are hereby granted a nonexclusive easement for the appropriate and intended use of the Commons, which shall comprise any property so described on any plat of Downtown Prospect or that the Founder may add by supplement to this Downtown Prospect Declaration or by a Grant of Easement designating the property as Commons under this Declaration. All such easements shall be nonexclusive and freely relocatable by the Founder, unless the grant of easement clearly states otherwise. The Commons are not dedicated for use by the general public. The Founder may, but is not obligated to, convey to Downtown Prospect Association fee title to the Commons at any time.

(b) Right of Access. Each Owner shall have a right of access over the Commons to the Owner's Unit. However, such access easement may be limited to designated pedestrian access from designated parking areas to the Unit.

(c) Residential Use. Any Owner of a Residential Unit may delegate, subject to the provisions of this Declaration and the Rules and Regulations, his right to enjoyment of the Commons to the Owners of his family, his tenants or his guests who reside in the Residential Unit or are accompanied by the Owner.

(d) Commercial Use. All tenants of the Owner of a Commercial Unit and all customers, clients, suppliers and other business invitees of the Owner or tenant shall have a right and easement in the streets, parking, walkways and other portions of the Commons reasonably necessary for access to the Owner's property. Downtown Prospect Association shall establish from time to time the extent to which business invitees shall enjoy a right to use any parks or other recreational facilities that are included in the Commons. All rights



are subject to the provisions of this Declaration and the Rules and Regulations, including without limitation Downtown Prospect Association's right to regulate traffic and parking.

5.2 Maintenance; Capital Improvements.

(a) Maintenance. Downtown Prospect Association shall be responsible for the management, control and improvement of the Commons (including without limitation common signage, common area lighting and electricity) and shall keep the Commons attractive, clean and in good repair.

(b) Capital Improvements. With the consent of the Founder, which is not to be unreasonably withheld, Downtown Prospect Association may make capital improvements to the Commons and may modify the uses of the Commons. If the capital improvement is to be paid by Special Assessment, it must be approved by a majority of the Owners, by assessment interests, other than the Founder. Any repair or replacement of existing improvements shall not be considered a capital improvement.

5.3 Street Regulation; Security.

(a) Generally. Streets and parking areas are intended to be dedicated to the public. For any areas not so dedicated, or to the extent permitted by the City of Longmont, Downtown Prospect Association may make rules and regulations concerning driving and parking within Downtown Prospect and may make physical modifications intended to discourage excessive speed and encourage safe driving.

(b) Parking. Downtown Prospect Association may assign or reserve parking and may require that owners or employees of businesses park at a distance from the business during business hours.

(c) Vehicles. Downtown Prospect Association may regulate or prohibit the parking within Downtown Prospect of trucks, buses or recreational vehicles, oversize vehicles, boats, vehicles which display advertising or the name of a business in an excessive or oversized fashion intended to draw attention to the business, and vehicles which are not in good running condition.

(d) Enforcement. Downtown Prospect Association may enforce any violation under this section in accordance with Section 11.13 and may tow or bar admittance to offenders. Any fees or fines collected under this section shall be contributed to the general fund of Downtown Prospect Association to offset expenses.

(e) Additional Services. Downtown Prospect Association may, but is not required to, provide roving patrols, an information station or other visitor assistance.

(f) Limitation of Liability. Downtown Prospect Association shall use reasonable judgment in providing services, maintaining the Commons and streets and enforcing traffic control measures, but Downtown Prospect Association and Founder do



not make any representation concerning security or safety or assume any liability for any loss or injury.

5.4 Damage or Destruction of Commons by Owner. If any Owner or any of his guests, tenants, licensees, agents, employees or Owners of his family damages any of the Commons, the Owner hereby authorizes Downtown Prospect Association to repair the damage. The cost of repair shall be the responsibility of that Owner and shall become an Individual Unit Assessment payable by the responsible Owner. Downtown Prospect Association may, but is not required to, seek compensation for damage from the guest, tenant or other party who caused the damage, in which case the Owner shall be jointly and severally liable. Owner shall not be liable for damage caused by a customer or client unless Owner contributed to the cause of the damage.

5.5 Open-Air Market and Festivals. The Founder reserves, for itself or its various assigns, the right to use portions of the Commons as designated in the Prospect Design Code as an open-air market for the rental of space for pushcarts, kiosks, stands or similar temporary or permanent structures. Such uses may be for special events or on a recurring or daily basis. Founder also reserves, for itself or its various assigns, the right to use portions of the Commons for festivals or other events intended to enrich and enliven the community. Founder further reserves a right of access through the Commons for all such purposes. Founder may, but is not obligated to, assign such rights to Downtown Prospect Association at any time.

5.6 Modification of Commons.

(a) Further Improvements. The Founder reserves the right to modify the design of the Commons and to make further improvements.

(b) Withdrawal of Commons. Unless the deed or grant of easement from the Founder to Downtown Prospect Association for a specific portion of the Commons states otherwise, the Founder reserves the right to withdraw property from the Commons and establish privately owned parcels on the withdrawn property so long as appropriate parking and access is preserved.

(c) No Commercial Use. Except as specifically permitted by this Declaration, there shall be no commercial use of the Commons, nor shall the Commons be subdivided or sold.

ARTICLE VI: | Relationship Between Units;
Other Easements

6.1 Relationship between Units.

(a) Intent. As provided by the Design Code, certain buildings within Downtown Prospect may be attached as townhouses, or may be detached but placed on or near the property line. The easements in this Section 6.1 are intended to provide guidelines

for reasonable cooperation between neighbors. The Downtown Prospect Association may make rules for maintenance and use of easement areas and shared improvements that shall be applied uniformly to all Lots similarly configured.

(b) Lot Lines. Lots may not be subdivided or separated into smaller Lots, or any portion of a Lot separately conveyed, except by the Founder or with the specific consent of the Design Review Board. However, this shall not prohibit corrective deeds or similar corrective instruments. The Founder may redefine Lots prior to sale by dividing or combining Lots or portions of Lots and adjusting the boundary of a Lot. The Founder shall also have the right to modify subdivision plats to make adjustments to Lot boundary lines with consent only of those Owners whose Lot boundaries are to be changed. The division or combination of Lots may be subject to zoning or other governmental regulation.

(c) Structural Party Walls. Each Owner grants to the Owner of each adjacent Lot the right and easement to maintain and to utilize any exterior or interior wall of a Building that forms a party wall between them. A wall will be considered a party wall only if it provides structural support for the Buildings, or parts of a Building, on more than one Lot. Maintenance of the surface of the party wall shall be the sole responsibility of the Owner whose Building faces such wall. Each Owner shall be liable and responsible if, in connection with that Owner's use and maintenance of the party wall, the Owner damages the adjacent Owner's Lot or the wall itself. The cost of any other repairs to the party wall shall be shared equally by the adjacent Owners.

(d) Exterior Walls along a Lot Line. An exterior wall which supports the Building on only one Lot, or which encloses a courtyard on one Lot, shall not be considered a party wall. The Downtown Prospect Association may make rules and regulations concerning use and maintenance of such walls, including assigning responsibility between the adjoining owners for painting and repair and granting access over the adjoining Lot as reasonably necessary to maintain the wall. All such maintenance and repair shall be in accordance with the Design Code.

(e) Roof Overhang; Footings. For certain building types that are to be built along a property line, the Design Code may permit roofs, gutters, soffits and downspouts to overhang this property line, and may allow footings and rain leaders to intrude below the surface of the same property line. To the extent allowed by the Design Code and local governmental regulations the adjacent property shall be subject to an easement for such intrusion, including the maintenance of the permitted intrusions. However, roofs, gutters, downspouts and rain leaders may not discharge water onto adjacent property.

(f) Townhouse or Row house Roof. If a townhouse or row house wall or parapet is constructed along or very near the property line, the owner of the townhouse or row house to be constructed on the adjacent property shall have the right to flash into the existing building, in accordance with industry standards and in order to make the new building watertight. This right shall include the right to make minor cuts on the existing building and to secure flashing or other materials to the existing building, so long as the structural integrity and watertightness of the existing building is not impaired. The cost for



flashing shall be incurred by the owner of the new building, but the maintenance of this connection shall be a shared expense between adjacent property owners.

6.2 Boundaries. Units may not be subdivided or separated into smaller Units, or any portion of a Unit separately conveyed, except by the Founder or with the specific consent of the Design Review Board. However, this shall not prohibit corrective deeds or similar corrective instruments. This provision is not intended to prohibit leasing, although leasing may be subject to other regulation. The Founder shall have the right to modify subdivision plats to make adjustments to boundary lines with consent only of those Owners whose boundaries are to be changed.

6.3 Easements in Favor of Downtown Prospect Association. The Founder hereby reserves from any conveyance, and assigns to Downtown Prospect Association, the following easements:

(a) Utility Easements. A blanket easement upon, across, over, through, and under Downtown Prospect for ingress, egress, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems include, but are not limited to, water, sewer, irrigation systems, drainage, telephone, electricity, television, cable or communication lines and other equipment. By virtue of this easement Downtown Prospect Association, and its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits. However, the exercise of this easement must not unreasonably disturb each Owner's right of quiet enjoyment of his Lot.

