

AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR BATTLEMENT MESA

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AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR BATTLEMENT MESA

THIS AMENDED AND RESTATED DECLARATION is made and entered into by BATTLEMENT MESA PARTNERS, a Colorado general partnership ("Declarant"), and by the members of the BATTLEMENT MESA SERVICE ASSOCIATION, on the date and year hereinafter set forth.

WITNESSETH:

THAT, WHEREAS, a certain Declaration of Covenants, Conditions and Restrictions for Battlement Mesa was recorded on October 15, 1981, in Book 583, Page 456, Reception No. 320285, in the records of the office of the Clerk and Recorder of Garfield County, Colorado, as amended or supplemented from time to time (collectively, the "Original Declaration"); and

WHEREAS, Article V, Section 3 of the Original Declaration permits amendment or repeal of any provision of the Original Declaration at any time upon approval of the amendment or repeal by at least two-thirds (2/3) of the total combined voting power of the Battlement Mesa Service Association, voting in person or by proxy at a meeting duly called for this purpose, in conjunction with the approval of such matter by the Declarant if the Declarant is an Owner at such time; and

WHEREAS, this Amended and Restated Declaration received the approval of at least two-thirds (2/3) of the total combined voting power of the Battlement Mesa Service Association, voting in person or by proxy at a meeting duly called for that purpose, and also contains the approval of the Declarant; and

WHEREAS, this Amended and Restated Declaration binds and encumbers that certain real property and improvements in the County of Garfield, State of Colorado, which is described on Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, the undersigned desire to amend and restate the Original Declaration in its entirety, and to subject and to place upon the above-described property certain covenants, conditions and restrictions, easements, reservations, rights-of-way, obligations, liabilities, and other charges and provisions set forth herein for the purpose of protecting the value and desirability of said Property and for the purpose of furthering a plan for the improvement, sale and ownership of said property, so that a

harmonious and attractive development of said property may be accomplished and the health, comfort, safety, convenience and general welfare of the owners thereof promoted and safeguarded.

NOW, THEREFORE, the undersigned hereby amend and restate the Original Declaration in its entirety, and hereby declare that all of the property described above shall be held, sold and conveyed subject to the following:

**ARTICLE I**  
**DEFINITIONS**

Unless otherwise expressly provided herein, the following words and phrases when used in this Amended and Restated Declaration shall have the meanings hereinafter specified.

1.1 Agencies. "Agencies" shall mean and collectively refer to the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Veterans Administration (VA), the Colorado Housing Finance Authority (CHFA), or any other public, quasi-public or private agency or entity which performs (or may in the future perform) functions similar to those currently performed by the entities specifically listed herein.

1.2 Amended and Restated Declaration. "Amended and Restated Declaration" shall mean this instrument as it may be amended or supplemented from time to time.

1.3 Annexable Area. "Annexable Area" shall mean all of the real property described on Exhibit B attached hereto and incorporated herein by this reference, all or any portion of which may from time to time be made subject to this Amended and Restated Declaration pursuant to the provisions of Section 2.2 hereof.

1.4 Architectural Committee. "Architectural Committee" shall mean the Committee appointed by the Declarant or by the Board of Directors, pursuant to and as provided in Article IX of this Amended and Restated Declaration.

1.5 Articles of Incorporation. "Articles of Incorporation" shall mean the Articles of Incorporation of Battlement Mesa Service Association, a Colorado corporation, as amended, which have been filed in the office of the Secretary of State of the State of Colorado.

1.6 Assessment. "Assessment" shall mean a Common Assessment, a Special Assessment, a Service Assessment, or a Reimbursement Assessment, as hereinafter defined.

1.7 Assessment Unit. "Assessment Unit" shall mean a Dwelling Unit or, as to Commercial Sites and the non-residential portion(s) of Miscellaneous Use Sites, each five hundred (500) square feet of finished non-residential building area on such property as evidenced by issuance of a final certificate of occupancy for the applicable building; provided, that until completion of a building on a Privately Owned Site, on a Commercial Site, or on the non-residential portion(s) of a Miscellaneous Use Site, such Site or portion(s) thereof shall constitute one (1) Assessment Unit.

1.8 Board of Directors. "Board of Directors" or "Board" shall mean the Board of Directors of the Service Association.

1.9 Bylaws. "Bylaws" shall mean the Bylaws of the Service Association, which have been adopted by the Board of Directors of the Service Association, as the same may be amended from time to time.

1.10 Commercial Site. "Commercial Site" shall mean a Privately Owned Site within the Service Association Area which is designated for commercial uses by zoning or in a Supplemental Declaration covering that Site.

1.11 Common Assessment. "Common Assessment" shall mean the assessments made for the purpose of covering the portion of the annual costs of operating the Service Association, including the expenses incurred in connection with any authorized function of the Service Association provided to or for the benefit of the Owners generally, which amounts are to be paid by each Owner to the Service Association for purposes provided herein and charged to such Owner and to the Privately Owned Site of such Owner; but excluding any Special Assessment, Service Assessment, or Reimbursement Assessment.

1.12 Common Assessment Limitation. "Common Assessment Limitation" shall mean the upper limit monetary cap which the Common Assessments shall not exceed on an annual fiscal year basis. The amount of the Common Assessment Limitation shall increase for each Service Association fiscal year, based on the Common Assessment Limitation for the preceding fiscal year as more fully provided in Section 7.3 hereof.

1.13 Condominium. "Condominium" shall mean (a) a "condominium unit" as defined in Section 38-33-103 of the Colorado Condominium Ownership Act, C.R.S. 1973, as amended, or as may hereafter be defined in any future Colorado statute or statutes; or (b) that portion of real property owned by a cooperative housing corporation, as defined in Section 216 of the Internal Revenue Code, to which a shareholder is entitled to

exclusive occupancy; or (c) a unit in a project in which an undivided interest in land is coupled with the right of exclusive occupancy of any space located thereon.

1.14 Declarant. "Declarant" shall mean Battlement Mesa Partners, a Colorado general partnership, its successors and assigns, if and only to the extent that such Person is specifically designated by the then-Declarant to be a successor or assign of Declarant under this Amended and Restated Declaration, in a duly Recorded instrument. Notwithstanding the foregoing, a successor to Battlement Mesa Partners by consolidation or merger shall automatically be deemed a successor or assign of Battlement Mesa Partners as Declarant under this Amended and Restated Declaration.

1.15 Delegate. "Delegate" shall mean the natural person selected by Members within a Delegate Area, pursuant to Article III hereof, to represent such Delegate Area and to cast votes on behalf of Members within such Delegate Area as provided in this Amended and Restated Declaration, the Articles of Incorporation and Bylaws.

1.16 Delegate Area. "Delegate Area" shall mean a geographical area which may constitute any portion or portions of the Service Association Area and from which all Members in that geographic area shall elect a single Delegate to represent their collective voting power, as further provided in Article III hereof. Parts of a Delegate Area need not be contiguous. No Delegate Area containing Owner Occupied Sites may contain any other type of Privately Owned Site.

1.17 Dwelling Unit. "Dwelling Unit" shall mean the smallest part of an Improvement on a Privately Owned Site which is legally habitable for residential occupancy and for which a final certificate of occupancy for residential use has been issued, including any individual single family attached or detached unit, Condominium or apartment unit. For purposes of Privately Owned Sites on which a Dwelling Unit(s) has not been completed, as aforesaid, "Dwelling Unit" shall mean the number of Dwelling Unit(s) planned to be completed on such Privately Owned Site as provided in the Supplemental Declaration thereof or, if not so provided, then as permitted in the zoning or approved development plan for such Privately Owned Site.

1.18 First Mortgage. "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument Recorded in the records of the office of the Clerk and Recorder of the County of Garfield, Colorado, pertaining to a Residential Site and having priority of record over all other Recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).



1.19 First Mortgagee. "First Mortgagee" shall mean and refer to any Person named as a mortgagee or beneficiary under any First Mortgage, including, for purposes of Section 10.2 hereof, with respect to notice of cancellation or substantial modification of certain insurance policies, and for purposes of Section 12.7 hereof, the Administrator of Veterans Affairs, an Officer of the United States of America, and his assigns, under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is Recorded or not, and the land records in the Office of the Clerk and Recorder of the County of Garfield, Colorado, show the said Administrator as having the Record title to the Residential Site, or any successor to the interest of any such Person under such First Mortgage.

1.20 Improvements. "Improvements" shall mean all structures and any appurtenances thereto or components thereof of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, patio covers, awnings, painting or other finish material of any exterior surfaces of any visible structure, additions, walkways, bicycle and/or equestrian trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, and exterior air conditioning and water softener fixtures.

1.21 Member. "Member" shall mean an Owner; membership in the Service Association shall be appurtenant to, and may not be severed from, ownership of a Privately Owned Site.

1.22 Miscellaneous Use Site. "Miscellaneous Use Site" shall mean any Privately Owned Site within the Service Association Area designated for greenbelt, mixed residential and commercial or other uses in the Supplemental Declaration covering that Site (except any Residential Site or Commercial Site). The manner in which the Owner of any Miscellaneous Use Site will use any Service Association Properties and contribute to the cost of operating the Service Association shall be set forth in the Supplemental Declaration covering such Miscellaneous Use Site.

1.23 Notice and Hearing. "Notice and Hearing" shall mean a written notice and a public hearing before the Board of Directors in the manner provided in the Bylaws.

1.24 Original Declaration. "Original Declaration" shall mean that certain Declaration of Covenants, Conditions and Restrictions for Battlement Mesa, recorded on October 15, 1981, in Book 583 at Page 456, Reception No. 320285, in the records of the Office of the Clerk and Recorder of Garfield County, Colorado, as amended or supplemented from time to time.

1.25 Owner. "Owner" shall mean the Record title holder, including Declarant, whether one or more Persons, of fee simple title to a Privately Owned Site, including sellers under executory contracts of sale and excluding buyers thereunder. The Owner of a Rental Site, Commercial Site or Miscellaneous Use Site, shall be the "Owner" for purposes of this Amended and Restated Declaration, and not the lessees or tenants thereof or of any Improvements located thereon.

1.26 Person. "Person" shall mean a natural person, a corporation, a partnership or any other entity recognized as being capable of owning real property under Colorado law.

1.27 Privately Owned Site or Site. "Privately Owned Site" or "Site" shall mean any lot or any Condominium or parcel of land within the Service Association Area which is shown upon any Recorded plat map, or any other parcel of land which may be sold or conveyed without violation of the provisions of Colorado law pertaining to the subdivision of land. "Privately Owned Site" or "Site" shall include, without limitation, all Residential Sites and any Rental Site, but shall not include the Service Association Properties or any Publicly Owned Site.

1.28 Project Area. "Project Area" shall mean the aggregate of the Service Association Area which is subject to this Amended and Restated Declaration at any point in time, and the Annexable Area.

