



**SUPPLEMENTAL DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
FOR VALLEY VIEW VILLAGE TOWNHOMES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VALLEY VIEW VILLAGE TOWNHOMES ("Supplemental Declaration") is made and entered into this 6 day of October, 2004, 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 Lot 46, Valley View Subdivision, as shown on the final plat thereof recorded at Reception No. 643044 (the "Property"); and

WHEREAS, the Property will be comprised of multi-family residential buildings (the "Townhomes"); and

WHEREAS, the Townhomes are a part of the larger Valley View Village Subdivision (the "Subdivision"); and

WHEREAS, a Master Declaration of Covenants, Conditions and Restrictions for the Subdivision was recorded in the office of the Clerk and Recorder of Garfield County, Colorado on December 16, 2003, as Reception No. 643048 (the "Master Declaration");

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

**ARTICLE I
GENERAL PURPOSE OF COVENANTS**

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 Lot No. 46 of the Subdivision, as more particularly described on the Final Plat thereof recorded as Reception No. 643044 in the office of the Garfield County Clerk and Recorder, which Final Plat is incorporated herein by reference. It is the intention of the owner 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

After recording, please return to:
Leavenworth & Karp, P.C.
P.O. Drawer 2030
Glenwood Springs, CO 81602

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instrument. Additional property within the Subdivision may be subjected to these covenants by the filing and recording of supplemental declaration.

1.2 Incorporation of Master Declaration. The Master Declaration recorded as set forth above is hereby incorporated by reference to the extent that its provisions relate to the Townhomes.

1.3 Defined Terms. Each capitalized term not otherwise defined in these Covenants shall have the meaning specified or used in the Colorado Common Interest Ownership Act, Sections 38-33.3-101 et seq., Colorado Revised Statutes, as it may be amended from time to time (the "Act").

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

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

1.7 Property Description and Separate Subassociation. The Property shall consist of multi-family structures and surrounding property within the Subdivision. Initially, all real property within Lot 46 of the Subdivision shall be subject to this Supplemental Declaration; provided that additional lands within the Subdivision may be subjected to this Supplemental Declaration by the Declarant; and further provided that Declarant shall have the option to subject individual buildings within Lot 46 to the authority of a separate subassociation and a separate supplemental declaration if Declarant so chooses. In such event, the declaration for the separate subassociation shall obligate it to contribute its pro rata share to the maintenance obligations of the Townhome Association for Common Elements benefitting the entirety of Lot 46.

ARTICLE II **DEFINITIONS**

2.1 "Common Elements" shall be all portions of the Valley View Village Townhomes portion of the Subdivision other than Units and are designated by this Declaration for the common use and enjoyment of the Unit Owners and their families, tenants, guests and invitees. The Townhome Association, subject to the rights and obligations of the Unit Owners set forth in this Declaration, shall be responsible for the management and control of the Common Elements. Each Unit Owner shall own an equal undivided interest in the Common Elements. Every Unit Owner shall have a perpetual right and easement of access to and from a Unit from public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Unit; provided, however that such right and easement shall be subject to (a) the covenants, conditions and easements contained in this Supplemental Declaration, in the Master Declaration and the Plat of the Subdivision; (b) the right of the Townhome Association to adopt, from time to time, rules and regulations for vehicular traffic and other passage across the Common Elements to facilitate the optimum and



most convenient use of the Units and Common Elements by Unit Owners; and (c) the right of the Declarant to construct additional multi-family buildings within the Subdivision and to designate additional Units and/or Common Elements within such property.

2.2 "Limited Common Elements" shall mean a portion of the Common Elements of the Subdivision designated in this Declaration, or the Map defined below, or on the contract documents for the sale and purchase of any such property, or by the Colorado Common Interest Ownership Act, Sections 38-33.3-101 et seq., Colorado Revised Statutes ("CCIOA"), as it may be amended from time to time (the "Act"), for the exclusive use of one or more but fewer than all of the Units. The following portions of the Property, 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, to wit: parking spaces and patio areas assigned to individual Units as shown on the Map.

2.3 "Map" or "Plat Map" or "Supplemental Map" shall mean the map of the Property attached hereto as Exhibit A pursuant to the requirements of CCIOA and includes the plat of the Property if a separate plat is attached to this Supplemental Declaration; provided that any such plat will depict only the units as have actually been constructed as of the date of such plat and shall not be deemed a waiver of the Declarant's right to construct additional units and to subject them to this Supplemental Declaration. By taking title to property subject to this Supplemental Declaration, all Unit Owners consent, without any need for such Owners' individual signatures on any document, to the filing and recording of amended plats to depict the buildings actually constructed and to define or redefine common elements and limited common elements associated with such buildings. THE MAP MAY BE CHANGED IN THE FUTURE AND DOES NOT MEAN THE SUBDIVISION OF LOTS SHOWN HAS BEEN APPROVED BY ANY GOVERNMENTAL AUTHORITY. In the event of any discrepancy in the precise location of boundary lines depicted on both the Map and also on any recorded final plat, then the recorded final plat shall control.

