

DECLARATION OF COVENANTS BIG HORN VALLEY ESTATES

BV PROPERTIES, LLC, a Wyoming limited liability company, herein the "Declarant", hereby declares that all of the lands within the BIG HORN VALLEY ESTATES, as more particularly described and laid out in that certain plat prepared by Mentock-Willey Consultants, approved by the County Commissioners of Sheridan County on January 22, 2003, and recorded in the Office of the County Clerk of Sheridan County as Document No. 2003 432351 on February 14, 2003, shall be subject to the following covenants:

1. **LOTS DEFINED.** These Covenants shall apply to each and every of the thirteen (13) numbered Lots of BIG HORN VALLEY ESTATES, as designated and shown on the aforesaid plat (herein referred to as "Lot" or "Lots"). Each covenant herein shall apply to each such Lot, shall be binding upon and run with the land.

2. **SUBDIVISION.** No Lot shall ever be further divided, subdivided, split or partitioned in any manner.

3. **RESIDENTIAL.** All Lots shall be used only for residential purposes, including any home business or home occupation use as permitted under the applicable zoning regulations of Sheridan County, Wyoming as now in effect or as hereafter from time to time amended or promulgated. Provided however, no sign denoting any such business shall be placed on the Lot greater in size than two square feet and no such sign shall be illuminated. Any such home business shall be operated exclusively within the interior of the home or within the interior of the garage/accessory building on the Lot and shall not result in any equipment, tools or product being placed outside or visible to other Lot owners. Provided further, such home business or home occupation occurring on a Lot may not result in an increase in vehicular traffic to that Lot which is above and beyond what would otherwise be reasonable if that Lot were used only for residential purposes. Nor shall any such home business increase noise, air or water pollution that would be above and beyond what would otherwise be reasonable if that Lot were used only for residential purposes. No driveway surface shall exceed sixteen feet (16') in width and no parking lot area shall be allowed which is greater in size than would be reasonable for a residence. For purposes of illustration, permitted home business or home occupation may include, but shall not necessarily be limited to: the practice of a profession in an office located within the home, a quiet trade or operation which occurs exclusively within the home or garage/accessory building, or the operation of a sales office within the residence for the sale of a product which is not inventoried on the Lot or within the residence but is being sold offsite of the Lot.

4. **CONSTRUCTION.** Any buildings erected on the Lot shall be on-site new construction. No owner of a Lot shall erect or place any mobile homes, factory constructed or other modular residential buildings on a Lot. Trailers shall not be used as a permanent residence during construction. Once construction of a structure is commenced on a Lot, construction of that structure shall be completed within eighteen (18) months of commencement. Temporary structures will be removed upon completion of construction. Mobile homes shall not be used as temporary or permanent residences at any time.

All buildings, fencing and any other improvements shall be appropriate in character, design, color and architecture for the area and the neighborhood. No unusual design, styles or construction methods shall be allowed (for illustration purposes only: there shall be no geodesic domes, no straw bale structures of inferior construction quality or design than what is standard in Sheridan County and no buried underground homes).

All structures shall be constructed of new quality materials. All buildings and improvements will be painted or sided in primarily earth tone colors so that they shall blend with the land and the surrounding area as much as possible.

No buildings shall be erected, altered, placed or permitted to remain on a Lot other than one (1) detached single-family primary residential dwelling, with a

private attached garage, and maximum of one (1) additional accessory building for use as a barn, studio, carriage or guest house, additional garage, workshop, living quarters for domestic employees, recreation room, storage area, etc., or any combination thereof.

Each and every primary residential dwelling shall have a minimum of 1,600 square feet of above-grade finished floor area on a combination of above-grade levels. No basement area will be considered a part of the finished floor area requirements.

Additional accessory buildings shall not exceed 2,000 square feet on the ground level, and may be of pole type construction but shall be sided only with the materials allowed in the following paragraph.

Each primary residential dwelling, and all additional accessory buildings, shall be sided with properly stained and treated cedar or redwood siding or logs, stucco, masonry (ie., natural or cultured stone or brick), high quality resin lap siding, or a combination thereof. No primary residential dwelling, nor any other structure erected on a Lot, shall be sided with other materials such as metal siding in any form, vinyl siding, plywood or sheet siding, pressboard, or exposed unfinished cement or concrete block, or any other such inferior siding.

