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BOOK 757 PAGE 504

Reception No. 403093 MILE & RECORDS
GARFIELD COUNTY, COLORADO

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MESA RIDGE

THIS DECLARATION is made this 21st day of June, 1989 by BATTLEMENT MESA, INC., a Delaware corporation ("BMI") and GARY LESTER HOMES OF COLORADO, INC., a Colorado corporation ("GLH"). BMI and GLH shall hereinafter be referred to together as the "Declarant."

RECITALS

BMI and GLH are the owners and developers of real property situate in the County of Garfield, State of Colorado (the "County") set forth on the Plat for Mesa Ridge Townhomes, recorded in the records of the County under Reception No. 395200 (the "Plat"). Declarant owns additional real property adjoining or adjacent to the property described in the Plat (the "Additional Real Property"), described on Exhibit A attached hereto, and Declarant may subject all or portions of the Additional Real Property to this Declaration by recording a Supplemental Declaration or Declarations and a Supplemental Plat or Plats in the records of the County within twenty years of the initial recording of this Declaration.

A multi-building residential townhome project known and referred to as Mesa Ridge Townhomes is or will be located on the Property and portions of the Additional Real Property as may be subjected to this Declaration in accordance with the terms and conditions set forth herein.

Declarant desires to establish a residential townhome community on the Property (as described below) with permanent common facilities for the benefit of the community and to provide for the preservation of the values and amenities in the community and for the maintenance of the residences and common facilities located in the community. By this Declaration, Declarant, therefore, subjects the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the above-described property and each owner thereof.

DECLARATION

Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the land, shall be a burden and a benefit to Declarant, its successors and assigns and any person acquiring or owning an interest in the real property subject to this Declaration and improvements built thereon, their grantees, successors, heirs, executors, administrators, devisees or assigns.

1. Definitions. As used in this Declaration, unless otherwise expressly provided:

(a) "Association" means the Mesa Ridge Townhome Association, a Colorado nonprofit corporation.

(b) "Assessment Lien" means the Lien established pursuant to Section 8(g) of this Declaration.

(c) "BMI" means Battlement Mesa, Inc., a Delaware corporation.

(d) "Common Assessment" shall mean an Owner's share of Common Expenses as described in Section 8 of this Declaration.

(e) "Building" or "Buildings" means the building improvements known as Mesa Ridge Townhomes located within the Project, and any building improvement subsequently built on the Property.

(f) "Common Space Parcels" means any parcel designated on the Plat or any Supplemental Plat as a common space parcel and all other parts of the Property that are not part of a Townhome Lot.

(g) "Common Expenses" means: (i) all expenses expressly declared to be common expenses by this Declaration or by the by-laws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining or repairing the Common Space Parcels, the portion of all Townhome Lots lying outside of the Buildings and the exterior of the Buildings; (iii) insurance premiums for the insurance carried under Paragraph 9; and (iv) all expenses lawfully determined to be Common Expenses by the board of directors of the Association. Notwithstanding the foregoing, management fees may be charged to owners as a direct expense and not as a Common Expense.

(h) "Battlement Mesa Service Association" means the Battlement Mesa Service Association, a Colorado non-profit corporation, described in the Declaration of Covenants, Conditions and Restrictions for Battlement Mesa (the "Battlement Mesa Service Association Declaration"), recorded with the Clerk and Recorder of the County.

(i) "County" means Garfield County, Colorado.

(j) "Declarant" means Battlement Mesa, Inc., a Delaware corporation and Gary Lester Homes of Colorado, Inc., a Colorado corporation, their successors and assigns.

(k) "Declaration" means this instrument and any Supplemental Declarations or amendments hereto hereafter recorded in the records of the County.

(l) "First Lienor" means the holder of a promissory note, payment of which is secured by a first mortgage, first deed of trust or assignment of lease encumbering an interest in a Townhome Lot. "Mortgage" shall include a deed of trust, an assignment of lease, and "mortgagee" shall include the beneficiary of a deed of trust or assignee under an assignment of lease.

(m) "GLH" means Gary Lester Homes of Colorado, Inc., a Colorado corporation.

(n) "Individual Special Assessments" means those assessments set forth in Section 8(f) of this Declaration.

(o) "Owner" means any individual, corporation, partnership, association, trust or other legal entity, or combination of legal entities, that is the record owner of an undivided fee simple interest in one or more Townhome Lots.

(p) "Plat" means the Plat for Mesa Ridge Townhomes, recorded in the records of the County under Reception No. 395200 and any Supplemental Plats or amendments thereto hereafter filed in the records of the County.

(q) "Project" means the Property and the Buildings and other improvements located on the Property.

(r) "Property" means real property subject to this Declaration from time to time and includes both the property described in the Plat and the Additional Real Property described in Exhibit A attached hereto, to the extent such Additional Real Property is made subject to the provisions hereof.

(s) "Special Assessments" means those assessments set forth in Section 8(e) of this Declaration.

(t) "Supplemental Declaration" means a written instrument containing covenants, conditions, restrictions, reservations, easements or any combination thereof, which shall be recorded in the County against all or any portion of the Additional Real Property in accordance with the terms and conditions set forth in Section 2 of this Declaration.

(u) "Supplemental Plat" means any plat filed in the records of the County in connection with real property covered by one or more Supplemental Declarations.

(v) "Townhome" means an attached or detached dwelling including garages located on a Townhome Lot and designed to be occupied by one family living independently of any other family, and having not more than one indoor kitchen facility which is limited to use by the one family.

(w) "Townhome Lot" means lots established by the Plat or one or more Supplemental Plats as said Plat or Plats may be amended from time to time; together with (i) all Townhomes and other improvements constructed thereon, (ii) all easements appurtenant thereto, and (iii) an undivided interest in the Common Space Parcels appurtenant to each Townhome Lot as set forth in this Declaration.