2.4 "Unit" shall mean an individual dwelling unit within a multi-family building to be constructed on the Property and may also include a private yard area if depicted as part of a Unit on the Map. Declarant shall further have the right to submit other Units located outside the Property but within the Subdivision to this Supplemental Declaration by filing a further supplement hereto.

2.5 "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.

ARTICLE III
OWNERS - HOMEOWNERS ASSOCIATION

3.1 Formation and Membership. The Townhome 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 Townhome Association shall,

for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with these Covenants. This Townhome 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 Townhome Association. Membership in the Townhome Association shall automatically terminate when an Owner of one of the Lots ceases to be an Owner of such Lot.

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

3.2 Executive Board and Officers. The affairs of the Townhome 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 Townhome Association.

3.3 Purpose. The Townhome 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 Townhome Association shall have the right 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 Townhome Association. The Townhome Association shall be governed by its Articles of Incorporation and Bylaws as may be amended from time to time.

3.4 Maintenance of Common Elements. The Townhome Association shall operate and maintain all Common Elements and Limited Common Elements within the Subdivision as defined above, including the roofs and exterior surfaces of the structures in order to keep them in good, clean, attractive and sanitary condition and repair, except as follows:

- (a) Except as provided otherwise in this Declaration, in the Master Declaration or by written agreement with the Association, all maintenance of individual Units, including, without limitation, all interior surfaces, structural and nonstructural members, utility systems, utility lines from the point of departure from a shared usage, glazing, doors, patios, yards, decks and other fixtures designed to serve a single Unit, shall be the sole responsibility of the respective Unit Owners. Each Unit shall be maintained in a good, clean, attractive and sanitary condition and repair consistent with the requirements of a first class residential development.
- (b) The Owner of a Unit to which any Limited Common Element is allocated shall be solely responsible for all maintenance of Limited Common Elements associated with such Unit, including without limitation landscaping and the removal of trash, leaves and debris from same;



provided that the Townhome Association shall be responsible for snow removal from all parking areas. If a Unit Owner fails to maintain a Limited Common Element to reasonably acceptable standards as determined by the Townhome Association, then the Townhome Association shall have a right (but not the obligation) to enter upon such Limited Common Element to perform such maintenance and to assess the Unit for the costs of such maintenance. Any other Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed proportionately against the Unit(s) to which the Limited Common Element is assigned.

3.5 Declarant Control. The provisions of Section 3.5 of the Master Declaration are incorporated herein in their entirety.

3.6 Limited Liability and Indemnification. To the fullest extent permitted by law, neither the Townhome Association nor its past, present or future officers, directors, nor any employee, agent or committee member of the Townhome 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 Townhome 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 Townhome Association for such purposes shall not be adequate, the Owners severally agree to indemnify the Townhome Association, the Board and the Declarant against all loss resulting from such action or failure 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 Townhomes by the Townhome 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 Unit.

ARTICLE IV
EASEMENTS AND LICENSES

4.1 Incorporation By Reference. The provisions of Sections 4.1 through and including 4.3 of Article IV of the Master Declaration are incorporated herein by reference in their entirety.

4.2 Eaves and Overhangs. Certain architectural features such as eaves and overhangs associated with any given Unit may encroach across the property boundary line into other

adjacent Units. Easements are hereby granted to the Townhome Association and to individual Unit owners to permit such architectural feature encroachments including but not limited to the right of the Townhome Association and/or the Unit Owner to maintain, repair, and replace such architectural features.

4.3 Limited Common Elements. The Townhome Association is granted easements to enter upon any Limited Common Element for the purpose of maintenance, including but not limited to control of trash, debris or weeds.

4.4 Utilities. The Townhome Association is granted easements for the installation, maintenance, repair and replacement of underground utility lines over and across all portions of the Property outside of building footprints. These easements may be assigned to the master association for the Subdivision and/or to utility providers.

ARTICLE V USE RESTRICTIONS

5.1 Incorporation by Reference. The provisions of Sections 5.1, 5.2, 5.3, 5.5 through and including 5.10, and 5.13 through and including 5.29 of Article V of the Master Declaration are incorporated herein by reference in their entirety.

5.2 No Partition of Common Elements. No Owner shall bring any action for partition or division of the Common Elements or Limited Common Elements. By acceptance of a deed or other instrument of conveyance or assignment, each Owner 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 or Limited 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 Townhome Association for its costs, expenses and reasonable attorneys' fees in defending any such action.

