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thereof during the period of ownership provided for in this Declaration. Units shall always be conveyed, transferred, devised, bequeathed, encumbered and otherwise affected only as a complete unit. Any transfer of a Unit or any part thereof shall be presumed to be a transfer of the entire Unit together with all appurtenant rights and interests created by law or by this Declaration.

Section 2.3 Non-partitionability. The Common Elements shall be owned by the Association. No owner or person claiming any right, title or interest in any Unit shall bring any action for partition or division of the Common Elements and by acceptance of a deed or any other instrument of conveyance or assignment of an interest to a Unit, each such Owner or person shall be deemed to have specifically waived any right to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Elements or of any Unit. Any Owner or person who institutes or maintains such action shall be liable to the Association for the Association's costs, expenses and reasonable attorney fees incurred in defending any such action.

Section 2.4 Covenants Running With the Land. All the provisions of this Declaration shall be deemed to be covenants running with the land or an equitable servitude as the context may require. The benefits, burdens and all other provisions set forth in the Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and all Owners and upon their respective heirs, executors, administrators, personal representatives, successors and assigns. Any right specifically reserved to or for the benefit of the Declarant may be transferred or assigned by the Declarant to any person, corporation, partnership, association or other entity.

ARTICLE III THE ASSOCIATION

Section 3.1 Authority. The business affairs of Alta Vista Townhomes shall be managed by the Association. The Association shall be governed by its Bylaws, as amended from time to time.

Section 3.2 Powers.

- a) The Association shall have all the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of Alta Vista Townhomes.
- b) The Association may assign its future income, including its rights to receive Common Expense assessments, only by the affirmative vote of the Unit Owners of Units to which at least 51 percent of the votes in the Association are allocated, at a meeting called for that purpose.

Section 3.3 Declarant Control. The Declarant shall have all the powers reserved in Section 38-33.3-303(5) of the Act to appoint and remove officers and members of the Executive Board (referred to herein as the "Board of Directors").

Section 3.4 Membership. Membership in the Association shall likewise be a covenant running with the land, and all Owners of Units in the Subdivision shall be members of such



Association, subject to the Articles of Incorporation, Bylaws and Rules and Regulations, as the same may from time to time be adopted and amended. Membership in the Association shall be appurtenant to and may not be separated from ownership of a Unit; provided, however, that members may make written appointments of an agent or a written designation by proxy which shall allow such agent or delegate to cast votes on behalf of the member.

Section 3.5 Voting Rights. All Owners of Units (including Declarant) shall be Members and the Owners of each Unit shall have one vote. When more than one person holds an ownership interest in a Unit, such persons may appoint one of the co-owners or a delegate to cast the vote for the Unit. Voting interests for any Unit shall not be divided among co-owners.

Section 3.6 Managing Agent. The Association may delegate any or all of its powers and duties to a managing agent, however, such delegation shall not relieve the Association of any responsibilities under this Declaration. Any such delegation shall be in writing and may be terminated by either party upon reasonable notice. The Association may by contract employ independent contractors, professionals, employees or such other persons as it deems necessary to carry out its function.

Section 3.7 Rules and Regulations. The Association shall have the right to adopt and amend reasonable rules and regulations governing the Alta Vista Townhomes. Any such rules and regulations shall be subject to the provisions of this Declaration and shall not alter or amend this Declaration. Violation of any such rules and regulations may be enjoined by the Association or any Owner and the provisions on collection in Section 5.9 and enforcement in Section 11.1 shall apply.

Section 3.8 Books and Records. The Association shall keep complete records of the affairs of the Association, including receipts and expenditures. Each Owner and any mortgagee shall have the right to inspect such records at reasonable times.

Section 3.9 Directors and Officers. The management of the Association shall be vested in a Board of Directors of not less than three (3) members. The Board shall annually elect a President, Vice President, Treasurer and Secretary. The Bylaws of the Association shall set forth detailed provisions for directors and officers who shall have and may exercise such powers as may be conferred upon them by this Declaration, the Act, the Articles of Incorporation, the Bylaws and the Colorado Nonprofit Corporation Act.

Section 3.10 Notices. Any notice required or permitted to be given pursuant to this Declaration or in the normal course of the affairs of the Association, shall be sent to such Owner by first-class mail, postage prepaid, to the address of such Owner as shown in the Association's records. An Owner may by written notice to the Association sent in the same manner notify the Association of a different address. If more than one Owner owns a Unit, any such notice may be addressed to all of such Owners and mailed in one envelope to the address shown in the Association's records. Until notice is given of a change of address for the Association, all notices to the Association shall be addressed as follows:

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Alta Vista Townhome Owners Association
26 Fawn Court
Pagosa Springs, CO 81147

ARTICLE IV UNITS

Section 4.1 Number of Units. The maximum number of Units in Alta Vista Townhomes is sixteen (16), consisting of four buildings containing four (4) Units each. The Declarant reserves no rights to create additional Units.

Section 4.2 Identification of Units. The identification of each Unit is shown on the Plat.

Section 4.3 Unit Boundaries. The boundaries of each Unit are located as shown on the Plat and are more particularly described as follows:

- a) for common walls, the centerline of the common walls is designated as the boundary of a Unit; and
- b) for exterior walls, the exterior surface of the wall is designated as the boundary of a Unit, except that portion of any Unit between the front Exterior wall and the Common Element which is outside the building footprint shall be designated as the Yard Area. No construction, landscaping or other improvements within the Yard Area shall be made without the written approval of the Association.