All major roof lines of any primary residential building shall be pitched with at least a 6/12 pitch; provided however, the roof pitch of porches, dormers and other minor ancillary roof lines shall not be less than a 4/12 pitch. All structures constructed on a Lot shall have a roof with at least a twelve inch (12") overhang. No roof of any other structure erected on a Lot shall be pitched less than a 4/12 pitch.

Permitted roofing materials shall not be in any unusual color and are limited to: tile, composite shingles, asphalt shingles (provided however, if asphalt shingles are used, they shall be the architectural design with the "shake" look and shall be of a quality with at least a 40 year rating), composite "shakes", shakes, metal roofing with a baked enamel finish, or other such comparable quality roofing.

No primary residential dwelling shall exceed two stories above finished grade (not including a standard basement level), nor shall any accessory building exceed twenty four feet (24') in height, as measured from the highest point of the roof to the highest point of the finished grade of the location of the accessory building.

There shall be no chain-link fences nor concrete block fences permitted on any Lot.

Subject to applicable Sheridan County regulations, nothing contained in these Covenants shall preclude the construction of the one permitted accessory building containing living quarters which do not meet the aforesaid minimum finished floor area requirements for a residential dwelling prior to the construction of the primary residential dwelling so long as such use does not exceed 12 months. Provided further that upon construction of a primary residential dwelling, nothing herein shall preclude the use of the living quarters in the accessory building thereafter as an accessory use, such as living quarters for domestic employees or as guest quarters, subject again to all applicable Sheridan County regulations governing the same.

5. GENERAL IMPROVEMENT SET BACK. No improvement (excluding perimeter fences, landscaping and similar improvements which would not defeat the purpose of the set back) shall be constructed closer to any property line than a distance of thirty-five (35) feet. Eaves, steps and open porches of buildings shall not be considered as part of such improvement. Consideration should be given to place structures so as not to disrupt the view of neighboring Lot owners and to provide continuity with the natural surroundings.

6. EXTERIOR LIGHTING. Only standard residential lighting shall be used to illuminate a Lot. All outside lighting shall be arranged, directed and/or shielded so as to prevent any such light shining onto or at the adjacent road and/or Lots.

7. UTILITIES/EASEMENTS. All utilities and service lines installed on Lots shall be underground. Propane tanks shall be buried, or in the alternative, shall be screened from public view and the view of neighboring Lots and said screen shall blend with the adjacent building. Easements are granted to and for the benefit of each Lot along those routes shown on the above-described Plat and designated thereof as "Utility, Drainage and Irrigation Easement" - said easements being fifteen feet (15') in width along the exterior boundary and the road frontage of each Lot (except along the south boundary of the subdivision where said easement is twenty feet (20') in width) and being ten (10') feet in width on each Lot where the boundary lines where two adjacent Lots meet --- all as shown on said Plat. The purpose of this easement is to provide each Lot with the benefit of allowing utilities, drainage and irrigation along such routes as may be necessary for each Lot.

8. WASTE DISPOSAL. The owner of each Lot shall adhere to local regulations for disposing of trash and garbage. No rubbish, debris, ashes or trash of any kind shall be burned on any Lot, nor shall it be placed or permitted to accumulate upon said Lot.

9. PARKING OF VEHICLES, MACHINERY AND EQUIPMENT. Vehicles which are not in running condition or are in a state of disrepair, and trailers, campers, boats, recreational vehicles and other like vehicles, machinery and equipment shall not be placed or stored anywhere on a Lot unless enclosed in a garage or accessory building and out of the view of other Lot owners. Private vehicles which are used on a daily basis and are used regularly do not need to be stored in such a manner.

10. LIVESTOCK, PETS AND FENCING. No livestock of any nature shall be kept, raised, or maintained on a Lot ("Livestock" shall include but not be limited to: horses, donkeys, cattle, sheep, pigs, goats, llamas, peacocks, turkeys, chickens and any other such animals not customarily kept as household pets in the area). Commercial animal husbandry shall not be practiced in any form, and all pets shall be maintained for personal and family use only. All dogs, cats and other such household pets shall be kept restrained on an owner's Lot in a reasonable manner and shall at all times be kept from creating a nuisance or disturbance (particularly a noise disturbance) to other Lot owners within BIG HORN VALLEY ESTATES.