5.3 Vehicles. There are designated parking spaces assigned to each Unit as Limited Common Elements shown on the Map. Each vehicle parked in a designated parking space shall be registered with the Townhome Association by type, year, color, license number and such other identification as is appropriate. Additional parking spaces designated on the Map as general common elements shall be considered visitor parking. Neither any guest of an Owner nor any 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. 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 Townhome Association may remove the vehicle without liability and the expense of removal shall be charged against the Owner.

The Townhome Association shall have the right to assess and enforce penalties against Owners violating these restrictions applying to vehicles as follows: Two Hundred Dollars (\$200.00) for the first violation and Two Hundred Dollars (\$200.00) plus an additional One Hundred Dollars (\$100.00) for each subsequent violation, such that the fine increases in One Hundred Dollar (\$100.00) increments for each succeeding violation.

5.4 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 for a period of less than thirty (30) days. 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.

ARTICLE VI ARCHITECTURAL COMMITTEE

6.1 Incorporation by Reference. The provisions of Sections 6.1 through and including 6.12 of Article VI of the Master Declaration are incorporated herein by reference in their entirety.

ARTICLE VII PARTY WALLS

7.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the structures and improvements within the Townhomes and which is located between Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.2 Sharing of Repair and Maintenance. The cost of normal repair and maintenance of any party wall shall be shared by the Owners who make use of the wall in proportion to such use and shall be considered a Limited Common Element for purposes of Sections 3.4 and 4.3.

7.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, the policy of the respective Unit Owners benefitting therefrom shall cover such damage to the maximum extent of available insurance. Deficiencies in insurance

proceeds for damage to party walls shall be paid in proportion to such use by affected Owners, without prejudice, however, to the right of any such Owners to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

7.4 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to any elements, shall bear the whole cost of furnishing the necessary protection against such elements, and if such wall shall be damaged by such elements, such Owner shall pay the entire cost of repair of the same.

7.5 Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and shall pass to such Owner's successors in title.

ARTICLE VIII **COLLECTION OF ASSESSMENTS - ENFORCEMENT**

8.1 Assessments. All Owners, by acceptance of a deed to 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 Townhome Association. To the extent the Townhome 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 Townhome Association's common property; expenses of the Architectural Committee; and insurance, accounting, and legal functions of the Townhome 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 Townhome Association's common property and any other anticipated costs and expenses of the Townhome 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 B, 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 Townhome 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 both the Valley View Village Homeowners Association and the Battlement Mesa Service Association for the maintenance of the Common Elements that serve

Subdivision and the entire Battlement Mesa PUD, including certain common elements of the Property, at the rate to be determined from time to time by the Valley View Homeowners Association and 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.

8.2 Incorporation by Reference. The provisions of Sections 7.2 through and including 7.5 of Article VII of the Master Declaration are hereby incorporated by reference in their entirety.

**ARTICLE IX
RIGHTS OF LENDERS**

9.1 Incorporation by Reference. Sections 8.1 through and including 8.12 of Article VIII of the Master Declaration are hereby incorporated by reference in their entirety.

**ARTICLE X
INSURANCE**

10.1 Incorporation by Reference. Sections 9.1 and 9.2 of Article IX of the Master Declaration are hereby incorporated by reference in their entirety.

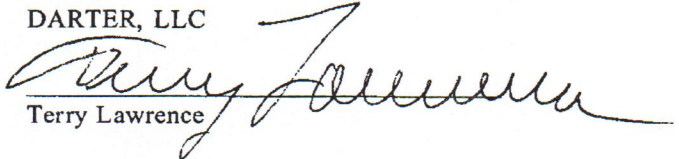
10.2 Additional Insurance. The Townhome Association shall obtain, maintain, and pay the premiums upon, as a common expense, a policy of property insurance covering all of the Common Elements and Limited Common Elements within the Property and all personal property belonging to the Townhome Association, as well as comprehensive general liability insurance covering all of the common elements and public ways of the Property.

**ARTICLE XI
GENERAL PROVISIONS**

11.1 Incorporation by Reference. Sections 11.1 through and including 11.7 and Section 11.9 of the Master Declaration are hereby incorporated by reference in their entirety.

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

DECLARANT:

DARTER, LLC
By 
Terry Lawrence

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11 of 11 R 56.00 D 0.00 GARFIELD COUNTY CO

EXHIBIT B

Allocations of Units for Assessment Purposes

The following Units shall be assessed equally and shall each have one vote; provided that assessments (but not votes) shall be prorated only amongst those units for which a certificate of occupancy has been issued by Garfield County:

- D 1-6
- E 1-6
- F 1-6
- G 1-6
- H 1-6
- I 1-2
- J 1-4
- K 1-6
- L 1-4
- M 1-6
- N 1-2