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MASTER DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
VALLEY VIEW VILLAGE SUBDIVISION IN
BATTLEMENT MESA PUD

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VALLEY VIEW VILLAGE is made and entered into this 16th day of DECEMBER, 2003, by DARTER, LLC ("Declarant").

RECITALS

WHEREAS, Declarant is the owner of certain property in the Southeast ¼ of the Northwest ¼, Section 18, Township 7 South, Range 95 West of the 6th Principal Meridian, Garfield County, Colorado which is more particularly described as Tracts B, C, D, E and Lot 46 as depicted on the final plat for Valley View Village Subdivision in Battlement Mesa P.U.D. recorded in the Office of the Garfield County Clerk and Recorder as Reception No. 143644 (the "Final Plat"); and

WHEREAS, Declarant deems it desirable to impose a general plan for the improvement, development and maintenance of such property and to adopt and establish covenants, conditions and restrictions upon that property for the purpose of enhancing, maintaining and protecting the value and attractiveness thereof; and

WHEREAS, Declarant deems it desirable to set aside a portion of the property as Common Areas for the use of the owners of such property and to establish a Colorado nonprofit corporation known as the VALLEY VIEW VILLAGE HOMEOWNERS ASSOCIATION, which shall be responsible for the management and maintenance of the development referred to herein.

NOW, THEREFORE, Declarant hereby declares Covenants, Conditions, Restrictions and Easements to be imposed on and for the benefit of Valley View Village and in furtherance of the purposes stated below, Declarant makes the following declarations:

ARTICLE I
GENERAL PURPOSE OF COVENANTS,
SUBMISSION, DEFINED TERMS, DESCRIPTION

1.1 Purpose. This Declaration of Covenants, Conditions and Restrictions (hereinafter "Covenants") shall govern and be applicable to that certain real property located within Garfield County, Colorado, known as the Valley View Village Subdivision (hereinafter "Subdivision"), as more particularly described on the Final Plat, which Final Plat is incorporated herein by reference. All future phases of the Subdivision to be developed within Tracts F, G, H or Lot 47 as shown on the Final Plat shall be also be subject to the provisions of these Covenants.

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It is the intention of the Declarant, expressed by its execution of this instrument, that the lands within the Subdivision be developed and maintained as a highly desirable affordable scenic residential area. It is the purpose of these Covenants to preserve the present natural beauty and character of the property along with the views and setting of the Subdivision to the greatest extent reasonably possible, and the Lots therein shall always be protected as much as possible with respect to uses, structures, landscaping, and general development as permitted by this instrument.

1.2 Property Submission. Declarant hereby submits Tracts B, C, D, E and Lot 46 of the Subdivision (the "Property") as now shown on the Final Plat, together with all easements, rights-of-way, and appurtenances thereto and any buildings, fixtures, and improvements thereon pursuant to the provisions of the Colorado Common Interest Ownership Act, which is set forth at C.R.S. §38-33.3-101 et seq. (hereinafter "Act") and to these Covenants. In the event the Act is repealed, the provisions of the Act on the effective date of these Covenants shall remain applicable hereto. Declarant further declares that the Property shall be held, leased, mortgaged, sold, and conveyed subject to the following terms, easements, reservations, restrictions, covenants, and conditions. Declarant further declares that these Covenants shall run with the land and shall be binding upon all parties having any right, title, or interest in the Property or any part thereof, their heirs, devisees, legal representatives, successors, and assigns and shall inure to the benefit of each and every Owner.

All streets and roads located within the Subdivision shall be dedicated to the public, except for those private roads and driveways within the multi-family Lots (i.e. Angelica Circle, Jessica Lane and Bryan Loop). Repair and maintenance of the public and private streets and roads within the Subdivision shall be the sole responsibility of the Association (as hereinafter defined).

1.3 Defined Terms. Each capitalized term not otherwise defined in these Covenants shall have the meaning specified or used in the Act.

1.4 Name of Common Interest Community. The name of the Common Interest Community is "Valley View Village."

1.5 Type of Common Interest Community. The type of Common Interest Community is a planned community.

1.6 Association Name. The name of the Association is the "Valley View Village Homeowners Association," a Colorado nonprofit corporation (hereinafter "Association").

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1.7 Property Location. The property constituting the Common Interest Community is located within the County of Garfield, State of Colorado.

1.8 Property Description. The Property shall consist of Tracts B, C, D, and E and Lot 46 as shown on the Final Plat.

ARTICLE II DEFINITIONS

2.1 "Additional Land" shall mean and refer to additional real property subject to Declarant's unilateral right of annexation as provided elsewhere in this Declaration, which property consists of all that land shown as Tracts F, G and H and Lot 47 on the Final Plat.

2.2 "Association" shall mean and refer to VALLEY VIEW VILLAGE HOMEOWNERS ASSOCIATION, its successors and assigns. The Association shall be responsible for the Common Areas and common elements of the development, but shall have no responsibility or duty toward the limited Common Areas and limited common elements.

2.3 "Attached Single Family Home" shall mean those structures comprised of two (2) or more single family Units sharing a common party wall, and located only on Lots 23, 24, 25, 26 and 46 of the Property and referred to alternatively as "Townhome."

2.4 "Common Area" shall mean all real property (including the improvements thereto) owned or maintained by the Association for the common use and enjoyment of all the Owners. Common Area shall be owned in fee simple by the Association or by the grant of an easement to the Association.

2.5 "Common Elements" shall mean the outdoor lighting of the Common Area, landscaping on Common Areas and such other improvements as the Association may cause or accept. Common Elements shall be owned in fee simple by the Association or by grant of an easement to the Association. Any references to "common elements" appearing on the Final Plat (except references to limited common elements) shall be deemed solely for purposes of general information and shall not be limiting in any way, nor shall any such reference define the common elements in any way.

2.6 "Future Plats" shall mean the final plats to be submitted at the appropriate times for Tracts F, G and H and Lot 47. Future Plats shall also include plats and/or airspace surveys effectuating the resubdivision of any portion of the Property into multifamily residential units.



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2.7 "Limited Common Areas" shall mean the parts of the Common Areas dedicated to the use and enjoyment of less than all of the Owners of the Subdivision. The "Limited Common Areas" may be defined in the Declaration of Covenants, Conditions and Restrictions to be filed by the Townhome Homeowners Association or other sub-association, as the case may be, and shall be subject to the control of the Townhome Homeowners Association or other sub-association, as appropriate.

2.8 "Limited Common Elements" shall mean the elements and components of each of the multi-family buildings as may be defined in the Declaration of Covenants, Conditions and Restrictions to be filed by the Townhome Homeowners Association or other subassociation, as the case may be, and shall be subject to the control of that association.

2.9 "Lot" shall mean and refer to any plot of land shown upon any recorded Subdivision map or plat of the properties with the exception of the Common Area, and where required by the context, shall include or mean the Unit.

2.10 "Mortgage" shall mean any mortgage or deed of trust or other conveyance of a Unit, or any interest therein, including but not limited to the improvements thereon, to secure the performance of an obligation, which Unit will be reconveyed upon completion of such performance.

2.11 "Mortgagee" shall mean and include mortgagees, trustees, beneficiaries and holders of deeds of trust, and the holders of any indebtedness secured by a Mortgage.