11. FIREARMS, FIREWORKS AND HUNTING. No firearm shall be discharged, and no fireworks shall be displayed or used, within the BIG HORN VALLEY ESTATES.

12. HAZARDOUS, NOXIOUS, OR OFFENSIVE ACTIVITIES. No hazardous, illegal, noxious, or unreasonably loud or offensive activities shall be permitted within the BIG HORN VALLEY ESTATES, nor shall anything be done or placed within BIG HORN VALLEY ESTATES which is or may become a nuisance.

13. IRRIGATION OF YARDS/LANDSCAPING. The Association, as defined in paragraph 14 below, shall have the authority to ensure that all appropriated irrigation water that is available to Big Horn Valley Estates, and to each Lot thereof, is properly delivered to the subdivision boundary. After such irrigation water is delivered to the boundary of the subdivision, each Lot owner shall be responsible for the maintenance, operation and cost of the ditch as it crosses his/her Lot and shall be allowed to divert his/her share of such irrigation water and shall be responsible for ensuring that the remainder of the irrigation water flows through his/her Lot to the other downstream Lots on that ditch. Each Lot may improve the means and location of the ditch conveyance of such irrigation water through his/her Lot so long as such improvement does not impair downstream users of such water. The ditch conveyance system may be modified by a Lot owner on his/her Lot so long as downstream Lots and users are not adversely affected as to the quantity or quality of the water transferred through such Lot. A Lot owner making such modifications shall ensure that such modifications comply with the rules and regulations of the Wyoming State Engineer's Office.

The irrigation ditch system of Big Horn Valley Estates provides for

approximately equal shares of available irrigation water to each Lot, as is set forth in THAT WATER RIGHTS DISTRIBUTION PLAN FOR BIG HORN VALLEY ESTATES prepared by Mentock-Wiley Consultants and filed with the Wyoming Engineer's Office. Said available irrigation water is intended to provide water to irrigate the yards and landscaping of each Lot, as the appropriated irrigation water appurtenant to BIG HORN VALLEY ESTATES is available from time to time and from season to season.

Landscaping, including the introduction and planting of grasses, shrubs, and trees, is permitted and encouraged; provided however all such landscaping shall be reasonably maintained and manicured and each Lot shall be kept reasonably clear and free of noxious weeds.

14. BIG HORN VALLEY ESTATES HOME OWNERS' ASSOCIATION.

a. Creation. The Big Horn Valley Estates Home Owners' Association (herein referred to as the "Association") is hereby created as an unincorporated, nonprofit Association under the Wyoming Unincorporated Nonprofit Association Act, Wyoming Statutes, to exercise the powers granted, and to perform the functions imposed, by these Covenants with regard to the Lots.

b. Purposes and Powers. The general purposes of the Association are to:

- (i) enforce these Covenants, as set forth herein and as may be amended,
- (ii) to govern, administer and pay for the private maintenance and repair of Valley Road,
- (iii) to ensure the proper delivery of the available appropriated irrigation water from the Colorado Colony Ditch to the boundaries of Big Horn Valley Estates;
- (iv) to serve as an architectural control committee to protect the generally required characteristics of construction described above and to prohibit any construction in violation of such requirements. In this capacity as an architectural control committee, the Association's approval shall not be required to commence construction; provided however, before any construction is commenced on a Lot, the owner shall submit to the Association the construction plans, elevations and color selections for the project, and the Association shall have a reasonable time to submit comments to the owner prior to commencement of construction. Should the Association deem such plans, elevations or colors a clear violation of the construction requirements set forth hereinbefore, the Association shall have the right, if after a proper vote is taken, to take action as the Association to attempt to enjoin the non-permitted construction.
- (v) to generally promote the health, safety, and welfare of the residents of the Lots. The Association shall also have the power to provide such additional services for the Lots as the owners may from time to time approve.