(b) Police Powers. A blanket easement throughout Downtown Prospect for private patrol services, and for police powers and services supplied by the local, state and federal governments.

(c) Drainage. In addition to those rights under the Declaration of Detention Pond and Drainage Easement recorded in the public records of Boulder County, Colorado, a blanket easement and right on, over, under and through the ground within Downtown Prospect to maintain and to correct drainage of surface water and other erosion controls. This easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health, safety or appearance or to comply with governmental requirements. Downtown Prospect Association shall notify affected Owners (except in an emergency) and shall restore the affected property to its original condition as nearly as practicable.

(d) Encroachment. An easement for any improvements constructed on the Commons which encroach on any Unit, whether due to any minor deviation from the subdivision plat of Downtown Prospect or the settling or shifting of any land or improvements.

(e) Maintenance of Commons. To the extent reasonably necessary, an easement over any Unit for maintenance of the Commons.



ARTICLE VII: | Downtown Prospect Association

7.1 Duties. Downtown Prospect Association shall maintain the Commons, shall perform all other duties required by this Declaration, and shall enforce the terms of this Declaration. The Downtown Prospect Association may also maintain public rights-of-way and other public or private properties located within reasonable proximity to Downtown Prospect if its deterioration would affect the appearance of or access to Downtown Prospect.

7.2 Additional Powers. Within Downtown Prospect, Downtown Prospect Association may provide any service allowed by law to be provided by a commercial property owners' association organized as a not-for-profit corporation. If requested by at least 10% of the Members, the offering of the additional service under this Section 7.2 shall be repealed by majority vote of the Members.

7.3 Membership. Every Owner of a Commercial Unit shall be a mandatory Member of Downtown Prospect Association. Temporary Unit Owners and lot owners who pay assessments shall also be considered Members. Membership shall be appurtenant to and may not be separated from title to any Unit. As provided in Article III, Owners of Residential Units shall not be members of Downtown Prospect Association but shall be members of the Residential Association.

7.4 Voting Rights. Commercial Units shall be assigned one vote for each assessment paid, which may be a fractional vote.

7.5 Exercise of Vote. When more than one person holds an interest in any Unit, all such persons shall be Members. However, the number of votes for that Unit shall not be increased, and the Members must determine among themselves how the Unit's vote may be exercised. Corporations, partnerships and other entities shall notify Downtown Prospect Association of the natural person who shall be considered a Member of Downtown Prospect Association and exercise its vote. An Owner may by written agreement appoint a tenant to exercise the Unit's voting rights which, in the case of a Commercial Unit, shall be either the business owner or the manager of the business conducted in the Commercial Unit. Such assignment may expire after a specified term and in any case may be revoked by the Owner by delivery to Downtown Prospect Association of a signed revocation.

7.6 Election of Board of Directors.

(a) Procedure. Elections shall be conducted in accordance with the Bylaws and procedures established by the then-current Board.

(b) Initial Selection by Founder. The Founder shall appoint and remove the initial officers and members of the Board and may elect a majority of the Board until sixty days after 75% of the nonresidential square footage within Downtown Prospect indicated



by or permitted under the Master Plan have been completed and conveyed to Owners other than the Founder or the builder. Any land within the Master Plan Area which is developed but which is not submitted to this Declaration shall be removed from the Master Plan for purposes of this calculation. The Founder may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the control period, in which case the Founder reserves the right to record an instrument specifying that, until the time Founder would have been required to end control of the Board, certain actions of the Association or Board must be approved by the Founder before they become effective.

(c) Owner Representative. No later than sixty days after at least ten (10) buildings (not including outbuildings) have been completed and conveyed to Owners other than the Founder or the builder, Parcel owners other than the Founder shall have the right to elect at least one member of the Board.

7.7 Contracts. Downtown Prospect Association may contract with the Founder or any other party for the performance of all or any portion of the management of Downtown Prospect Association and its maintenance and repair obligations. The cost of the contract shall be included within the General Assessment, Zone Assessment, Special Assessment or Individual Unit Assessment as applicable. Downtown Prospect Association may require that Owners contract for certain routine exterior maintenance, in order to provide a uniform level of care. Downtown Prospect Association also may, but is not obligated to, act as agent for an Owner, if so requested by that Owner, to contract for routine maintenance and other services not required to be provided by Downtown Prospect Association, the cost of which would be assessed to that Owner as an Individual Unit Assessment. The terms and conditions of all such contracts shall be at the discretion of the Board.

7.8 Additional Provisions. Additional provisions concerning the operation of Downtown Prospect Association and the Board are contained in the Articles and Bylaws.

ARTICLE VIII: | Merchants' Council

8.1 Purpose. The Merchants' Council shall promote Downtown Prospect for the mutual benefit of all businesses. Its responsibilities shall include advertising, special event programming and other promotional activities and all commercial signage for Downtown Prospect other than signs on individual businesses.

8.2 Organization. Members of the Merchants' Council do not need to be Members of Downtown Prospect Association and shall include Commercial Unit Owners, business owners and managers conducting businesses within Downtown Prospect. The Merchants' Council shall originally operate as a committee of Downtown Prospect Association. However, the Commercial Unit Owners may, by majority vote, choose to incorporate the Merchants' Council and operate it as a separate entity.



8.3 Membership; Board of Directors. The Merchants' Council's Board of Directors shall be selected by the Board of Directors of Downtown Prospect Association from among the Merchants' Council membership. The Commercial Unit Owners may, by majority vote, adopt bylaws for the Merchants' Council's operation, which may include a different method of selecting a board of directors.

8.4 Funding. The Merchants' Council Board of Directors shall propose an annual budget to the Downtown Prospect Association, which shall review the budget and fund the Merchants' Council activities at its discretion. The Merchants' Council may also receive revenue from special events and services.

8.5 Consent of Founder. So long as the Founder selects a majority of the board of directors of Downtown Prospect Association, all actions of the Merchants' Council shall be subject to the Founder's review and approval, which shall not be unreasonably withheld or delayed.

ARTICLE IX: | Downtown Prospect Association Budget

9.1 Fiscal Year. The fiscal year of Downtown Prospect Association shall begin January 1 of each year, unless the Board selects a different fiscal year.

9.2 Budget Items. The budget shall estimate total expenses to be incurred by Downtown Prospect Association in carrying out its responsibilities. These expenses shall include, without limitation, the cost of wages, materials, insurance premiums, services, supplies and other expenses for the rendering of all services required by this Declaration or properly approved in accordance with this Declaration. The budget may also include reasonable amounts, as determined by the Board, for working capital for Downtown Prospect Association and for reserves. If the Commons are taxed separately from the Units, Downtown Prospect Association shall include such taxes as part of the budget. Fees for professional management of Downtown Prospect Association, accounting services, legal counsel and other professional services may also be included in the budget.

9.3 Reserves. Downtown Prospect Association may build up and maintain reserves for working capital, contingencies and replacement of the Commons, which shall be included in the budget and collected as part of the annual General Assessment. Extraordinary expenses not originally included in the annual budget that may become necessary during the year shall be charged first against such reserves. Except in the event of an emergency, reserves accumulated for one purpose may not be expended for any other purpose unless approved by a majority vote of the Members. If the reserves are inadequate for any reason, including nonpayment of any Member's assessment, the Board may at any time levy an emergency Special Assessment. If there is an excess of reserves at the end of the fiscal year and the Board so determines, the excess may be returned on a prorata basis to all Members who are current in payment of all assessments due Downtown Prospect Association, or may be used to reduce the following year's assessments.



9.4 Preparation and Approval of Annual Budget.

(a) Initial Budget. The Founder shall determine the budget for the fiscal year in which a Unit is first conveyed to an Owner other than the Founder.

(b) Subsequent Years. Beginning with the year in which a Unit is first conveyed to an Owner other than the Founder and each year thereafter, at least one month before the end of the fiscal year, the Board shall, by majority vote, adopt a budget for the coming year and set the annual General Assessments at a level sufficient to meet the budget. At least two weeks before the fiscal year to which the budget applies, the Board shall send to each Member a copy of the budget in reasonably itemized form, which shall include the amount of General Assessments payable by each Member.

(c) Approval. If General Assessments are to be increased to greater than 125% of the previous year's General Assessment which was not a year in which General Assessments were guaranteed in whole or in part by Founder, and at least 10% of the Members request review within thirty (30) days after the budget is delivered to Members, the Board shall call a meeting of the Members to present the budget and to answer any questions. After presentation, the budget shall be deemed approved unless the percentage required to transact business is present and the budget is rejected by a majority of the Members present. If the budget is rejected, the Board shall approve a new budget within ten (10) days and send a copy to each Member.

9.5 Effect of Failure to Prepare or Adopt Budget. The Board's failure or delay in preparing or adopting the annual budget for any fiscal year, or review of the budget under Section 9.4 (c), shall not waive or release a Member's obligation to pay General Assessments whenever the amount of such assessments is finally determined. In the absence of an annual Association budget each Member shall continue to pay the assessment at the rate established for the previous fiscal period until notified otherwise.

9.6 Capital Improvements. Any substantial capital improvement to the Commons approved by the Board must be ratified by a majority of the Members. If the substantial capital improvement is approved by the Members, the Board shall determine whether it shall be paid from General Assessments or by Special Assessment. A capital improvement shall be considered substantial if the cost to Downtown Prospect Association of the improvement is more than six percent (6%) of Downtown Prospect Association's annual budget, or if, when added to other capital improvements for the fiscal year, totals more than ten percent (10%) of Downtown Prospect Association's annual budget. Approval of the Design Review Board is required for all capital improvements. This paragraph shall not limit the right of the Founder to make improvements to the Commons.

9.7 Zone Improvement. Any Zone or Zones may, by two-thirds (2/3) vote of the Members within that Zone or Zones and approval of the Board, vote to assess themselves for capital improvements to Commons which will primarily benefit that Zone or Zones. Any assessment so approved shall be assessed to all Owners within that Zone or Zones as an Individual Unit Assessment. If more than one Zone is to vote, the Board shall



determine whether approval and assessment is to be by Zone or by the combined group of Zones. If a group smaller than a Zone wishes to be assessed for capital improvements, all of those being assessed must agree to the assessment.

9.8 Accounts. Reserves shall be kept separate from other Association funds, either in a single account for all reserves or separated by purpose. All other sums collected by the Board with respect to Assessments and charges of all types may be commingled in a single fund.

ARTICLE X: | Expenses; Assessments

10.1 Obligation for Assessments. Except as specifically exempted by this Declaration, each Owner of property within Downtown Prospect, by acceptance of a deed or other transfer instrument, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the following (collectively, "Assessments"):

- (a) General Assessments for expenses included in the budget,
- (b) For Commercial Units, an additional assessment based on gross sales if applicable,
- (c) Special Assessments for the purposes provided in this Declaration,
- (d) Zone Assessments if applicable and
- (d) Individual Unit Assessments for any charges particular to that Unit,

together with a late fee and interest, as established by Downtown Prospect Association, and cost of collection when delinquent, including a reasonable attorney's fee whether or not suit is brought. Upon default in the payment of any one or more installments, Downtown Prospect Association may accelerate the entire balance of such Assessment, which shall be declared due and payable in full.

10.2 Amount of General Assessments. Owners shall pay General Assessments based on the following formulas:

(a) Commercial Units. Owners of Commercial Units shall pay an amount equal to one General Assessment per 200 square feet of net leasable commercial square footage, as defined in Section 10.7.

(b) Temporary Units. Each Temporary Unit shall pay an amount determined by Downtown Prospect Association, not to exceed one General Assessment per year, which shall be prorated to reflect the number of days per year the Temporary Unit is in use. Temporary Units which are used for information or other non-revenue-producing purposes shall not pay assessments.



(c) Unimproved Lots. Lots which do not have a building which is substantially complete shall pay a reasonable amount as determined by Downtown Prospect Association, but not to exceed one General Assessment per year.

(d) Exempt Units. Units which are used by non-profit or governmental entities primarily for the benefit of Downtown Prospect residents or guests may be exempt from Assessments or pay reduced Assessments as determined on an annual basis by Downtown Prospect Association. The Commons are not subject to assessment.

(e) Residential Units. Residential Units shall not be assessed by the Downtown Prospect Association.

10.3 Percentage Assessment.

(a) Amount. In addition to General Assessments, Commercial Units with retail businesses shall pay a Percentage Assessment which shall be equal to the amount, if any, by which the specified percentage of the gross sales of a business within a Commercial Unit exceeds the General Assessments assigned to the space occupied by that business. The Percentage Assessment shall not, however, be more than twice the amount of the General Assessments assigned to that space. Gross sales shall be defined in the same manner as for state sales tax.

(b) Time when Due. The Percentage Assessment shall be calculated annually by adding monthly gross sales from September 1 of the previous year to August 31 of the current year and subtracting the current annual General Assessment from the specified percentage of gross sales. Percentage Assessments shall be due and payable no later than November 15.

(c) Specified Percentage. For restaurants and other stores which sell primarily food or drink, the specified percentage of gross sales shall be no greater than $\frac{1}{2}$ %. For all other retail establishments, the specified percentage shall be no greater than $\frac{1}{4}$ %. The specific percentages shall be determined from time to time by Downtown Prospect Association.

(d) Qualifying businesses. Retail businesses subject to Percentage Assessments shall include all businesses subject to Colorado state sales tax, but not the leasing of living quarters or guest accommodations. No Percentage Assessments will be owed on professional offices or other office space.

(e) Enforcement. All Commercial Unit owners with retail businesses shall be required to make state sales tax returns available to Downtown Prospect Association to support its calculation of the percentage assessment.



10.4 Zone Expenses.

(a) Capital Improvements. Any Zone may, by majority vote of the Owners within that Zone and approval of Downtown Prospect Association, vote to assess all of its Owners for capital improvements to Commons that will primarily benefit that Zone. If appropriate to all of the buildings within the Zone and if approved by the Design Review Board, the Zone may vote to assess its Owners for improvements to portions of the Units or buildings visible to the public.

(b) Additional Services. Any Zone may, by majority vote of the Owners within that Zone and approval of Downtown Prospect Association, vote to assess themselves for maintenance or services in addition to those normally provided by Downtown Prospect Association. Such maintenance or services may be to portions of the Units or buildings visible to the public as well as the Commons.

(c) Combined Zones; Smaller Groups. Zones may be combined or join together for such assessments. If more than one Zone is to vote, Downtown Prospect Association shall determine whether approval and assessment is to be by Zone or by the combined group of Zones. If a group smaller than a Zone wishes to be assessed for capital improvements or services, all of those being assessed must agree to the assessment.

(d) Assessment Levy. Any assessment so approved shall be assessed to all Owners within that Zone or designated group as an Individual Unit Assessment.

10.5 Individual Unit Assessments. Downtown Prospect Association may levy at any time an Individual Unit Assessment against a particular Unit for the purpose of defraying, in whole or in part, the cost of any special services to that Unit, for expenses approved by that Zone in accordance with Section 10.4, or any other charges designated in this Declaration as an Individual Unit Assessment.

10.6 Allocation of Special Assessments. Special Assessments, and Individual Unit Assessments for Zone charges, shall be allocated among Units as a uniform percentage of the General Assessment for that Unit.

10.7 Definition of Net Leasable Commercial Square Footage. For purposes of calculating the General Assessment, net leasable commercial square footage shall include all heated or air-conditioned space which may be used for commerce, office, storage and other support areas for the commercial use, measured to the center of the wall. Commercial Unit square footage shall not include any Residential Units, or any stairwells or walkways used primarily to access residential space. At the discretion of Downtown Prospect Association, decks and other un-airconditioned space which are used on a regular basis for commerce may also be considered as part of the square footage and assessed at the same or a reduced rate, depending on use. The amount of assessed square footage for a particular Commercial Unit shall be as determined by Downtown Prospect Association in its reasonable discretion.

10.8 Determination by Downtown Prospect Association. Downtown Prospect Association may establish rules for the definition and calculation of building square footage, assessment of unimproved lots, determination of residential or type of business use and other matters relating to assessment. Downtown Prospect Association's agent may enter and examine buildings at reasonable times for assessment purposes. An Owner shall have the right to a hearing before Downtown Prospect Association to appeal an assessment evaluation; however, the decision of Downtown Prospect Association is final.

10.9 Payment of General Assessments. Downtown Prospect Association shall set the date or dates such assessments become due and may provide for collection of assessments annually or in monthly, quarterly or semiannual installments. The annual General Assessments shall begin on the day of conveyance of the first Unit to an Owner other than the Founder, prorated to the month of closing.

10.10 Effect of Nonpayment of Assessment; Remedies

(a) Personal Obligation. All Assessments, together with any late fee, interest and cost of collection when delinquent, including a reasonable attorney's fee whether or not suit is brought (collectively, the "Assessment Charge") shall be the personal obligation of the person or entity who was the Owner of the Unit at the time when the assessment was levied, and of each subsequent Owner. No Owner may waive or otherwise escape liability for the Assessment Charge by abandonment of the Unit.

(b) Creation of Lien. The Assessment Charge shall also be charged on the land and shall be a continuing lien upon the Unit against which the Assessment Charge is made, which may be enforced upon recording of a claim of lien. This lien, in favor of Downtown Prospect Association, shall secure the Assessment Charge which is then due and which may accrue subsequent to the recording of the claim of lien and prior to entry of final judgment of foreclosure. Any subsequent owner of the Unit shall be deemed to have notice of the Assessment Charge on the land, whether or not a lien has been filed.

(c) Suit for Payment; Foreclosure of Lien. Downtown Prospect Association may bring an action at law against the Owner personally obligated to pay the Assessment Charge, or may foreclose the lien in a manner similar to foreclosure of a mortgage lien, or both. Downtown Prospect Association, acting on behalf of the Owners, shall have the power to bid for an interest in any Unit foreclosed at such foreclosure sale and to acquire, hold, lease, mortgage and convey the Unit.

(d) Subordination of the Lien to Mortgages. The lien of the Assessment Charge shall be inferior to the first mortgage lien of any Mortgagee. Sale or transfer of any Unit pursuant to foreclosure of such a mortgage (or, if approved by Downtown Prospect Association, acceptance of a deed in lieu of foreclosure) shall extinguish the lien as to payments which became due prior to the sale of transfer. The transferees of such Unit shall be liable for any assessments coming due after the sale or transfer.