2.12 "Mortgagor" shall mean and include mortgagors and trustors under deeds of trust.

2.13 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot or Unit which is a part of the Properties, including contract sellers but excluding those having such interest merely as security for the performance of an obligation.

2.14 "Property" or "Properties" shall mean and refer to Tracts B, C, D and E and Lot 46 as depicted on the Final Plat and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

2.15 "Townhome Association" shall mean and refer to VALLEY VIEW VILLAGE TOWNHOME HOMEOWNERS ASSOCIATION, its successors and assigns and shall function as a sub-association within the scope of the Association. The Townhome Association shall be responsible only for the limited Common Areas, the limited common elements as such terms may

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be defined and elements declared in the Valley View Village Townhome Homeowners Association Declaration of Covenants, Conditions and Restrictions.

2.16 "Unit" means, as the context requires, a single family Lot, one portion of an Attached Single Family Home or a single unit in a multi-family building.

ARTICLE III OWNERS - HOMEOWNERS ASSOCIATION

3.1 Formation and Membership. The Association shall be a nonprofit Colorado corporation charged with the duties and vested with the powers prescribed by law and as set forth in its Articles of Incorporation, Bylaws and this Declaration of Covenants, Conditions and Restrictions. Neither the Articles nor Bylaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with these Covenants. This Association shall be a membership association without certificates or shares of stock. All Owners, including Declarant, who own or acquire the title in fee to any of the Lots in the Subdivision by whatever means acquired shall automatically become members of Association. Membership in the Association shall automatically terminate when an Owner of one of the Lots ceases to be an Owner of such Lot.

Each Unit within the Subdivision shall be entitled to one (1) vote.

In addition to all duties imposed upon it by the laws of the State of Colorado, by its Articles of Incorporation, its Bylaws and by this Declaration of Covenants, Conditions and Restrictions, the Association shall have the sole responsibility, at its sole cost and expense, to maintain all common open areas and open space corridors. For the benefit of wildlife indigenous to the area of the Subdivision, the Association shall see that wildlife cover and forage is properly maintained in these open areas.

3.2 Executive Board and Officers. The affairs of the Association shall be governed by an Executive Board consisting of at least three (3) and no more than seven (7) members elected by the Owners. The initial Board shall be comprised of three (3) members. The Executive Board may elect or appoint officers in accordance with its Articles and Bylaws as the same may be amended from time to time. The Executive Board may also appoint various committees and hire employees as may be required. The Board shall determine the compensation to be paid to any employee of the Association.

3.3 Purpose. The Association, through its Executive Board, shall be authorized and empowered to take each and every step necessary or convenient for the implementation and enforcement of the Covenants contained in this Declaration. The Association shall have the right



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and responsibility to maintain, preserve, repair, insure, and otherwise protect and promote the interests of the Owners with respect to all common properties and interests of the Owners and the Association. The Association shall be governed by its Articles of Incorporation and Bylaws as may be amended from time to time.

3.4 Common Elements. The Association shall own, operate, and maintain all Common Elements within the Subdivision. These common elements shall include, among other things, the internal trail system, the pedestrian bridge, any sidewalks within the Subdivision, and any landscaping undertaken by Declarant or the Association in accordance with the provisions hereof.

3.5 Declarant Control. The Declarant shall have the reserved power, pursuant to the Act, to appoint and remove officers and members of the Executive Board. This period of Declarant control ("period of Declarant Control") terminates no later than the earlier of (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than the Declarant or (b) two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business to an Owner other than Declarant. During the period of Declarant Control, the Declarant's Control shall be subject to the following limitations:

- a. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Owners other than the Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board must be elected by Owners other than the Declarant.
- b. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Owners other than the Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Executive Board must be elected by Owners other than the Declarant.

3.6 Limited Liability and Indemnification. To the fullest extent permitted by law, neither the Association nor its past, present or future officers, directors, nor any employee, agent or committee member of the Association, nor the Declarant shall be liable to any Owner or to any other person for any damage, act, omission to act, simple negligence or other matter of any kind or nature, except gross negligence. Without limiting the foregoing, the Association, the Board and the Declarant shall not be liable to any party for any action or for any failure to act, in good faith and without malice. Acts taken upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and without malice. To the extent insurance carried by the Association for such purposes shall not be adequate, the Owners severally agree to indemnify the Association, the Board and the Declarant against all loss resulting from such action or failure



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to act, including expenses and liabilities, attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved. The foregoing limitations of liability shall extend to the officers, agents, legal representatives and owners of Declarant.

3.7 Notice to Owners. Notice to an Owner of matters affecting the Subdivision by the Association or by another Owner shall be sufficiently given if such notice is in writing and is delivered personally, by courier, or private service delivery or on the third business day after deposit in the mails for registered or certified mail, return receipt requested, at the address of record for real property tax assessment notices with respect to that Owner's Lot.

ARTICLE IV EASEMENTS AND LICENSES

4.1 Unit Owners' Easements. Every Owner shall have a right of enjoyment and easement for access to their Lot through or over the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. The right of the Association to promulgate and publish rules and regulations with which each Owner and their guests shall strictly comply.
- b. The right of the Association to suspend the voting rights and rights to use the Common Elements by any Owner for any period during which any assessment against their Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its rules and regulations.
- c. The right of the Association to grant easements, leases, licenses, and concessions through or over the Common Elements.
- d. The right of the Association to convey or subject a Common Element to a Security Interest in accordance with and to the extent permitted by the Act.
- e. The right of the Association to close or limit the use of the Common Elements while maintaining, repairing, or replacing such Common Elements.
- f. Any Owner may delegate their right of enjoyment to the Common Elements and facilities to the members of their family, their tenants, or guests who reside on or rent their Lot.
- g. The terms and conditions of these Covenants.



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4.2 Easements Shown on Final Plat. The Association is entitled to use such easements as are reflected on the Final Plat for the Subdivision and the Future Plats. Except by agreement with an Owner, the Association shall have no obligation to pay any amount for the use and enjoyment of such easement. The Association shall pay for the cost of maintaining and repairing any improvements which it places on any easements.

In addition, maintenance of the twenty-foot (20') Buffer, Pedestrian and Utility Easement, approved previously as part of the Planned Unit Development, shall be the sole responsibility and at the sole expense of the Association. No development of any kind, including without limitation fencing, shall be allowed in the Buffer, Pedestrian and Utility Easement.

4.3 Easements for Access and Repairs. The Association shall be entitled to an easement across any of the Lots within the Subdivision for the purposes of accessing any of the Association's property, protecting any Association property, or for necessary repairs or emergency circumstances. The Association may access all Lots within the Subdivision at reasonable times to determine compliance with the conditions of approvals of the Subdivision granted by the County of Garfield and to determine and enforce compliance with all of the provisions of these Covenants.

ARTICLE V USE RESTRICTIONS

5.1 General Restriction. Except as provided below, the Property, except for Lot 47, shall be used only for the residential dwelling purposes subject to the applicable rules and regulations of all governmental authorities having jurisdiction. Permanent occupancy of any Lot shall be limited to two (2) adults or three (3) children per bedroom.