2. Annexation of Additional Real Property

(a) The Declarant may hereafter within twenty years of the initial recording of this Declaration subject all or portions of the Additional Real Property to the provisions of this Declaration and construct improvements thereon as described in a Supplemental Declaration and Supplemental Plat. Each such addition shall be evidenced by (i) a Supplemental Plat, and (ii) a Supplemental Declaration, both to be filed and recorded in the records of the County.

(b) Prior to a conveyance by Declarant of any portion of the Additional Real Property to be included in the Project, the Declarant shall cause to be filed for record in the County, a Supplemental Declaration which shall contain (i) a legal description of the portion of the Additional Real Property to be included in the Project, and (ii) a reference to this Declaration and the applicable Supplemental Plat.

3. Property Rights.

(a) Easement. A blanket easement is hereby made, established, declared and granted upon, across, over and under the entire Property (including any Common Space Parcels and each Townhome Lot) for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, gas, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing company to erect and maintain the necessary equipment on the Project and to affix and maintain wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Buildings. Such easement shall be deemed appurtenant to the land, shall be deemed to benefit and burden the land, and shall pass to all successors in title to land affected thereby.

(b) Inseparability. Each Townhome Lot shall be inseparable and may be conveyed, leased, devised or encumbered only as a Townhome Lot as established herein. Title to a Townhome Lot may be held individually, or by any entity or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Townhome Lot in which he owns an interest.

(c) Party Walls. (i) For purposes of this Section 2(c), "Party Wall" shall mean and refer to any wall which is part of the original construction of any Building located on two or more Townhome Lots and is placed on or immediately adjacent to a Townhome Lot line and which separates two or more Townhomes.

(ii) Mutual reciprocal easements are hereby established, declared and granted for all Party Walls between Townhome Lots, which reciprocal easements shall be for mutual support and shall be governed by this Declaration. Every conveyance of a Townhome Lot, whether or not expressly so stating, shall be deemed to convey and to be subject to such reciprocal easements.

(iii) To the extent not inconsistent with the provisions of this Section 2(c), the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(iv) The cost of reasonable repair and maintenance of any Party Wall shall be borne equally by the Owners of Townhomes sharing said Party Wall. If the Owner of one Townhome sharing the Party Wall refuses to pay his proportionate share of the cost of repair or maintenance, then the other Owner may cause the Party Wall to be repaired and shall be entitled to assess the cost attributable against the non-paying adjoining Owner's Townhome Lot, and the same shall become and remain a lien against the Townhome Lot, until fully paid. Said lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

(v) If a Party Wall is destroyed or damaged by fire or other casualty, Owners of Townhomes sharing the Party Wall may restore it, and if other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion of such use, subject however, to the right of any such Owners to call for a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions. If one Owner causes the Party Wall to be restored and any other Owner uses the Party Wall and does not contribute to the costs of the Party Wall's restoration, the Owner who caused the wall to be restored shall be entitled to assess the cost attributable against the non-paying adjoining Owner's Townhome Lot, and the same shall become and remain a lien against such property until fully paid. The lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

(vi) Notwithstanding any other provision of this Section 2(c), an Owner who by his negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(vii) The right of any Owner to contribution from any other Owner under this Section 2(c) shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

(viii) If any dispute arises concerning a Party Wall under the provisions of this Section 2(c), such dispute shall be arbitrated in the manner hereinafter provided. Three individuals (including one or more members of the board of directors of the Association or one or more Owners or a combination of both) appointed by the President of the Association, none of whom may be a party to the dispute, shall act as a Board of Arbitration and the decision shall be by a majority vote of the Board of Arbitration after an

arbitration proceeding. No legal action with respect to a Party Wall dispute shall be commenced or maintained unless and until the provisions of this arbitration clause have been met. The appointment of arbitrators hereunder shall be made within 20 days after notice by one party to the other party that a dispute exists, which notice shall not be given after any applicable statute of limitations concerning such dispute shall have expired.

(ix) Notwithstanding any other provision of this Section 2(c), the Association may, in its sole discretion make any repairs to Party Walls which the Association deems necessary and the cost for said repairs shall be assessed equally against the Townhome Lots containing Townhomes benefitted by said repairs unless the repairs are necessitated by intentional acts or negligence of one Owner in which case the Owner causing the damage shall pay for all costs of repairs.

(d) Description. Any contract of sale, deed, lease, deed of trust, mortgage, will or other instrument affecting a Townhome Lot may describe it as follows:

Townhome Lot _____, MESA RIDGE TOWNHOMES, according to the Final Plat for Mesa Ridge Townhomes, Garfield County, Colorado; TOGETHER WITH all easements appurtenant thereto as granted pursuant to the Declaration of Covenants, Conditions and Restrictions for Mesa Ridge Townhomes, recorded with the Clerk and Recorder of Garfield County, Colorado together with any amendments or supplements thereto (the "Declaration");

AND TOGETHER WITH an undivided interest in and to the Common Space Parcels as described in the Declaration;

SUBJECT, HOWEVER, to all of the terms and conditions contained in the Declaration.

(e) Separate Assessment. Declarant shall request that the Townhome Lots be separately assessed and taxed.

(f) Restriction On Use. The Townhome Lots shall be used and occupied solely for residential dwelling or lodging purposes. Owners may rent or lease their Townhome Lots to others for these purposes.

(g) No Partition of Lots. No Owner may assert any right of partition with respect to his Townhome Lot. By becoming an Owner, each Owner waives any and all rights of partition he may hold with respect to his Townhome Lot.

4. Common Space Parcels; Encroachments.

(a) Common Ownership. The Common Space Parcels shall be owned in common by all the Owners and shall remain undivided. No Owner may assert any right of partition with respect to the Common Space Parcels. Each Owner waives any and all rights of partition he may hold by virtue of his ownership of an undivided interest in the Common Space Parcels as a tenant in common with the other Owners.

(b) Use by Owners. Each Owner shall be entitled to use the Common Space Parcels in accordance with the purposes for which they are intended, without hindering, impeding or imposing upon the rights of the other Owners and in accordance with rules and regulations duly established from time to time by the Association. The Association shall have the right to charge reasonable admission and other fees for the use of any recreational facility which may become situated upon or which is a part of the Common Space Parcels.

(c) Encroachments. If any portion of the Common Space Parcels now encroaches upon any Townhome Lot, or if any improvement on a Townhome Lot now encroaches upon any other Townhome Lot or upon any portion of the Common Space Parcels, as a result of construction, or if any such encroachment shall occur hereafter as a result of settling or shifting of any improvements, a valid easement for the encroachments and for the maintenance of the same so long as the improvement stands, shall exist. In the event any improvement shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Space Parcels upon any Townhome Lot or upon any portion of the Common Space Parcels, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the improvement shall stand.

(d) Restrictions On Use. Common Space Parcels may be used for parking, snow storage, open space and vehicular and pedestrian access for the installation, maintenance and operation of underground utility lines and related facilities and in the discretion of the Association, may be used for recreational facilities, provided that any recreational facilities constructed must be approved by the Review Board, as described in Section 18 hereof.

5. Mechanic's Liens; Indemnification.

(a) No Liens. If any Owner shall cause any material to be furnished to his Townhome or Townhome Lot or any labor to be performed therein or thereon, no Owner of any other Townhome Lot shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Townhome or Townhome Lot. Nothing herein contained shall authorize any Owner or any person dealing through, with or under any Owner to charge the Common Space Parcels or any Townhome Lot other than that of such Owner with any mechanic's lien or other lien or encumbrance whatsoever. On the contrary (and notice is hereby given) the right and power to charge any lien or encumbrance of any kind against the Common Space Parcels or against any Owner or any Owner's Townhome Lot for work done or materials furnished to any other Owner's Townhome Lot is hereby expressly denied.

(b) Discharge of Liens. If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Space Parcels or against any other Owner's Townhome Lot or any improvements therein, or against any other Owner (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within 20 days after the date of filing thereof, and further shall indemnify and save all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages, including reasonable attorney's fees resulting therefrom.

6. Administration and Management. The Association shall be administered and managed pursuant to this Declaration, any Supplemental Declaration, the articles of incorporation and by the bylaws of the Association. Each Owner shall be a member of the Association and shall remain a member until he ceases to be an Owner. Each member shall comply strictly with the provisions of this Declaration and of the articles of incorporation and bylaws of the Association. Each member shall be bound and shall comply with rules, resolutions and decisions of the Association duly made or adopted in the manner set forth in the articles of incorporation or bylaws. Failure of a member to comply with such

provisions, rules, resolutions or decisions shall be grounds for an action to recover damages or to obtain injunctive relief, or both, maintainable by the Association on behalf of the other Owners or, in a proper case, by an aggrieved Owner. In addition, the Association's bylaws may authorize the Association, during the period of any delinquency, (a) to revoke a delinquent Owner's right to use the Common Space Parcels, and (b) to suspend a member's voting privileges; however, no such suspension shall affect the rights of a First Lienor.

7. Maintenance and Repairs.

(a) Interior Maintenance. Each Owner shall be responsible for maintenance and repairs within his Townhome. In performing such maintenance or repairs, or in improving or altering his Townhome, no Owner shall do any act or work which impairs the structural soundness of any Party Wall.

(b) Common Space Parcels and Exterior Maintenance. The Common Space Parcels, the exterior of all Townhomes, including all entryway courtyards, and areas of each Townhome Lot outside of any Townhome or outside of any fence enclosing portions of any Townhome Lot or outside of any patio or deck on any Townhome Lot, shall be administered, conserved, managed, maintained, repaired and replaced by the Association, which may have access to any Townhome Lot and Townhome from time to time during reasonable hours for such purposes, or at any time for the purpose of making emergency repairs therein necessary to prevent damage to the Common Space Parcels or to other Townhome Lots or Townhomes. The costs of repairing any damage to a Townhome Lot or Townhome resulting from entry therein for any such purpose shall be a Common Expense of all the Owners. However, if the need to make such entry results from the negligence or intentional act of any Owner, such Owner shall reimburse the Association for all the costs of repairing such damage and shall be liable to the other Owners for all additional losses or damages suffered, including reasonable attorney's fees. The Association's maintenance of the exterior of Townhomes shall not include cleaning of or replacing glass on Townhomes. Cleaning and replacing glass shall be the responsibility of the individual Owner of the Townhome.

8. Assessments for Common Expenses.

(a) Creation of Assessments. The Declarant, for each Townhome Lot owned within the Project, hereby covenants, and each Owner of any Townhome Lot by acceptance of a deed therefor, whether or not it shall be so expressed in

such deed, is deemed to covenant and agree to pay the Association: (i) Common Assessments, (ii) Special Assessments, and (iii) Individual Special Assessments, such assessments to be established and collected as hereinafter provided.

(b) Common Assessment. Except as set forth herein, each Owner shall pay his share of the Common Expenses, which shall be referred to as the Common Assessment. The Common Assessment levied against each Townhome Lot for any given year shall be established by the Board and shall be levied uniformly except as provided in paragraph (h) of this Section 8. Notwithstanding anything to the contrary set forth herein, the amount of the Common Assessment shall be restricted in accordance with paragraph (c) of this Section 8.

(c) Maximum Common Assessments. The Association shall not levy against any Townhome Lot, for any fiscal year, Common Assessments in excess of the "Maximum Common Assessment" as hereinafter defined. The Maximum Common Assessment shall be \$1,500 for the first fiscal year of the Association. For purposes of this Section, the first fiscal year of the Association shall be the year which follows the year of recording of this Declaration. During the second fiscal year and each fiscal year thereafter, the Maximum Common Assessment may be increased by 10 percent above the Common Assessment levied against each Townhome Lot during the preceding fiscal year. Any increase in the Common Assessment in excess of the 10 percent Maximum Common Assessment shall require the approval of Owners representing two-thirds of the entire voting power of the Association. Notwithstanding anything to the contrary contained herein, for so long as either BMI or GLH owns any Townhome Lot, if the Common Expenses exceed the Maximum Common Assessments, GLH shall pay such excess to the Association.