1.29 Publicly Owned Site. "Publicly Owned Site" shall mean any lot or parcel of land within the Service Association Area which at any time is dedicated by Declarant to, or otherwise acquired by, any governmental body. Publicly Owned Sites shall be subject to the provisions of Article VIII, Article IX, and Article XI hereof, but shall not be subject to Assessments, nor shall the Owners thereof be Members of the Service Association.

1.30 Record, Recorded or Recordation. "Record" or "Recorded" shall mean the filing for record of any document in the real estate records in the office of the Clerk and Recorder of Garfield County, Colorado.

1.31 Reimbursement Assessment. "Reimbursement Assessment" shall mean a charge against a particular Owner and such Owner's Privately Owned Site to reimburse the Service Association for expenditures or losses incurred as a result of the action(s) of such Owner or any Related User of such Owner, as provided in Section 7.6 hereof.

1.32 Related User. "Related User" shall mean: (a) any Person who resides with an Owner within the Service Association Properties; (b) a guest or invitee of an Owner; or (c) an

occupant, tenant or contract purchaser of Improvements on a Privately Owned Site, and any family member, guest, invitee or cohabitant of any such Person.

1.33 Residential Site. "Residential Site" shall mean any Privately Owned Site within the Service Association Area designated for residential use in this Amended and Restated Declaration, in the Supplemental Declaration covering that Site, or in approved zoning documents on file with Garfield County, Colorado.

1.34 Rules and Regulations. "Rules and Regulations" shall mean rules and regulations adopted by the Board of Directors as provided in Section 4.3 of this Amended and Restated Declaration.

1.35 Service Assessment. "Service Assessment" shall mean a charge against one or more Owners and their Privately Owned Sites for services provided or to be provided by the Service Association to such Owners, as provided in Sections 4.3(e) and 7.7 hereof.

1.36 Service Association. "Service Association" shall mean Battlement Mesa Service Association, a Colorado nonprofit corporation, its successors and assigns.

1.37 Service Association Area. "Service Association Area" shall mean any real property which is or hereafter becomes subject to this Amended and Restated Declaration. The property initially subject to this Amended and Restated Declaration is as described on Exhibit A attached hereto and incorporated herein by this reference.

1.38 Service Association Properties. "Service Association Properties" or "Service Association Property" shall mean all real and personal property, including Improvements: now or hereafter owned by the Service Association; or which the Service Association has a contractual right to use; or which the Service Association maintains, holds or uses for the common use and enjoyment of all or certain of the Members or for other purposes as may be permitted by this Amended and Restated Declaration.

1.39 Special Assessment. "Special Assessment" shall mean a charge against each Owner and such Owner's Privately Owned Site, representing a portion of the costs to the Service Association for the purpose of funding such functions as the Service Association may determine, including, without limitation, reconstruction, major capital repairs, maintenance, correction of Budget deficits, replacements and Improvements.

1.40 Subassociation. "Subassociation" shall mean any Colorado corporation and its successors and assigns, organized and established or authorized pursuant to, or in connection with, one or more Supplemental Declarations, the membership of which is composed of Owners of Privately Owned Sites within the area(s) covered by a Supplemental Declaration(s).

1.41 Supplemental Declaration. "Supplemental Declaration" shall mean a written Recorded instrument including, without limitation, a condominium declaration, containing covenants, conditions, restrictions, reservations, easements or equitable servitudes, or any combination thereof, which affects any portion(s) of the Project Area, excluding this Amended and Restated Declaration.

## ARTICLE II ANNEXATION TO SERVICE ASSOCIATION AREA

2.1 Delegate Areas for Initial Service Association Area. The Service Association Area initially subject to this Amended and Restated Declaration shall constitute separate Delegate Areas as set forth on the attached Exhibit A.

2.2 Property Which May Be Annexed. Within twenty (20) years after the date this Amended and Restated Declaration is Recorded, Declarant may, but shall in no way be required to, from time to time, as long as Declarant owns an interest in any portion of the Project Area, unilaterally add to the Service Association Area all or any portion of the Annexable Area.

2.3 Manner of Annexation. Real property ("Annexed Property") within the Annexable Area shall, upon Recording of a final plat therefor, become part of the Service Association Area and subject to this Amended and Restated Declaration. Such annexation shall be evidenced by, and effective upon the date of, Recordation of a Supplemental Declaration meeting the requirements hereinafter set forth. A Supplemental Declaration, shall, without limitation: (a) contain the executed and acknowledged written consent of Declarant; (b) state the land classification (Residential Site, Commercial Site, Miscellaneous Use Site, Service Association Properties, or Publicly Owned Site) of the Annexed Property, and state the number of Assessment Units included therein; (c) designate in which Delegate Areas the Annexed Property is located; and (d) state whether or not Sites therein shall be subject to the jurisdiction of a Subassociation. A Supplemental Declaration may provide for phased annexation so that real property may be made subject to the Supplemental Declaration and this Amended and Restated Declaration at different times. A Supplemental Declaration may impose on the Annexed Property described therein covenants, conditions, restrictions, limitations, reservations, exceptions, equitable

servitudes and other provisions in addition to, but not in conflict with, those set forth in this Amended and Restated Declaration, taking into account the unique and particular aspects of the proposed development of the Annexed Property covered thereby.

2.4 Annexation of Condominiums. In order to add Annexed Property which will be developed as Condominiums, Declarant, in addition to meeting the requirements of Section 2.3, shall take both of the following steps: (a) Record a Statement of Intention to Annex, which shall state the number of Condominiums which Declarant intends to annex, shall provide that, upon Recordation, each Condominium described therein shall become subject to this Amended and Restated Declaration, but only for purposes of voting and for payment of Assessments, and shall further provide that, upon Recording of a condominium map or supplemental condominium map ("Map") which depicts the Condominiums described in the Statement of Intention to Annex, all of the property described on the Map shall be annexed to this Amended and Restated Declaration for all purposes; and (b) Record the Map. Upon Recording of the Statement of Intention to Annex, the Supplemental Declaration and the Map, all of the property described therein shall be annexed to this Amended and Restated Declaration and be subject to the provisions hereof.

### ARTICLE III SERVICE ASSOCIATION OPERATION

3.1 Service Association. The Service Association has been or will be incorporated under the Colorado Nonprofit Corporation Act. The Service Association shall have the duties, powers and rights set forth in this Amended and Restated Declaration and in its Articles of Incorporation and Bylaws, and shall have a Board of Directors to manage its affairs. The Board of Directors shall be elected by Delegates casting votes of the Members within their Delegate Area. Each Delegate shall be elected by the Owners within his Delegate Area, acting in their capacity as Members of the Service Association.

3.2 Board of Directors. The number, term and qualifications of the members of the Board of Directors shall be fixed in the Articles of Incorporation and Bylaws; provided that, until the date when Declarant has conveyed all Privately Owned Sites to Owners other than a Declarant, unless sooner relinquished by Declarant, the seven (7) member Board of Directors shall consist of five (5) directors elected by Delegates and two (2) directors appointed by the Declarant. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Service Association, or to agents and employees of the Service Association, but such delegation of authority shall not relieve the

Board of Directors of the ultimate responsibility for management of the affairs of the Service Association. Action by or on behalf of the Service Association may be taken by the Board of Directors without a vote of Members or Delegates, except as otherwise specifically provided in this Amended and Restated Declaration.

3.3 Membership in Service Association. Each Owner, including Declarant, shall be a Member of the Service Association and shall automatically be the holder of the membership appurtenant to each Privately Owned Site owned by such Owner. The membership appurtenant to each Site shall automatically pass with fee simple title to such Site. Membership in the Service Association shall not be assignable separate and apart from fee simple title to a Privately Owned Site, except that an Owner may assign some or all of the Owner's rights as an Owner and as Member of the Service Association to a tenant or First Mortgagee, and may arrange for a tenant to perform some or all of such Owner's obligations as provided in this Amended and Restated Declaration. However, no such delegation or assignment shall relieve an Owner from the responsibility for fulfillment of his obligations as an Owner under this Amended and Restated Declaration. The rights acquired by any such tenant or First Mortgagee shall be extinguished automatically upon termination of the tenancy or First Mortgage. The assignment of rights by an Owner pursuant to this Section shall not be subject to any present or future statutory time limit for the duration of proxy rights.

3.4 Establishment of Delegate Areas. The Service Association Area shall be divided into Delegate Areas, as hereinafter described, and each Delegate Area shall elect one (1) Delegate to the Service Association to exercise the voting power of all the Members in such Delegate Area. A Delegate Area containing Owner Occupied Sites shall not contain any other type of Privately Owned Site. If a Subassociation is created, then all of the Annexed Property within the jurisdiction of the Subassociation shall constitute a Delegate Area. The Delegate Areas for each portion of the Service Association Area at the time of Recording of this Amended and Restated Declaration shall be as set forth on the attached Exhibit A. The Delegate Area(s) for each portion of the Annexable Area shall be established by the Supplemental Declarations for such property. Such Supplemental Declarations shall contain legal descriptions of the portions of the Project Area which shall be or become part of a Delegate Area and a statement that such real property described therein shall be or become part of a designated Delegate Area for purposes of this Amended and Restated Declaration.

3.5 Voting Rights of Members. Each member shall have the right to cast votes for the election of the Delegate to the Service Association to exercise the voting power of the Delegate

Area in which the Member's Privately Owned Site is located. There shall be one class of voting membership in the Service Association, and all Members shall be members of such class. However, voting rights shall be limited to one (1) vote per Assessment Unit, such that the Members who own each Privately Owned Site shall collectively be entitled to one (1) vote for each Assessment Unit within such Privately Owned Site.

(a) The candidate for election to a Delegate position who receives a plurality of the votes validly cast by the Members in such Delegate's Delegate Area shall be elected as the Delegate from such Delegate Area. The Articles of Incorporation or Bylaws shall provide for the manner time, place, conduct, and voting procedures for elections to elect a Delegate, or for other purposes.

(b) Notwithstanding anything to the contrary contained herein, however, Delegates representing Owners of Privately Owned Sites other than Sites which are intended to be occupied by the Owner thereof, shall never elect a majority of the members of the Board of Directors, and all other members of the Board of Directors shall be elected by the Delegates representing Owners of Sites which are intended to be occupied by the Owner thereof.

3.6 Voting Rights of Delegates. Each Delegate may cast as many vote(s) on behalf of his Delegate Area as the Owners of Privately Owned Sites in such Delegate Area are authorized to cast under this Amended and Restated Declaration. A Delegate may cast votes with respect to each Privately Owned Site only during such periods as the Owner of such Privately Owned Site is entitled to cast votes for the election of a Delegate.