5.2 Limited Business Activities. Subject to all applicable governmental regulations, as well as the PUD zoning districts as defined in Garfield County Resolution No. 82-330, and in addition to residential purposes, in-home business activities or occupations not involving the provision of on site services for customers or use of employees on site (other than Owners) shall be allowed, provided such activities; (i) are conducted solely within the Lot, (ii) do not materially increase motor vehicle traffic on the Property, (iii) do not create any external indication of an in home business, and (iv) do not generate any noise, smoke, dust, odors, heat or other offensive or noxious emanations on the Property. Notwithstanding the foregoing, business activities associated with the sale of Lots shall be allowed.

5.3 Construction and Alteration of Improvements. No Owner shall construct, erect, place any structure or replace, repair, reconstruct, refinish or alter any part of the exterior of any Lot or other Improvement upon, under or above any part of the Property without the written



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consent of the Architectural Committee and compliance with the provisions of this Declaration. However, improvements and alterations which are completely within the interior of a Lot's structure may be undertaken without such approval. No towers, exterior radio, television or communication antennae or dish receivers larger than twenty-four inches (24") in diameter, nails, holes, or other punctures on deck membranes, sheds, fences, outbuildings or other structures shall be permitted without the prior written approval of the Architectural Board. Dish receivers twenty-four inches (24") in diameter or less are permitted only on the side of the building and not on the roof. In the event of any requested addition or alteration, the Architectural Committee may require that the applicant (i) submit plans and specifications showing the nature, kind, shape, heights, color, materials and location of the proposed addition or alteration in sufficient detail for the Architectural Committee to properly review same and (ii) pay for processing and review costs, which may include any professional fees the Association may incur in retaining architects or engineers to review the plans and specifications. The review by the Executive Committee shall specifically consider the impact of the addition or alteration on the harmony of external design and location with surrounding structures and topography. Any approval may impose such terms and conditions as the Architectural Committee deems appropriate.

No building or improvements shall contain exterior roofs or siding materials which are reflective or shiny.

Any construction activity on any Lot in the Subdivision shall be completed, fully cleaned up, and landscaped within twelve (12) months from the issuance of a building permit, unless the Owner shall first obtain a variance from the Architectural Committee to allow for a longer period of construction upon proof of due diligence. In the event a variance is not secured and twelve (12) months from issuance of a building permit has passed, the Association may assess penalties in any amount it deems appropriate. Upon commencement of any construction on any Lot in the Subdivision, the Owner shall complete said construction with reasonable diligence.

5.4 Subdivision or Change in Boundaries of Lots. No Lot may be subdivided nor shall the boundaries of any Lot be altered or relocated except as provided by the Act, and subject to County approval. A relocation of a boundary of a Lot may be approved by the Association in its sole discretion, subject to the provisions of Section 5.3; provided, however, that Declarant reserves the right to resubdivide Tracts F, G and H and Lot 47 as set forth in the Plat of the Subdivision recorded as set forth above, as and when such resubdivision is appropriate and feasible.

5.5 No Partition of Common Elements. The Common Elements shall be owned by the Association, and no Owner shall bring any action for partition or division of the Common Elements. By acceptance of a deed or other instrument of conveyance or assignment, each Owner

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shall be deemed to have specifically waived such Owner's rights to commence or maintain a partition action or any other action designed to cause a division of the Common Elements. This Section may be pleaded as a bar to any such action. Any Owner who commences or maintains any such action shall be liable for and agrees to reimburse the Association for its costs, expenses and reasonable attorneys' fees in defending any such action.

5.6 Compliance with Laws. Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations and ordinances with respect to the Property, including, without limitation, all applicable environmental laws and regulations.

5.7 Nuisance. No obnoxious or offensive activity shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public nuisance.

5.8 Prohibition of Increases in Insurable Risks. Nothing shall be done or kept on the Property or in any Lot which would result in the cancellation or reduction of insurance on all or any part of the Property or in an increase in the cost of such insurance, but for such activity, without the prior written approval of the Association.

5.9 Prohibition against Damage or Waste. No damage to or waste of the Property, including any portion of the Common Elements, shall be committed by any Owner. Each Owner hereby agrees to indemnify and hold the Association and the other Owners harmless against any damage or waste caused by such Owner and agrees to pay for or reimburse the Association for any and all costs and expenses resulting from any damage or waste caused by an Owner or that Owner's family, tenants, guests, pets, employees, contractors, agents, licensees, and invitees.

5.10 Obstructions. No person shall obstruct or interfere with the free use of walkways, driveways, drainage structures or other Common Elements, except as may be reasonably required for repairs. The Association shall take such action as may be necessary to abate or enjoin any interference with or obstruction of walkways, paths and drainage courses.

5.11 Leasing and Restrictions on Alienation. A Unit may not be owned or occupied pursuant to a time-sharing arrangement described in Sections 38-33-110 to 113, Colorado Revised Statutes. An Owner shall have the right to lease a Unit, provided that such lease shall be in writing and subject to the reasonable requirements of the Executive Board, and provided further that no Lots may be leased on a daily or weekly basis. Any lease shall be made expressly subject to this Declaration and all Association Rules. Any failure of a tenant to comply with this Declaration shall be a default under the lease, and the Owner shall be liable for any violation of this Declaration committed by the Owner's tenant, without prejudice to the Owner's rights against the Owner's tenant.

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5.12 Vehicles. Not more than three (3) motor vehicles may be kept on the Property for each Unit. No guest of an Owner shall use a parking space designated for visitors for more than three (3) days without the consent of the Executive Board, which may impose a fee for such use. No trucks, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, trailers, boats or boat trailers or similar vehicles (other than passenger automobiles or pickup or utility trucks with a capacity of one ton or less) or any other vehicles shall be parked, stored or kept on any portion of the Property unless within an enclosed garage. This restriction shall not prohibit occasional parking of commercial, service and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing service to the Property. No work on vehicles, including repairs, shall be performed on any portion of the Property, except in emergencies. Abandoned or inoperable vehicles shall not be stored or parked on any portion of the Property. An abandoned or inoperable vehicle is any vehicle which has not been driven under its own propulsion for three (3) weeks or longer and which appears incapable of operation. A written notice describing the abandoned or inoperable vehicle and requesting its removal shall be personally served upon the Owner or posted on the vehicle. If such vehicle has not been removed within seventy-two (72) hours after notice is given, the Association may remove the vehicle without liability and the expense of removal shall be charged against the Owner.

The Association shall have the right to assess and enforce penalties against Owners violating these restrictions applying to vehicles as follows: One Hundred Dollars (\$100.00) for the first violation and One Hundred Dollars (\$100.00) plus an additional Fifty Dollars (\$50.00) for each subsequent violation, such that the fine increases in Fifty Dollar (\$50.00) increments for each succeeding violation.

5.13 Animals and Pets. Each Owner may keep a reasonable number of common household pets; provided, however, that only one (1) dog and/or two (2) cats will be allowed for each new residential Unit and the animals shall be required to be confined within the Owner's property boundaries. Dogs and cats shall be neutered or spayed. The type of behavior of permitted pets shall be regulated by the Association Rules. Pets shall not be kept in the Common Elements or in the parking area. No pet shall cause any nuisance by noise or otherwise. Any animal waste deposited on the Common Elements shall be immediately removed by the Owner and placed in a trash receptacle. Other than common household pets, no livestock or poultry of any kind shall be kept, raised or bred on any portion of the Property.