ARTICLE V ASSESSMENTS

Section 5.1 Covenant. Declarant, for each Unit shown on the Plat, hereby covenants, and each Owner of a Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- 5.1.1 Annual Assessments;
- 5.1.2 Special Assessments; and
- 5.1.3 Default Assessments.

Section 5.2 Personal Obligation of Owner. Such assessments shall be fixed, established and collected from time to time as provided in the Act, this Declaration and the Bylaws of the Association. Each Owner, by acceptance of deed, further waives any Homestead Exemption as to any lien created by this Declaration or the Act. All assessments, together with such interest thereon and costs of collection thereof, including reasonable attorney's fees, as hereinafter provided, shall be a lien pursuant to the Act and shall also be a continuing liability of the person who was the Owner of such Unit at the time when the assessment fell due.

Section 5.3 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to pay Common Expenses and for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Property and in particular for the maintenance of the roads, utilities, Unit Exteriors, Common Elements and other property the Association is obligated or authorized to maintain.

Section 5.4 Statement of Status of Assessments. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer or agent of the Association, setting forth whether the assessments on a specified Unit have been paid. A reasonable charge may be made by the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 5.5 Annual Assessment. At least thirty (30) days prior to the end of each calendar year, the Board shall determine the Annual Assessment for the next ensuing year. Such Assessment shall be based upon an annual budget for the Association approved by the Board and adopted by the Owners in the manner required by the Act. Each annual budget shall be based upon the actual income and expenditures for the preceding year, plus such amounts representing expected additional expenses and modifications of income for the next ensuing year together with contributions to reserves maintained by the Association. Annual Assessments shall be payable in periodic installments and with appropriate penalties for delinquency as shall be established by the Board.

Section 5.6 Special Assessment. In addition to the Annual Assessments authorized above, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair, or replacement of any Common Elements or facilities which are the responsibility of the Association pursuant to this Declaration, provided that such Special Assessment shall have the assent of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. Any such Special Assessment shall be payable in equal monthly or quarterly installments together with the Annual Assessment installment over such a period of time as the Board of Directors may deem in the best interest of the Owners.

Section 5.7 Default Assessments. In the event that expenses for maintenance, repair or replacement of the Common Elements or a Unit Exterior are the result of the intentional or negligent act of an Owner, an Owner's family or an Owner's guests or invitees, then such expenses incurred by the Association for such maintenance shall be the personal obligation of such Owner and if not repaid to the Association within seven (7) days after notice of the amount of such expense, then such expense shall become a Default Assessment levied against such Unit and the Association may proceed to collect such assessment in the manner provided in Article XI.

Section 5.8 Allocation of Assessments. All assessments, excluding Default Assessments, shall be evenly allocated among the Owners on the basis of the total number of potential Units (16) resulting in an allocation per Unit of 1/16th.



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Section 5.9 Collection of Assessments. Any annual, Special or Default Assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate provided in the Bylaws, not to exceed twenty-one percent (21%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the property, and interest, costs and a reasonable attorney's fee for any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability of the assessments provided for herein by abandonment of his Unit.

Section 5.10 Liens. Priority of liens for assessments shall be as set forth in the Act, including §38-33.3-316 which provides that any holder of a first deed of trust who obtains title to a Unit or Units pursuant to the remedies in the deed of trust or through foreclosure will not be liable for more than six months of the unit's unpaid regularly budgeted dues or charges accrued before the acquisition of the title to the lot or lots by the holder of the deed of trust.

Section 5.11 Reserves. The Association may establish reasonable reserves for maintenance, capital expenditures, or repairs and accumulate such reserves from year to year without causing such reserves to be deemed "surplus funds" for purposes of the Act.

Section 5.12 Commencement of Annual Assessment. The annual assessments provided for herein shall commence on all completed Units on the first day of the month following the conveyance of the first such Unit by Declarant to an Owner other than Declarant. A completed Unit shall be defined as a Unit for which a certificate of occupancy has been issued by the appropriate governmental authority. During the development of the Alta Vista Townhomes, Units will become subject to the assessment at varying times depending on the completion date. Until all Units subject to this Declaration have completed Units constructed on them, Declarant shall pay all Common Expenses not covered by the annual assessments provided for herein.

ARTICLE VI LIMITED COMMON ELEMENTS

Section 6.1 Rights of Ingress and Egress. Every Owner and all family members, guests and licensees of such Owner shall have a right and easement of ingress and egress over, across and upon the Common Elements for the purpose of getting to and from the Unit and parking spaces of such Owner and the roadways and rights of way shown on the Plat for both pedestrian and vehicular traffic. Such right and easement shall be appurtenant to and pass with the ownership of such Unit subject to the following:

6.1.1 All provisions of the Declaration and the Plat; and

6.1.2 The right of the Association which is hereby specifically reserved, to adopt reasonable rules and regulations concerning parking, vehicular or pedestrian traffic within Alta Vista Townhomes; and

6.1.3 The right of the Association, which is hereby specifically reserved, to adopt and amend reasonable rules and regulations concerning the use of the Common Elements and improvements located thereon.

Section 6.2 Private Nature of Roads, Paths and Parking Areas. Unless expressly dedicated to public use or previously reserved for public use or access, all roads, pathways and parking areas shown on the Plat are hereby declared to be private for the use of the Owners, the Association and their guests, licensees and invitees and shall be conveyed to the Association as Common Elements.

Section 6.3 Limited Common Elements.

a) A "Limited Common Element" means a portion of the Common Elements, designated in this Declaration, on the Plat, or by the Act, for the exclusive use of one or more but fewer than all of the Units.

b) The following portions of the buildings, in addition to the portions described in Sections 38-33.3-202(1)(b) and (d) of the Act, are designated as Limited Common Elements;

(i) common walls in each building, serving two adjoining Units shall be a limited common element assigned jointly to those two Units,

(ii) all other components of each Unit, including but not limited to the exterior walls and roof, serving only that Unit, shall be a limited common element assigned solely to that Unit.

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(iii) Yard Areas, as referenced in Section 4.4 above shall be a limited Common Element allocated solely to that Unit.

Section 6.4 Allocation of Specified Common Elements. The Board of Directors may designate parts of the Common Elements from time to time for use by less than all of the Unit owners or by non owners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Board of Directors. Any such designation by the Board of Directors shall not be a sale or disposition of such portions of the Common Elements.

ARTICLE VII MAINTENANCE, REPAIR AND REPLACEMENT

Section 7.1 Maintenance of Limited Common Elements. The Owner of a Unit to which any foundation, wall, roof, eaves, chimney, window, door, doorstep, stoop, porch, balcony, patio, yard, lawn or other landscaped area is allocated shall be responsible for the removal of snow, leaves and debris therefrom and for all maintenance and upkeep thereof.

Section 7.2 Expense Allocation. Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element assigned to more than one Unit shall be assessed equally against the Units to which the Limited Common Element is assigned. Any expense associated with the maintenance, repair or replacement of a Limited Common Element assigned on one Unit shall be assessed only against that Unit.

Section 7.3 General Maintenance Responsibilities. Subject to the specific rights and obligations set forth in this Declaration, each Owner shall have the exclusive right and obligation to maintain such Owner's Unit Interior. The Association shall have the right and obligation to maintain all Unit Exteriors and Common Elements.

Section 7.4 Owner's Maintenance Obligation. Each Owner shall have the obligation, at such Owner's sole cost and expense, to maintain and keep in good repair the Unit Interior, including the fixtures located therein, to the extent such repairs shall be necessary to avoid any damage to other Units or the Common Elements. No Owner shall do or permit any act or work which would impair the structure, utilities, heating or plumbing systems or the integrity of the buildings or impair any easement established by this Declaration. An Owner shall not be responsible for repairs caused by casualties as set forth in Article XII hereof unless such repair is caused by the act or negligence of the Owner, the Owner's family, guests, invitees or tenants. In such event, such Owner shall promptly reimburse the Association for the repairs and unless paid such amount shall become a default assessment which shall be enforceable in the same manner as other assessments pursuant to this Declaration.

Section 7.5 Association's Maintenance Obligation. The Association shall be obligated to maintain, repair, replace and improve all Unit Exteriors and Common Elements not otherwise required to be maintained by the Owner. No approval of the Owners shall be required for the Association to make such expenditures.

Section 7.6 Modification to Unit Exterior Prohibited. Any modifications to any Unit Exterior or the construction of any improvements or landscaping within any Common Element or Yard Area without the expressed written approval of the Association is prohibited.

Section 7.7 Party Walls. The walls of any Unit which are shared with one or more contiguous Units are declared to be Party Walls and subject to the following provisions:

7.7.1 Mutual reciprocal easements are hereby established, declared and granted for all common walls between Units. The Owners of adjoining Units shall have the right to use Party Walls jointly. Each Owner of each Unit having a Party Wall shall have an easement on that part of the foundation, stem walls, supporting wall structure and roofing of the Unit on each adjoining Unit and such Owner's Unit, for the purpose of structural support, repair and maintenance of the same, and including reasonable access through such adjoining Unit for the repair, maintenance, restoration and replacement of such building components constituting the Party Wall and situated on such common boundary. Reference to any Unit in any instrument affecting the title thereto, including without limitation, deeds, mortgages, deeds of trust, statements of lien and the like, shall be deemed automatically to include the reciprocal easements for Party Wall structural improvements adjacent and appurtenant to such Unit. To the extent not inconsistent with these provisions, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply.

7.7.2 Repair, restoration and replacement of any part of Party Wall improvements of an Owner caused by the willful act or negligence of the Owner of an adjoining Unit, or his family members, guests or invitees, shall be the responsibility of and performed by such other Owner at his sole cost and expense. Repair and maintenance of Party Wall coverings, including sheetrock, paneling, fiberboard, paint and the like, due to ordinary wear and tear or damage or destruction by acts of God or the elements shall be the responsibility of the Owner on whose Unit such wall coverings are situated, at his sole cost and expense. Repair, maintenance, replacement or restoration of all other parts or components of Party Wall improvements including concrete, structural framing, roof material and insulation shall, unless caused by the willful act or negligence of one Owner or his family, guests or invitees, be performed at the joint and mutual cost and expense of the Owners of both units having easements in such Party Wall. Each Owner is hereby licensed and authorized by the adjacent Owner to enter upon the other Owner's premises during reasonable business hours and after reasonable notice to make necessary or proper repairs, maintenance, restoration or replacement of the Party Wall improvements. Construction, replacement and restoration of the portion of any Party Wall shall be of the same design, type, quality and color as previously existed. In the event any Owner fails after reasonable demand to perform repairs, maintenance, replacement or restoration for which such Owner is liable by the foregoing provisions, then upon request of an aggrieved Owner the Association may make or contract to make such repairs, maintenance, replacement or restoration and all costs and expense thereof shall be billed to the responsible Owner as a default assessment.