(e) Other Remedies. Downtown Prospect Association shall have the right to assess fines and suspend the voting rights and right to use of the Commons by an Owner for any period during which any Assessment against his Unit remains unpaid.

10.11 Certificate of Payment. Downtown Prospect Association, upon request of any Owner, shall furnish a certificate stating whether any assessments are owed by that Owner. Such certificate, when signed by an officer of Downtown Prospect Association's corporate entity, may be relied upon by a good faith purchaser or mortgagee as conclusive evidence of payment of any assessment therein stated to have been paid.

10.12 Bookkeeping; Use of Funds. Downtown Prospect Association shall maintain a general fund and shall keep books and records of its expenses in performing its duties under this Declaration. All assessments, fines and other moneys collected under this Declaration shall be used only for maintenance, repair and replacement of the Commons, reserves, capital improvements and other uses authorized by this Declaration, including legal and professional fees and a reasonable administrative fee to Downtown Prospect Association.

10.13 Founder's Assessments. The Founder shall be excused from payment of assessments if the Founder guarantees to Parcel owners that their Assessments during the "Guarantee Period," as defined below, shall not exceed the amounts shown in the then-current estimated operating budget. If the Founder offers such a guarantee, the Founder agrees to pay any Common Expenses incurred during the Guarantee Period which exceed the amount produced by Assessments during that time. The "Guarantee Period" may begin at Founder's discretion at any time within the first three years after the recording of this Declaration in the public records of Boulder County, Colorado and shall end at the beginning of the next fiscal year. The Guarantee Period shall then be automatically extended for successive six-month periods up to an additional eight years unless terminated upon written notice by the Founder to the Association at least 30 days before the end of the then-current Guarantee Period. During the Guarantee Period, the General Assessments may be increased by up to 15% per year.

ARTICLE XI: | Regulation of Commercial Use

11.1 Permitted Uses. Permitted uses within Downtown Prospect, which may include residential use or retail, office, restaurant or other commercial use, shall be determined by the Founder based on the size, shape and location of the parcel within the overall design for the Zone and for Downtown Prospect. At the Founder's discretion, the Founder shall make the determination of record at the time of the parcel's addition to Downtown Prospect, or at any time up to and including the time of conveyance of the parcel to someone other than the Founder. If the Founder fails to make such a determination of record, the approval of the building or modification under the design review procedures of the Master Deed Restrictions may describe permitted uses.



11.2 Generally. Each Owner, by acceptance of a deed to property within Downtown Prospect, recognizes that Owner's property is part of Downtown Prospect and the larger community of Prospect. Within Downtown Prospect, the proper balance of types of retail stores and other businesses, as well as the quality of those businesses, is critical to the success of Downtown Prospect and the entire community of Prospect. The conditions of this Declaration regarding operation of the business upon an Owner's Unit within Downtown Prospect are part of the consideration for the granting of easements for use of the Commons to Owners and the granting of a deed from the Founder to Owners other than the Founder. These restrictions shall run with the land and be binding upon Owner, successors and assigns and any tenants.

11.3 Types of Business.

(a) Review. Downtown Prospect Association shall have the right to approve all prospective businesses for financial stability, experience and ability to comply with the requirements of this Declaration.

(b) Standards. To assure an appropriate mix of varied, quality establishments, Downtown Prospect Association may establish standards for various aspects of Owner's business, including without limitation types, quality, style and prices of stock. Such standards may differ for different parts of Downtown Prospect, and may apply to an individual store or on a block-by-block basis, in which case standards may be different for opposite sides of the street, corner buildings or for different sizes or types of buildings. Downtown Prospect Association may change the standards from time to time; however, no business which meets existing standards may be required to conform to new standards so long as the business continues to operate under the same name and ownership.

(c) Exclusives. Downtown Prospect Association's efforts to assure varied, quality businesses within Prospect may include the restriction or prohibition of types of merchandise which may be offered and the granting of exclusive rights to certain merchandise. Such exclusive rights may be granted on an individual basis at Downtown Prospect Association's discretion, based on its own evaluation of the quality of merchandise, potential for success and other factors.

(d) Real Estate Offices. The Founder reserves the right to exclusive operation of real estate sales, rental or management offices within Downtown Prospect, which may be considered a deed restriction for the entire Downtown Prospect property and shall be part of the consideration for the sale of property within Downtown Prospect. No real estate sales, rental or management offices, whether for residential, vacation or commercial properties, may operate within Downtown Prospect without the express, written consent of the Founder, which may be arbitrarily withheld.

11.4 Name of Business; Advertising.

(a) Review. Downtown Prospect Association shall have the right to review in advance and approve the name, logo or any identifying symbols to be used with the business.



(b) Use of Name "Prospect." The name "Prospect" is a trade name owned by the Founder. An Owner may use the name "Prospect" to describe the location of the business, and may advertise a business as being located "in Prospect." If requested by the Founder, Owner shall accompany such use with a symbol or explanation concerning trademark or service mark registration of the name "Prospect." Owner may not use the name "Prospect" in any other manner without the express permission of the Founder, which may be arbitrarily denied.

(c) Approval of Advertising. All advertising for the business to be conducted on the Unit, whether for print, television, radio, handbills, outside sign or other media, shall be subject to Downtown Prospect Association's standards and regulations. Downtown Prospect Association may prohibit or regulate the distribution of handbills within Downtown Prospect.

(d) Signage. A business shall display on the exterior of the building or upon any exterior glass surfaces or within 24 inches of any window only those signs, advertising placards, names, insignia, trademarks, descriptive material or other identification which are specifically approved by Downtown Prospect Association and, as applicable, the Prospect Design Review Board. No hand-lettered signs may be displayed unless professionally prepared.

11.5 Appearance, Hours of Operation. Downtown Prospect Association may regulate store displays and general decor, days and hours of operation. The entrance and interior of the business shall be kept immaculately clean and inviting in appearance at all times. Wall and floor coverings, displays and all other furnishings shall be maintained in first-class condition.

11.6 Staff. All personnel who may be viewed by patrons shall be appropriately dressed, well groomed, courteous and knowledgeable concerning the stock and store policies. In addition, Downtown Prospect Association may require personnel to attend classes concerning the history and philosophy of Prospect, the location of other commercial and public facilities within Prospect and other information that might reasonably be asked by retail store patrons. Personnel may be required to demonstrate proficiency from time to time in such information.

11.7 Quality Control. Downtown Prospect Association, its agents and employees shall have the right to inspect the business, stock and services on a monthly basis. Failure to conduct monthly inspections on a regular basis shall not waive Downtown Prospect Association's rights to do so. Downtown Prospect Association shall notify Owner of any deficiencies noted during such inspection. If any such deficiency is not resolved within a reasonable amount of time, Downtown Prospect Association shall give a second notice to Owner, which shall be noted as a "second notice of deficiency." If the deficiency is not cured within 30 days of the second notice, then Downtown Prospect Association shall have all rights of enforcement under this Declaration.



11.8 Leases. The provisions of this Downtown Prospect Declaration, including but not limited to this Article XI, shall be deemed included in any lease of commercial space within Downtown Prospect. All retail tenants of Commercial Units shall be required to provide state sales tax returns to assist in the calculation of Percentage Assessments in accordance with Section 10.3. Downtown Prospect Association shall have the right to review all Commercial Unit leases in advance and may promulgate a standard form lease to simplify its review. If any tenant is in violation of these provisions Downtown Prospect Association may enforce these provisions against the Owner, the tenant or both, and is granted the right as Owner's agent and attorney in fact in accordance with Section 11.13 to evict any tenant in violation of these provisions. Downtown Prospect Association may prohibit the leasing of any Unit while the Owner is in default in the payment of Assessments; if the Unit is leased in violation, Downtown Prospect Association may attach rentals and may evict the tenant as if it were a tenant violation under paragraph 11.13 (c).

11.9 Prohibited Uses.

(a) Nuisances, Unlawful Use. No nuisance or immoral, improper, offensive or unlawful use shall be permitted to exist or operate on any Unit. Downtown Prospect Association may from time to time define and determine unacceptable uses. All laws, building codes, orders, rules, regulations or requirements of any governmental agency having jurisdiction shall be complied with, by and at the sole expense of the Owner.

(b) Insurance. Nothing shall be done or kept on any Unit or the Commons which will increase the rate of, or result in cancellation of, insurance for the Commons or any other Unit or its content, without the prior written consent of Downtown Prospect Association.

(c) Soliciting. Downtown Prospect Association may regulate or prohibit soliciting within Downtown Prospect.

(d) Time Sharing. No time-share ownership of Units is permitted without Downtown Prospect Association's approval. For this purpose, the term "time-share ownership" shall mean a method of ownership of an interest in a Unit under which the exclusive right of use, possession or occupancy of the Unit circulates among the various owners on a periodically reoccurring basis over a scheduled period of time. Leasing a building or ownership of a Unit by a corporation, partnership or other entity or by not more than four individuals or married couples will not normally be considered time-share ownership.

(e) Camping. Camping shall be prohibited within Downtown Prospect.