(d) Annual Budget. The board of directors of the Association shall cause to be prepared, at least 60 days prior to the commencement of each fiscal year, a budget for such fiscal year. The budget shall show, in reasonable detail, anticipated Common Expenses and shall reflect any expected income of the Association for the coming fiscal year and any reserves or surplus from the prior fiscal year. The budget may include an amount to fund or replenish any contingency reserves. Copies of the budget shall be made available to any Owner, prospective Owner or mortgagee, upon request.

(e) Special Assessments for Capital Improvements. In addition to the Common Assessment authorized above, the Association may levy, in any assessment year, a Special

Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of all members of the Association who are voting in person or by proxy at a meeting duly called for this purpose. In addition, the Association may levy Special Assessments (i) to meet increased operating or maintenance expenses or costs, and (ii) to provide for emergencies.

(f) Individual Special Assessments. In addition to the Common and Special Assessments authorized herein, the Association may levy an Individual Special Assessment for the purpose of reimbursing the Association for any costs incurred by the Association in causing compliance with the protective covenants or enforcing the protective covenants against the Owner or said Owner's Townhome Lot and said Individual Special Assessment shall be secured by the Assessment Lien (as defined below). In the event of a default on the part of the Owner or occupant of any Townhome Lot in observing any of the protective covenants set forth in Section 20 of this Declaration, or any rules and regulations imposed by the Review Board or covenants imposed by the Declarant pursuant to Section 20(bb) hereof, such default continuing after 10 days written notice thereof posted on the Townhome Lot and delivered to the last known address of the Owner, the Association may, without liability to the Owner or occupant in trespass, conversion or otherwise, enter upon the non-complying Townhome Lot and do whatever is necessary to secure compliance with the protective covenants described herein, including without limitation cutting weeds and grass and removing garbage, trash and rubbish.

(g) Assessment Lien. The Annual, Special and Individual Special Assessments, together with interest, costs, and reasonable attorney's fees which are incurred by reason of the failure to pay such assessments as required by the bylaws of the Association shall be secured by an Assessment Lien on the Townhome Lot to which the assessments relate in favor of the Association which shall be a continuing servitude and lien upon the applicable Townhome Lot against which each such assessment is made. The Assessment Lien shall attach from the date when the unpaid assessment becomes due and may be foreclosed by the Association in the manner as a mortgage on real property upon the recording of a notice or claim of said Assessment Lien executed by the Association setting forth the amount of the unpaid assessment (including any late charges imposed pursuant to paragraph (i) of this Section 8) the name

of the delinquent Owner(s) and a description of the applicable Townhome Lot. The Association shall be entitled to purchase the Townhome Lot at any foreclosure sale. Each such assessment, together with interest, costs and reasonable attorney's fees necessary to collect the assessments shall also be a continuing personal obligation of the person or entity who or which was the Owner of such property at the time the assessment became due. Any purchaser of a Townhome Lot will be jointly and severally liable with his seller for any unpaid assessments at the time the Townhome Lot is purchased.

(h) Declarants Exemption. For so long as BMI or GLH retain fee title to a Townhome Lot, any Townhome Lot so owned shall be subject to payment of assessments at the rate of 25 percent of the Common and Special Assessments. Notwithstanding anything to the contrary set forth herein, the full assessment rate shall be paid on any such Townhome Lot upon the first of the following to occur: (i) the sale or conveyance of said Townhome Lot to a third party, or (ii) the leasing or rental of a Townhome located on said Townhome Lot to a third party.

(i) Late Charges and Interest. If any Common Assessment, Special Assessment or Individual Special Assessment or any installment thereof is not paid within 30 days after it is due, the Owner obligated to pay the assessment may be required to pay late charges and interest on all outstanding amounts as determined appropriate by the board of directors of the Association.

(j) No Exemption. No Owner shall exempt himself from liability for payment of his share of the Common Expenses either by waiver of the use or enjoyment of the Common Space Parcels or by abandonment of his Townhome Lot or for alleged failure of the Association to perform its duties and responsibilities hereunder.

(k) Estoppel Statement. Upon written request of any Owner, mortgagee, prospective mortgagee, purchaser or other prospective transferee of a Townhome Lot, the Association shall issue a written statement setting forth the amount of the unpaid Common Expenses, if any, with respect to such Townhome Lot, the amount of the current monthly Common Assessment and any Special Assessment or Individual Special Assessment, the date on which such assessment became or shall become due and the amount of any credit for prepaid expenses. Such statement, for which a reasonable fee may be charged, shall be binding upon the Association in favor of any person who may rely thereon in good faith. Unless a request for such statement shall be complied with within fifteen days after receipt



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thereof, all unpaid Common Expenses which became due prior to the date of making such request shall be subordinated to the lien or other interest of the person requesting such statement.

(1) Right To Pay. Any party in favor of whom a lien on a Townhome Lot has been created may, but shall not be required to, pay any unpaid Common Expense with respect to such Townhome Lot, and upon such payment such party shall have a lien on such Townhome Lot for the amount so paid of the same rank as the lien theretofore existing.

9. Insurance.

(a) Insurance on Common Space Parcels. The Association shall maintain insurance covering all insurable improvements located or constructed upon the Common Space Parcels. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a Common Expense.

(i) A policy of property insurance covering all insurable improvements located on the Common Space Parcels, except for land, foundation, excavation and other matters normally excluded from coverage, in an amount not less than necessary to comply with any co-insurance percentage stipulated in the insurance policy. Further, said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, and include an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement." The Association may also purchase coverage on personal property owned by the Association including fixtures and building service equipment, furnishings and supplies. Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:

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

(B) such other risks as shall customarily be 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.

(ii) A comprehensive policy of public liability insurance covering all of the Common Space Parcels, insuring the Association in an amount not less than \$1,000,000.00 covering bodily injury, including death to persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Space Parcels, and protection against liability for non-owned and hired automobiles; such coverage may also include, if applicable, comprehensive automobile liability insurance, garagekeeper's liability, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be required by private institutional mortgage investors with respect to projects similar in construction, location and use.

(iii) 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 Association and all others who handle or are responsible for handling funds of the Association, in an amount deemed appropriate by the board of directors of the Association. Such fidelity coverage or bonds shall meet the following requirements:

(A) all such fidelity coverage or bonds shall name the Association as an obligee;

(B) 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.

(iv) If the Common Space Parcels, or any portion thereof, located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on the Common Space Parcels has been made available under the National Flood Insurance Program, then such a policy of flood insurance on the Common Space Parcels in an amount at least equal to the lesser of:

(A) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

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(B) one hundred percent of current replacement cost of all Buildings and other insurable property located within a designated flood hazard area.

(v) In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including but not limited to personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association and, if appropriate, coverage for loss or damage resulting from steam boiler equipment or air conditioning equipment accidents in an amount not less than \$100,000.00 per accident per location or such greater amount as may be deemed prudent by the Association based on the nature of the property.

(b) Insurance on Townhome Lots. The Association or its agent shall obtain and maintain, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, a policy of property insurance covering the Buildings located on each Townhome Lot, except for land, foundation, excavation and other items normally excluded from coverage, with an amount not less than that necessary to comply with any co-insurance percentage stipulated in the insurance policy. Further, said policy shall contain a "Replacement Cost Endorsement" provided that any claim will be settled on a full replacement cost basis without deduction for depreciation, and including an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement." Such insurance as maintained by the Association pursuant to this Section shall afford protection against at least the following:

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

(ii) such other risks as shall customarily be 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.

(c) General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as.

insured, or its designee as trustee and attorney-in-fact for all Owners, and each shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory First Mortgagee's clause in favor of each First Lienor and a provision that it cannot be cancelled or materially altered by either the insured or the insurance company until thirty days' prior written notice thereof is given to the insured and each First Lienor, insurer or guarantor of a first Mortgage on a Townhome Lot. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including First Lienors of Townhome Lots, upon request. Any such Owner's policy shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

(d) Deductibles. The board of directors of the Association shall determine the maximum acceptable deductible clauses on all insurance policies. Any loss falling within the deductible portion of such policy shall be borne by the person or entity who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible shall be borne by the Association. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any annual assessment.

(e) Insurance Trustee. The 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. Such insurance trustee shall act as attorney-in-fact for the purpose of purchasing and maintaining insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. Said party may also

receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Lienors as their interest may appear.

(f) Association Insurance as Primary Coverage.

If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any annual assessment. Any such Owner's policy shall also contain waivers of subrogation.

(g) Acceptable Insurance Companies.

Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports of V/VI or better, or a financial rating of Class V provided it has a general policy holder's rating of at least A, and is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (i) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgage or mortgagee's designee or (ii) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders or members, or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

(h) Insurance to be Maintained by Owners.

Insurance coverage on the furnishings and other items of personal property belonging to an Owner shall be the responsibility of the Owner thereof. Any insurance policy obtained by an Owner shall, to the extent possible at reasonable cost, contain a waiver of the right of subrogation by the issuer as to any claim against the Association, its officers, directors, agents and employees and against other Owners. A copy of any insurance policy obtained by Owner shall be furnished to the Association. Owners shall also be responsible for obtaining such policies of title insurance related to any sale of a Townhome Lot other than the purchase by the initial Owner from the Declarant.

(i) Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the board of directors of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association and all business operations to be performed by the Association in accordance with this Declaration and the Articles and Bylaws of the Association. Prior to obtaining any policy of fire insurance or renewal thereof, the board of directors or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or other person knowledgeable as to replacement costs, which appraiser shall reasonably estimate the full replacement value of the improvements to the insured for the purpose of determining the amount of insurance required pursuant to the provisions of this Article. Any First Lienor of a Townhome Lot shall be furnished with a copy of such appraisal upon request.

10. Appointment of Attorney-in-Fact. Each Owner by his acceptance of the deed or other conveyance vesting in him an interest in a Townhome Lot does irrevocably constitute and appoint (a) the Association with full power of substitution as his true and lawful attorney in his name, place and stead to deal with such interest upon damage to or destruction, obsolescence, or condemnation of any improvement, or portion of the Property as hereinafter provided, and (b) Declarant with full power of substitution as his true and lawful attorney in his name, place, and stead to deal with such interest in order to effectuate the reservation contained in paragraph 22, each with full power, right and authorization to execute, acknowledge and deliver any contract, deed, proof of loss, release or other instrument affecting the interest of such Owner, and to make any other action, which the Association or Declarant may consider necessary or advisable to give effect to the provisions of this Declaration. If requested to do so by the Association or Declarant, each Owner shall execute and deliver a written instrument confirming such appointment. The action of the Association in settling any damage or condemnation claim shall be final and binding on all Owners. No Owner shall have any rights against the Association or any of its officers or directors with respect thereto except in the case of fraud or gross negligence.

11. Damage or Destruction. In case of damage to or destruction of any improvement on the Property by any cause whatever:

(a) Sufficient Insurance. If in the reasonable judgment of the Association, the proceeds of insurance shall be sufficient to pay all the costs of repairing and restoring

the improvement, the Association (as attorney-in-fact for the Owners) shall cause the repairs to be made, applying the proceeds of insurance for that purpose.

(b) Insufficient Insurance; Mandatory Repair.

If in the reasonable judgment of the Association, the anticipated proceeds of insurance are not sufficient to pay the costs of repairing and restoring the improvement, and if the excess of such costs over the anticipated insurance proceeds are less than 10 percent of the maximum replacement value, then the Association (as attorney-in-fact for the Owners) shall promptly cause the improvement to be repaired and restored, and the difference between the insurance proceeds and the costs of repair and restoration shall be a Common Expense, to be assessed and paid as provided in Section 8.

(c) Insufficient Insurance; Optional Repair.

If in the reasonable judgment of the Association, the anticipated proceeds of insurance are not sufficient to pay the costs of repairing and restoring the improvement, and if the excess of such costs are 10 percent or more of the maximum replacement value, then (unless within 100 days after the date of such damage or destruction a plan for repairing and restoring the building shall be approved by Owners of 80 percent or more of the total interests in the Common Space Parcels) the Association (as attorney-in-fact for the Owners) shall execute and record in the real estate records of the County a notice of such facts, and thereafter shall sell the Property, together with any improvements thereon, free and clear of the provisions of this Declaration, which shall wholly terminate and expire upon the closing of such sale. The proceeds of insurance and the proceeds of such sale of the Property shall be collected by the Association, applied first to the payment of expenses of the sale, and then divided among the Owners and paid into separate accounts, each representing one Townhome Lot. The insurance proceeds shall be divided equally among all Owners. The funds in each account (without contribution from one account to another) shall be applied by the Association for the following purposes in the order indicated: (i) for payment of the balance of the lien of any first mortgage on the Townhome Lot; (ii) for payment of taxes and special assessment liens in favor of any assessing entity; (iii) for payment of unpaid Common Expenses; (iv) for payment of junior liens and encumbrances in the order of and to the extent of their priority and (v) the balance remaining, if any, shall be paid to the Owner. The provisions of this paragraph shall not be construed as limiting in any way the right of a First Lienor (in case the proceeds allocated under

(i) above shall be insufficient to pay the indebtedness secured by his lien) to assert and enforce the personal liability for such deficiency of the person or persons responsible for payment of such indebtedness. If within 100 days after the date of such damage or destruction a plan for repairing and restoring a damaged or destroyed building shall be approved by 80 percent or more of all Owners, the Association (as attorney-in-fact for such Owners) shall promptly cause such repairs and restoration to be made according to such plan. All Owners shall be bound by the terms of such plan, and the difference, if any, between the amount of the insurance proceeds and the costs of repair and restoration shall be a Common Expense, to be assessed and paid as provided in Section 8.

(d) No Liability. Nothing contained in this Section 11 shall be construed as imposing any liability whatever on any First Lienor to pay all or any part of the costs of repair or restoration.

12. Obsolescence.

(a) Restoration. If at any time 80 percent or more of all Owners shall agree that the Project has become obsolete and shall approve a plan for its renovation or restoration, the Association (as attorney-in-fact for the Owners) shall promptly cause such renovation or restoration to be made according to such plan. All Owners shall be bound by the terms of such plan, and the costs of the work shall be a Common Expense, to be assessed and paid as provided in Section 8.

(b) Sale. If at any time 80 percent or more of all Owners shall agree that the Project has become obsolete and should be sold, the Association (as attorney-in-fact for the Owners) shall promptly record in the real estate records of the County a notice of such facts, and shall sell the Property, free and clear of the provisions of this Declaration, which shall wholly terminate and expire upon the closing of such sale. The proceeds of such sale shall be collected, applied and divided among the Owners equally.

13. Condemnation.

(a) Entire Taking. If the Property shall be entirely taken under any statute, by right of eminent domain, or by purchase in lieu thereof, or if any part of any improvement covered by this Declaration shall be so taken, or if any part of the land shall be so taken and the part remaining shall be insufficient for the purposes of the Project, the

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Association (as attorney-in-fact for the Owners) shall collect the award made in such taking, and shall sell the part of the land remaining after the taking, if any, free and clear of the provisions of this Declaration. Such provisions shall wholly terminate and expire upon the recording of a notice by the Association setting forth all of such facts. The award and the proceeds of such sale, if any, shall be collected, applied and divided equally among the Owners.

(B) Partial Taking. If such taking shall be partial only, if no part of any improvement shall be taken, and if the remaining part of the Property shall be sufficient for the purposes of the Project, the Association (as attorney-in-fact for the Owners) shall collect the award and shall promptly and without delay cause the Property not so taken to be restored as nearly as possible to its condition prior to the taking, applying the award to that purpose. Any part of the award not required for such restoration shall be divided by the Association equally among the Owners.

14. Quality of Work. Any repairs, renovation or restoration of the Property or any improvement covered by this Declaration by the Association as attorney-in-fact for the Owners shall be done in such manner as to make the Property or the improvement at least as valuable after such work as it was immediately before the occurrence requiring the work to be done.

15. Amendments or Revocation. This Declaration (a) may be amended or revoked by Declarant at any time prior to the recording of a deed from Declarant conveying any Townhome Lot to an Owner; or (b) may be amended or revoked upon the written approval in recordable form of Owners having the right to vote 80 percent or more of the total votes of all Owners of Townhome Lots. The Declaration shall be revoked in its entirety or with respect to any Townhome Lot within the project, upon the sale of Townhome Lots pursuant to Sections 11(c), 12(b) or 13(a).

16. Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all the Owners real, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be owned equally by all Owners and shall not be transferable except with a transfer of a Townhome Lot. A transfer of a Townhome Lot shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon

the lawful rights of the other Owners. The transfer of title to a Townhome Lot under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed Townhome Lot.

17. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for monthly statements, notices of Association meetings and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. If an Owner fails to register his mailing address with the Association, his mailing address shall be deemed to be his address at his Townhome Lot. All notices, demands or other notices intended to be served upon the Association shall be sent certified mail, postage prepaid, to the address of the Association as designated in the bylaws of the Association.

18. Architectural Control.

(a) BMI shall establish an Architectural Review Board (the "Review Board"), which shall consist of from three to five members appointed by BMI until such time as all improvements have been erected on all Townhome Lots, and on such occurrence, the Association shall thereafter make such appointments.