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7.7.3 The right of any Owner to contribution from any other Owner under these Party Wall provisions shall be appurtenant to the land and shall pass to such Owner's successors in title.

7.7.4 In the event of any dispute between adjacent Unit Owners concerning a Party Wall, such dispute shall be submitted to binding arbitration pursuant to the Colorado Uniform Arbitration Act of 1975, Section 13-22-201, C.R.S. Each party shall choose one arbitrator and such two arbitrators shall choose one additional arbitrator and the decision shall be by a majority of the arbitrators. The selection by each party of an arbitrator shall be made within twenty (20) days of notice by one party in writing to the other party demanding arbitration of any such dispute.

ARTICLE VIII DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS

Section 8.1 Development Rights and Special Declarant Rights. The Declarant reserves the following Development Rights and other Special Declarant Rights for the maximum time allowed by law:

- a) the right to complete or make improvements indicated on the Plats; and
- b) the right to maintain sales offices, management office and models in Units or on the Common Elements; and
- c) the right to maintain signs on the Property to advertise a Unit or Units "For Sale"; and
- d) the right to use, and permit other to use, easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the Act and this Declaration; and
- e) the right to appoint or remove any officer of the Association or any Director during the Declarant Control Period consistent with the Act.

Section 8.2 Additional Common Area Parking. Declarant may construct up to 24 additional open parking spaces on the Property. Said parking spaces would be:

- a) for the purpose of 'convenience' for Owners or Owner's tenants and/or for guests; and
- b) located between the Unit buildings and Lakeside Drive; and
- c) would be restricted to the extent that overnight parking would be restricted to guests; and

d) limited in the land use required so as not to decrease the amount of 'Open Space' to less than 35% of the Property.

Section 8.3 Limitations on Developmental Rights and Special Declarant Rights.
Unless sooner terminated by a recorded instrument signed by the Declarant, any Development Right or Special Declarant Right may be exercised by the Declarant for the period of time specified in the Act.

ARTICLE IX RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 9.1 Use and Occupancy Restrictions. Subject to the Development Rights and Special Declarant Rights reserved by the Declarant, the following use restrictions apply to all Units and to the Common Elements;

- a) **Residential Use.** All Units shall be used exclusively for single family residential purposes.
- b) **Improvements.** No improvements shall be constructed on any Unit, except only as approved by the Board, or other entity to whom review responsibilities have been assigned as provided herein. For purposes of this Declaration, improvements shall mean any changes, alterations, modifications or improvements to buildings, structures, parking areas, fences, walls, hedges, plantings, driveways, walkways, signs, decks, enclosures, change in exterior color or shape, excavation, and all other site work, including without limitation grading, work constructions, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvements.
- c) **No Commercial Use.** No commercial or business enterprise of any nature shall be allowed or permitted on any Unit; provided however, that the Owner of the Unit may be permitted to rent or lease a residence and to conduct a home occupation, artistic or literary activity on any Unit upon the approval of the Board as to such occupation or activity. Regardless of any lease of a Unit, the Unit Owner shall remain directly liable for all obligations imposed by this Declaration.
- d) **Antennae.** No exterior radio, television, microwave or other antennae or antennae dish or signal capture or distribution device in excess of three feet high or 24 inches in diameter shall be permitted or installed on any Unit.
- e) **Wood burning Devices.** All solid fuel or wood burning stoves and devices, including fireplaces, shall comply with any rules and regulations implemented and in effect by any federal, state or local governmental entity.
- f) **Fences.** No fences shall be erected to enclose any portion of the Yard Area or any Limited Common Element assigned to a Unit, with the exception of fencing to enclose the areas

used for trash receptacles. Any fencing shall meet with the specifications set by the Board.

g) Signs. Except for reasonable and appropriate house number and ownership identifications, no sign of any kind shall be displayed for public view on any portion of any Unit, except upon application to and written permission from the Board.

h) Drainage. No Unit Owner shall do or permit any work, construction of improvements or do any landscaping which shall alter or interfere with the natural drainage for the property, except to the extent the same is approved by the Board.

i) Structures Prohibited. No occupied temporary structure, modular home, mobile home, trailer house, travel trailer or RV vehicle shall be permitted on any Unit or upon the Property. If the Board should designate a portion of the Common Element to be used for recreational vehicle parking, then guests may park and occupy a travel trailer or RV vehicle in said area for up to one week.

j) Trash. No trash, ashes, garbage or other refuse shall be allowed to accumulate or be placed upon any Unit or area within the Property. There shall be no burning or other disposal of refuse outdoor. Each Owner shall provide suitable wildlife resistant receptacles for the temporary storage and collection of such refuse and all such receptacle shall be screen from the public view and from wind and protected from animal and other disturbances.