3.7 Manner of Voting. Each Delegate shall cast the votes which he or she represents in such manner as the Delegate, in his or her sole discretion, deems appropriate, acting on behalf of all of the Owners in the Delegate Area; provided, however, that in the event that at least a majority in interest of the Owners in any Delegate Area shall determine at any duly constituted meeting to instruct their Delegate as to the manner in which he or she is to vote on any issue, then the Delegate representing such Delegate Area shall cast all of the voting power in such Delegate Area in the same proportion, as nearly as possible without counting fractional votes, as the Owners in such Delegate Area shall have cast their votes "for" and "against" such issue. A Delegate shall have the authority, in his or her sole discretion, to call a special meeting of the Members of the Delegate's Delegate Area in the manner provided in the Bylaws, for the purpose of obtaining instructions as to the manner in which to vote on any issue to be voted on by the Delegates. When a Delegate is voting without instruction or recommendations from

the Members represented by such Delegate, then all of the votes may be cast as a unit, or the Delegate may apportion some of such votes in favor of a given proposition. It will be presumed for all purposes of Service Association business that any Delegate casting votes will have acted with the authority and consent of all of the Members of the Delegate Area of such Delegate.

**ARTICLE IV**  
**DUTIES AND POWERS OF SERVICE ASSOCIATION**

4.1 General Duties and Powers of Service Association. The Service Association has been formed to further the common interests of the Members. The Service Association, acting through the Board of Directors, shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, repair, improve, regulate and enhance Service Association Properties, and to improve and enhance the attractiveness, desirability and safety of the Service Association Area.

4.2 Duties of Service Association. Without in any way limiting the power or authority of the Service Association to assume or agree to perform other duties or matters, the Service Association shall specifically have the duty to:

(a) Accept title to any property transferred to the Service Association as Service Association Properties, including any Improvements thereon, provided that such transfer and property are not inconsistent with the terms of this Amended and Restated Declaration. "Title" interests transferred to the Service Association may include fee simple title, easements, leasehold interests and contractual rights or other rights or licenses to use property. Any property or interest in property transferred to the Service Association shall, except to the extent otherwise specifically approved by resolution of the Board of Directors, be transferred to the Service Association free and clear of all liens (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Amended and Restated Declaration and of any applicable Supplemental Declaration.

(b) Manage, operate, care for, maintain and repair all Service Association Properties and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members. In addition, the Service Association may operate, maintain and repair property other than Service Association Properties, if some or all of the Members will benefit thereby or if such is required by the applicable governmental authority, including, without limitation, maintenance of public streets and landscaping on public rights-of-way.



(c) Pay all taxes and assessments levied upon the Service Association Properties and all other taxes and assessments payable by the Service Association. The Service Association shall have the right to contest any such taxes or assessments by appropriate legal proceedings in order to prevent the sale or foreclosure of any lien for such tax or assessment, and provided that the Service Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties which may accrue with respect thereto, if the contest of such taxes is unsuccessful.

(d) Provide an audited financial statement for the immediately preceding fiscal year within a reasonable time after written request by, and free of charge to, any First Mortgagee or insurer or guarantor of a First Mortgage.

(e) Levy and collect assessments and other charges, costs and fees, obtain and keep in full force and effect insurance coverage, and do, perform and provide all other acts and services, as provided in this Amended and Restated Declaration, the Articles of Incorporation, Bylaws, or by law.

4.3 Powers of Service Association. Without in any way limiting the power or authority of the Service Association to assume or agree to perform other duties or matters, the Service Association shall specifically have the power to:

(a) Acquire property or interests in property for the common benefit of Owners, including Improvements and personal property, and construct Improvements on property and demolish existing Improvements. In addition, the Service Association shall have the power to maintain public or private rights-of-way, and Improvements thereon, and any portion of the Service Association Area, whether or not owned by the Service Association.

(b) At any time from time to time, adopt, amend, repeal and enforce such Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Amended and Restated Declaration, the operation of the Service Association, the use and enjoyment of Service Association Properties, and the use of any other property within the Service Association Area, including Privately Owned Sites. Any such Rules and Regulations shall be reasonable and uniformly applied and each Member shall comply with such Rules and Regulations and shall see that Related Users of such Member comply therewith.

(c) Enforce the provisions of this Amended and Restated Declaration, the Articles of Incorporation, Bylaws, and Rules and Regulations, and to take such action as the Board deems necessary or desirable to cause compliance therewith by each

Member and the Related Users of each Member, including without limitation the levying and collecting of fines as Reimbursement Assessments for any violations of any such documents.

(d) Provide services to Subassociation(s), for which such Subassociation(s) shall pay or reimburse the Service Association for the reasonably estimated or actual costs and expenses which the Service Association incurs in providing such services, including a fair share of the overhead expenses of the Service Association. Services which may be provided to a Subassociation may include, without limitation: (i) the construction, care, operation, management, maintenance, repair and replacement of Improvements owned, managed or maintained by the Subassociation; (ii) the enforcement of any Supplemental Declaration for, on behalf of, and in the name of the Subassociation; (iii) the collection of assessments for, in the name of, and on behalf of a Subassociation; (iv) the payment of taxes for a Subassociation with funds of the Subassociation; (v) the procurement of insurance for a Subassociation; (vi) the collection of charges for use of facilities of a Subassociation; and (vii) the appointment and supervision of a managing agent or other independent contractors for a Subassociation. In lieu of collecting the costs and expenses for such services from the Subassociation, the Service Association shall have the right, but not the obligation, to collect them directly from the Members of the Subassociation, in monthly or other installments, as part of the Service Assessments.

(e) Provide to a Member or group of Members, including without limitation, the Members within a Delegate Area, services which the Service Association does not otherwise provide to its Members. The Member(s) to whom such special services are provided shall pay or reimburse the Service Association therefor by a Service Assessment, as provided in Section 7.7 hereof.

(f) Acquire, create, own and operate any and all such facilities and services as it deems appropriate, including, without limitation, landscape maintenance and refuse collection, or any other similar or dissimilar functions, and to establish charges for the use of facilities and services. The charges may include admission, rental or other fees and charges, and the amounts thereof shall be as determined from time to time by the Board of Directors.

(g) Grant access, utility, drainage, water facility and any other easements in, on, over, or under Service Association Area for any lawful purpose, including, without limitation, the provision of emergency services, utilities, telephone, television, or other uses or services to some or all of the Members.

(h) With the approval of Delegates representing at least two-thirds (2/3) of the Membership votes, grant, convey, dedicate or transfer any Service Association Properties or facilities owned by the Service Association to any public or governmental agency or authority, for such purposes and subject to such terms and conditions as the Service Association shall deem appropriate, subject to the other provisions of this Amended and Restated Declaration.

(i) Borrow money and, with the approval of Delegates representing the votes of at least two-thirds (2/3) of the Members of the Service Association, to encumber Service Association Properties as security for such borrowing, subject to other provisions contained in this Amended and Restated Declaration.

(j) Retain and pay for the services of a managing agent for the Service Association, and the Service Association may delegate any of its duties, powers or functions to such managing agent. Any contract or agreement with a managing agent shall be terminable by either party for cause on no more than thirty (30) days' prior written notice, and shall be terminable by either party without cause and without payment of a termination fee on no more than ninety (90) days' prior written notice. Notwithstanding any delegation to a managing agent of any duties, powers or functions of the Service Association, the Service Association and its Board of Directors shall remain ultimately responsible for the performance and exercise of such duties, powers and functions.

(k) Hire and discharge employees, agents consultants, and to retain and pay for such legal, accounting and other services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Service Association.

(l) Regulate the days and hours during which trash and solid waste may be collected or put out for collection in any portion of the Service Association Area. The Service Association shall also have the power to provide services for the collection of trash and solid waste within all or any portions of the Service Association Area.

(m) Exercise all of the powers and rights of a corporation formed under the Colorado Nonprofit Corporation Act, and such other powers and rights as may be given to the Service Association by this Amended and Restated Declaration, the Articles of Incorporation, Bylaws or by law.

4.4 Maintenance Easement for Service Association. An easement to perform its maintenance obligations pursuant to this Amended and Restated Declaration is hereby granted to the Service

Association, its officers, agents, employees and assigns, upon, across, over, in and under the Service Association Area, together with the right to make such use of the Service Association Area as may be necessary or appropriate in carrying out such maintenance.

**ARTICLE V**  
**SERVICE ASSOCIATION PROPERTIES**

5.1 Right of Service Association to Regulate Use. The Service Association, acting through the Board, shall have the power to regulate use of Service Association Properties, including without limitation imposing limits on the times of use and numbers of guests permitted.

5.2 Right of Service Association to Allow Public Use. The Service Association shall have the right to allow members of the general public to use Service Association Properties, as long as use by the general public does not unreasonably interfere with or impair the rights of use and enjoyment of Owners.

5.3 Liability of Owners for Damage. Each Owner shall be liable to the Service Association for any damage to Service Association Properties, or for any expense or liability incurred by the Service Association, to the extent not covered by insurance (including deductibles), which may be sustained by reason of the negligence or willful misconduct of such Owner or a Related User of the Owner, and for any violation by such Owner or Related User of this Amended and Restated Declaration or any Rules and Regulations. The Service Association may levy and collect a Reimbursement Assessment against an Owner to reimburse the Service Association for such damage or violation.

5.4 Damage to Service Association Properties. In the event of damage to or destruction of all or a portion of the Service Association Properties due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Service Association to such reconstruction and repair. If the insurance proceeds are insufficient to repair and reconstruct the damage or destruction, then the Service Association shall levy a Special Assessment in the aggregate amount of such insufficiency pursuant to Section 7.5 hereof, and shall proceed to make such repairs or reconstruction, unless the Owners and First Mortgagees agree not to repair and reconstruct such damage in accordance with Article XII hereof. No distributions of insurance proceeds shall be made to the Owners, unless made jointly payable to Owners and their First Mortgagees, if any.

5.5 First Mortgagee Right to Pay Taxes and Insurance Premiums. Any one or more First Mortgagees, jointly or singly,

shall be entitled to pay any taxes or other charges which are in default and which may become or have become a charge against any of the Service Association Properties, and may pay any overdue premiums on hazard insurance policies for any Service Association Properties, or may secure new coverage if the insurance policy on any Service Association Property lapses, and the First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Service Association.

5.6 Service Association Powers in the Event of Condemnation.

(a) If proceedings are initiated by any government or agency thereof seeking to take the Service Association Properties or any interests therein or part thereof, including any Improvements, the Service Association shall give prompt notice thereof to all Owners. Such notice shall include a description of the part of or interest in the Property sought to be so condemned. The Service Association shall have full power and authority to defend in said proceedings, and to represent the Owners in any negotiations, settlements and agreements with a condemning authority, and each Owner hereby appoints the Service Association as the Owner's attorney-in-fact for such purposes. Any award or proceeds of settlement shall be payable to the Service Association for the use and benefit of the Owners and their mortgagees as their interests may appear. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

(b) If all of the Service Association Properties are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, any award or settlement shall be apportioned by the Service Association on such a fair and equitable basis as the Service Association determines to be appropriate in the circumstances, or as determined by judicial decree. If the allocation of the condemnation award is already established in the negotiations, judicial decree, or otherwise, then in allocating the condemnation award the Service Association shall employ such allocation to the extent that it is relevant and applicable.

(c) If less than all of the Service Association Properties are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, the condemnation award shall first be applied by the Service Association to the rebuilding and replacement of those Improvements on the Service Association Properties which are damaged or taken by the condemning authority, unless Delegates representing at least sixty-seven percent (67%) of the votes of the Members and at least sixty-seven percent (67%) of the First Mortgagees (based upon one vote for each First Mortgage held) agree otherwise. Any surplus of

the award or other portion thereof not used for rebuilding and replacement shall be distributed by the Service Association on the same basis as indicated in subparagraph (b) of this Section. No provision of this Amended and Restated Declaration shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee, pursuant to a First Mortgage, regarding distribution of insurance proceeds or condemnation awards for losses to or taking of Service Association Properties.

**ARTICLE VI**  
**DECLARANT'S RIGHTS AND RESERVATIONS**

6.1 Period of Declarant's Rights and Reservations. Declarant shall have, retain and reserve certain rights, as hereinafter set forth, with respect to the Service Association and the Service Association Properties. Such rights shall be retained and reserved from the date of Recording hereof, until that date when the last Privately Owned Site owned by the Declarant has been conveyed by Declarant to an Owner other than Declarant. No provision of this Article VI may be modified, amended, rescinded, or affected by any amendment of this Amended and Restated Declaration, without the prior written discretionary consent of all Declarants. Further, the provisions of this Article VI shall be prior and superior to any other provisions of this Amended and Restated Declaration.

6.2 Right to Construct Additional Improvements on Service Association Properties. Declarant shall have the right, but shall not be obligated to, construct additional Improvements on Service Association Properties at any time and from time to time, for the improvement and enhancement of the Service Association Properties or for the benefit of the Service Association and the Owners; provided, that any such construction has the prior written approval of the Board of Directors. The Service Association shall not be obligated to reimburse or otherwise compensate Declarant for any costs or expenses of such construction as described in this Section 6.2.

6.3 Declarant's Rights to Use Service Association Properties in Promotion and Marketing of Service Association Area. Declarant shall have and hereby reserves the right to use the Service Association Properties and to use services offered by the Service Association in connection with the promotion and marketing of property within the boundaries of the Project Area. However, said promotion and marketing activities shall not unreasonably interfere with the use and enjoyment of the Service Association Properties by the Members, and shall not conflict with any Rules and Regulations.

6.4 Declarant's Rights to Complete Development of Project Area. No provision of this Amended and Restated Declara-

tion shall be construed to prevent or limit Declarant's rights to: complete the development of property within the boundaries of the Project Area; construct or alter Improvements on any property owned by Declarant within the Project Area; maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant within the Project Area; or post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Project Area. However, Declarant shall seek and obtain the approval of the Architectural Committee for any Improvement by Declarant on any property owned by Declarant or by the Service Association.

#### ARTICLE VII ASSESSMENTS

##### 7.1 Creation of the Lien and Personal Obligation of Assessments.

(a) Each Owner, including Declarant, is deemed to covenant and agree to pay Assessments to the Service Association, with such Assessments to be established and collected as hereinafter provided. The Assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Site against which each such Assessment is made. The obligation for such payments by each Owner to the Service Association is an independent covenant, with all amounts due, from time to time, payable in full when due without notice (except as otherwise expressly provided in this Amended and Restated Declaration) or demand, and without setoff or deduction. All Owners shall be jointly and severally liable to the Service Association for the payment of all Assessments, fees, costs, charges and interest attributable to their Site. Each Assessment, together with interest, late charges, costs, and reasonable attorneys' fees, shall also be the personal obligation of each Person who was the Owner of such Site at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

(b) The lien may be enforced by foreclosure of the defaulting Owner's Site by the Service Association in like manner as a mortgage on real property. In any such foreclosure the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorneys' fees. The Board of Directors or managing agent of the Service Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Site, and a description of the Site. Such a notice shall be signed by one of the Board of Directors or by the managing agent of the Service Association and may be Recorded. The lien for such unpaid

Assessment attaches to each Site at the beginning of each Service Association fiscal year and shall continue to be a lien against such Site until paid. The costs and expenses for filing any notice of lien shall be added to the Assessment for the Site against which it is filed and collected as part and parcel thereof. The Service Association's lien on each Site for Assessments shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed subject to this Amended and Restated Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment lien.

7.2 Purpose of Assessments. The Assessments shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Service Association Area, for all of those purposes and activities which may be required of the Service Association or which the Service Association may be empowered to pursue pursuant to this Amended and Restated Declaration, the Articles of Incorporation, Bylaws, or by law, and for the improvement and maintenance of the Service Association Properties and any other real or personal property not owned but maintained by the Service Association.

7.3 Common Assessment. The Service Association shall levy Common Assessments against all Owners in order to pay the general operating and maintenance expenses of the Service Association and all other costs, expenses, charges and fees of the Service Association which are not covered by Special Assessments, Service Assessments or Reimbursement Assessments. The Service Association shall maintain an adequate reserve fund out of the Common Assessments for maintenance, repair and replacement of items requiring such on a periodic basis, and for the payment of insurance deductibles.

(a) The Board of Directors shall annually, after consideration of the projected operating costs, maintenance costs and other financial needs of the Service Association, establish the Common Assessment in an amount which shall not exceed the Common Assessment Limitation for the Service Association fiscal year for which such Common Assessment is being set. Written notice of the actual Common Assessment levied shall be sent to every Owner at least thirty (30) days in advance of the Service Association fiscal year, except that until such notice is sent the amount of the actual Common Assessment shall continue at the level then in effect for the preceding Service Association fiscal year.

(b) Effective for the first Service Association fiscal year with Recording of this Amended and Restated Declaration, the Common Assessment Limitation shall be One



Hundred Forty and No/100 Dollars (\$140.00) per year per Assessment Unit.

(c) Effective with commencement of the second and each subsequent Service Association fiscal year after Recording of this Amended and Restated Declaration, the Common Assessment Limitation shall annually be increased effective each Service Association fiscal year by the greater of: (i) the percentage increase, if any, in the Consumer Price Index published by the U.S. Department of Labor, Washington, D.C., for all Urban Consumers, U.S. City Average, All Items (1982 through 1984 = 100), for the one (1) year period ending with the preceding month of April; or (ii) ten percent (10%). [As an example only and means of illustrating the foregoing: the Common Assessment Limitation for the first fiscal year is \$140.00; and assume the actual Common Assessment levied during the first fiscal year is \$120.00; and assume the C.P.I. is a 6% increase for the applicable period; and the standard 10% increase per the foregoing is greater than the example C.P.I.; then, the Common Assessment Limitation for the second Service Association fiscal year would be \$154.00 (\$140.00 x 110%); therefore, the actual Common Assessment during the second Service Association fiscal year shall not exceed \$154.00.] The aforesaid annual increase in the Common Assessment Limitation shall occur automatically upon the commencement of each Service Association fiscal year. In the event the aforesaid Consumer Price Index is not published, for whatever reason, then the annual increase index shall be designated by the Board of Directors in place of the C.P.I.

(d) The Board of Directors may, in its discretion from time to time, initiate a financial review of the Service Association and the amount of the Common Assessment Limitation to determine if said amount is appropriate or in need of amendment.

(e) In the event, for whatever reason, it is determined that the Common Assessment Limitation should be amended, the Common Assessment Limitation per Section 7.3 (c) herein may at any time be amended by the approval of the Board of Directors and not less than two-thirds (2/3) of the Membership votes cast by Delegates voting in person at a duly held meeting of Delegates.

7.4 Notice and Quorum for any Action Authorized Under Section 7.3(c). Written notice of any meeting called for the purpose of taking any action authorized under Section 7.3(c) of this Article VII shall be sent to all Delegates and all Members not less than thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Delegates entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same

notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.5 Special Assessments. In addition to the other Assessments provided for in this Amended and Restated Declaration, the Board of Directors, with the approval of not less than two-thirds (2/3) of the Membership votes cast by Delegates voting in person at a duly held meeting of Delegates, may levy, in any fiscal year, one or more Special Assessments applicable to that year only. Any such Special Assessment may be levied for the purpose of defraying, in whole or in part, any operating or reserve deficit(s), the cost of any construction, reconstruction, repair, or replacement of capital improvements on the Service Association Properties, or any damaged or destroyed improvements which are the obligation of the Service Association to maintain and for which adequate insurance proceeds are not available, including fixtures and personal property related thereto.

7.6 Reimbursement Assessment. The Board of Directors may, at any time levy a Reimbursement Assessment against any Owner if a loss of revenue or an expenditure of funds by the Service Association resulted from the willful or negligent failure of the Owner or a Related User of such Owner to comply with this Amended and Restated Declaration, the Articles of Incorporation, Bylaws or Rules and Regulations. Except for a default consisting solely of a failure to timely pay any Assessment, a Reimbursement Assessment shall be levied only after Notice and Hearing.

7.7 Service Assessments. The Board of Directors may, in its discretion, at any time, levy a Service Assessment against any one (1) or more Owners for services provided by the Service Association to such Owners within a specified Delegate Area or at their written request, if such services would not otherwise be provided to any Owners by the Association and paid for out of the Common Assessments, Special Assessments or Reimbursement Assessments. Each Service Assessment shall be levied in such amount as is sufficient to pay or reimburse the Service Association for the reasonably estimated or actual costs, fees and expenses which the Service Association has or will incur to provide such services, including without limitation a fair share of the overhead expenses, costs and fees of the Service Association. Each Service Assessment shall be set equally against each Assessment Unit, and the Owners thereof, to or for which the services have been or will be provided.

7.8 Rate of Assessment. Common Assessments and Special Assessments shall be fixed at a uniform rate for all Assessment

Units sufficient to meet the expected needs of the Service Association which are not paid by Service Assessments or Reimbursement Assessments; however, the rate of Common Assessments for each Assessment Unit within a subassociation that has residential-use townhomes or residential-use condominiums shall be fixed at one-half (1/2) of the Common Assessment rate for other Assessment Units (except those of the Declarant as hereinafter provided). Notwithstanding anything to the contrary contained in this Amended and Restated Declaration, however, the rate of Common Assessments and Special Assessments set for each Assessment Unit owned by Declarant which is vacant land that is not improved with a Dwelling Unit, a Commercial Unit or is part of an improved and operating miscellaneous Use Site, shall be fixed at one-half (1/2) of the Assessment rate for the other Assessment Units. In the event that, prior to the date when the Declarant owns twenty-five percent (25%) or less of the Sites, if Common Assessments due to the Service Association (whether collected or not) for a Service Association fiscal year, plus all other funds and income of the Service Association, fail to equal or exceed the actual expenses incurred by the Service Association to be paid out of Common Assessments during such fiscal year and if such shortfall was caused by the Declarant's payment of partial Common Assessments, then Declarant shall pay up to the amount of full parity on such Common Assessments, to the Service Association to meet any such shortfall so long as: (a) written notice must be given by the Service Association to the Declarant within one hundred twenty (120) days following the termination of the Service Association fiscal year for which such shortfall is claimed, and (b) Declarant shall not have any obligation for any such shortfall caused by expenditures for capital improvements or by any decrease in Common Assessments, including without limitation the levying of any Common Assessment in an amount less than the maximum for any fiscal year or portion thereof, unless the same has previously been approved in writing by Declarant. In the event there is more than one "Declarant," then, subject to the conditions hereinabove stated, each such Declarant shall pay a prorata share of such shortfall, with such prorata share to be computed as follows: the total amount of reduced Common Assessments and Special Assessments due from all Declarants during the applicable Service Association fiscal year shall be divided by the total amount of reduced Common Assessments and Special Assessments due from the applicable Declarant during the applicable Service Association fiscal year, and that quotient shall be multiplied by the total amount of such shortfall.

7.9 Date of Commencement of Common Assessments. The Common Assessments shall commence, if not already in effect, on the first day of the month of Recording of this Amended and Restated Declaration. The Common Assessments shall be due and payable in advance, on such date(s), with such frequency, and in as many installments, as the Board of Directors may determine in

its discretion from time to time. Any Owner purchasing a Site between installment due dates shall pay a prorata share of the last installment due.

7.10 Effect of Nonpayment of Assessments; Remedies of the Service Association. Any Assessment or portion thereof which is not paid when due shall be delinquent. Any Assessment or portion thereof which is not paid within ten (10) days after the due date may bear interest from the due date at the rate of twenty-four percent (24%) per annum or at such lesser rate as may be set from time to time by the Board of Directors, and the Board of Directors may assess a periodic late charge thereon. The Service Association may bring an action at law against the Owner personally obligated to pay any Assessment, or foreclose the lien against such Owner's Site, and in the event a judgment is obtained, such judgment shall include interest, late charges, attorneys' fees, and the costs of the action. No Owner may waive or otherwise escape liability for Assessments by non-use of the Service Association Properties or abandonment of his Site. If any payment to the Service Association is less than the amount(s) due, the sums received shall be credited in such order of priority as the Board of Directors may determine in its sole discretion from time to time.

7.11 Subordination of the Lien to First Mortgages. The lien of the Assessments provided for herein, including without limitation, any fees, costs, late charges or interest which may be charged by the Service Association in connection with unpaid Assessments, shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Site shall not affect the lien for said Assessment charges, except that sale or transfer of any Site pursuant to foreclosure of any such First Mortgage, or any proceeding in lieu thereof, including deed or assignment in lieu of foreclosure, shall extinguish the lien of Assessment charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof; provided, however, that the personal obligation for the payment of such Assessments by the Owner of the Site at any time such Assessments become due shall not thereby be extinguished; provided further, however, that any such delinquent Assessment charges, including interest, late charges, costs and reasonable attorneys' fees, which are extinguished as provided herein may be reallocated and assessed to all Sites as a common expense. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, shall relieve any Site from liability for any Assessment charges thereafter becoming due, nor from the lien thereof; provided, however, that in the event of foreclosure of a First Mortgage or any proceeding in lieu thereof, such First Mortgagee shall not be liable for unpaid Assessments or other charges which accrue prior to the acquisition of title to the Site in question by such First Mortgagee.

7.12 Rights Upon Foreclosure. In the event a First Mortgagee succeeds through foreclosure to the fee title ownership of any Site, including succession to the ownership interest of Declarant, whether such foreclosure is judicial or non-judicial, and including without limitation, a deed in lieu of foreclosure, then such First Mortgagee shall succeed to all rights of the prior Owner as the Owner of such Site under this Amended and Restated Declaration, the Articles of Incorporation and Bylaws.

**ARTICLE VIII**  
**GENERAL RESTRICTIONS APPLICABLE TO PROPERTY**

8.1 Limitations and Restrictions. All Publicly Owned Sites, Privately Owned Sites and Service Association Properties, shall be held, used and enjoyed subject to the approved Battlement Mesa P.U.D., as amended from time to time, subject to all applicable plat restrictions and other recorded documents, subject to the following limitations and restrictions, and subject to the exemptions for Declarant set forth in this Amended and Restated Declaration. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Board of Directors or by a duly authorized committee appointed by the Board of Directors, if such strict application would be unreasonable or unduly harsh under the circumstances; provided, however, that a Privately Owned Site platted and zoned specifically for residential purposes shall be used only for residential purposes as permitted by applicable zoning and by law. Any such modification or waiver must be in writing or be contained in written guidelines or rules promulgated by the Board of Directors or by a duly authorized committee appointed by the Board of Directors.

8.2 Maintenance of Property. No property within the Service Association Area shall be permitted to fall into disrepair, and all property within the Service Association Area, including any Improvements and landscaping thereon, shall be kept and maintained in a clean, safe, attractive and slightly condition and in good repair. Maintenance, repair and upkeep of each Privately Owned Site or Publicly Owned Site shall be the responsibility of the Owner of the Site. Maintenance, repair and upkeep of Service Association Properties shall be the responsibility of the Service Association. Violation of this provision by an Owner shall permit the Service Association, after Notice and Hearing, to enter on the property to cure the violation or cause compliance with this provision and to levy and collect a Reimbursement Assessment for the costs and expenses of the Service Association in so doing; provided, however, that there shall be no entry into the interior of an Improvement intended for human occupancy without the consent of the Owner thereof unless a clear emergency exists.

8.3 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any property within the Service Association Area, nor shall anything be done or placed thereon which is or may become a nuisance or which is or may cause an unreasonable embarrassment, disturbance or annoyance to others.

8.4 No Annoying Light, Sounds or Odors. No light shall be emitted from any Publicly Owned Site or Privately Owned Site or Improvement which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any property within the Service Association Area which could reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices, other than security devices used exclusively for security purposes, shall be located or used on any property except with the prior written approval of the Architectural Committee and the Board of Directors.

8.5 No Hazardous Activities. No activity shall be conducted, and no Improvement shall be constructed, on any property within the Service Association Area which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property and no open fires shall be lighted or permitted on any property except in a contained barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers.

8.6 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within a structure, including snow removal equipment and garden or maintenance equipment, except when actually in use.

8.7 Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse or debris of any kind shall be kept, stored or allowed to accumulate on any part of the Service Association Area, except within an enclosed structure or appropriately screened from view, except that any container containing such materials may be placed outside at proper times for garbage or trash pickup.

8.8 New Construction Only; No Temporary Structures; Maximum Height of Outbuildings; Minimum Square Footages of Dwelling Units.

(a) All construction within the Service Association Area shall be new construction and no previously-erected

buildings or other structures shall be constructed at another location and then moved and set upon any portion of the Service Association Area, except for new manufactured housing approved by the Architectural Committee.

(b) No tent, shack, temporary structure or temporary building shall be placed upon any property within the Service Association Area, except with the prior written consent of the Architectural Committee.

(c) Any building or structure on a Residential Site, other than the Dwelling Unit and garage, shall not exceed eight feet (8') in height above adjacent grade.

(d) Within Battlement Creek Village, Sections One and Two, the floor area of any single-family detached house, exclusive of open porches and garages, shall not be less than 2,000 square feet, outside measurement, for single-story homes and 2,400 square feet, outside measurement, for multi-story homes; each home shall have an enclosed garage not less than 22 feet wide (2 car capacity) nor more than 3 car capacity.

Within Mesa Ridge (Phase 1) and Jack's Pocket Village, Filing No. 5, the floor area of any townhome shall be subject to review and approval of the Architectural Committee; each townhome shall have an enclosed garage not less than 12 feet wide (1½ car capacity) nor more than 3 car capacity.

Within Monument Creek Village, Sections One and Two, the floor area of any single-family detached house, exclusive of open porches and garages, shall not be less than 900 square feet, outside measurement; each home shall have an enclosed garage not less than 12 feet wide (1½ car capacity) nor more than 3 car capacity.

Within Saddleback Village Filing No. 1, the floor area of any single-family detached house or manufactured home, exclusive of open porches and garages, shall not be less than 720 square feet, outside measurement; each home issued a Certificate of Occupancy shall have an enclosed garage not less than 12 feet wide (1½ car capacity) nor more than 2 car capacity.

Within Willow Creek Village, Section One, the floor area of any single-family detached house, exclusive of any open porches and garages, shall not be less than 1,800 square feet, outside measurement; each home shall have an enclosed garage not less than 20 feet wide (2 car capacity) nor more than 3 car capacity.

The maximum height of any single-family detached house dwelling unit and garage shall not exceed 35 feet as measured

vertically from the lowest finish grade elevation to the highest roof ridgeline elevation of the structure, the maximum height of any multi-family attached dwelling unit shall be subject to the review and approval of the Architectural Committee.

Within Willow Creek Village, Section No. 2, the floor area of any Multi-Family attached Dwelling Unit shall be subject to review and approval of the Architectural Committee.

Within Tamarisk Subdivision, Filing No. 2, and any other future development residential subdivisions, the floor area and garage criteria shall be established by supplemental declaration prior to commencement of construction activities.

8.9 Restriction on Antennae, Satellite Dishes, Pipes and Utility Lines.

(a) Pipes and lines for water, gas, sewer, drainage or other utilities or purposes, and wires, poles, antennae and other facilities for the transmission or reception of audio, visual or other electromagnetic signals or electricity, shall be kept and maintained underground or within an enclosed structure, except such facilities as are in place at the time of Recording of this Amended and Restated Declaration replacements of any such facilities.

(b) No electronic antennae or exterior device of any type, other than an antennae for receiving normal television signals and a satellite dish, as hereinafter provided, shall be erected, constructed, placed or permitted to remain on any Site, or on any Dwelling Unit. An antennae for receiving normal television signals may be attached to the exterior of a Dwelling Unit as long as the antennae is located on the rear of the Dwelling Unit, or is located to the rear of the ridgeline, gable or centerline of the Dwelling Unit, so that the antennae is not visible from the street on which such Dwelling Unit fronts. A satellite dish for receiving normal television signals may be located on a Site, as long as the satellite dish does not exceed nine feet (9') in diameter, is located in the fenced backyard of such Site (with such fence to be a six foot (6') high solid fence), and does not extend higher than 7.5 feet above adjacent grade for the Site.

8.10 Restrictions on Signs and Advertising Devices. Except for the rights of Declarant as provided in Article VI of this Declaration and as hereinafter provided, no sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Service Association Area so as to be evident to public view, except such signs as may be approved in writing by the Architectural Committee. Notwithstanding the foregoing, a sign advertising a Privately Owned Site



for sale or for lease may be placed on such Privately Owned Site; provided, however, that the sign may have a maximum dimension of 24 inches and a maximum area of 576 inches; and provided further, however, that signs advertising the Project Area, any Site(s) or any of the Service Association Area during the construction and sales period, used by Declarant or by any builder(s) who acquire Site(s) from Declarant, shall be exempt from the provisions of this Section 8.10.

8.11 Restriction on Mining or Drilling. No portion of any Residential Site or Commercial Site shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth, except drilling, exploring for or removing underground water by Declarant or any Person designated by Declarant for the purpose of providing water service to property within the boundaries of the Project Area.

8.12 Maintenance of Drainage. There shall be no interference with the established drainage pattern over any property within the Service Association Area, except as approved in writing by the Architectural Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The "established drainage pattern" shall mean the drainage pattern which exists at the time the overall grading of any property is completed, and shall include any established drainage pattern.

8.13 Compliance with Insurance Requirements. Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on property within the Service Association Area which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Service Association.

8.14 Compliance with Laws. Nothing shall be done or kept on any property within the Service Association Area in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction.

8.15 Restoration in the Event of Damage or Destruction. In the event of damage to or destruction of any Improvement on any Privately Owned Site, the Owner thereof shall, subject to the approval of the Architectural Committee, either: (a) cause the damaged or destroyed Improvement to be restored or replaced to its original condition or such other condition as may be approved in writing; or (b) cause the damaged or destroyed Improvement to be demolished and the Privately Owned Site to be suitably landscaped, so as to present a pleasing and attractive appearance.

8.16 Vehicular Parking, Storage and Repairs.

(a) No trailer, camping trailer, boat or boat accessories, snowmobiles, truck larger than one (1) ton, recreational vehicle or equipment, or commercial vehicle, may be parked or stored anywhere in the Service Association Area, except in garages, or behind a six foot (6') high solid fence screening the vehicular equipment from view, or in designated parking or storage areas, or on such Privately Owned Sites or Publicly Owned Sites as may be specifically exempted from this restriction by any Supplemental Declaration covering such Sites, or except in emergencies or as a temporary expedience. Furthermore, no automobiles, trucks, or other vehicles may be parked in any side or rear yard areas unless screened from view behind a six foot (6') high solid fence. No emergency or temporary parking or storage shall continue for more than seventy-two (72) hours.

(b) No abandoned or inoperable vehicles of any kind shall be stored or parked within the Service Association Area, except in garages, designated parking or storage areas, or on such Privately Owned Sites or Publicly Owned Sites as may be specifically exempted from this restriction by any Supplemental Declaration covering such Sites, or except in emergencies. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, van, trailer, house trailer, camper, recreational vehicle or other device for carrying passengers, goods or equipment, which has not been driven under its own propulsion for a period of two (2) weeks or longer or which does not have installed within it an operable propulsion system; provided, however, that any vehicle belonging to an Owner which is otherwise permitted will not be deemed to be abandoned while the Owner is ill or out of town. If the Service Association determines that a vehicle is abandoned or inoperable, a written notice calling for its removal shall be delivered to the owner of the vehicle, if ownership can reasonably be ascertained, or shall be placed in a conspicuous place on the vehicle if ownership cannot reasonably be ascertained. If the abandoned or inoperable vehicle is not removed within seventy-two (72) hours after such notice is delivered or posted, the Service Association shall have the right to remove and store the vehicle at the sole expense of its owner, and any Owner who is determined (after Notice and Hearing) to be responsible for the vehicle shall be subject to a Reimbursement Assessment therefor.

(c) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, painting or servicing any kind of vehicle shall take place within the Service Association Area, except within completely enclosed structures which prevent such activities from being seen or heard from the street and from adjoining property. This restriction shall not be deemed to prohibit washing and polishing of vehicles.

8.17 Household Pets. No animals, livestock, birds, poultry or insects, of any kind, shall be raised, bred, kept or boarded in or on any Residential Site; provided, however, that Owners may keep a reasonable number of dogs, cats, or other domestic animals which are bona fide household pets, so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to violate any zoning ordinance or other governmental requirements or to create a nuisance. When outside, all pets shall be leashed or restrained within an enclosure. The Service Association shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Section, and to take such action or actions as it deems reasonably necessary to correct the violation. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Service Association as a result of such pets, and any such costs and damages shall be subject to all of the Service Association's rights with respect to the collection and enforcement of Assessments as provided in Article VII hereof.

8.18 Sites Not to be Subdivided. No Privately Owned Site shall be subdivided, except for the purpose of combining portions with an adjoining Site, provided that no additional building site is created thereby. Not less than one entire Privately Owned Site, as conveyed, shall be used as a building site.

8.19 Restrictions on Walls, Fences, Planters and Hedges. No wall, fence, planter or hedge in excess of two feet (2') in height which restricts view shall be erected or maintained nearer to the front lot line of any Site than the front building setback line of such Site. No front, side, or rear fence, wall, or hedge shall be more than six feet (6') high above grade. No fence shall be of wire or chain link construction.

8.20 Site Lines on Corner Sites. No object, thing, planting, or landscaping shall be constructed, erected, placed or planted on corner Sites so as to obstruct Site lines and elevations between two feet (2') and six feet (6') above the top of the street curb within a triangular area formed by the intersection of the street and curb lines and a line connecting them at a point fifty-five feet (55') from the intersection of such street, curb lines or extensions thereof.

8.21 Clothes Drying. The drying of clothes in public view is prohibited. Without limiting the generality of the foregoing, the Owner or occupants of any Sites at the intersec-

tion of streets or adjacent to any Service Association Properties, Publicly Owned Site, park, playground, greenbelt or other facility (other than Privately Owned Sites), which have a rear yard or a portion of the Site which is visible to the public shall, if clothes drying is to be done outside of the Dwelling Unit or other structure located on the Site, construct and maintain a drying yard or a suitable enclosure, as approved by the Architectural Committee, to screen the drying clothes from public view.

8.22 Windmills. Windmills, including without limitation, wind-powered electric generating equipment, shall not be constructed, erected, placed, or maintained on any Site.

8.23 Leases. The term "lease," as used herein, shall include any agreement for the leasing or rental of a Residential Site intended for Owner occupancy, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. A Residential Site intended for Owner occupancy, or any portion thereof, may only be leased under the following conditions:

(a) All leases shall be in writing and a copy of the lease delivered to the Board of Directors or the managing agent of the Service Association; and

(b) All leases shall provide that the terms of the lease and the lessee's occupancy of the leased premises shall be subject in all respects to the provisions of this Amended and Restated Declaration, and the Articles of Incorporation, Bylaws and Rules and Regulations, as well as the applicable Supplemental Declaration and the Articles of Incorporation, Bylaws, and Rules and Regulations of any Subassociation governing the Site, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease; and

(c) No lease shall be for less than thirty (30) days.

8.24 Minor Violations of Setback Restrictions. If, upon the erection of any Improvement, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of Improvements immediately adjoining the Improvement which is in violation of the setback requirement, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the restrictions, covenants, or other provisions contained in this Amended and Restated Declaration or any Supplemental Declaration. A "minor violation," for the

purpose of this Section, is a violation of not more than one (1) foot beyond the required setback lines. This provision shall apply only to the original Improvements and shall not be applicable to any alterations or repairs to any of such Improvements.

8.25 Utilities. Declarant hereby creates and reserves to itself, until the earlier to occur of conveyance by the Declarant of the last Privately Owned Site to an Owner other than Declarant or twenty (20) years after Recording of this Amended and Restated Declaration, a blanket easement upon, across, over and under the Service Association Properties for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity and master television antennae or cable systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Service Association Properties and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone and television wires, circuits, conduits and meters. If any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Service Association Properties without conflicting with the terms hereof. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Service Association Properties.

8.26 Landscaping. Prior to the end of the first full growing season after issuance of a final certificate of occupancy on any building constructed on a Publicly Owned Site or Privately Owned Site (other than a Condominium), the Owner of such Site shall install landscaping on at least the front yard of such Site and shall thereafter maintain the landscaping in a neat and attractive condition, including periodic and horticulturally correct watering, fertilizing, trimming, pruning and replacement when necessary. Landscaping plans shall be submitted in advance to the Architectural Committee for review and approval.

8.27 Construction Period Exception. During construction of any permitted Improvement to Property, as hereinafter defined, on any Privately Owned Site, the Architectural Committee may waive any provisions of this Article VIII to the extent necessary or appropriate to permit such construction; provided that, during such construction, nothing is done which would result in a violation of this Article VIII subsequent to completion of construction.

**ARTICLE IX**  
**ARCHITECTURAL APPROVAL**

9.1 Approval of Improvements Required. The written approval of the Architectural Committee shall be required prior to the construction, installation or alteration of any "Improvement to Property," as hereinafter defined, on any Privately Owned Site or Publicly Owned Site, except as prior approval may be waived or certain Improvements to Property may be exempted.

9.2 Improvement to Property Defined. "Improvement to Property," requiring approval of the Architectural Committee, shall mean and include, without limitation: (a) the construction, installation, erection or expansion of any building, structure or other Improvements, including utility facilities; (b) the demolition or destruction, by voluntary action, of any building, structure or other Improvements; (c) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; (d) landscaping, planting, clearing or removing of trees, shrubs, grass or perennial plants; and (e) any change or alteration of any previously approved Improvement to property, including any change of exterior appearance, finish material, color or texture.

9.3 Membership of Committee. The Architectural Committee shall initially consist of three (3) members, all of whom shall be appointed by Declarant. Declarant shall have the continuing right to appoint and remove the members of the Architectural Committee, from time to time in the Declarant's discretion, until the conveyance of the last Privately Owned Site owned by Declarant. Members of the Architectural Committee appointed by Declarant may be removed at any time by Declarant and shall serve until resignation or removal by Declarant.

Thereafter, the Board of Directors shall appoint the Architectural Committee, which shall consist of from three (3) to five (5) persons. Members of the Architectural Committee who are appointed by the Board of Directors may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board.

9.4 Submission of Plans. Prior to commencement of work to accomplish any proposed Improvement to Property, the Person proposing to make such Improvement to Property ("Applicant") shall submit to the Architectural Committee at the Service Association offices such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Architectural Committee may reasonably request from time to time,

showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property. The Architectural Committee may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement to Property, and may postpone review of any materials with respect thereto until the Architectural Committee's receipt of all requested or required documents and information.

9.5 Criteria for Approval. The Architectural Committee shall approve any proposed Improvement to Property only if it deems in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of the Project Area as a whole; that the appearance of the proposed Improvement to Property will be in harmony with the surrounding areas of the Project Area; that the Improvement to Property will not detract from the beauty, wholesomeness and attractiveness of the Service Association Area or the enjoyment thereof by Owners or Related Users; and that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Service Association or the applicable Subassociation. The Architectural Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Architectural Committee may deem appropriate. In reviewing any matter, the Architectural Committee shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an Improvement to Property be deemed approval of such matters.

9.6 Architectural Review Fee. The Architectural Committee may require the applicant of any proposed Improvement to Property to pay directly, or to reimburse the Architectural Committee for payment of, any fees of outside consultants or any costs incurred by the Architectural Committee in its research, review or consideration of such application.

9.7 Decision of Committee. The decision of the Architectural Committee shall be made within thirty (30) days after the Architectural Committee receives all required materials and information, unless such time period is extended by mutual agreement. The decision shall be in writing and, if the decision is to disapprove a proposed Improvement to Property, the reasons therefor shall be stated. Any request for approval of a proposed Improvement to Property shall be deemed approved unless the request is disapproved by the Architectural Committee within thirty (30) days after the Architectural Committee has received all required materials and information thereon.

9.8 Prosecution of Work After Approval. After approval, a proposed Improvement to Property shall be accomplished as promptly and diligently as reasonably possible and in complete conformity with the description thereof, any materials submitted to or approved by the Architectural Committee, and any conditions imposed by the Architectural Committee. Failure to diligently prosecute and complete any proposed Improvement to Property within a reasonable time, and in any event within one (1) year after the date of Architectural Committee approval of the application, or to complete the Improvement to Property in accordance with the description and materials furnished to, and the terms, conditions, and requirements imposed by, the Architectural Committee, shall constitute a violation of this Article and the approval of such proposed Improvement to Property previously granted by the Architectural Committee shall thereupon be null and void.

9.9 Notice of Noncompliance. If, as a result of inspections or otherwise, the Architectural Committee finds that any Improvement to Property has been or is being done without obtaining the approval of the Architectural Committee, or is or was not done in substantial compliance with the approval that was granted, or is or was otherwise in violation of this Article IX, then the Architectural Committee shall notify the applicant in writing of the noncompliance, provided that such notice must be given within twelve (12) months after completion of the work which gave rise to the Notice. Such Notice shall specify the particulars of the noncompliance, shall require the applicant to take such action as may be necessary to remedy the noncompliance, and such Notice (or a memorandum thereof) may be recorded against the property on which the noncompliance exists.

9.10 Correction of Noncompliance. If the applicant fails to remedy or remove any noncompliance within forty-five (45) days from the date of the Notice provided for in Section 9.9 hereof, then the Architectural Committee may, at its option, record a notice of noncompliance against the real property on which the noncompliance exists (if such notice was not recorded earlier), may itself or by its agent remove the noncompliant Improvement to Property without liability to the Owner or occupant thereof, or may otherwise remedy the noncompliance, and the applicant shall reimburse the Architectural Committee, upon demand, for all costs, expenses and fees incurred in connection therewith. If such amounts are not promptly repaid by the applicant or Owner to the Architectural Committee, the Board of Directors may levy a Reimbursement Assessment against the Owner of the Site, for reimbursement of such amounts. The right of the Architectural Committee to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Architectural Committee or Service Association may have at law, in equity, or under this Amended and Restated Declaration.



9.11 No Implied Waiver or Estoppel. No action or failure to act by the Architectural Committee shall constitute a waiver or estoppel with respect to any future action by the Architectural Committee.

9.12 Committee Power to Grant Variances. The Architectural Committee may authorize variances from compliance with any of the requirements as to Improvements to Property provided for in this Amended and Restated Declaration or any Supplemental Declaration, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations, justify such variance. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Architectural Committee. If any such variance is granted, no violation of the provisions of this Amended and Restated Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that no variance shall operate to waive any of the provisions of this Amended and Restated Declaration or any Supplemental Declaration for any purpose, except as to the particular property and particular provision covered by the variance, nor shall the granting of any variance affect the jurisdiction of the Architectural Committee, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned.

9.13 Design Guidelines, Minimum Construction Standards, Rules and Regulations. The Architectural Committee may, at any time from time to time, adopt, amend, publish, repeal and enforce design guidelines, minimum construction standards, and other rules and regulations (collectively herein the "Guidelines"), pertaining to Improvements to Property or any other matters within the authority of the Architectural Committee; provided, that any substantial revisions or amendments to the Guidelines shall be developed by the Architectural Committee with consideration of input from, and in cooperation with, the Board of Directors. A copy of the Guidelines shall be available to each Member upon request and payment of the copying cost. Each Member, and any Person subject to the jurisdiction of the Architectural Committee, shall comply with the Guidelines. However, in the event of any conflict between the Guidelines and the Rules and Regulations or this Amended and Restated Declaration, the Rules and Regulations or this Amended and Restated Declaration, as applicable, shall prevail.

9.14 Applicability of this Article IX. No Improvements to Property which were completed prior to the date of Recording of this Amended and Restated Declaration shall be subject to the provisions of this Article IX, but subsequent alterations, modifications, additions, or construction to any

such Improvements to Property shall be subject to the provisions of this Article IX. Improvements to Property which were commenced prior to Recording of this Amended and Restated Declaration shall be subject only to those provisions of this Article IX which are applicable to such Improvements to Property after the time of such Recording.

**ARTICLE X**  
**INSURANCE**

10.1 Insurance on Service Association Properties. The Service Association shall maintain insurance covering all insurable Service Association Properties. The Service Association shall maintain at least the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage, and the cost thereof shall be paid by the Service Association from Assessments.

(a) A policy of property insurance covering all insurable Improvements on Service Association Properties, except for land, foundation, excavation and other matters normally excluded from coverage, in an amount not less than full replacement cost and including an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement". Such insurance shall afford protection against at least the following:

(i) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(ii) such other risks as at the time are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available.

(b) A comprehensive policy of public liability insurance covering all of the Service Association Properties, insuring the Service Association in an amount not less than \$1,000,000, covering bodily injury, including death, personal injury and property damage liability arising out of a single occurrence.

(c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Service Association and all others who handle or are responsible for handling funds of the Service Association. Such fidelity coverage or bonds shall meet at least the following requirements:

(i) the Service Association shall be named as an obligee; and

(ii) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(d) In addition, the Service Association may obtain such other insurance as it may deem appropriate from time to time, including but not limited to personal liability insurance to protect directors, officers and/or others.

10.2 General Provisions of Insurance Policies. All policies of insurance carried by the Service Association shall be carried in blanket policy form naming the Service Association, or its designee, as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Service Association. The policy or policies shall contain a standard non-contributory First Mortgagee's clause in favor of each First Mortgagee, and a provision that it cannot be cancelled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice thereof is given to the insured and to each First Mortgagee, insurer or guarantor of a First Mortgage. Any such Owner's policy shall also contain waivers of subrogation. Additionally, all policies shall contain waivers of any defense based on invalidity arising from any act or neglect of an Owner where such Owner is not under the control of the Service Association.

10.3 Deductibles. Any deductible shall be payable by the Person responsible for the repair and maintenance of the damaged or destroyed property which is the subject of an insurance claim. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the parties sharing in such joint duty, or may be partly or wholly borne by the Service Association, at the election of the Board of Directors. Notwithstanding the foregoing, after Notice and Hearing, the Service Association may determine that a loss, either in the form of a deductible to be paid by the Service Association or an uninsured loss, resulted from the act or negligence of an Owner. Upon such a determination by the Service Association, said loss or any portion thereof may be assessed to the Owner in question and the Service Association may collect the amount from said Owner by levying a Reimbursement Assessment.

10.4 Insurance Trustee. The Service Association may authorize a representative to act for it, including any trustee or successor thereto, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance. Said party may also receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Mortgagees, as their interests may appear.

10.5 Acceptable Terms of Insurance Policies. The Service Association shall not obtain any policy if: (a) the terms of the insurance company's charter, bylaws, or policy provide that contributions or assessments may be made against the mortgagor or mortgagee's designee; or (b) the terms of the carrier's charter, bylaws, or policy provide that loss payments are contingent upon action by the carrier's board of directors, policyholders or members; or (c) the policy includes any limiting clauses (other than insurance conditions) which would prevent mortgagees or any Owner from collecting insurance proceeds.

10.6 Other Insurance to be Maintained by Owners. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, public liability insurance coverage upon each Privately Owned Site, and hazard insurance coverage on the Improvements owned by each Owner (unless such coverage is maintained by a Subassociation having jurisdiction over the Privately Owned Site on which any such Improvement is constructed) shall be the responsibility of the Owner of such Privately Owned Site.

10.7 Owners' Negligence. Notwithstanding anything to the contrary contained in this Amended and Restated Declaration, in the event that the need for maintenance, repair or reconstruction of any or all of the Service Association Properties is caused by the willful or negligent act or omission of any Owner, or a Related User of such Owner, the cost of such repair, maintenance or reconstruction shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Service Association for such maintenance, repair or reconstruction may be collected as a Reimbursement Assessment. A determination of the negligence or willful act or omission of any Owner or any Related User of such Owner, and the amount of the Owner's liability therefor, shall be determined by the Service Association after a Notice and Hearing.

#### ARTICLE XI MISCELLANEOUS

11.1 Term of Amended and Restated Declaration; Binding on Successors. Unless amended, each and every term, covenant, condition, restriction, equitable servitude and other provisions contained in this Amended and Restated Declaration shall run with and bind the land and shall be effective, for a term of twenty (20) years after the date this Amended and Restated Declaration is Recorded, and, thereafter, shall be automatically extended for successive periods of ten (10) years each. Notwithstanding the foregoing, this Amended and Restated Declaration may at any time be terminated by the vote, by written ballot, of Delegates representing at least sixty-seven percent (67%) of the voting power of Members of the Service Association at a duly constituted

meeting of the Service Association, unless a higher percentage vote is required by another provision of this Amended and Restated Declaration, in which case such higher percentage shall be required. This Amended and Restated Declaration, and each and every term and provision hereof, shall be binding on and inure to the benefit of the Declarant, each Owner, and any person or entity having any right, title or interest in the Property or any part thereof, their heirs, personal representatives, successors and assigns.

11.2 Amendment of Amended and Restated Declaration by Members. Except as otherwise provided in this Amended and Restated Declaration, and subject to provisions elsewhere contained in this Amended and Restated Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Amended and Restated Declaration may be amended at any time and from time to time upon approval by Delegates representing at least fifty-one percent (51%) of the voting power of Members of the Service Association at a duly constituted meeting of the Service Association.

11.3 Technical Amendments by Declarant. Notwithstanding anything to the contrary contained in this Amended and Restated Declaration, Declarant hereby reserves and is granted the right and power to make and Record (if applicable) technical amendments to this Amended and Restated Declaration, the Articles of Incorporation and Bylaws, at any time prior to conveyance by Declarant of the last Privately Owned Site to the first Owner (other than Declarant), or twenty (20) years after the date this Amended and Restated Declaration is Recorded, whichever occurs first, for the purposes of correcting spelling, survey errors, grammar, dates, cross references, or typographical errors.

11.4 Agency Amendments. Notwithstanding anything to the contrary contained in this Amended and Restated Declaration, if Declarant shall determine that any amendments to this Amended and Restated Declaration or any amendments to the Articles of Incorporation or Bylaws shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to any of the Agencies, then, subject to the following sentence of this Section, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners, Members, Delegates or First Mortgagees. Each such amendment of this Amended and Restated Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to the conveyance of the last Privately Owned Site owned by Declarant to the first Owner thereof.

11.5 Special Rights of First Mortgagees. Any First Mortgagee, upon filing a written request therefor with the Service Association, shall be entitled to: (a) receive written notice from the Service Association of any default by the Owner indebted to such First Mortgagee in the performance of the Owner's obligations under this Amended and Restated Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within sixty (60) days after the Service Association learns of such default; (b) examine the books and records of the Service Association during normal business hours; (c) upon request, receive a copy of financial statements of the Service Association, including any annual audited financial statement, within one hundred twenty (120) days following the end of any fiscal year of the Service Association; (d) receive written notice of all meetings of Delegates or of Delegate Areas; (e) designate a representative to attend any meeting of Delegates or of Delegate Areas; (f) receive written notice of abandonment or termination of the Service Association or of this Amended and Restated Declaration; (g) receive notice of any amendment to this Amended and Restated Declaration, the Articles of Incorporation or the Bylaws; (h) receive written notice of termination of any agreement for professional management of the Service Association or the Service Association Properties following a decision by the Service Association to assume self-management; and (i) receive written notice of any damage to the Service Association Properties if the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000.00), and of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Service Association Properties.

11.6 Special Approvals. Subject to the provisions of Sections 11.3 and 11.4 hereof, but notwithstanding any other provisions of this Amended and Restated Declaration to the contrary, the Service Association shall not:

(a) unless it has obtained the prior written consent of Delegates representing at least sixty-seven percent (67%) of the votes of the Members and the prior written consent of at least sixty-seven percent (67%) of the First Mortgagees (based upon one vote for each First Mortgage owned or held):

(i) by act or omission, change, waive, or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the Service Association Area, or Improvements thereon, the maintenance of any Service Association Properties, party walls or common fences and driveways, or the upkeep of lawns and plantings in the Service Association Area;

(ii) fail to maintain fire and extended coverage insurance on insurable Service Association Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(iii) use hazard insurance proceeds for Service Association Properties property losses for purposes other than to repair, replace, or reconstruct such property;

(iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer any property owned, directly or indirectly, by the Service Association for the benefit of the Owners (excluding the granting of permits, licenses and easements for public utilities, roads or other purposes reasonably necessary or useful for the proper maintenance or operation of the Service Association Area or the Service Association); or

(v) change the method of determining the obligations, Assessments, dues, or other charges which may be levied against an Owner.

(b) unless it has obtained the prior written consent of Delegates representing at least sixty-seven percent (67%) of the total allocated votes in the Service Association, and fifty-one percent (51%) of the First Mortgagees (based upon one vote for each First Mortgage owned or held), add or amend any material provisions of this Amended and Restated Declaration, the Articles of Incorporation or Bylaws, which establish, provide for, govern or regulate any of the following, provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only:

(i) voting rights;

(ii) Assessments, Assessment liens or subordination of such liens;

(iii) reserves for maintenance, repair and replacement of those elements of the Service Association Properties which must be maintained, repaired or replaced on a periodic basis;

(iv) insurance, including but not limited to fidelity bonds;

(v) rights to use the Service Association Properties;

(vi) responsibility for maintenance and repair of any portion of the Service Association Area;

(vii) expansion or contraction of the Service Association Area or the addition, annexation or withdrawal of property to or from the Service Association Area;

(viii) boundaries of any Privately Owned Site;

(ix) convertibility of Privately Owned Sites into Service Association Properties, or of Service Association Properties into Privately Owned Sites;

(x) leasing of Privately Owned Sites;

(xi) imposition of any restriction on the right of any Owner to sell or transfer such Owner's Privately Owned Site;

(xii) any provisions which are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages;

(xiii) any restoration or repair of the Service Association Area after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Amended and Restated Declaration, the Articles of Incorporation and Bylaws;

(xiv) any action to terminate the legal status of the Service Association Area after substantial destruction or condemnation; or

(xv) any decision by the Service Association to assume self-management of the Service Association, when professional management has previously been required by any First Mortgagee or insurer or guarantor of a First Mortgage.

11.7 Evidence of Required Approvals. Whenever the validity of any amendment to or revocation of this Amended and Restated Declaration is conditioned upon voting by a stated percentage of Members or Delegates, or approval by First Mortgagees or Agencies, or both, the Recorded document implementing the amendment or revocation shall contain a certification by the Secretary of the Service Association that the approvals of the required percentages of Members or Delegates, as well as any required approvals of First Mortgagees or Agencies, were obtained. The Secretary shall keep on file in the offices of the Service Association such proxies, letters, minutes of meetings or other documentation as may be required to evidence compliance with applicable approval requirements, but the Secretary's



certificate on the Recorded instrument shall be sufficient public notice of compliance.

11.8 Notices. Any notice permitted or required to be given under this Amended and Restated Declaration shall be in writing and may be given either personally or by mail, telephone or telegraph. If served by mail, each notice shall be sent postage prepaid, addressed to the appropriate Person at the address given by such Person to the Service Association for the purpose of service of such notice, or to the Privately Owned Site of such Person if no address has been given to the Service Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Service Association.

11.9 Persons Entitled to Enforce Amended and Restated Declaration. The Service Association, acting by authority of the Board, or any Member, or any Subassociation, or the Architectural Committee, as well as any aggrieved Owner or other aggrieved Person, shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Amended and Restated Declaration against any property within the Service Association Area, the Owner thereof, or any other Person. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of this Amended and Restated Declaration. Each remedy provided under this Amended and Restated Declaration is cumulative and not exclusive. In any action or proceeding under this Amended and Restated Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees and expert witness fees.

11.10 Limitation on Liability. The Service Association, the Board of Directors, the Architectural Committee, any Subassociation, any Delegate and any member, agent or employee of any of the same, shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

11.11 Governing Law. This Amended and Restated Declaration shall be construed and governed under the laws of the State of Colorado.

11.12 Severability. Each of the provisions of this Amended and Restated Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

11.13 Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

11.14 Captions for Convenience. The titles, headings and captions used in this Amended and Restated Declaration are intended solely for convenience of reference and are not intended to affect the meaning of any provisions of this Amended and Restated Declaration.

11.15 Conflicts in Documents. In case of any conflict between this Amended and Restated Declaration and the Articles of Incorporation or the Bylaws, this Amended and Restated Declaration shall control. If there is a conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control. If there is a conflict between this Amended and Restated Declaration and a Supplemental Declaration, the more restrictive provision shall control unless that would result in a direct violation of this Amended and Restated Declaration, in which case this Amended and Restated Declaration shall control.

IN WITNESS WHEREOF, the undersigned Secretary of the Service Association hereby states and declares that the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Battlement Mesa was approved by at least two-thirds (2/3) of the total combined voting power of the Battlement Mesa Service Association at a meeting of the Members thereof duly held on August 2, 1991.

Dated this 6<sup>th</sup> day of August, 1991.

BATLEMENT MESA SERVICE ASSOCIATION,  
a Colorado nonprofit corporation

By: Fred A. Malo Fred Malo  
Its: Secretary

STATE OF COLORADO )  
 ) SS:  
COUNTY OF GARFIELD )

The foregoing instrument was acknowledged before me this 6 day of August, 1991, by Fred Malo as Secretary for Battlement Mesa Service Association, a Colorado nonprofit corporation.

WITNESS my hand and official seal.

My Commission Expires: June 17 1995

*Cynthia J. Peterson*  
Notary Public

The undersigned Declarant hereby approves the aforesaid Amended and Restated Declaration of Covenants, Conditions and Restrictions of Battlement Mesa.

Dated this 5th day of August, 1991.

DECLARANT:

BATLEMENT MESA PARTNERS, a Colorado general partnership

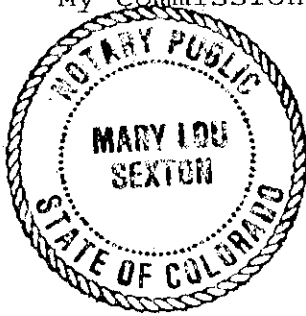
By: *William Wilde* William Wilde  
Its: Vice President  
Community Holdings West, Inc.,  
its general partner

STATE OF COLORADO )  
 )SS:  
COUNTY OF GARFIELD )

The foregoing instrument was acknowledged before me this  
5th day of August, 19 91, by William Wilde  
as Vice President for Battlement Mesa Partners, a Colorado  
general partnership.

WITNESS my hand and official seal.

My Commission Expires: 6/5/93



*Mary Lou Sexton*  
Notary Public

EXHIBIT A

## SERVICE ASSOCIATION AREA

All of the referenced plots are recorded in the office of the Clerk and Recorder of Garfield County, Colorado:

<u>Residential Area</u>	<u>Delegate Areas</u>
Battlement Creek Village, Section One	Delegate Area #1
Battlement Creek Village, Section Two	Delegate Area #2
Mesa Ridge Phase 1, and Jack's Pocket Village Filing No. 5	Delegate Area #3
Monument Creek Village, Section One	Delegate Area #4
Monument Creek Village, Section Two	Delegate Area #5
Saddleback Village Filing No. 1 (except Lots 1 and 2, Block 8)	Delegate Area #6
Tamarisk Subdivision Filing No. 1, Parcel C	Delegate Area #7
Tamarisk Subdivision Filing No. 2	Delegate Area #8
Willow Creek Village, Section One	Delegate Area #9
Willow Creek Village, Section No. 2	Delegate Area #10

Commercial Areas:

Burning Rock Subdivision (golf course)	Delegate Area #51
Saddleback Village Filing No. 1; Lots 1 and 2, Block 8	Delegate Area #52
Town Center, Filing No. 1	Delegate Area #53

Town Center, Filing No. 2	Delegate Area #54
Town Center, Filing No. 3	Delegate Area #55
Town Center, (Sales Pavilion)	Delegate Area #56

Publicly Owned Sites:

Jack's Pocket Village,  
Filing No. 1 (Fire Station)

Jack's Pocket Village,  
Filing No. 2 (Pump Station)

Jack's Pocket Village,  
Filing No. 3 (Water Tank)

Jack's Pocket Village,  
Filing No. 4 (Church)

L.W. St. John Middle School

Monument Creek Village,  
Section Two (School Site)

Monument Creek Village,  
Filing No. 4 (Church Site)

River Bluff, Filing No. 1  
(Treatment Plants)

River Bluff, Filing No. 2  
(Well Field)

River Bluff, Filing No. 3  
(Pump Station)

River Bluff, Filing No. 4  
(Lift Station)

River Bluff, Filing No. 5  
(Pump Station)

River Bluff, Filing No. 6  
(Ball Fields)

River Bluff, Filing No. 8  
(Church Site)

River Bluff, Filing No. 9  
(Church and Site)

Saddleback Village Filing No. 1:  
Lot 1, Block 28 (PSR Site); and Lot 1,  
Block 29 (Church Site)

Tamarisk Subdivision Filing No. 1;  
Lot 1, Block 17 (Elementary  
School)

The Highlands, Filing No. 1  
(Water Tank)

Town Center, Filing No. 4  
(Activity Center)

EXHIBIT B

ANNEXABLE AREA

All other property within the boundaries of the Battlement Mesa P.U.D., as may be amended from time to time, not specifically set forth in the foregoing Exhibit A.