(b) The Review Board shall select its own chairman and vice-chairman from among its members. The chairman or in his absence the vice-chairman shall be the presiding officer of its meetings. In the absence of both the chairman and the vice-chairman from a meeting, the members present shall appoint a member to serve as acting chairman at such meeting. Meetings shall be held upon call of the chairman in such location as shall from time to time be set by the Review Board. A majority of the members shall constitute a quorum for the transaction of business, but in the absence of a quorum a lesser number may adjourn any meeting to a later time or date. The affirmative vote of a majority of a quorum of the members of the Review Board shall constitute the action of the Review Board on any matter before it. The Review Board shall operate in accordance with its own rules of procedure.

(c) The Review Board is hereby authorized to retain the services of one or more consulting architects, landscape architects, urban designers or engineers who need not be licensed to practice in the State of Colorado, to advise and assist the Review Board in performing its

functions. Such consultants may be retained to advise the Review Board on a single project, on a number of projects, or on a continuing basis.

19. Covenant Enforcement Committee.

(a) The Association may establish a Covenant enforcement Committee hereinafter called the "Enforcement Committee" which shall consist of from 3 to 5 members appointed by the Association.

(b) The Enforcement Committee shall be charged with the responsibility of monitoring Owner compliance with each of the protective covenants set forth herein, responding to Owner complaints and reports of alleged violations and making reports and recommendations as necessary to the board of directors of the Association. The Enforcement Committee shall not be authorized to implement or require any Owner to implement any substantial corrective action without specific authorization by the board of directors of the Association.

20. Protective Covenants.

(a) Residential Use. With the exception of uses by Declarant permitted by paragraph (g) set forth below, no Townhome Lot shall be used for anything other than residential purposes. Only Townhomes (not to exceed two stories in height, and including private garages for not more than three cars and other outbuildings directly incidental to residential use), shall be constructed, maintained, executed, altered, placed or permitted to remain on any Townhome Lot.

(b) New Construction Only. All construction within the Properties shall be new construction and no previously erected buildings, structure, or improvements shall be moved and set upon any Townhome Lot from any other location.

(c) Minimum Floor Area. The proposed floor area for any Townhome, shall be subject to review and approval by the Review Board.

(d) Setbacks. No building shall be located on any Townhome Lot nearer than setback lines shown on the Plat. For the purposes of this covenant, eaves, steps and open porches shall not be considered as part of a Townhome or building, provided however, that this shall not be construed to permit any portion of a Townhome or other building on the Townhome Lot to encroach upon another Townhome Lot. Maximum building height shall not exceed 35 feet measured at the vertical to the grade at the center of the building.

(e) Resubdivision and Combination of Townhome Lots. The creation of more than one Townhome per Townhome Lot or the resubdivision of Townhome Lots into smaller units is prohibited but the combination of more than one Townhome Lot into one building site shall be permitted upon approval by the Review Board. When constructing improvements on such combined Townhome Lots, the side lot setback lines shall be measured from the resulting side property lines, rather than the lot lines as indicated on the recorded Plat. Notwithstanding the foregoing, Declarant shall have the right to create more than one Townhome per Townhome Lot, to resubdivide Townhome Lots into smaller units or to combine more than one Townhome Lot into one building site, on the condition that the required regulatory approvals are obtained.

(f) Limitation on Activities; Declarant Exemption. Nothing shall be done or permitted on any Townhome Lot which may be or become an annoyance or nuisance to the neighborhood. No noxious or offensive activities shall be carried on upon any Townhome Lot. No commercial business or trade, whether for profit or not, shall be carried on upon any Townhome Lot except that Declarant may designate any Townhome Lot for use for sales offices, model homes, construction offices and storage yards and buildings for a maximum period of twelve years from the date of recordation of this Declaration. During the period of time said Townhome Lots are so utilized, the storage yards, buildings or structures constructed or situated hereon shall not be subject to the conditions, covenants and restrictions herein set out.

(g) Limitation on Use of Certain Structures. No structure of a temporary character or trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Townhome Lot at any time as residence, whether temporarily or permanently. This Section shall not, however, prohibit Declarant from using such structures for the purposes set forth in paragraph (f) above.

(h) Outbuilding Maximum Height. Any building or structure other than Townhomes shall be limited to 8 feet or less in height and must be approved by the Review Board in accordance with these covenants.

(i) Limitation on Parkway Storage. No boats, trailers, buses, recreational vehicles, inoperative private automobiles, or inoperative vehicles of any kind, camp rigs off trucks, or boat rigging or other similar items shall be parked or stored permanently or semi-permanently on streets, rights-of-way, or on driveways. Permanent or semi-permanent

storage for such vehicles or items must be within garages. Semi-permanent storage is hereby defined to be location in the Project for a period of seventy-two hours or longer.

(j) Restriction on Animals. No animals, live-stock or poultry of any kind shall be raised, bred or kept on any Townhome Lot by any Owner, lessee, invitee, guest or other person, except that the original purchaser of a Townhome Lot from either Declarant may keep and maintain not more than one dog or one cat, which dog or cat is owned at the time of the purchase of the Townhome Lot and may not be replaced upon death or otherwise, and provided that such dog or cat is not kept, bred or maintained for commercial purposes. All such dogs and cats must be leashed or restrained within an adequate enclosure. Notwithstanding the foregoing, no dog or cat may be kept on any Townhome Lot which results in annoyance or are obnoxious to the residents in the vicinity and all dog or cat owners must comply with the rules and regulations regarding pets as are adopted by the Association from time to time. The Enforcement Committee will take reasonable measures to remind violators of the existence of this covenant but neither the Enforcement Committee nor the Association shall be under any obligation to enforce or control compliance herewith.

(k) Restriction on Clothes Drying. The drying of clothes in public view is prohibited.