For these purposes, the Association is hereby empowered to:

- (1) exercise all of the authority, powers, and privileges delegated to or vested in the Association by these Covenants, by Wyoming Statutes, or as may be reasonably implied as being necessary and proper hereunder, and to perform all of the duties and obligations established by these Covenants;
- (2) elect officers to carry out the administrative duties authorized by the Association's members from time to time. Officers shall include a President, Vice President and Secretary/Treasurer unless otherwise provided by the Association;
- (3) fix, levy, collect, and enforce payment by any lawful means, all charges or assessments pursuant to these Covenants, and to pay all expenses in connection therewith and all expenses incident to the conduct of the business of the Association, specifically including the costs associated with repairing, maintaining and operating Valley Road; and
- (5) employ such firms or persons to perform any or all of the duties and obligations of the Association.

c. **Membership.** Every person who is an owner of a Lot shall be a member of the Association, and such membership shall be appurtenant to and may not be separated from the ownership of the Lot. An owner shall become a member upon conveyance of record to him of his Lot and shall cease being a member upon his conveyance of record of such Lot. No certificate or document, save and except a recorded conveyance to a Lot, shall be required to evidence such membership.

d. **Voting Rights.** Each owner shall be entitled to one vote for each Lot owned, save and except that the voting rights of any owner who is more than 30 days past due on the payment of any assessment to the Association shall be automatically suspended until such assessment, together with interest, costs, and reasonable attorney's fees, is paid in full. The voting rights of any owner against an enforcement issue is being voted upon by the Association shall be suspended for the vote on that enforcement issue only. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast on behalf of one Lot.

e. **Action.** An action of the Association, or any approval required of the owners under these Covenants, shall require the affirmative vote of *at least* eighty percent (80%) of all Lots [i.e., at least 11 of the 13 Lots voting in the affirmative], excluding the vote of any owner whose voting rights are suspended under Subparagraph d., cast in person or by proxy, at a duly constituted meeting of the Association, or, without a meeting by written approval of such action.

f. **Meetings.** The Association shall have an annual meeting. The first annual meeting shall be held in the month of June of 2003, as shall be called to order by Declarant. At such initial annual meeting, the members of the Association shall determine the preferred time, date and location for the annual meetings thereafter. Other special meetings of the Association may be called at any time by the written request of the owners of any three (3) Lots. Written notice of any and all meetings of the Association shall be given by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each owner, addressed to the owner's address last appearing on the books of the Association, or supplied by such owner to the Association for the purpose of notice. Such notice shall specify the place, day, and hour of the meeting, and the purpose of the meeting. Each owner may vote in person or by proxy at all meetings of the Association. All proxies shall be in writing. Every proxy shall be revocable and shall automatically cease upon conveyance by the owner of his Lot.

g. **Books and Records.** Upon prior written request, the books, records, and papers of the Association shall be subject to inspection at a reasonable time and place by any owner and by a mortgagee holding a duly recorded mortgage against a Lot.

h. **Principal Office.** The Association shall designate a principal office from time to time.

i. **Dissolution.** The Association may be dissolved upon the written approval of all of the owners of all the Lots. Upon dissolution of the Association, the assets of the Association shall be distributed to the owners of the Lots within BIG HORN VALLEY ESTATES in equal shares, or, dedicated to an appropriate public agency or nonprofit organization to be used for purposes broadly similar to those for which this Association was created.

j. **Limitations.** No part of the net earnings of the Association shall inure to the benefit of, or be distributed to, the owners, except that the Association shall be authorized to pay reasonable compensation for services rendered.

15. **ASSESSMENTS.**

a. **Creation of Lien & Personal Obligation of Assessments.** Each owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all assessments

or charges duly established and collected as hereinafter provided. All such assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an owner's successors in title unless expressly assumed by them.

b. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to pay the obligations imposed upon the Association by these Covenants and to promote the health, safety, and welfare of the residents of the Lots.

c. Annual Assessments. The Association shall establish annual assessments to meet its obligations under these Covenants, including specifically the obligations to maintain Valley Road and to satisfy the operating expenses of the Association. The Association shall have the power to include within the annual assessment amounts to meet the costs of any other service duly approved by the Association.

d. Special Assessments. In addition to the regular assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only.

e. Approval of Assessments. All assessments under this Paragraph 15 shall be subject to the approval of the Association, as provided herein. It is Declarant's intention that the initial annual assessment for the year 2003 shall be set in accord with c. above at its first annual meeting in June of 2003.

f. Uniform Rate of Assessment. Both annual and special assessments must be fixed as a uniform rate for all Lots, except as noted specifically above.

g. Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all Lots on such date as shall be established by the Association under Subparagraph e. The Association shall fix the amount of the annual assessment against each Lot at least 30 days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

h. Effect of Nonpayment of Assessments. Any assessment not paid within 30 days after the due date shall thereafter bear interest from the due date at the rate of 12 percent per annum. Upon the failure of a Lot owner to pay the assessment when due, the Association will provide written notice to the violating Lot owner by delivering the notice by certified mail -- such delivery shall be deemed effective on the date notice is mailed by the Association. The violating Lot owner shall have thirty (30) days from the date the notice is deposited in the mail to pay, in full, the unpaid assessment, interest thereon and costs. If payment is not received by the Association within said 30 day period, the Association may bring an action at law against the owner personally obligated to pay the same, or may foreclose the lien against the Lot which is created herein by such nonpayment. The lien created herein shall be foreclosed in the manner provided for the foreclosure of real estate mortgages in the State of Wyoming and may be, at the Association's discretion, accomplished by advertisement and sale as provided in the Wyoming Statutes. In the event of such collection and/or foreclosure, the nonpaying Lot owner shall be liable for all attorney's fees and costs incurred by the enforcing party in such

collection. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of his Lot.

i. **Subordination of Lien to Mortgages.** The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to the foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

16. **VARIANCE.** The owners of BIG HORN VALLEY ESTATES shall have full power and authority, upon an affirmative vote of *at least* eighty percent (80%) of Lot owners (ie., 11 of the 13 Lots), to grant a variance from these Covenants for good cause shown in order to prevent undue hardship on an owner subject to the Covenants. The variance, if granted, shall not violate the overall theme and appearance of the property subject to these Covenants and shall be in writing.

17. **ENFORCEABILITY.** These Covenants may be enforced by the record owner of any Lot or parcel in the BIG HORN VALLEY ESTATES or by the Association, but shall not run to the benefit of a third party, except as otherwise specifically provided below. The Association shall be entitled to recovery of its attorneys fees and costs incurred in a successful enforcement of these Covenants.

18. **SEVERABILITY.** Invalidity of any one of these Covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

19. **NON-WAIVER.** Any failure to promptly enforce a violation of these Covenants shall not be deemed a waiver of the right to so enforce whatsoever.

20. **COVENANTS RUN WITH THE LAND; AMENDMENT.** This Declaration of Covenants shall run with the land and shall be binding upon all parties and shall be automatically extended for successive periods of ten (10) years unless an instrument signed by *at least* eighty percent (80%) of Lot owners repeals or amends this Declaration covenants.

Except as expressly otherwise provided hereafter, these Covenants may be amended only upon an affirmative vote of *at least* eighty percent (80%) of Lot owners (ie., 11 of the 13 Lots) and with an instrument signed by the record owners of at least eleven Lots in the BIG HORN VALLEY ESTATES which shall be filed in the Office of the County Clerk of Sheridan County, Wyoming.

Executed by the Declarant this 20th day of February, 2003.

BV PROPERTIES, LLC, a
Wyoming limited liability company

BY: 

Brian N. Beisher, Operating Manager

BY: 

Greg Von Krosigk, Vice Operating
Manager, attesting officer

STATE OF WYOMING)
) ss.
COUNTY OF SHERIDAN)

On this 20th day of February, 2003, the foregoing Declaration was acknowledged before me by Brian N. Beisher, who appeared before me and was personally known to me, and who, being by me duly sworn, did say that he is the Operating Manager of BV Properties, LLC, a Wyoming limited liability company and that said instrument was signed on behalf of said Company by proper authority and he acknowledged said instrument to be the free act and deed of said Company.

GIVEN under my hand and notary seal the day and year first above written.

Lynn M. Smith
Notary Public

My Commission expires:

STATE OF WYOMING)
) ss.
COUNTY OF ALBANY)



On this 4th day of February, 2003, the foregoing Declaration was acknowledged before me by Greg A. Von Krosigk, who appeared before me and was personally known to me, and who, being by me duly sworn, did say that he is the Vice Operating Manager of BV Properties, LLC, a Wyoming limited liability company and that said instrument was signed on behalf of said Company by proper authority and he acknowledged said instrument to be the free act and deed of said Company.

GIVEN under my hand and notary seal the day and year first above written.

Sheila R. Sanchez
Notary Public

My Commission expires:

