

Declaration of Covenants, Conditions and Restrictions

Prospector's Point
Condominium Association, Inc.

CONDOMINIUM DECLARATION
FOR
PROSPECTOR'S POINT CONDOMINIUM

JAMES R. McCLINTIC ("the Declarant") owner of the real property described in Exhibit "A" attached hereto ("the Property") hereby makes this Declaration ("Declaration") in order to create with respect to the Property a Condominium to be known as Prospector's Point Condominium ("Condominium") under the New Mexico Condominium Act ("the Act").

1. SUBMISSION OF LAND TO THE ACT. The Property together with the improvements constructed thereon, is hereby submitted to the provisions of the Act.

2. DEFINITIONS. Terms not otherwise defined herein or in the Plat ("the Plat"), the Plans ("the Plans") or the Bylaws of the unit owners' association ("Bylaws") have the meanings specified in Section 47-7A-3 of the Act. The unit owners' association shall be known as the Prospector's Point Condominium Association, Inc. ("Association").

3. BUILDINGS AND UNITS.

A. Buildings. The location, dimensions and areas of the buildings on the Property are shown on the Plat attached hereto as Exhibit "B".

B. Units. The location of Units within the buildings on the Property is shown on the Plans attached hereto as Exhibit "C". Attached as Exhibit "D" hereto is a list of all Units, their identifying letters, size (all as shown more fully on the Plat and the Plans); and the undivided percentage interest of each Unit Owner in the Common Elements and Common Expenses ("Percentage Interest") appurtenant to each Unit. The "size" of each Unit is the total number of square feet contained therein determined by reference to the dimensions shown on the Plat and Plans (exclusive of interior partitions). The locations of the Common Elements to which each Unit has direct access are shown on the Plat and the Plans. Each Unit shall be allotted one vote in the Association.

C. Unit Boundaries. Each Unit consists of the space within the following boundaries:

1.) Upper and Lower (horizontal) Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries.

a) Upper Boundaries of one story units. The horizontal plane of the under surface of the ceiling joists or roof joists.

b) Lower Boundaries of one story units. The horizontal plane of the upper surfaces of the floor concrete slab or floor decking except in Unit "D" the lower boundary of the area in which the stairwell is located shall be the horizontal plane of the upper surface of the floor concrete slab.

(c) Upper and Lower Boundaries of two story units.

The upper and lower boundaries of two story units shall be the same as the upper and lower boundaries of one story units except that the lower boundaries shall be the horizontal plane of the upper surfaces of the floor concrete slab and the upper boundaries shall be the horizontal plane of the undersurface of the roof joists.

2.) Perimetrical (vertical) Boundaries. The perimetrical boundaries of the unit shall be the following boundaries extended to an intersection with the upper and lower boundaries: The vertical planes adjacent to and which include the inner surface of the wall framing of the interior and exterior walls of the building bounding a unit (and in the case of each unit lettered "D" which has a stairwell serving it only, such boundaries shall also include the vertical planes adjacent to and which include the inner surface of the wall framing of the walls bounding such stairwell.

3.) Garage. Each unit includes a garage as described on the Plans. The boundaries of a garage are described in the same manner as the boundaries of a one story unit.

D. Maintenance Responsibilities. Notwithstanding the ownership of various portions of the Common Elements and the Units by virtue of the foregoing boundary description, the provisions of the Bylaws shall govern the division of maintenance and repair responsibilities between the Unit Owners and the Association.

E. Relocation of Unit Boundaries and Subdivision of Units. Relocation of boundaries between Units and subdivision of Units will not be permitted.

F. Limited Common Elements. The patio or deck appurtenant to each Unit and the driveway in front of each Unit's garage are Limited Common Elements for the exclusive use of the owner of that Unit.

4. DESIGNATION OF RESERVED COMMON ELEMENTS. The Board of Directors shall have the power in their discretion to designate from time to time certain Common Elements as "Reserved Common Elements" and grant reserved rights to any or less than all of the Unit Owners and establish a reasonable charge to such Unit Owner for the Use and maintenance thereof. Such designation by the Board shall not be construed as a sale or disposition of the Common Elements.

5. UNIT USE. No Unit shall be used for other than housing and the related common purposes for which the Property was designated.

6. RESERVATION OF USE BY DECLARANT. All Units shall be subject to the statutory right in favor of Declarant provided in Section 47-7B-15

of the Act. Declarant reserves the right to use any Units owned by Declarant as models, management offices or sales offices until such time as Declarant conveys title thereto to Unit Owners. Declarant reserves the right to relocate the same from time to time within the Property; upon relocation or sale of a model, management office or sales office, the furnishings thereof may be removed. Declarant further reserves the right to maintain on the Property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of Declarant.

7. UNIT OWNERS' EASEMENTS. Each Unit Owner is hereby granted a non-exclusive easement in common with each other Unit Owner appurtenant to each Unit for ingress and egress through all Common Elements, subject to such reasonable rules, regulations and restrictions as may be imposed by the Association.

8. ACCESS. Declarant reserves in favor of Declarant and any managing agent or other person authorized by the Board of Directors a right of access to any Unit as provided in Section 47-7C-7 of the Act and Article V, Section 9 of the Bylaws. In case of emergency, such entry shall be immediate whether the Unit Owner is present at the time or not.

9. DECLARANT'S RIGHT TO LEASE. Declarant shall retain title to each Unit not sold to any purchaser. Declarant retains the right to enter into leases with any third parties for the occupancy of any of the Units retained by Declarant and not sold to any purchaser.

10. RESERVED DEVELOPMENT RIGHTS.

A.) Additional Land. Declarant hereby expressly reserves the rights, until the 7th anniversary of the recordation hereof, to add up to all of the land described in Exhibits "E-1" and "E-2" attached hereto ("additional land") to the Condominium and to create upon such additional land up to 80 additional units in accordance with Section 47-7B-10 of the act without the consent of any Unit Owner or mortgagee. This development right may be exercised with respect to different portions of the additional land at different times. No assurance is given as to the boundaries of any of the additional land with respect to which the Declarant may exercise his development rights nor the order in which any portion may be subject to the exercise of such right. If the development right is exercised as to any portion, the development right is not required to be exercised with respect to any other portion. Should Declarant exercise the right to add additional Units to the Condominium, the Percentage Interest of each Unit may be computed on the basis of size as specified in Paragraph 3B above or may be uniform, but in any event each Unit shall be allocated one vote in the Association. Since the total Percentage Interest of the Condominium shall always equal 100%, the total Percentage Interest allocated to Units listed in Exhibit "D" will be readjusted accordingly.

B. Declarant's Easement. Whether or not Declarant exercises the right under subparagraph A above, Declarant does hereby reserve the right of way for ingress and egress over the Property to and from the additional land and a right to connect with, make use of, and maintain, repair and replace utility and drainage lines within the Property and to

grant such easements for roadways and utilities as may be necessary to complete the development or improvement of the additional land.

C.) If the development right is exercised as to any portion of the additional land, the date the amendment to this Declaration is filed pursuant to Section 47-7B-10A shall be the effective date for granting voting rights and for assigning assessments to the annexed units. All future improvements on the additional land will be consistent with the initial improvements in terms of quality of construction.

11. DECLARANT CONTROL. Until no later than the earlier of (a) four months after 75% of the Units (including those to be constructed on the additional land) have been conveyed to Unit Owners or (b) five years after the 1st Unit is conveyed to a Unit Owner, the Declarant may appoint and remove the officers and members of the Board of Directors of the Association, subject to the limitations in Section 47-7C-3 of the Act.

12. RIGHTS OF SECURED LENDERS.

A. Priority. Except as specifically provided in the Act, this Declaration and the Bylaws, no provision therein shall be construed to grant to any Unit Owner, or to any other person, any priority over any rights of mortgagees.

B. Restrictions.

1.) No material provisions in this Declaration or the Bylaws of the Association may be amended without approval of 51% of the holders of mortgages secured by Units. Implied approval may be assumed if a mortgagee fails to submit a response to a written proposal for an amendment within 30 days after the proposal is made. A change to any of the following would be considered as material:

- voting rights;
- assessments, assessment liens, or subordination of assessment liens;
- reserves for maintenance, repair and replacement of common areas;
- responsibility for maintenance and repairs;
- reallocation of interests in the general or limited common areas, or rights to their use;
- boundaries of any Unit;
- convertibility of Units into common areas or vice versa;
- expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project;

- insurance or fidelity bonds;
- leasing of Units;
- imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- a decision by the Owners' Association to establish self management when professional management had been required previously by an eligible mortgage holder;
- restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;
- any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or
- any provisions that expressly benefit mortgage holders, insurers or guarantors.

2.) Termination of the legal status of the Property for reason other than substantial destruction or condemnation shall not be effective without the approval of 67% of the holders of mortgages secured by Units.

13. AMENDMENT. Subject to the provisions of paragraph 12 above, this Declaration may be amended only by a vote of agreement of Unit Owners or Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

IN WITNESS WHEREOF, Declarant has executed this Declaration this _____ day of _____, 19 ____.

James R. McClintic

STATE OF NEW MEXICO)
)ss
COUNTY OF BERNALILLO)

The foregoing instrument was acknowledged before me this _____ day of _____, 19 ____ by James R. McClintic.

My Commission Expires

Notary Public

DESCRIPTION

A certain tract of land situate in the Elena Gallegos Grant in projected Section 27, Township 11 North, Range 4 East, N.M.P.M., Bernalillo County, Albuquerque, New Mexico being a portion of Tract "A4-A", PROSPECTOR'S RIDGE as the same is shown and designated on the plat filed in the office of the County Clerk of Bernalillo County, New Mexico on September 20, 1982 in Volume C20, Folio 47 and being more particularly described by New Mexico State Plane Grid Bearings (Central Zone) and ground distances as follows:

BEGINNING at the southwest corner of the tract herein described, said corner being a point on the westerly boundary of said Tract "A4-A", whence the southwest corner of said Tract "A4-A" bears $S00^{\circ}02'19''E$, 377.08 feet and from said point of beginning running thence along the westerly boundary of said Tract "A4-A" and also along the westerly boundary of the tract herein described, $N00^{\circ}02'19''W$, 309.32 feet to the northwest corner of the tract herein described; thence leaving the westerly boundary of said Tract "A4-A" and continuing along the northerly boundary of the tract herein described, $N89^{\circ}57'20''E$, 146.95 feet to a point; thence, $S00^{\circ}02'40''E$, 19.50 feet to a point; thence, $N89^{\circ}57'20''E$, 261.00 feet to the northeast corner of the tract herein described, said corner being a point on the westerly right-of-way of Lowell Street N.E. and also being a point on the easterly boundary of said Tract "A4-A"; thence continuing along said westerly right-of-way and along the easterly boundary of said Tract "A4-A" and also along the easterly boundary of the tract herein described, $S00^{\circ}02'40''E$, 289.82 feet to the southeast corner of the tract herein described; thence leaving the westerly right-of-way of Lowell Street N.E. and the easterly boundary of said Tract "A4-A" and continuing along the southerly boundary of the tract herein described, $S89^{\circ}57'20''W$, 407.98 feet to the point and place of beginning.

Tract contains 2.7801 acres, more or less.

Bohannon-Huston, Inc.
4125 Carlisle Boulevard N.E.
Albuquerque, NM 87107

May 17, 1985
Job No. 5 141 6

PROSPECTOR'S POINT CONDOMINIUM

Unit Description and Allocated
Interest

<u>Units</u>	<u>Approximate Square Footage</u>
6-A through 11-A 22-A through 25-A	1004
*6-B through 11-B 22-B through 25-B	1155
*6-C through 11-C 22-C through 25-C	1155
6-D through 11-D 22-D through 25-D	1190

Each Unit has a 2 $\frac{1}{4}$ % interest in the Common Elements.

*Some B and C Units may contain 1302 square feet.

EXHIBIT "D"

DESCRIPTION

A certain tract of land situate in the Elena Gallegos Grant in projected Section 27, Township 11 North, Range 4 East, N.M.P.M., Bernalillo County, Albuquerque, New Mexico being a portion of Tract "A4-A", PROSPECTOR'S RIDGE as the same is shown and designated on the plat filed in the office of the County Clerk of Bernalillo County, New Mexico on September 20, 1982 in Volume C20, Folio 47 and being more particularly described by New Mexico State Plane Grid Bearings (Central Zone) and ground distances as follows:

BEGINNING at the southwest corner of said Tract "A4-A", said corner being a point on the northerly right-of-way of Spain Road N.E., running thence along the westerly boundary of the tract herein described and also along the westerly boundary of said Tract "A4-A", $N00^{\circ}02'19''W$, 377.08 feet to the northwest corner of the tract herein described; thence leaving the westerly boundary of said Tract "A4-A" and continuing along the northerly boundary of the tract herein described, $N89^{\circ}57'20''E$, 407.98 feet to the northeast corner of the tract herein described; said corner being a point on the westerly right-of-way of Lowell Street N.E.; thence continuing along said right-of-way and also along the easterly boundary of the tract herein described, $S00^{\circ}02'40''E$, 245.98 feet to a point of curvature; thence, 34.75 feet along the arc of a curve to the right having a radius of 25.00 feet and a chord bearing $S39^{\circ}46'20''W$, 32.02 feet to a point of reverse curvature, said point being a point on the northerly right-of-way of Spain Road N.E.; thence continuing along said northerly right-of-way and also along the southerly boundary of the tract herein described, 178.80 feet along the arc of a curve to the left having a radius of 1593.00 feet and a chord bearing $S76^{\circ}22'23''W$, 178.71 to a point of tangency; thence, $S73^{\circ}09'27''W$, 223.33 feet to the point and place of beginning.

Tract contains 2.9725 acres, more or less.

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DESCRIPTION

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BEGINNING at the southwest corner of the tract herein described, said corner being a point on the westerly boundary of said Tract "A4-A", whence the southwest corner of said Tract "A4-A" bears $S00^{\circ}02'19''E$, 686.40 feet and from said point of beginning running thence along the westerly boundary of said Tract "A4-A" and also along the westerly boundary of the tract herein described, $N00^{\circ}02'19''W$, 403.17 feet to the northwest corner of the tract herein described, said corner being the northwest corner of said Tract "A4-A" and also being the southwest corner of Tract "A3" as the same is shown and designated on the Summary Plat of Tract "A", LANDS OF AMHOME IV filed in the office of the County Clerk of Bernalillo County, New Mexico on September 19, 1980 in Volume C17, Folio 77; thence continuing along the southerly boundary of said Tract "A3" and along the northerly boundary of said Tract "A4-A" and also along the northerly boundary of the tract herein described, $N89^{\circ}57'20''E$, 407.91 feet to the northeast corner of the tract herein described, said corner being the southeast corner of said Tract "A3" also being the northeast corner of said Tract "A4-A" and also being a point on the westerly right-of-way of Lowell Street N.E.; thence continuing along said westerly right-of-way and along the easterly boundary of said Tract "A4-A" and also along the easterly boundary of the tract herein described, $S00^{\circ}02'40''E$, 422.67 feet to the southeast corner of the tract herein described; thence leaving the westerly right-of-way of Lowell Street N.E. and the easterly boundary of said Tract "A4-A" and continuing along the southerly boundary of the tract herein described, $S89^{\circ}57'20''W$, 261.00 feet to a point; thence, $N00^{\circ}02'40''W$, 19.50 feet to a point; thence, $S89^{\circ}57'20''W$, 146.95 feet to the point and place of beginning.

Tract contains 3.8924 acres, more or less.

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EXHIBIT "E-2"