k) Completion of Construction. All construction (other than construction of the Units themselves), reconstruction, alterations or improvements, approved by the Board, shall be prosecuted diligently through completion and shall be completed within six months of the commencement thereof.

l) Abandoned or Inoperable Vehicles. Abandoned or inoperable automobiles or motor vehicles of any kind, shall not be stored or parked on any driveway, road or Common Element within the Property. Abandoned or inoperable vehicles shall be defined as any vehicle which is either incapable of legal operation upon a public highway or has not been driven under its own propulsion for a period of thirty days or longer. A written notice describing the abandoned or inoperable vehicle and requesting the removal thereof may be personally served upon the Owner or Owner's tenant or posted on the unused vehicle, and if such vehicle has not been removed within 72 hours thereafter, the Board acting on behalf of the Association shall have the right to remove the same and will be held harmless of any liability from the Owner and/or the owner of said vehicle, and the expenses thereof shall be charged to the Owner.

m) Noise. No exterior horns, whistles, bells, or other sound devices, except security and/or warning devices used exclusively to protect the improvements on any Unit shall be placed or used on any Unit.

n) Nuisance. No obnoxious or offensive activity shall be carried on within the Property, nor shall anything be done or permitted to exist or operate upon the Property so as to be offensive or detrimental to any other part of the Property or its Owners or occupants.

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o) **Hazardous Activities.** No activities shall be allowed or conducted on the property which are or might be unsafe or hazardous to any person or property. Such hazardous activities include, but are limited to, fireworks, firearms, bow and arrows, explosives, air or pellet guns or any similar type devices.

p) **Maintenance and Repair.** If the Unit Owner fails to maintain his or her Unit, or any part thereof or improvements thereon, or a Limited Common Element in which the Owner has an interest, in good repair, the Board may give the Owner written notice of the needed maintenance or repair. If said maintenance or repair is not completed by the Owner within 45 days of the mailing of such notice, the Board, at its option, may obtain an injunction against the Owner to force completion of the needed work. In the alternative, the Board may contract with a third party for the completion of the needed work and assess the cost of same against the Owner pursuant to the assessment provisions contained herein.

q) **Animals.** No livestock or exotic animals of any kind may be kept on the Property. Common household pets, including but not limited to dogs, cats, birds and fish shall be allowed. If the pet is the type of animal that is not confined to the Unit, the animal is to be on a leash when outside the Unit and each Unit Owner shall be limited to two such household pets. The Owner of any animal shall at all times be personally liable and responsible for all actions of such animals and for any damage or maintenance required as the result of such animals.

r) **Compliance With Subdivision Declarations.** Notwithstanding any provisions hereof, all Units and Unit Owners shall comply with the Declarations of Restrictions for the Second Replat of South Village Lake subdivision, as filed for record with the Archuleta County Clerk and Recorder's Office on or about August 3, 1982 at Reception Number 111807, and any supplements or amendments thereto.

s) **Use of Fertilizers.** In order to prevent any unwanted discharge into drainages adjoining the Property, all fertilizers and other products used in landscaping the Common Areas shall be non-toxic and pose no danger to persons or animals.

t) **Owners may rent Units for periods of not less than one week.** The Association may adopt reasonable rules and regulations concerning rentals. Tenants shall be subject to the Declaration and all rules and regulations adopted hereunder.

Section 9.2 Restrictions on Alienation. A Unit may not be conveyed pursuant to a time-sharing arrangement described in Section 38-33-110 to 113, Colorado Revised Statutes. All leases and rental agreements shall be in writing and subject to the reasonable requirements of the Board.

Section 9.3 Conversion of a Portion of the General Common Area to Specific Use. In the event that the Board receives a petition signed by at least three Unit Owner's requesting that a portion of the General Common Area be converted to specific use, said uses could be but are not limited to parking for residents or guests, parking of recreational vehicles and/or trailers,

clubhouses, swimming pools, tennis courts, walkways, picnic areas, individual gardening areas or playgrounds, the procedure to be followed is:

- a) The Board shall request the petitioners to prepare a specific proposal which shall include but not be limited to the specific portion or portions of the Property to be affected, the estimated cost to create the change and the cost to create any new facilities, the policies to be used by the Board in administering the new use, the impact (if any) on the 'Open Space' within the Property, the cost of maintaining the new use, the cost to insure against any new liability related to the change, a definition of any security issues related to the change, the method to be used to provide the funds to establish the new use, and the method to be used to fund the ongoing operation of the new use.
- b) If the proposal does not violate the minimum 'Open Space' requirement of the Property and does not violate any other provision of this Declaration or of the Declarations of South Village Lake, the Board shall set the date, at least sixty days in the future, for a special election for the purpose of voting on the proposal and shall also set a date for the mailing of notices related to said election.
- c) The Board shall send to each Owner, via certified mail, a notice of the election and also a complete copy of the proposal. This mailing shall be a minimum of 30 days prior to the election date. Any Unit Owner and/or the Board may prepare a 'position paper' either for or against the proposal and if submitted to the Board in a timely manner, any such paper shall be included in the mailing.
- d) Upon receipt of eleven or more favorable votes, each Unit Owner having one vote excluding the Declarant, the Board will take the necessary steps to implement the proposal.

ARTICLE X EASEMENTS

Section 10.1 Recorded Easements. The property and each of the Units shall be subject to all easements and rights of way shown on any plat, deed or other document of record affecting the Property.

Section 10.2 Easements for Encroachments. The Property and each of the Units shall be subject to an easement for building encroachments created by construction, overhangs, settling, shifting and movement of any portion of the Alta Vista Townhomes. A perpetual easement for the encroachment and the maintenance thereof is hereby created.

Section 10.3 Utility Easements. A general easement is hereby created upon, across, over, in and under all of the Common Elements and that portion of each Unit which is not occupied by the building footprint. The general easements created hereby shall be for ingress and egress and for the installation, repair and maintenance of utilities. This easement shall be for the use and benefit of the utility providers, the Association and the Owners for the purposes of providing necessary utilities for the operation of the Alta Vista Townhomes. This general easement grant

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shall not be construed as a grant of an easement for any utilities which are not serving the Alta Vista Townhomes.

Section 10.4 Drainage Easements. All drainage easements shown on any plat of record for Alta Vista Townhomes shall be properly maintained by the Association and no construction or development shall be permitted which impedes proper drainage.

Section 10.5 Emergency Easement. A general easement is also granted to all police, fire, ambulance and other emergency agencies and their personnel to enter upon the streets and the property when necessary in the performance of their duties.

Section 10.6 Maintenance Easement. An easement is hereby granted to the Association and its officers, agents, employees, contractors and assigns upon, across, over, in and under the Common Elements including the right to construct and maintain maintenance and storage facilities on the Common Elements necessary for carrying out the affairs of the Association.

Section 10.7 Access Easement for Repair, Maintenance and Emergencies. Some of the Common Elements or Unit Exteriors are or may be located within the interior of Units or may be most reasonably accessed through the interior of Units. The Association shall have the irrevocable right to have access to each Unit and to all Common Elements or Unit Exteriors during any reasonable hours as may be necessary for the maintenance, repair, removal or replacement of any of the Common Elements, to prevent damage to any of the Common Elements or to make repairs to any Unit. Except when such repairs or maintenance are required as a result of the acts or the negligence of an Owner, his family, guests or invitees, any damage to the interior of a Unit resulting from the maintenance or repair of a Common Elements or the exterior of a Unit shall be a Common Expense of all Owners.

Section 10.8 Easements Created. Any conveyances of Units within Alta Vista Townhomes, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements specified in this Declaration whether or not specific reference is made to the easements or the Declaration.

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ARTICLE XI ENFORCEMENT; POWERS OF ASSOCIATION

Section 11.1 Enforcement. This Declaration may be enforced by an Owner or by the Association, including without limitations the right to maintain an action for injunction, damages or both. In the event that litigation is brought for the purpose of enforcing this Declaration or to recover liens for assessments or other charges levied by the Association pursuant to this Declaration, the prevailing party shall be entitled to recover its costs, including all charges for witnesses, experts, or consultants, and reasonable attorney's fees.

Section 11.2 Powers of Association. The Association may exercise all powers conferred upon it by this Declaration, together also with such powers as may be contained in the Act, the Articles of Incorporation, the Bylaws and the Colorado Nonprofit Corporation Act, not reasonably inconsistent with the powers and purposes set forth in this Declaration. Such powers shall include, but not be limited to, the following:

11.2.1 The power to enforce, by litigation if necessary, all provisions of this Declaration.

11.2.2 The power to appoint an Architectural Control Committee or to act as same and to approve fence construction or other improvements as authorized by this Declaration.

11.2.3 The power to establish budgets and maintenance assessments and assessments for capital improvements and to place liens and take such other actions as shall be necessary for the collection of same.

11.2.4 The power to maintain, repair and improve roads as shown on the Plat, emergency access as shown on the Plat, entrance sign, irrigation pumps and lines, common facilities, and other access and utility improvements, together with the power to make and enter into contracts for snow removal, landscaping maintenance, repairs or improvements, and weed control in conformance with requirements of applicable planning approvals and the requirements of any governmental agency with jurisdiction.

11.2.5 After expiration of the Declarant's rights, the power to grant licenses or easements for use of access and utility easements as shown on the Plat or described herein to any utility or adjoining land Owner, together also with the power to allow connection to utility systems within the Property, subject to the following conditions:

a. The person or persons to whom such license is granted shall be responsible for all damage to roads or easements and restoration of landscaping, fences and improvements.

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b. All such licenses shall be revocable upon thirty (30) days notice by the Association; grants of easement or utility connection may be in perpetuity.

c. The Association may prescribe the compensation to be paid for use of such easements or connection to utility systems; provided that no fee, other than reasonable inspection fees, shall be payable by an Owner.

d. The power to grant the right to use easements and to connect to utility systems is exclusively reserved to the Association and shall not be exercised by any individual Unit Owner.

11.2.6 The power to establish rules and regulations for the use of the Common Elements,

Section 11.3 Other Declarations. The Property is subject to certain other declarations and associations established thereunder. To the maximum extent permitted, the Association shall have first and primary responsibility for enforcement of such other declarations.

ARTICLE XII INSURANCE, DAMAGE, DESTRUCTION AND CONDEMNATION

Section 12.1 Association's Obligation to Maintain Insurance. At the time of the first conveyance of a Unit to a person other than Declarant, the Association shall maintain in full force and effect, to the extent reasonably available, the following insurance:

12.1.1 Property insurance for broad form covered causes of loss in the kinds and amounts typically required by mortgage lenders for similar townhome projects. The amount of such insurance shall be the full insurable replacement cost less applicable deductibles. Coverage shall be provided for the Common Elements and the Unit Exteriors but not the Unit Interiors. If Units are under construction which are connected to completed Units that have been conveyed to a person other than the Declarant, Declarant may elect to continue coverage under Declarant's policy of builder's risk until all adjoining Units are completed. In such event, Declarant shall add to the policy, as additional insured, any Owners and Mortgage holders to the extent of their respective interests.

12.1.2 A comprehensive policy of public liability insurance covering all claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover the Association, its Board, management agent and their respective employees, agents and all persons acting as agents. The Unit Owner shall also be included as additional insured for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall also cover claims of one or more insured parties against other insured parties.

12.1.3 To the extent required by law and subject to the availability of funds, adequate fidelity insurance or bond to protect against dishonest acts on the part of the



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Association's officers, directors, managing agents, trustees, employees and volunteers which shall name the Association as obligee and be written in an amount equal to at least 150% of the estimated annual operating expenses of the Property, including reserves.

12.1.4 To the extent required by law and subject to availability of funds, the Association may also obtain personal liability insurance for officers and directors, workman's' compensation insurance and insurance against other risks as it shall deem appropriate.

Section 12.2 Insurance Premiums. All insurance premiums required or permitted hereunder shall be a Common Expense of the Association, except Owner's Insurance.

Section 12.3 Owner's Insurance. Each Owner shall have the responsibility, at such Owner's sole expense, to maintain a standard policy of fire and hazard insurance on the Unit Interior and a standard policy of liability insurance with limits of not less than \$25,000 / \$50,000 covering such Unit. Owners may obtain such additional insurance as they deem appropriate provided such insurance coverage shall not affect any coverage obtained by the Association nor cause the diminution or termination thereof. All Owners' insurance policies shall include a provision waiving the insurance company's right of subrogation against the Association.

Section 12.4 Damage or Destruction. As soon as possible after damage to or destruction of any part of the Property, the Association shall, unless such damage or destruction shall be minor, obtain an estimate of the cost of repair and reconstruction. Repair or reconstruction shall mean restoring the damage or destroyed part of the Property to the same condition as existed prior to the damage or destruction. The Association shall diligently pursue completion of the repairs and shall utilize insurance proceeds for such reconstruction. The Association shall have full authority, right and power of attorney-in-fact to cause the repair and restoration of the improvement without any consent or other action by any Owner.

Section 12.5 Insufficient Proceeds for Repair. If insurance proceeds are not sufficient to cover the complete cost of the repair, a special repair assessment shall be levied against all Owners and their Units for the deficiency which shall be due and payable within thirty (30) days. Such special repair assessment shall not be subject to the approval requirement of Section 7.

ARTICLE XIII DURATION AND AMENDMENT

Duration and amendment of this Declaration shall be as set forth in the Act, except that amendments shall require a vote of at least eleven (11) Owners for approval.

ARTICLE XIV GENERAL PROVISIONS

Section 14.1 Severability. In the event that any provision of this Declaration is deemed invalid or is declared to be invalid by any court of competent jurisdiction, such declaration shall not invalidate the remainder of the Declaration, and they shall remain in full force and effect.

Section 14.2 Indemnification. To the fullest extent permitted by law, every Director and Officer of the Association, and the members of committees of the Association, and the Developer (to the extent a claim may be brought against the Developer by reason of its appointment, removal or control over a member of the Board) shall be indemnified by the Association, and every other person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise may be in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or in the case of the Developer by reason of having appointed, removed or controlled or fail to control members of the Board, or any settlement thereof, whether or not he is a director, officer, or serving in such other specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that such officer, director, or the Developer, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise.

Section 14.3 Nonwaiver. Failure by the Declarant, the Association or any Owner to enforce any covenant, condition, restriction, easement, reservation, right-of-way or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 14.4 Captions. The captions to the Articles and Sections are inserted herein only as a matter of convenience and for reference and are in no way to be construed to define, limit or otherwise describe the scope of this Declaration nor the intent of any provisions hereof.

Section 14.5 Conflict in Documents. In the case of any conflict between the provisions of this Declaration and the Articles of Incorporation, Bylaws or Rules and Regulations adopted by the Association, this Declaration shall control.

IN WITNESS WHEREOF, the Declarant has caused the Declaration to be executed by Olin Hazen as President of Petra Development Company which is a Colorado Corporation this day of May, 1998.



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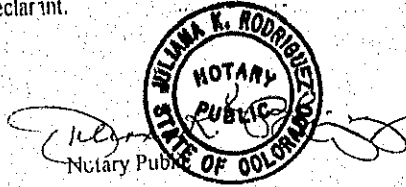
PETRA DEVELOPMENT COMPANY

Olin Hazen
By: Olin Hazen
Title: President

STATE OF COLORADO)
) ss
COUNTY OF ARCHULETA)

SUBSCRIBED and sworn to before me this 17th day of ^{Sept} ~~May~~, 1998 by Olin Hazen,
President of Petra Development Company, Declarant.