11.10 Attractiveness and Safety of Units. Each Owner shall keep all parts of his Unit in good order and repair and free from debris. Downtown Prospect Association may regulate placement and maintenance of garbage and trash containers, and fuel or gas storage tanks, and other matters affecting the attractiveness or safety of Units. In addition to the provisions of paragraph 11.4 (d) concerning business signage, no sign, advertisement or

notice of any type or nature whatsoever (including "For Sale" or "For Rent" signs) shall be erected or displayed on any Unit or portion of the Commons unless specifically permitted by Downtown Prospect Association. Garage doors shall be kept closed except when automobiles are entering or leaving the garage. No obstruction to visibility at street intersections shall be permitted.

11.11 Pets. Pets may be kept in a Unit but only if such pets do not cause an unsafe condition or unreasonable disturbance or annoyance within Downtown Prospect. Each pet owner shall be held strictly responsible to immediately collect and properly dispose of wastes and litter of his pets. Downtown Prospect Association reserves the right to regulate the number and size of pets; to prohibit the keeping of animals other than customary household pets, which it may define, acting reasonably; to designate specific areas within the Commons where pets may be walked and to prohibit pets on other areas; to require pets to be on leash; and to restrict the rights of tenants to keep pets.

11.12 Rules and Regulations. Downtown Prospect Association may from time to time adopt rules or amend previously adopted rules and regulations governing the details of the operation, use, maintenance and control of the Units, Commons and any facilities or services made available to the Owners. This right shall include without limitation the right to approve rental agents, contractors and sub-contractors who do business within Prospect. Rules and Regulations shall take effect immediately upon approval by the Board, or at a later date selected by the Board. If requested by at least 10% of the Members, a meeting of Members may be called and any Rule or Regulation may be repealed by majority vote of the Members. A copy of the Rules and Regulations adopted from time to time shall be posted in a conspicuous place within Downtown Prospect or furnished to each Owner.

11.13 Enforcement.

(a) Owner's Responsibility. Each Owner and Owners' family members, guests and tenants shall conform and abide by the covenants contained in this Declaration and any Rules and Regulations which may be adopted from time to time by Downtown Prospect Association. Each Owner shall be responsible for assuring such compliance, and any violation by family members, guests or tenants may be considered to be a violation by the Owner.

(b) Notice, Hearing and Fines. Any Owner who is believed to be in violation of this Declaration or the Rules and Regulations shall be given notice and an opportunity to be heard. After such hearing, Downtown Prospect Association shall have the right to assess fines, up to a maximum of \$500 for a single violation or \$50 per day for a continuing violation (to be adjusted according to increases in the cost of living) and may restrict the Owner's use of the Commons for up to sixty (60) days or until remedied, whichever is longer. However, the primary goal of this provision is not to punish but to conciliate and resolve problems. Downtown Prospect Association may suggest or approve agreements and withhold the requirement of paying a fine if the agreement is honored. Fines shall be charged against the Unit as an Individual Unit Assessment. Any fines collected shall be contributed to the general fund of Downtown Prospect Association.



(c) Tenant Violations. If a tenant is believed to be in violation of the Declaration or Rules and Regulations, Downtown Prospect Association shall notify the Owner and tenant and provide an opportunity for hearing. If Downtown Prospect Association determines after notice and opportunity for hearing that a tenant has violated this Declaration or Rules and Regulations, Downtown Prospect Association may assess fines against the Owner as provided in paragraph (b). In addition, if the violation continues for ten days after notice to the Owner of the findings, or if the tenant materially violates either Declaration or Rules and Regulations more than once in any one-year period, Downtown Prospect Association shall have the right to evict the tenant. Each Owner by acceptance of a deed irrevocably appoints Downtown Prospect Association as its agent and attorney-in-fact in such an eviction action. All costs related to such action shall be charged to the Owner as an Individual Unit Assessment.

(d) Corrective Action for Unit Maintenance. If Downtown Prospect Association determines after notice and hearing that any Owner has failed to maintain any part of the Unit (including the yard and any wall, fence, building, garden structure or other structure) in a clean, attractive and safe manner, in accordance with the provisions of this Declaration and applicable rules and regulations, Downtown Prospect Association shall notify the Owner of its findings and may assess fines as provided in paragraph (b). If the violation continues for ten days after notice to the Owner, Downtown Prospect Association shall have the right without liability to enter upon such Unit to correct, repair, restore, paint and maintain any part of such Unit and to have any objectionable items removed from the Unit. Downtown Prospect Association may reduce or eliminate the time for notice if it believes the condition creates a hazard. All costs related to such action shall be assessed to the Owner as an Individual Unit Assessment.

(e) Pets. After notice and hearing, Downtown Prospect Association may find that a pet causes an unsafe condition or unreasonable disturbance or annoyance and may require the Owner or tenant to take steps to cure or limit the offensive condition. If such steps are ineffective, if the Owner or tenant fails to cooperate or if the pet is considered to create an unsafe condition, Downtown Prospect Association may require that an Owner or tenant permanently remove the pet from Downtown Prospect.

(f) Additional Remedies. All remedies listed in this section are non-exclusive and may be applied cumulatively. Downtown Prospect Association shall also have the right to bring suit to enforce the Declaration and Rules and Regulations, as described in Section 14.3.

ARTICLE XII: | Insurance;
Casualty

12.1 Review of Coverage. The Board shall review limits of coverage for each type of insurance at least once each year.



12.2 Casualty Insurance. The Board may obtain and, if additional Commons with significant insurable improvements are added to Downtown Prospect, shall be required to obtain and maintain, casualty insurance on the Commons for fire damage. Endorsements for extended coverage, vandalism, malicious mischief, flood and windstorm should be obtained where available at reasonable cost. Coverage shall be in an amount not less than necessary to comply with the co-insurance percentage stipulated in the policy, but in any event not less than 80% of the insurable value (based upon replacement) of the improvements constructed on the Commons.

12.3 Public Liability. The Board may obtain public liability insurance in such limits as the Board may from time to time determine, insuring against any liability arising out of, or incident to, the ownership and use of the Commons. At the Board's discretion, such coverage may include easements, such as walkways, which benefit the Association. Whenever practicable, such insurance should be issued on a comprehensive liability basis and should contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, the Board or other Owners.

12.4 Director Liability Insurance. The Board may obtain liability insurance insuring against personal loss for actions taken by members of the Board and advisory members in the performance of their duties. Such insurance shall be of the type and amount determined by the Board in its discretion.

12.5 Other Coverage. The Board shall obtain and maintain workman's compensation insurance if and to the extent necessary to meet the requirements of law, and such other insurance as the Board may determine or as may be requested from time to time by a majority vote of the Members.

12.6 Unit Coverage.

(a) Generally. Each Owner shall obtain casualty insurance for improvements on the Unit. Coverage shall be in an amount not less than necessary to comply with the co-insurance percentage stipulated in the policy, but in any event not less than 80% of the insurable value (based upon replacement) of the improvements. If requested, Owners shall provide evidence of such insurance to Downtown Prospect Association.

(b) Commercial Units. Downtown Prospect Association may require Commercial Units to carry additional insurance, including but not limited to comprehensive general liability and, where applicable, liquor liability and special coverage for machinery and equipment.

12.7 Repair and Reconstruction after Fire or Other Casualty.

(a) Commons. If fire or other casualty damages or destroys any of the improvements on the Commons, the Board shall arrange for and supervise the prompt repair and restoration of the improvements, unless other plans are approved by the Design Review Board or the area is to be redeveloped as provided in Section 13.3. The Board shall obtain funds for such reconstruction first from the insurance proceeds, then from



reserves for the repair and replacement of such improvements, and then from any Special Assessments that may be necessary after exhausting insurance and reserves.

(b) Units. If fire or other casualty damages or destroys a building or any other improvements on a Unit, the Owner of that Unit shall immediately proceed to rebuild and restore the improvements to the condition existing immediately prior to such damage or destruction, unless other plans are approved by the Design Review Board or the area is to be redeveloped as provided in Section 13.3. If the Owner fails to clean and secure a Unit within 30 days after a casualty, Downtown Prospect Association may, in accordance with the provisions of Section 11.13 (d), remove debris, raze or remove portions of damaged structures and perform any other clean up Downtown Prospect Association deems necessary to make the Unit safe and attractive. The cost of such clean-up shall be assessed to the Unit Owner as an Individual Unit Assessment.

ARTICLE XIII: | Amendment, Dedication,
Redevelopment and
Termination

13.1 Amendment.

(a) By Members. This Declaration may be amended at any time by an instrument signed by the president or vice president and secretary of Downtown Prospect Association, certifying approval in writing by two-thirds (2/3) of the total votes. Rights reserved to the Founder may not be amended without the specific consent of the Founder.

(b) By the Founder. The Founder specifically reserves the absolute and unconditional right to amend this Declaration without the consent or joinder of any party (i) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association or any other generally recognized institution involved in the guarantee or purchase and sale of home loan mortgages, (ii) to conform to the requirements of institutional mortgage lenders or title insurance companies, or (iii) to clarify the Declaration's provisions or correct errors.

(c) Limitation. Whenever any action described in this Declaration requires approval of greater than two-thirds (2/3) of the total votes, amendment of that provision shall require the same percentage vote as would be required to accomplish that action directly.