Notwithstanding the foregoing, no animal(s) may be kept within a Lot or a dwelling which, in the good-faith judgment of the Executive Board, result(s) in any annoyance to residents in the vicinity or to Owners within the Subdivision. Except as expressly limited herein, domestic animals shall be permitted subject to any rules and regulations which may be promulgated by the Executive Board.

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The Association shall have the right to assess and enforce penalties against Owners violating these restrictions applying to dogs and cats as follows: One Hundred Dollars (\$100.00) for the first violation committed by an Owner's dog, and One Hundred Dollars (\$100.00) plus an additional Fifty Dollars (\$50.00) for each subsequent violation, such that the fine increases in Fifty Dollar (\$50.00) increments for each succeeding violation. If any dog or cat commits four (4) violations or any dog is caught chasing or molesting deer, elk, or any domestic animals, the Association shall be authorized to prohibit the Owner from continuing to maintain the offending animal on the Owner's property.

5.14 Signs. No signs of any kind shall be displayed to the public view on or from any portion of the Property except those signs approved by the Executive Board, business signs of Declarant or its affiliates, or signs required by law. Any approved sign shall also be subject to the provisions of the County Sign Code. One (1) real estate sign per Lot advertising the Lot as for sale shall be permitted. A reasonable number of political signs may be displayed within sixty (60) days prior to an election.

5.15 Solid Waste. No trash, ashes, garbage, rubbish, debris or other refuse shall be thrown, dumped or otherwise accumulated on the Property. There shall be no burning of refuse. Each Owner shall use the central receptacles for the temporary storage and collection of solid waste, which shall be screened from public view and protected from wind, animals and other disturbances. Each Unit shall be kept in a sanitary condition, free of offensive odors, rodent and insect infestations at the Owner's sole cost.

5.16 Outside Burning. There shall be no exterior fires except in propane or charcoal grill. No Owner shall allow any condition upon such Owner's Lot which creates a fire hazard or violates fire prevention regulations.

5.17 Yard Maintenance. Each Owner shall keep and maintain the yard within the Lot so as to be free from trash, debris, and weeds. Grass shall be kept mowed during the summer months, and landscaping shall be watered, trimmed, pruned as necessary to maintain a clean and attractive appearance. Any backyard storage must be kept within a well-maintained shed. The open storage of junk automobiles, machinery, appliances, junk piles, scrap piles and other materials which may be used by mammals such as skunks and raccoons for denning sites is strictly prohibited.

5.18 Noxious Weeds. The Association shall be responsible for weed management in all Common Areas, including but not limited to roadsides, open spaces and the asphalt/pedestrian trail.

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In addition, all Owners of vacant Lots within the Subdivision shall be required to manage noxious weeds as provided by Colorado law. In the event an Owner shall fail to fulfill this requirement, the Association shall be authorized to enter the Lot and remove the noxious weeds, with an appropriate charge to the Owner thereof as set forth herein.

5.19 Noise. No exterior horns, whistles, bells or other sound devices, except security devices approved in writing by the Executive Board, shall be placed or used on any portion of the Property. Owners shall not allow any noise or disturbance in or on their respective Units which is offensive, disturbing or otherwise detrimental to any other person.

5.20 Lighting. No flood lighting, security lighting or other type of high intensity lighting shall be permitted without the approval of the Executive Board and as further set forth in Paragraph 6.7 of these Covenants.

5.21 Underground Utility Lines. With respect to the new construction or extension of any utilities, all water, sewer, gas, electrical, telephone, cable television, and other utility pipes or lines within the limits of Valley View Village shall be buried underground and not be carried on overhead poles or above the surface of the ground. Any areas of natural vegetation or terrain in the Subdivision disturbed by the burying of utility lines shall be revegetated by and at the expense of the Owner or Owners causing the installation of the utilities no later than the next growing season following installation.

5.22 Mining, Drilling, or Quarrying. Mining, quarrying, tunneling, excavating, or drilling for any substance within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, shall not be permitted within the limits of the Subdivision. Individual wells shall not be permitted on any Lot, and no Owner shall be permitted to drill for water on his Lot, unless prior approval shall have been obtained from the Architectural Committee.

5.23 Trees. Each Owner shall be required to plant the minimum number of trees on their respective Lots as specifically required by the Design Guidelines and Standards developed by the Architectural Committee. No Owner shall remove any healthy, living trees without first having obtained the approval of the Architectural Committee. All construction, landscaping, and development on any Lot shall seek to minimize the removal of trees and to preserve the natural trees and vegetation to the greatest extent possible while bearing in mind wildfire considerations.

5.24 Hunting and Wildlife Control. Hunting shall be prohibited within the Property. With the approval of the Association, and, when appropriate, after consultation with the Colorado Division of Wildlife, an Owner may, consistent with the requirements of law, destroy or remove wildlife which constitutes a nuisance or which may die on their property. In the event

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bears become a nuisance with respect to trash containers kept on any Lot within the Subdivision, the Association will require Owners to install bear-proof garbage containers. The Colorado Division of Wildlife is not responsible for the removal of bears and mountain lions just because they are spotted or seen in or near the Subdivision.

It shall be the sole responsibility of the Owner of any Lot within the Subdivision to remove and dispose of the carcass of any animal (e.g., deer or racoon) found on such Lot. It shall be the sole responsibility of the Association to dispose of the carcass of any such animal found on any of the Common Areas within the Subdivision.

5.25 Addresses, Number, and Location of Buildings. No buildings shall be placed, erected, altered, or permitted to remain on any Lot except as approved by the Architectural Committee. All addresses shall be posted in conspicuous locations for ease of identification.

5.26 Enclosure of Unightly Facilities and Equipment. All unightly structures, facilities, equipment, and other items, including but not limited to those specified below, shall be enclosed within a solid structure sufficient to screen such things from view from the common roads and neighboring homes to the greatest extent possible. Any motor home, trailer, boat, tractor, motorcycle, snow removal or garden equipment, and any similar item shall be kept at all times, except when in actual use, in an enclosed garage. Any refuse or trash containers, utility meters, propane tanks, fuel storage tanks, or other facilities, service area, or storage pile shall be enclosed within a structure or appropriately screened from view by planting or fencing approved by the Architectural Committee and adequate to conceal the same from neighbors, streets, and private roads. No lumber, metals, bulk materials, scrap, refuse, or trash shall be kept, stored, or allowed to accumulate on any Lot except building materials during the course of construction and only for such reasonable periods of time as are necessary prior to the collection of or disposal thereof.

5.27 Common Areas and Open Space. All Common Areas within the Subdivision shall be restricted to recreational, irrigation, and utility uses only, and shall not be used for residential purposes. All open space areas shall be maintained to further the existence and preservation of wildlife.

5.28 Unauthorized Use of Vehicles. No snowmobiles or all-terrain vehicles (ATVs) shall be operated within the Subdivision.

5.29 General Restriction. All Lots in the Subdivision shall comply with restrictions contained in any other section of these Protective Covenants.

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ARTICLE VI ARCHITECTURAL COMMITTEE

6.1 Architectural Committee. The Architectural Committee shall be composed of between three (3) and five (5) persons. During the period of Declarant Control, Declarant may appoint the members of the Architectural Committee which may include officers, directors, or shareholders of Declarant, in Declarant's sole discretion, and the Executive Board of the Association shall have no authority to remove any member so appointed. Upon the sale of the last Lot in the Subdivision, or at an earlier time as determined by Declarant, the members of the Architectural Committee shall be appointed by the Executive Board of the Association. The persons serving on the Architectural Committee shall serve at the pleasure of the Executive Board which may remove a member of the Architectural Committee, except a member appointed by Declarant, and appoint a new member at any time, provided there shall at all times be at least three (3) persons serving on the Architectural Committee. The members of the Architectural Committee may also be directors of the Association and need not be Owners. The Architectural Committee shall have and exercise all the powers, duties, and responsibilities set out in this instrument.

6.2 Approval by Architectural Committee. No improvements of any kind, including but not limited to dwelling units, garages, accessory buildings, swimming pools, ponds, parking areas, fences, walls, driveways, antennae, satellite dishes, and walks shall be constructed, erected, altered, or permitted to remain within the Subdivision, nor shall any excavating, tree cutting, and clearing or landscaping be done within the Subdivision, unless the complete architectural plans and specifications, and a site plan showing the location and orientation thereof, for such erection or alteration and landscaping are approved by the Architectural Committee prior to the commencement of such work, except as Declarant may be specifically permitted to do by these Covenants or required to do by any subdivision improvements agreement between the Declarant and Garfield County. Revegetation of all infills and cuts will be required. Plans addressing the revegetation of infills and cuts will be submitted to the Architectural Committee prior to any excavation.

At least three (3) complete sets of the architectural and site development plans and specifications shall be submitted to the Architectural Committee along with a complete list of all exterior materials and colors to be used. All copies of the complete plans and specifications shall be signed and dated for identification by the Owner or the Owner's architect. The Architectural Committee shall have the right to request whatever additional specification information, plans, reports, and the like it deems necessary to evaluate the development proposal throughout the approval and construction process. In addition, the Architectural Committee may adopt rules and regulations which shall specify the information, reports, plans, specifications, and the like required to be submitted to the Architectural Committee. In the event the

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Architectural Committee fails to take any action within forty-five (45) days after three (3) copies of the complete architectural and site development plans, specifications, materials, and colors have been submitted to it and the submittal has been certified in writing by the Architectural Committee as complete, then all of such submitted architectural plans shall be deemed to be approved. The Architectural Committee shall not unreasonably disapprove the architectural plans. The majority vote of the members of the Architectural Committee shall be required for approval of plans. In the event the Architectural Committee shall disapprove any architectural plans, the person or entity submitting such architectural plans may appeal the matter to the next annual or special meeting of the members of the Association where a vote of seventy-five percent (75%) of the members' votes entitled to be cast at said members' meetings shall be required to change the decision of the Architectural Committee.

6.3 Improvements - Site Location. Site review for any and all structures and improvements must be undertaken by the Architectural Committee.

6.4 Building Permits. An Owner may apply for a building permit from the Garfield County Building Department at any time; provided, however, the plans approved by the Building Department shall not differ in any substantial way from the plans approved by the Architectural Committee. If the plans approved by the Building Department differ in any substantial way as determined by the Architectural Committee, then all approvals of the Architectural Committee shall be deemed automatically revoked. Owners must comply with all Garfield County zoning and subdivision regulations and with those provisions set forth on the Plat and Future Plats relating to off-street parking.

6.5 Variances. The Architectural Committee may, by an affirmative vote of a majority of the members of the Architectural Committee, allow reasonable variances as to any of the covenants and restrictions governing architectural control contained in this instrument and/or policies or rules promulgated by the Architectural Committee, on such terms and conditions as it shall require. No variance shall be granted which contravenes any provisions of these Covenants required by an approval obtained by Declarant from Garfield County for the Subdivision or which violates the Garfield County zoning regulations, Resolution No. 82-330 or the Garfield County Subdivision Regulations and Building Codes. No variance shall be granted without written notice of the request for such variance provided ten (10) days prior to the hearing for said variance to all Owners within the Subdivision. Notice to such Owners shall be deemed complete when placed in the United States Mail, first-class postage prepaid, to the last known address for each Owner as provided to the Association.

6.6 General Requirements. The Architectural Committee shall exercise its best judgment to see that all improvements, construction, landscaping, and alterations within the Subdivision harmonize to the greatest extent possible with the surroundings and with other

structures as to design, materials, color, height, grade, finished ground elevation of neighboring Lots, and other design features. The Architectural Committee shall strive to protect the visual quality of each Lot insofar as possible (taking into account final buildout of all Lots in the Subdivision) in the development of the Subdivision pursuant to these Covenants and shall endeavor to protect and preserve the visual character of the Property and preserve and maintain any trees in the Subdivision.

- (a) Soils and Foundation Report, and Grading and Drainage Plan. Grading for conveyance of storm water away from structures shall be the responsibility of each Owner. All Owners shall allow for conveyance of storm water through their Lot. Due to the expansive and compressible soils, the Owner of each Lot shall conduct additional design level geotechnical studies once building locations are finalized, to characterize soil and engineering properties beneath each planned structure for the purpose of a site-specific development plan and whether footings with a minimum load will be needed to counteract expansive clays.

Once the grading plan has been completed on-site, the drainage report shall be updated to account for a new cross-sectional profile of the drainage. If the new channel cross-section changes the flow velocities within the drainage, the Architectural Committee may require slope reinforcement to prevent erosion along the length of the fill slope.

- (b) Materials and Landscaping. In its review of any proposed development activity, the Architectural Committee shall evaluate, among other things, the materials to be used on the outside of buildings or structures, including exterior colors, location with respect to topography and finished grade elevations, and harmony of landscaping with the natural setting and native trees and other vegetation within the Subdivision. In addition, the Architectural Committee shall review all irrigation systems proposed to be installed on any Lot.

With regard to landscaping, each Lot Owner shall deposit with the Association, prior to the commencement of construction, the sum of Eight Hundred Dollars (\$800.00) as security for proper landscaping of the Lot. Upon approval of the final landscaping as completed by the Architectural Committee, such deposit shall be refunded to the Lot Owner.

- (c) Site Location. In reviewing the proposed location of any structure to be placed or built on any Lot, the Architectural Committee shall exercise its judgment so as to maximize the view plane of each Lot while preserving to the greatest extent possible the natural characteristics of each Lot and all natural vegetation,

including trees and bushes and the natural setting of each building site. The Architectural Committee must review and approve the location of all structures and improvements to be located on each Lot.

- (d) Fencing. The Architectural Committee must review and approve all fencing prior to installation. The type and location of all fencing must be approved by the Architectural Committee. Wildlife fencing shall be encouraged; privacy fencing shall be on a limited basis, at the sole discretion of the Architectural Committee. One basis for consideration by the Architectural Committee of fencing will be how it affects the movement of wildlife throughout the Subdivision. Fencing shall be constructed to Colorado Division of Wildlife specifications, shall be of a round or split rail variety, shall not exceed forty-eight (48) inches in height, shall not have more than three (3) horizontal poles, the bottom pole of which shall be at least eighteen (18) inches off the ground, and no two poles shall be less than eighteen (18) inches apart. The Colorado Division of Wildlife shall not be liable to any Owner for any damage to gardens, flowers, shrubs, trees, or any other greenery caused by the actions of any wild animal.
- (e) Geologic Hazard Mitigation. In addition to all other requirements set forth herein, all construction shall conform to the recommendations regarding foundations, floor slabs, under-drain systems, site grading, surface drainage and pavement subgrades as contained in the Preliminary Geotechnical Study prepared by Hepworth-Pawlak Geotechnical, Inc., dated September 16, 2002, a copy of which shall be available for inspection in the office of the Association.
- (f) Perimeter Drains. In order to prevent moisture from saturating soils, perimeter drains are recommended around each foundation.
- (g) Radon Gas. Testing for radon gas shall be performed when each residence and/or other occupied structures has been completed. A satisfactory result on the radon gas testing shall be a prerequisite to the issuance of a Certificate of Occupancy.

6.7 Lighting. All exterior lighting shall be the minimum amount necessary and all exterior lighting shall be directed inward, toward the interior of the Subdivision, except that provisions may be made to allow for safety lighting that goes beyond the Unit's boundaries with the approval of the Architectural Committee.

6.8 Preliminary Approvals. Owners who anticipate constructing improvements on lands within the Subdivision may submit preliminary sketches of such improvements to the

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Architectural Committee for informal and preliminary approval or disapproval. All preliminary sketches should be submitted in at least three (3) sets and should contain sufficient general information on those matters required to be in the complete architectural and site development plans and specifications to allow the Architectural Committee to grant an informed preliminary approval or disapproval. The Architectural Committee shall never be finally committed or bound by any preliminary or informal approval or disapproval until such time as complete architectural and site development plans, specifications, materials, and colors are submitted and approved or disapproved. The preliminary approval is offered as an accommodation only, and the Architectural Committee may set fees for this service.

6.9 Architectural and Site Development Plans. The Architectural Committee shall disapprove any architectural and site development plans submitted to it which do not contain sufficient information for it to exercise the judgment required of it by these Covenants.

6.10 Architectural Committee Not Liable. The Architectural Committee shall not be liable for damages to any person or entity submitting any plans for approval, or to any Owner or Owners of land within the Subdivision, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such plans. The Architectural Committee shall have no liability or responsibility for any representations made to any Owner or prospective Owner by any third parties. The decisions of the Architectural Committee shall be governed by these Covenants and any rules or regulations duly adopted by the Architectural Committee pursuant to these Covenants.

6.11 Written Records. The Architectural Committee shall keep and safeguard for at least five (5) years complete permanent written records of all approved applications, including one (1) set of the final approved architectural and site development plans, and of all actions of approval or disapproval and all other formal actions taken by it under the provisions of this instrument.

6.12 Authority to Promulgate Design Guidelines, Rules and Regulations. The Architectural Committee may promulgate and adopt additional design guidelines and rules and regulations necessary to implement these Covenants. The design guidelines may include requirements relating to acceptable building materials, architectural styles, allowable colors for home exteriors, and the like. The rules and regulations may include submission requirements concerning the type of information, reports, plans and specifications, and other information necessary to make an informed decision regarding requests for development, modifications to buildings, and the like

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ARTICLE VII
COLLECTION OF ASSESSMENTS - ENFORCEMENT

7.1 Assessments. All Owners, by acceptance of a deed to a Lot or a Unit, including without limitation public trustee, sheriff's or similar deed, are deemed to covenant and agree and shall be obligated to pay any and all assessments lawfully imposed by the Executive Board of the Association. To the extent the Association is responsible therefor, assessments may be lawfully imposed for any items of common expense which may include, among other things: expenses and costs of maintaining, repairing, and plowing of roads within and accessing the Subdivision; expenses for maintaining, improving, and preserving the Association's common property; expenses of the Architectural Committee; and insurance, accounting, and legal functions of the Association. Such assessments shall be deemed general assessments and shall be borne pro rata by all Owners. The Executive Board may establish contingency and reserve funds for the maintenance and improvement of the Association's common property and any other anticipated costs and expenses of the Association to be incurred in pursuit of its purpose. Contingency and reserve funds shall be in such an amount as the Executive Board may deem necessary and appropriate for the aforesaid purposes. Each Owner shall be required to pay his pro rata portion of these funds. The pro rata allocation shall be calculated as shown on Exhibit A, attached hereto and incorporated herein.

The Executive Board shall have the right during any calendar year to levy and assess against all of the Owners a special assessment for such purpose or purposes, in accordance with these Covenants, or the Articles or Bylaws of the Association, as may be necessary. Such special assessment shall be paid for in equal portions by the Owners obligated to pay such assessment and shall be due and payable as determined by the Executive Board.

All Owners specifically acknowledge and agree that an assessment will be levied against them and their Unit by the Battlement Mesa Service Association for the maintenance of the common elements that serve the entire Battlement Mesa PUD, including certain common elements of the Property, at rate established from time to time by the Battlement Mesa Service Association. Any default in the payment of such assessments shall constitute a default under these Covenants and shall be subject to enforcement hereunder.

7.2 Lien for Non-Payment of Assessments. All sums assessed by the Executive Board, including without limitation the share of common expense assessments chargeable to any Owner, any fines which may be levied on an Owner, and unpaid utility fees and assessments charged to an Owner shall constitute a lien against such Lot superior (prior) to all other liens and encumbrances, excepting only:

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- (a) Tax and special assessment liens on the Lots in favor of any governmental assessing unit.
- (b) All sums unpaid on a first mortgage of record, including any unpaid obligatory sums as may be provided by encumbrance.
- (c) Each Owner hereby agrees that the Association's lien on a Lot for assessments as hereinabove described shall be superior to any Lot exemption as is now or may hereafter be provided by state or federal law and each Owner hereby agrees that the acceptance of the deed or other instrument of conveyance in regard to any Lot within the Property shall signify such grantee's waiver of the any such exemption.
- (d) Any recorded lien for non-payment of the common expenses may be released by recording a release of lien executed by a member of the Executive Board.

If any assessment shall remain unpaid after thirty (30) days after the due date thereof, such unpaid sums shall bear interest from and after the due date thereof at the maximum rate of interest permitted by law, or at such rate as is determined by the Executive Board, and the Executive Board may impose a late charge on such defaulting Owner as may be established by the Board. In addition, the Executive Board shall be entitled to collect reasonable attorneys' fees incurred in connection with any demands for payment and/or collection of delinquent assessments. To evidence such lien, the Executive Board shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot, and its legal description. Such a notice shall be signed by one (1) member of the Executive Board and shall be recorded in the Office of the Clerk and Recorder of the County of Garfield, Colorado. Such lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property, upon the recording of a notice of claim thereof. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and all reasonable attorneys' fees. The Owner shall also be required to pay to the Association any additional assessments against the Lot during the period of foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same. The Executive Board, for the Association, shall have the power to bid on the Lot at foreclosure sale and acquire and hold, lease, mortgage, and convey same. The Association, at its election, and in addition to any other remedies it may have at law or in equity, may also sue an Owner personally to collect any monies owed the Association.

7.3 Enforcement Actions. The Association, acting by and through its Executive Board, shall have the right to prosecute any action to enforce the provisions of all of these

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Covenants by injunctive relief, on behalf of itself and all or part of the Owners within the Subdivision. In addition, each Owner within the Subdivision, including the Association, shall have the right to prosecute any action for injunctive relief and for damages by reason of any violation of these Covenants. The prevailing party in any enforcement action shall be entitled to an award of its reasonable costs and attorneys' fees. The Executive Board shall be entitled to assess penalties for late payment of assessments due the Association and to collect interest thereon at rates to be determined from time to time by the Executive Board but not to exceed 1.5 percent per month. After thirty (30) days, written notice to any Owner of a violation of these Covenants, and the Owner's failure to eliminate or cure said violation, the Association may levy, in addition to the other remedies set forth herein, a penalty of \$25.00 per day for every day the violation exists or continues after the expiration of said 30-day period.

7.4 Enforcement of Non-Assessment Provisions. In the event of the violation of the provisions of these Covenants which do not relate to monetary assessments, the violating Owner shall be given written notice of such violation, requiring such violation to be cured within one (1) calendar day of receipt of such notice (or within such reasonable time as is necessary in order for the owner to correct the violation). If such violation is not cured within such time frame, or if a second violation of the same nature occurs, a fine in the amount of One Hundred Dollars (\$100.00) shall be assessed against such Owner. In the event of a third violation of the same nature, a fine in the amount of One Hundred Fifty (\$150.00) shall be assessed. Should a fourth violation of the same nature occur, a fine in the amount of Three Hundred Dollars (\$300.00) shall be assessed, and the Association may also take such action as is reasonably necessary to cause the violation to cease, including entry on the property of the Owner. Violations involving dogs or cats shall be enforced as set forth in Paragraph 5.13 hereof.

For each additional recurrence of the same type of violation, or if a violation continues beyond sixty (60) days after an owner receives notice, an additional fine will be assessed against such owner in an amount equal to double the amount of the previous fine. With respect to such a continuing violation, the additional fine will be assessed every four (4) calendar days beyond the sixty (60) day period during which the violation continues. The aggregate amount of fines which may be charged against an Owner for the recurrence or continuation of one type of violation shall not exceed the sum of Five Thousand Dollars (\$5,000.00).

Each violation of these Covenants, the Declaration and/or the Rules and Regulations of the Subdivision shall be deemed a separate offense for the purpose of enforcement. All fines levied in accordance with this Paragraph 7.5 shall be enforced as set forth in Paragraph 7.2 above.

7.5 Limitations on Actions. In the event any construction or alteration or landscaping work is commenced upon any of the lands in the Subdivision in violation of these Covenants and

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no action is commenced within one (1) year thereafter to restrain such violation, then injunctive or equitable relief shall be denied, but an action for damages shall still be available to any party aggrieved. This one-year limitation shall not apply to injunctive or equitable relief against other violations of these Covenants.

ARTICLE VIII RIGHTS OF LENDERS

8.1 Filing Notice; Notices and Approvals. A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Executive Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Unit within the Property. Such notice need not state which Unit or Units are encumbered by such Mortgage, but shall state whether such Mortgagee is a first Mortgagee. Wherever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of those Mortgagees which have delivered such notice to the Executive Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgagees over the lien of assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice to the Executive Board. Any notice or request delivered to the Executive Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

8.2 Relationship with Assessment Lien.

- (a) The lien provided for in Article VII hereof for the payment of assessments shall be subordinate to the lien of any Mortgage which was recorded prior to the date any such assessment becomes due.
- (b) If any Unit subject to a monetary lien created by any provision hereof shall be subject to the lien of a Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (2) the foreclosure of the lien of said Mortgage, or sale under a power of sale included in such Mortgage ("Events of Foreclosure") shall not operate to affect or impair the lien

hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

- (c) Any Mortgagee who obtains title to a Unit by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid assessments against such Unit which accrue prior to the time such Mortgagee or purchaser takes title to such Unit, except for liens or claims for a share of such assessments resulting from a pro rata reallocation of such assessments to all Units within the Property.
- (d) Nothing in this Section shall be construed to release any Owner from his obligation to pay for any assessment levied pursuant to this Declaration.

8.3 Seventy-Five Percent (75%) Vote of Institutional Mortgagees. Except upon the prior written approval of at least seventy-five percent (75%) of institutional Mortgagees, and subject to all Garfield County regulations, including but not limited to the PUD and Subdivision regulations, based on one (1) vote for each first Mortgage held, neither the Association nor the members of the Association shall be entitled to do any of the following:

- (a) Abandon or terminate by any act or omission the Common Area, or any part thereof, except for abandonment or termination provided by law and/or this Declaration in this case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; or
- (b) Dissolve the Association or abandon or terminate the maintenance of the Common Area by the Association; or
- (c) Amend a material provision of this Declaration, the Bylaws or the Articles, and without limiting the generality of the foregoing, the provisions of Article IX hereof, this Article, any other rights granted specifically to Mortgagees pursuant to any other provision of this Declaration; or

- (d) Abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate, or otherwise encumber the Common Area; provided, however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area shall not require such approval; or
- (e) Partition or subdivide a Lot.

8.4 Other Rights of Institutional Mortgagees. Any institutional Mortgagee or its mortgage service contractor, shall, upon written request to the Association, be entitled to:

- (a) Inspect the books and records of the Association during normal business hours;
- (b) Receive the annual financial statement of the Association ninety (90) days following the end of the Association's fiscal year;
- (c) Receive written notice of all annual and special meetings of the members of the Association or of the Executive Board, and institutional Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; provided, however, nothing contained in this Section shall give an institutional Mortgagee the right to call a meeting of the Executive Board or of the members of the Association for any purpose or to vote at any such meeting.

8.5 Distribution of Insurance and Condemnation Proceeds. No Owner nor any other party, shall have priority over any right of first Mortgagees of Units pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of the Common Area. Any provision to the contrary herein or in the Bylaws or other documents relating to the Property is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Mortgagees naming the Mortgagees, as their interests may appear.

8.6 Notice to Mortgagees of Record. In the event that any Owner is in default under any provision of these Covenants, or under any provision of the Bylaws or the Rules and Regulations adopted by the Association, which default is not cured within thirty (30) days after written notice thereof to such Owner, the Association shall give to the Mortgagee of record of

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such Owner written notice of such default and of the fact that said thirty (30) day period has expired.

8.7 Voting Rights on Default. In the event of a default by the Owner or Owners of any Unit in any payment due under the terms of any first Mortgage encumbering such Unit, or the promissory note secured thereby, the Mortgagee, or his representative, shall have the right, upon giving written notice to such defaulting Owner or Owners, and placing of record a notice of default, to exercise the voting rights of such defaulting Owner or Owners attributable to such Unit at any regular or special meeting of the members of the Association held during such time as such default may continue.

8.8 Effect of Breach Hereof. No breach of any provision of these Covenants, conditions and restrictions shall invalidate the lien of any Mortgagee in good faith and for value, but all of said provisions hereof shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise.

8.9 Non-Curable Breach. Any Mortgagee who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure any breach of this Declaration which is non-curable or of a type which is not practical or feasible to cure.

8.10 Loan to Facilitate. Any Mortgage given to secure a loan to facilitate the resale of a Unit after acquisition by foreclosure or by a deed in lieu of foreclosure or by assignment in lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article VIII.

8.11 Right to Furnish Information. Any Mortgagee shall have the right to furnish information to the Executive Board concerning the status of any Mortgage.

8.12 Inapplicability of Right of First Refusal to Mortgagee. No right of first refusal or similar restriction upon the right of an Owner to sell, transfer or otherwise convey the Owner's Unit shall be granted to the Association without the consent of the Mortgagee, if any, of such Unit. Any right of first refusal or option to purchase a Unit which may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Unit, whether voluntary or involuntary, to a Mortgagee which acquires title to or ownership of said Unit pursuant to the remedies provided in its Mortgage or by reason of foreclosure of the Mortgage or deed (or assignment) in lieu of foreclosure.

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ARTICLE IX INSURANCE

9.1 Types of Insurance. The Association shall obtain and keep in full force and effect the following insurance coverage, if appropriate:

- (a) Public liability and property damage insurance, including medical payments insurance, in an amount to be determined by the Board, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the ownership, operation, maintenance or other use of Association property. This policy shall also cover operation of automobiles or other vehicles or equipment on behalf of the Association.
- (b) Worker's compensation and employer's liability insurance in the amounts and in the forms required by law.
- (c) Coverage for members of the Board and officers of the Association, including committee members, against libel, slander, false arrest, invasion of privacy, errors and omissions, and other forms of liability generally covered in officers and directors liability policies.
- (d) Coverage against such other risks of a similar or dissimilar nature as the Board deems appropriate.

9.2 Fidelity Coverage. The Executive Board, at its discretion, may elect to secure fidelity coverage against the dishonesty of employees, destruction or disappearance of money or securities, and forgery. This policy shall also cover persons who serve the Association without compensation.

ARTICLE X ANNEXATION OF ADDITIONAL PROPERTY

Notwithstanding any other provisions of this Declaration, the Declarant shall have the rights recited in this Article X.

10.1 Annexation without Approval of Members. As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option, from time to time at any time until seven (7) years from the date this Declaration is first recorded in the real property records of the County to subject to the provisions of this

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Declaration and the jurisdiction of the Association all or any portion of the Additional Land, whether in fee simple or leasehold, by filing in the real property records of the County an amendment annexing such property. Such amendment to this Declaration shall not require the vote of Members. Any such annexation shall be effective upon the filing for record of such amendment unless otherwise provided therein.

Declarant shall have the unilateral right to transfer to any other person the said right, privilege and option to annex the Additional Land which is herein reserved to Declarant, provided that such transfer is memorialized in a written recorded instrument.

The rights reserved upon Declarant to subject Additional Land to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such Additional Land to this Declaration or to the jurisdiction of the Association. If such Additional Land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such Additional Land, nor shall such rights in any manner limit or restrict the use to which such Additional Land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

10.2 Acquisition of Additional Common Elements. Declarant may convey to the Association additional real estate, improved or unimproved, located within the Additional Land which upon conveyance or dedication shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

10.3 Amendment. Notwithstanding any other provision of this Declaration, this Article shall not be amended while the Declarant retains the right to exercise the rights defined in this Article X without the written consent of Declarant, so long as the Declarant owns any of the Additional Land.

ARTICLE XI GENERAL PROVISIONS

11.1 Covenants to Run. All of the covenants contained in this instrument shall be a burden on the title to all of the lands within the Subdivision, and the benefits thereof shall inure to the Owners of the lands in the Subdivision and the benefits, and burdens of all said covenants shall run with the title to all of the lands in the Subdivision.

11.2 Termination of Covenants. In the event these Covenants have not been sooner lawfully terminated pursuant to any applicable laws of the State of Colorado and the County of Garfield, Colorado, and the provisions herein contained, these Covenants may be terminated on

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January 1 of the year 2038 by a vote of seventy-five percent (75%) of the votes entitled to be cast by the members of the Association. If these Covenants are not so terminated, then they shall continue to be in full force and effect for successive twenty-five (25) year periods unless, at the close of a 25-year period, the Covenants are terminated by a vote of seventy-five percent (75%) of the votes entitled to be cast by the members of the Association at a meeting of the members duly held. In the event of any such termination by the members, a properly certified copy of the resolution of termination shall be placed on record in Garfield County, Colorado, not more than six (6) months after the meeting at which such vote is cast.

11.3 Amendment of Covenants. These Covenants may be amended by a vote of seventy-five percent (75%) of the votes entitled to be cast by the members of the Association, said vote to be cast at a meeting of the members duly held, provided a properly certified copy of the resolution of amendment be placed on record in the County of Garfield, Colorado, no more than six (6) months after said meeting.

11.4 Notice. All notices or requests required shall be in writing. Notice to any Owner shall be considered delivered and effective upon personal delivery, or three (3) days after posting when sent by certified mail, return receipt requested, to the address of the Owner on file in the records of the Association at the time of the mailing or if no such address is available, then to the address shown by the County Assessor. Notice to the Executive Board or the Association shall be considered delivered and effective upon personal delivery, or three (3) days after posting when sent by certified mail, return receipt requested, to the Association, at the address as shall be established by the Association from time to time by notice to the Owners. General notices to all Owners need not be certified, but may be sent by regular first class mail. The First Mortgagees (or insurer or guarantor of the mortgage) shall receive written notice of those matters set forth in Article VIII hereof.

11.5 Waiver or Delay in Enforcement. No failure by the Association or the Executive Board to give notice of default or any delay in enforcement of any provision or in the exercise of any right or remedy shall operate as a waiver. No waiver shall be effective unless it is in writing signed by the President or Vice President of the Executive Board on behalf of the Association.

11.6 Severability. Should any part or parts of these Covenants be declared invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining covenants.

11.7 Paragraph Headings and Underlining. The paragraph headings and underlining within this instrument are for convenience only and shall not be construed to be a specific part of the covenants contained herein.

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11.8 County as Third-Party Beneficiary. The County of Garfield shall be a third-party beneficiary to this Declaration only as it relates to Section 4.12 of the Garfield County PUD zoning regulations.

11.9 Rule Against Perpetuities. If any of the terms, covenants, conditions, easements, restrictions, uses, limitations or obligations created by these Covenants shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, such provision shall continue only for the period of the life of the representative of Declarant executing these Covenants, his now living descendants, and the survivor of them, plus twenty-one (21) years.

IN WITNESS WHEREOF, this Declaration of Covenants, Conditions and Restrictions for Valley View Village has been executed as of the day and year first written above.

DECLARANT:

DARTER, LLC

By Terry Lawrence
Terry Lawrence



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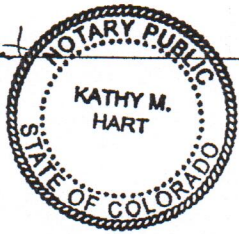
STATE OF Colorado)
) ss.
COUNTY OF Mesa)

Acknowledged, subscribed, and sworn to before me this 2nd day of December
2003, by Terry Lawrence, President of Darter, LLC.

WITNESS my hand and official seal.

My Commission expires: 8/29/06.

Kathy M. Hart
Notary Public





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EXHIBIT A

PRO-RATA ALLOCATION OF ASSESSMENTS

Lot 46 100%

This allocation may be modified periodically as additional tracts are approved for development.