WITNESS my hand and official seal.
My commission expires: 2-4-2001



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EXHIBIT A

DESCRIPTION OF LAND

EXHIBIT B

TABLE OF INTERESTS

Unit No.	Percentage share of Common Elements	Percentage share of Common Expenses	Vote in the affairs of Association
Petra Dev. Co. 1-16	100%	100%	100%
	100 percent	100 percent	

EXHIBIT C

DESIGNATION OF YARD AREAS



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ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. Review of Plans. No building, fence, wall, canopy, awning, landscaping structure, or improvement shall be commenced, erected, altered, moved, removed, or maintained upon the Property, nor shall any exterior addition to, or change or alteration thereof be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to the approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee.

Section 2. Architectural Control Committee. The ACC shall be appointed by the Board and shall exercise its best judgment to see that all improvements, construction, landscaping, and alternations on lands within the Property conform to and harmonize with existing surroundings and structures. The ACC shall consist of three (3) persons.

Section 3. Procedures. The ACC shall approve or disapprove all plans and requests within forty-five (45) days after submission. In the event the ACC fails to take any action within forty-five (45) days after a request has been submitted, approval will not be required, and Article IX, Section 1 will be deemed to have been fully complied with.

Section 4. Majority Vote. A majority vote of the ACC is required for approval of disapproval of proposed plans and specifications.

Section 5. Written Records. The ACC shall maintain written records of all applications submitted to it and of all actions it may have taken.

Section 6. No Liability. The ACC and each member thereof shall not be liable for damage to any person submitting requests for approval to any Owner within the Property, or to any other person or entity by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests.

Section 7. Variance. The ACC may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article X hereof, in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the conditions and restrictions contained in the Article or Article X hereof. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

Section 8. Waivers. The approval on consent of the ACC, any representative thereof, or the Board, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee, any representative thereof, or said Board, as to any other application or other matters whatsoever subsequently or

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additionally submitted for approval or consent hereunder.

Section 9. Fee for Review of Plans. There shall be no net fee charged by the ACC members for the review of plans. The ACC members shall have the right to be reimbursed for all reasonable expenses incurred in their capacity as a member of the ACC. The maximum amount that the ACC may charge an Owner to cover the costs of ACC members is Three Hundred Dollars (\$300.00). The ACC shall also be able to charge an Owner the actual costs incurred for services of professional to assist in the evaluation of plans submitted. In the event such professional services are required and the related costs are expected to exceed Five Hundred Dollars (\$500.00), the Owner's written consent is to be obtained before services are retained.

ARTICLE IX

PARTY WALLS

Section 1. General Rules to Apply. Each wall which is built as a part of the original construction of the Townhomes upon the Property and placed on the dividing line between the Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article IX or any other provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Finished Surfaces. The cost of repair and maintenance of the finished surface of a party wall located within a Unit shall be the sole expense of the Owner of that Unit.

Section 3. Repair and Maintenance. Except as provided in Section 2 above and except as otherwise provided in this Declaration, the cost of reasonable repair and maintenance of any party wall shall be borne by the Owners who use and benefit from the wall in proportion to their use and benefit. If the Owner of one of the Units who uses the wall refuses to pay his proportionate share of the cost of repair or maintenance, then the Owner of the other Unit may cause the party wall to be repaired and shall be entitled to assess the costs attributable thereto against the non-paying Owner's Unit, and the same shall become and remain a lien against the said Unit until fully paid. Said lien shall be established, enforced, and release, and shall have priority, in the manner set forth in Article IV, provided that any lien established pursuant to this Article IX shall be subordinate to the lien of any First Mortgage and the lien for Common Expense assessments set forth in Article IV. Said obligation shall also be a personal obligation of the non-paying Owner. Suit to recover a money judgment shall be maintainable without foreclosing or waiving the lien permitted hereunder.

Section 4. Proceeds. To the extent that damage to a party wall is covered by insurance, the full insurance proceeds shall be used and applied to repair, restore, or replace the party wall.

Section 5. Damage or Destruction. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owner of the other

Unit adjacent to said party wall shall thereafter make use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of the other Owner under any rule of law regarding liability for negligence or willful acts or omissions. If the Owner of one Unit causes the wall to be restored and the Owner of the other Unit adjacent to the wall uses the wall and does not contribute to the costs of the wall's restoration the Owner who caused the wall to be restored shall be entitled to assess the non paying Owner's proportionate share of the costs attributable thereto against the non-paying Owner and his Unit, and the same shall become and remain a lien against said Unit as set forth in Section 3 of this Article IX. Said obligation shall also be a personal obligation of the non-paying Owner. Suit to recover a money judgment shall be maintainable without foreclosing or waiving the lien permitted hereunder.

Section 6. Protection of Party Wall. Notwithstanding any other provisions of this Article, any Owner who, by his negligent or will full acts or omissions, causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against the elements.

Section 7. Utility Repair. An Owner shall have the right to maintain and repair any utility, telephone, or television installations located within a party wall and, in doing so, shall restore the party wall to the condition it was in immediately prior to such maintenance and repair.