

748

**THIRD AMENDMENT
TO THE
AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR BATTLEMENT MESA**

THIS AMENDMENT is made this 19th day of August, 2003.

RECITALS

A. Battlement Mesa, Inc., a Delaware corporation, and Pulte Home Corporation, a Delaware corporation, created the Battlement Mesa community (the "Service Association Area") by recording a Declaration of Covenants, Conditions and Restrictions of Battlement Mesa in the real property records of Garfield County, State of Colorado at Reception No. 320285, Book 583, Page 456 on October 15, 1981, as amended by an Amended and Restated Declaration of Covenants, Conditions and Restrictions for Battlement Mesa recorded August 13, 1991, in the real property records of Garfield County, State of Colorado at Reception No. 426419, Book 811 at Page 09 (the "Original Declaration").

B. Pursuant to Article XI, Section 11.2 of the Original Declaration, the approval of Delegates representing fifty-one percent (51%) of the voting power of the Members of the Service Association at a duly constituted meeting of the Service Association is required to approve any amendments to the Declaration.

C. The undersigned, being the President and Secretary of the Association, hereby certify that the approval of Delegates representing fifty-one percent (51%) of the voting power of Members of the Service Association at a duly constituted meeting of the Service Association has been obtained for this Amendment as required under Article XI, Section 11.2 of the Original Declaration, and that the approvals, along with the recorded copy of this Third Amendment shall be placed in the Battlement Mesa Service Association's corporate records and shall be available for review and inspection upon request.

D. As amended by this Amendment, the Original Declaration is referred to as the "Declaration."

NOW THEREFORE,

I. **Amendments.** The Original Declaration is hereby amended as follows:

(a) **Repeal and Restatement.** Article III, Section 3.1 is hereby repealed in its entirety and the following Article III, Section 3.1 is substituted:

Return To

Battlement Mesa Service Association
P.O. Box 6006
Battlement Mesa, CO 81636

35
10/1



The Service Association has been 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 comprised of Delegates. Each Delegate shall be elected by the Owners within his or her Delegate Area, acting in their capacity as Members of the Service Association. Upon election by the Owners within his or her Delegate Area, the elected Delegate shall automatically become a member of the Board of Directors. Notwithstanding the foregoing, the Declarant shall have the right to appoint two (2) members of the Board of Directors pursuant to the Bylaws.

(b) Repeal and Restatement. Article III, Section 3.2 is hereby repealed in its entirety and the following Article III, Section 3.2 is substituted:

The number, term and qualification of the members of the Board of Directors shall be fixed in the Articles of Incorporation and Bylaws. Until the date when the Declarant has conveyed all Privately Owned Sites to Owners other than Declarant, the Board of Directors shall be made up of the Delegates elected by the Owners within their respective Delegate Area, plus two (2) directors who are appointed by the Declarant. The number of members of the Board of Directors shall increase as new Delegate Areas are developed. 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.

II. No Other Amendments. Except as amended by the terms of this Amendment and previous Amendments, the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment is executed by the undersigned.

**BATTLEMENT MESA SERVICE ASSOCIATION,
a Colorado nonprofit corporation**

By: Charles D. Hall
President

By: Suzanne M. Lancaster
Secretary