(d) Recording. Any amendment shall take effect upon recording in the public records.

13.2 Dedication. The Founder or Downtown Prospect Association shall have the right to convey title to or dedicate the streets and any other Commons to the appropriate public agency or authority.

13.3 Redevelopment.

(a) Purpose. If Downtown Prospect should ever be struck by a severe natural disaster, all or a portion of Downtown Prospect might be destroyed and need to be rebuilt. In general, after any casualty loss, improvements are to be rebuilt in accordance with the original plan. Alternatively, this section provides a method for redevelopment in accordance with a new plan when two-thirds of the owners, the Founder and a majority of the mortgagees agree that it is necessary and desirable to do so. This super-majority approval is designed to protect individual property owners' rights and expectations in their property. However, when such consensus is achieved, this section allows redevelopment, while continuing to protect the dissenting owners by assuring payment to them of fair market value, plus a relocation allowance. The same method may be used when, after long periods of time, changing uses and conditions make redevelopment desirable.

(b) Definitions. Redevelopment is the process of rebuilding all or a portion of Downtown Prospect Zones, known as a Redevelopment Area, in accordance with a revised master plan, combined with the offer to purchase the property of any dissenting Unit Owners. A Redevelopment Area must be a defined, logical section for redevelopment comprising a Zone or Zones, or all of Downtown Prospect Zones. The plan may allow buildings which are currently in serviceable condition to remain but require that such buildings, if rebuilt or remodeled in the future, to be rebuilt in accordance with the redevelopment plan. The plan for redevelopment may include termination of the Declaration for the Redevelopment Area. If the Declaration is terminated for a Redevelopment Area, the Founder may sell or donate to the Owners within the Redevelopment Area the Commons located there, reserving access and use easements as appropriate.

(c) Redevelopment; When Available. Redevelopment shall be available only upon the occurrence of one of the following:

(i) Any time after thirty (30) years from the recording of this Declaration, or

(ii) Upon a casualty loss destroying at least two-thirds, by value, of the insurable improvements, either within all of the Zones, or within a Redevelopment Area. If the necessary approvals are not obtained within ninety (90) days after the casualty, the damage must be repaired in accordance with Section 12.2 ("Repair and Reconstruction after Fire or Other Casualty").

(d) Approvals. Redevelopment requires the consent in writing of Owners representing two-thirds of the Owner's assessment interests within the Redevelopment Area, as applicable; Mortgagees holding mortgages on a majority, by assessment interests, of the Units encumbered by mortgages; and the Founder. If the plan is approved, consenting Owners must rebuild in accordance with the redevelopment plan, and, unless the plan provides otherwise, must participate in the purchase of dissenting Owners' Units.



(e) Redevelopment Corporation. The plan may include formation of a redevelopment corporation or other entity to purchase the Units of dissenting Owners. Unless otherwise agreed, the consenting Owners would be required to contribute to the capital of the redevelopment corporation in proportion to their General Assessments, as a portion of all consenting Owners. The plan may authorize Downtown Prospect Association, on behalf of the redevelopment corporation, to collect the Owners' shares as an Individual Unit Assessment.

(f) Option to Purchase. Upon approval of the redevelopment plan, the redevelopment corporation or other designee of the consenting Owners shall deliver an option to purchase to all remaining Owners of Units within the Redevelopment Area. The option to purchase must be delivered in person or by registered mail to each Owner of a Unit to be purchased. The recipient of such an option shall, within 30 days, choose either to join the consenting Owners, or to sell the Unit to the consenting Owners. Failure to agree to the sale within 30 days shall be deemed to be agreement to join the consenting Owners. The sale price shall be paid in cash or upon terms approved by the seller, and the sale shall be closed in a timely fashion following determination of the sale price.

(g) Price. The price for each Unit to be purchased shall be its fair market value determined by agreement between the seller and the designee of the consenting Owners within 30 days of the delivery or mailing of the notice. In the absence of agreement, the purchasing Owners and the selling Owners shall each select a real estate appraiser, which appraiser shall then choose a third appraiser, and the purchase price shall be the average (mean) of the three appraisals. The fair market value of the property shall be determined in its present, as-is condition, subject to the Declaration, and the seller shall be entitled to any insurance proceeds attributable to that Unit distributed on account of the casualty loss. The expense of the appraisals and all closing costs shall be paid by the purchaser.

(h) Relocation Allowance. In addition to the purchase price, the purchaser shall pay to the seller a relocation allowance of five percent (5%) of the purchase price.

(i) Enforcement. A judgment of specific performance of the purchase based upon the determination of the price by the appraisers may be entered in any court of competent jurisdiction.

(j) Limitation. If necessary for this section's validity under the Rule Against Perpetuities or similar law, this option shall expire 21 years after the death of the last child of any member of the Colorado state legislature serving at the time of the recording of this Declaration, or whatever greater time period allowed by law.

13.4 Duration; Termination. The covenants and restrictions and other provisions contained in this Declaration shall run with and bind Downtown Prospect and shall inure to the benefit of and be enforceable by Downtown Prospect Association, the Founder and all Owners of property within Downtown Prospect, their respective legal representatives, heirs, successors or assigns for twenty years, and shall be automatically extended for each succeeding ten year periods unless an instrument signed by Owners representing 90% of



the votes in the Association shall have been recorded and consent of the Founder, agreeing to terminate the Declaration as of a specified date.

This Declaration may also be terminated in any of the following ways:

(a) Unanimous Consent. The Declaration may be terminated at any time by the consent in writing of all Owners and the Founder.

(b) Redevelopment. The Declaration may be terminated for all or a part of Downtown Prospect in accordance with the redevelopment provisions of Section 13.3.

13.5 Rerecording. Unless this Declaration is terminated, Downtown Prospect Association shall rerecord this Declaration or other notice of its terms at intervals necessary under Colorado law to preserve its effect. If Downtown Prospect Association fails to rerecord this Declaration, the Founder or any Owner may do so.

13.6 Condemnation. If all or part of the Commons is taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be paid to Downtown Prospect Association.

ARTICLE XIV: | General Provisions

14.1 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform and consistent plan for the development and operation of Downtown Prospect as an integral part of Prospect but with separate needs as an area of primarily commercial character. If necessary in the event of a conflict, the provisions shall be interpreted in the manner which gives Downtown Prospect the greatest autonomy.

14.2 Invalidity. The invalidity of any part of this Declaration shall not impair or affect the validity or enforceability of the rest of the Declaration, which shall remain in full force and effect.

14.3 Enforcement of Declaration.

(a) Enforcement. Suit may be brought against any person, persons or entity violating or attempting to violate the provisions of this Declaration, either to restrain violation or to recover damages, and against his or its property to enforce any lien created by this Declaration. To enforce this Declaration or the Rules and Regulations, the Founder, Downtown Prospect Association, the Merchants' Council or any Owner may bring an action for damages, specific performance, declaratory decree or injunction, or any other remedy at law or in equity.



(b) No Waiver. Failure to enforce any provision of this Declaration or the Rules and Regulations shall not be deemed a waiver of the right to do so at any time thereafter.

(c) Legal Fees. Any and all costs, including but not limited to attorneys' fees and court costs, which may be incurred by the Founder, Downtown Prospect Association or the Merchants' Council in the enforcement of any of the provisions of this Declaration, whether or not suit is brought, may be assessed as an Individual Unit Assessment to the Owner against whom such action was taken.

14.4 Assignment of Founder Rights. Founder may assign all or any portion of its rights or obligations at any time to a successor or assign, or to Downtown Prospect Association. If Founder conveys all of its property within Downtown Prospect without assigning its rights, then the Founder's rights shall be automatically assigned to Downtown Prospect Association.

14.5 Notices. Any notice required to be sent to the Owner shall be deemed to have been properly sent when mailed, postage prepaid, or hand delivered to the Unit and, if different, to the last known address of the person who appears as Owner of the Unit as that address is stated on the records of Downtown Prospect Association at the time of the mailing.

14.6 Gender and Number. The use of the masculine gender herein shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

14.7 Consent of Mortgagees.

(a) When Consent Required. This Declaration contains provisions concerning various rights, priorities, remedies and interests of Mortgagees. Such provisions are to be construed as covenants for the protection of the Mortgagees on which they may rely in making loans secured by a mortgage on a Unit. Accordingly, no amendment or modification of this Declaration specifically impairing such rights, priorities, remedies or interests of a mortgagee shall be adopted without the prior written consent of Mortgagees as provided in paragraph (b). This section shall not be construed, however, as a limitation upon the rights of the Founder or the Owners to make amendments which do not adversely affect the Mortgagees.

(b) Percentage Required. Wherever consent of the Mortgagees is required, it shall be sufficient to obtain the written consent of Mortgagees holding a lien on two-thirds or more of all Units encumbered by a mortgage, unless a smaller percentage is specified.

(c) Timely Response. Any such required consent shall be given promptly and shall not be unreasonably withheld. Any consent not given or denied within 30 calendar days of receipt of request for consent shall be deemed given.

14.8 Law to Govern. This Declaration shall be construed in accordance with the laws of the State of Colorado.



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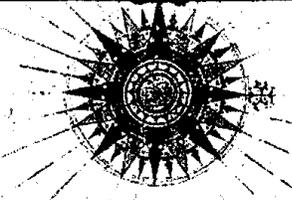
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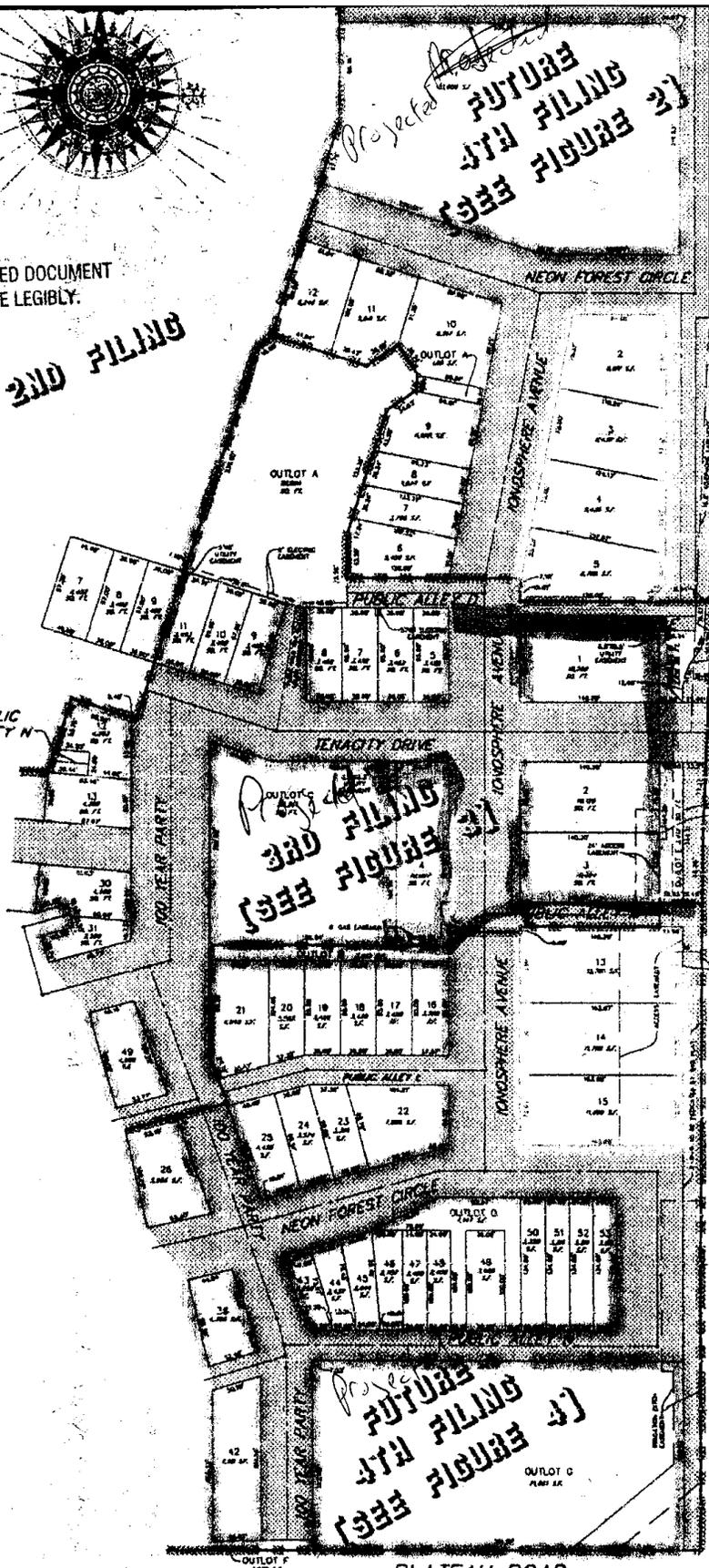
EXHIBIT A
Attached Legal Description of Property

RECORDER'S NOTE:
PORTION OF RECORDED DOCUMENT
MAY NOT REPRODUCE LEGIBLY.

2ND FILING



First Phase Third Filing
Second Phase To be determined & possible Second Phase To be Determined
Third Phase possible Third Phase



Projected
1st ENGINE EEE
2nd FILING
3rd ENGINE EEE

Projected
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PLATEAU ROAD

**ARTICLES OF INCORPORATION
DOWNTOWN PROSPECT ASSOCIATION, INC.
(A NONPROFIT CORPORATION)**

The undersigned person, acting as incorporator of a non-profit corporation in accordance with CRS § 7-122-101, hereby signs and acknowledges, for delivery to the Secretary of State of Colorado, these Articles of Incorporation pursuant to statute, and states the following:

Article I. Name and Principal Office

The name of this corporation is **DOWNTOWN PROSPECT ASSOCIATION, INC.** (referred to hereinafter as the "Association") and the principal office of the Association is 659 Fourth Avenue, Longmont, Colorado 80501.

Article II. Registered Agent for Service and Address

The initial registered agent of the Association shall be **Cameron A. Grant** at the registered address of 436 Coffman Street, Suite 200, Longmont, Boulder County, Colorado 80501.

I consent to the appointment as registered agent of this corporation.


Cameron A. Grant, Registered Agent

Article III. Duration

The duration of the Association shall be perpetual.

Article IV. Purposes and Powers of Association

4.01 The Association shall operate Downtown Prospect, located in Boulder County, Colorado, in accordance with the Downtown Prospect Declaration of Charter, Easements, Covenants and Restrictions, as amended ("the Declaration"), and the Colorado Revised Nonprofit Corporation Act, as amended.

4.02 The Association shall promote the health, safety, welfare, and common benefit of the members of Downtown Prospect.

4.03 The Association shall do any and all permitted acts, and shall have and exercise any and all powers, rights, and privileges which are granted under the laws of the State of Colorado and the Declaration, Bylaws, Rules and Regulations, and other governing documents of the Association.

4.04 The foregoing statements of purpose shall be construed as a statement of both purposes and powers. The purposes and powers stated in each clause shall not be limited or restricted by reference to or inference from the terms or provisions of any other clause, but shall be broadly construed as independent purposes and powers.

Article V. Dissolution

In the event of dissolution of this Corporation, either voluntarily by the members hereof, by operation of law, or otherwise, then the assets of this Corporation shall be deemed to be owned by the members at the date of dissolution.

Article VI. Nonprofit

The Association shall be a nonprofit corporation, without shares of stock.

Article VII. Membership Rights and Qualifications

The classes, rights, and qualifications and the manner of election or appointment of members are as follows: Any person who holds title to a Commercial Unit, is a Temporary Unit Owner or is a lot owner who pays assessments in Downtown Prospect, as those terms are defined in the Declaration, shall be a member of the Association. Voting, transfer of membership and other matters shall be governed by the provisions of the Declaration.

Article VIII. Executive Board

The initial Executive Board shall consist of three persons ("Directors"), and this number may be changed by a duly adopted amendment to the Bylaws, except that in no event may the number of Directors be less than three. The names and addresses of the persons who shall serve as Directors until their successors shall be elected and qualified shall be listed in the Bylaws of the Association.

Article IX. Incorporator

The name and address of the incorporator is:

Cameron A. Grant
436 Coffman Street, Suite 200
P.O. Box 908
Longmont, Colorado 80502-0908

Article X. Amendment

Amendment of these Articles shall require the assent of at least two-thirds of the members of the Association as provided in the Colorado Nonprofit Corporation Act.

Article XI. Execution

The undersigned incorporator has signed these Articles this 28TH day of NOVEMBER, 2001.


Cameron A. Grant, Incorporator



BYLAWS
of
DOWNTOWN PROSPECT ASSOCIATION, INC.
(A *NONPROFIT CORPORATION*)

Article I. Principal Office

Section 1. The principal office of the corporation shall be located at 659 Fourth Avenue, Longmont, Colorado. The principal office may be changed by the board of directors. The corporation may also have offices at other places within or outside of Colorado as the board of directors may approve.

Article II. Members

Section 1. Any person who holds title to a Commercial Unit, is a Temporary Unit Owner or is a lot owner who pays assessments in Downtown Prospect, as those terms are defined in the Declaration of Charter, Easements, Covenants and Restrictions of Downtown Prospect (hereinafter referred to as the "Declaration"), shall be a member of the Association.

Article III. Dues and Assessments

Section 1. Generally. Dues and Assessments shall be paid as provided in the Declaration.

Section 2. Nonpayment of Dues and Assessments. The failure to pay dues or assessments in the amounts and at the times determined by the board of directors shall cause the member's privileges or membership to be suspended or terminated, as determined by the board of directors.

Article IV. Meetings of Members

Section 1. Annual Meeting. An annual meeting of the members of the corporation shall be held at a time and date stated in or fixed in accordance with a resolution of the board of directors. The annual meeting shall be held for the election of directors and the transaction of such other business as may properly come before it.

Section 2. Regular Meetings. Regular membership meetings may be held at a time and date stated in or fixed in accordance with a resolution of the board of directors.

Section 3. Budget Meeting. Meetings of Members to consider proposed budgets shall be called in accordance with the Act. The budget may be considered at Annual or Special Meetings called for other purposes as well.

Section 4. Special Meetings. A special meeting of the members may be called by the board of directors or by or at the direction of the president or chairperson of the board. A special meeting may also be called by the members in accordance with Colorado law.



Section 5. Notice of Meetings. Notice of a meeting, whether annual, regular or special, shall include the place, date and time of the meeting and shall be mailed by first class mail no fewer than ten days, nor more than 60 days before the meeting. Notice of an annual or regular meeting shall include a description of any matter or matters that must be approved by the members or for which membership approval is sought. Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

Section 6. Order of Business. The order of business at all meetings of the Members shall be as follows:

- (a) Roll call (or check-in procedure);
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports;
- (e) Establish number and term of memberships of the Executive Board (if required and noticed);
- (f) Election of inspectors of election (when required);
- (g) Election of Directors of the Executive Board (when required);
- (h) Ratification of budget (if required and noticed);
- (i) Unfinished business; and
- (j) New business.

Section 7. Voting. If only one of several owners of a Unit is present at a meeting of the Association, the owner present is entitled to cast all the Votes allocated to the Unit. If more than one of the owners are present, the Votes allocated to the Unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any one of the owners casts the Votes allocated to the Unit without protest being made promptly to the person presiding over the meeting by another owner of the Unit.

Votes allocated to a Unit may be cast under a proxy duly executed by a Member. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the Unit through a duly executed proxy. A Member may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter



term.

The Vote of a corporation or business trust may be cast by any officer of that corporation or business trust in the absence of express notice of the designation of a specific person by the Executive Board of directors or bylaws of the owning corporation or business trust. The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership. The moderator of the meeting may require reasonable evidence that a person voting on behalf of a corporation, partnership or business trust owner is qualified to vote.

Votes allocated to a Unit owned by the Association may not be cast.

Section 8. Quorum/Voting Groups. Unless otherwise provided by law, 25 percent of the votes entitled to be cast on the matter by a voting group constitutes a quorum of that group for action on that matter.

Section 9. Action Without Meeting. Any action required or permitted to be taken at a members' meeting may be taken without a meeting if members entitled to vote thereon unanimously agree and consent to such action in writing.

Section 10. Meetings by Telecommunication. Any or all of the members may participate in an annual, regular, or special meetings of the members, or the meeting may be conducted through the use of, any means of communicating by which all persons participating in the meeting may hear each other during the meeting. A person participating in a meeting by this means is deemed to be present in person at the meeting.

Section 11. Written Ballots. Any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

Article V. Board of Directors

Section 1. Size of Board. The initial board of the corporation shall consist of one person. The initial director shall be John Christian Wallace. For such time as the Founder is empowered to elect the Board of Directors as provided in the Declaration, the Founder shall determine the number of Directors. Thereafter, the corporation shall have a board consisting of not less than three directors and not more than five directors. The number of directors may be fixed or changed from time to time within the range by the voting members of the board of directors. A director need not be a resident of Colorado or a member of the corporation. Directors shall serve a term of one year. Directors may be elected for successive terms.

Section 2. Vacancies. Vacancies on the board of directors may be filled for the unexpired term of the predecessor in office by a majority vote of the remaining directors at any meeting of the board of directors, provided however, that such vacancies may



be filled by the Founder so long as the Founder is empowered to elect the Board as provided in the Declaration. A vacancy created by an increase in the number of directors may be filled for a term of office continuing only until the next election of directors. If, however, the vacant office was held by a director elected by a voting group of voting members or was held by a director elected by a voting group of directors, the vacancy shall be filled in accordance with the requirements of Colorado law.

Section 3. Power and Duties of the Directors. The board of directors shall have control and general management of the affairs, property and business of the corporation and, subject to these bylaws, may adopt such rules and regulations for that purpose and for the conduct of its meetings as the board of directors may deem proper. The powers shall include but not be limited to the appointment and removal of the officers of the corporation.

Section 4. Election of Directors. The election of directors shall be at the annual meeting of the membership or such other method authorized by these bylaws.

Section 5. Chairperson of the Board. From among its members, the board of directors shall elect a chairperson. The chairperson of the board shall preside at meetings of the members and the board of directors.

Article VI. Meetings of Directors

Section 1. Regular Meetings. Regular meetings of the board directors may be held without notice of the date, time, place or purpose of the meeting.

Section 2. Special Meetings. Special meetings of the board of directors shall be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the meeting unless otherwise required by law.

Section 3. Quorum and Voting. A quorum of the board of directors consists of a majority of the number of directors in office immediately before the meeting begins. The affirmative vote of a majority of directors present is the act of the board of directors unless the vote of a greater number of directors is required by law.

Section 4. Action Without Meeting. Any action required or permitted to be taken at a board of directors' meeting may be taken without a meeting if each and every member of the board in writing either: (a) votes for the action; or (b) votes against the action or abstains, and waives the right to demand that a meeting be held. The affirmative votes must equal or exceed the minimum number necessary to take action at a meeting at which all of the directors then in office were present and voted.



Article VII. Officers and Duties

- Section 1. Officers. The officers of the corporation shall consist of a chairperson of the board, a president, one or more vice presidents, a secretary and a treasurer. Any two or more offices may be held by the same person, except the offices of president and secretary. Officers shall be elected or appointed by the board of directors at the annual meeting of the directors. A vacancy in any office may be filled by the board of directors at any regular or special meeting called for that purpose.
- Section 2. Chairperson of the Board. The chairperson of the board shall preside at all meetings of the members and the board of directors, and may have any other powers and duties as may be conferred by the board of directors.
- Section 3. President. The president shall, subject to the direction and supervision of the board of directors, be the chief executive officer of the corporation and shall have general and active control of its affairs and business and general supervision of its officers, agents and employees. The president shall have the authority to sign all contracts and other instruments on behalf of the corporation, except as the authority may be restricted by resolutions of the board of directors adopted from time to time.
- Section 4. Vice Presidents. Vice presidents shall have the duties that the board of directors or the president may delegate to them from time to time. In the absence of the president or his or her inability to act, the duties and powers of the office shall be performed and exercised by a vice president.
- Section 5. Secretary. The secretary shall have the responsibility for the preparation and maintenance of minutes of the directors' and members' meetings and other records and information required to be kept by the corporation and for authenticating records of the corporation. The secretary shall perform all duties usually incident to the office of the secretary, those duties specified in these bylaws, and other duties that may from time to time be delegated by the board of directors.
- Section 6. Treasurer. The treasurer shall have general supervision over the care and custody of the funds and securities of the corporation and shall deposit the same or cause the same to be deposited in the name of the corporation in the bank or banks, trust company or trust companies, that the board of directors may designate. The treasurer shall keep or cause to be kept full and accurate accounts of all receipts and disbursements of the corporation and whenever required by the board of directors, shall render or cause to be rendered financial statements of the corporation.
- Section 7. Agreements, Contracts, Deeds, Checks, etc. Except as otherwise provided in these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by an officer of the Association



or by any other person or persons designated by the Executive Board.

Article VIII. Indemnification

Section 1. Indemnification. To the extent permitted by law and consistent with the Articles of Incorporation, the Association will indemnify every member of the Executive Board, and every officer, employee and agent of the Association and every person who serves at the request of the Association as a director, officer, employee, fiduciary or agent of any other foreign or domestic corporation or of any partnership, joint venture, trust or other enterprise or employee benefit plan against liability asserted against or incurred by such person in such capacity or arising out of that person's capacity as such. The indemnification permitted under this Article will not extend, in any event, to any act or omission occurring prior to the date of incorporation of the Association.

Section 2. Indemnification in the event of Settlement. In the event of a settlement, indemnification will be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of such action or omissions in the performance of such person's duties for the Association. The foregoing rights will not be exclusive of other rights to which such member of the Board of Directors or officer or other person may be entitled. All liability, loss, damage, cost and expense arising out of or in connection with the foregoing indemnification provisions will be treated and handled by the Association as a Common Expense.

Article IX. Nonprofit Corporation

Section 1. The Association is not organized for profit. No Member of the Association, member of the Executive Board, or person from whom the Association may receive any property or funds will receive or will be lawfully entitled to receive any pecuniary profit from the operations of the Association, and in no event will any part of the funds or assets of the Association be paid as a dividend or be distributed to, or inure to the benefit of, any member of the Executive Board. Notwithstanding the foregoing, (i) reasonable compensation may be paid to any Member or Director acting as an agent or employee of the Association for services rendered in effecting one or more of the purposes of the Association, (ii) any Member or Director may, from time to time, be reimbursed for his actual and reasonable expenses incurred in connection with the administration of the affairs of the Association, and any Director may be reimbursed for actual expenses incurred in the performance of his duties.

Article X. Amendment of Bylaws

Section 1. Board Action. The board of directors may amend the bylaws at any time to add, change, or delete a provision unless it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges,



preferences, restrictions, or conditions of another class.

Section 2. Membership Action. The members may amend the bylaws even though the bylaws may also be amended by the board of directors.

Article XI. Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association will begin on the first day of January and end on the 31st day of December every year, except that the first fiscal year will begin on the date of incorporation.

Section 2. Corporate Seal. The Association will have a seal in circular form having within its circumference the words: "Downtown Prospect Association."

Section 3. Conflicts of Documents. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles will control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration will control.

Adopted this 29th day of November, 2001

Cameron A. Grant, Incorporator