(l) Maintenance of Townhome Lots. All Townhome Lots shall be kept at all times in a sanitary, healthful, safe and attractive condition and the Owner or occupants of all Townhome Lots shall keep all weeds and grass cut within any fenced portions of said Townhome Lots that may exist and shall in no event use any such fenced areas of any Townhome Lot for storage of materials and equipment other than material and equipment incidental to normal residential requirements or permit the accumulation of garbage, trash or rubbish of any kind thereon.

(m) Restrictions on Signs. No sign, advertisement, billboard or advertising structure of any kind shall be displayed for the public view on any portion of any Townhome Lot, except one sign for each Townhome Lot, which sign may have one maximum dimension of 24 inches and a maximum area of 576 square inches, for the sole purpose of advertising the property for sale or rent, except signs used by Declarant or builders who buy Townhome Lots from Declarant to advertise the property during the construction and sales period. The Review Board shall have the right to remove any signs, advertisements, billboards or structures which are placed on a Townhome

Lot in violation of this covenant, and in doing so shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal.

(n) Restriction on Digging, Dirt Removal and Tree Cutting. The digging of, or removal of any dirt from any Townhome Lot is prohibited except as necessary in conjunction with the landscaping of or construction on such Townhome Lot. No native trees shall be cut without the prior written approval of the Review Board, except for the removal of dead trees.

(o) Restriction on Antennae. No electronic antenna or device of any type shall be erected, constructed, placed or permitted to remain on any Townhome Lot, Townhome or building constructed within the Project where it is visible except that one master satellite dish shall be permitted on one or more Townhome Lots provided that it is affixed in a manner and location approved by the Review Board.

(p) Restriction on Parking. No commercial type vehicles or trucks shall be stored or parked within the Project except in an enclosed garage except while engaged in transportation to or from a residence. For the purpose of this covenant, a 3/4 ton or smaller vehicle, commonly known as a pick-up truck, shall not be deemed to be a commercial vehicle or a truck.

(q) Underground Utilities. All electrical, telephone service and cable television service lines shall be underground and no telephone or existing electrical service drop poles or wires shall be permitted above ground except those existing as of this date, whether the same be in the utility easement or other portions of the Project.

(r) Quality of Materials; Construction Standards. All building materials, whether for initial or subsequent construction, shall be of high quality, as determined by the Review Board guided by industry standards.

(s) Restriction Relating to Drainage. Nothing shall be done or permitted by the Owner or occupant, as the case may be, which would block, divert, or channelize the natural flow of drainage water across any Townhome Lot from adjacent Townhome Lots as established by original subdivision grading.

(t) Restriction on Mailboxes. No delivery boxes, newspaper "tubes" or drop boxes other than conventional, U.S. Postal Service approved, single or grouped mailboxes shall be placed or constructed within the Project.

(u) No Cesspools or Septic Tanks. No cesspools or septic tanks shall be permitted on any portion of the Project without prior written approval of the Review Board.

(v) No Hazardous Activities. No activities shall be conducted on the Property and no improvements shall be constructed which are or might be unsafe or hazardous to any person or the Property. Without limiting the generality of the foregoing, no weapons of any kind shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well designed interior fireplace.

(w) No Annoying Lights, Sounds or Odors. No light shall be emitted from any Townhome Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Townhome Lot which is unreasonably loud or annoying; and no odor shall be emitted from any Townhome Lot which is noxious or offensive to others.

(x) No Mining and Drilling. No Townhome Lot 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.

(y) Windmills Prohibited. Windmills, including without limitation, wind-powered electric generating equipment, shall not be constructed or placed on any Townhome Lot.

(z) Use of Vacant or Unoccupied Townhome Lots. No refuse or item of personal property shall be parked, stored permanently or semi-permanently or disposed of on any vacant or unoccupied Townhome Lot or any other portion of the Property other than those areas appropriately designed by the Association for such use. Any item so deposited on any vacant or unoccupied Townhome Lot without the prior written consent of the board of directors shall be considered abandoned and subject to disposal at the discretion of the board of directors. Any cost incurred in removal or disposal of any such property may be charged directly to the Owner causing such removal or disposal to take place.

(aa) Compliance with Law. No Townhome Lot shall be used, occupied, altered, changed, improved or repaired except in compliance with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of the United States of America, State of Colorado, County of Garfield, and all other municipal, governmental or lawful

authority whatsoever, affecting the Lots or the improvements thereon or any part thereof, and of all their departments, bureaus and officials.

(bb) Additional Covenants, Conditions and Restrictions. By specific provision in any deed from Declarant, BMI or GLH, Declarant, BMI or GLH may subject any property to be conveyed by such deed to particular covenants, conditions or restrictions applicable to the particular property conveyed by such deed.

(cc) Construction Period Exception. During the course of actual construction of any permitted structures or improvements on any Townhome Lot, the Review Board may, by written instrument, waive certain provisions contained in this Section to the extent necessary to permit such construction provided that, during the course of such construction, nothing is done which will result in a violation of any of such provisions upon completion of construction.

(dd) Deviations. The Review Board at its sole discretion, is hereby permitted to approve deviations in the protective covenants hereinabove set out, where, in its judgment, such deviations will result in a more common beneficial use. Such approvals must be granted in writing and when given, will become a part of these covenants.

21. Battlement Mesa Service Association Matters. Each Owner, by accepting a deed to a Townhome Lot, recognizes that (a) the Project is subject to the Battlement Mesa Service Association Declaration, (b) by virtue of his ownership, he has become a member of the Battlement Mesa Service Association, (c) such Owner is subject to rules and regulations imposed by the Battlement Mesa Service Association, and (d) pursuant to Article IV of the articles of incorporation of the Battlement Mesa Service Association, an Owner is a member of the Battlement Mesa Service Association and is entitled to all of the benefits and subject to all of the burdens of such membership. Each Owner, by accepting a deed to a Townhome Lot, acknowledges that he has received a copy of the Declaration, articles of incorporation, and bylaws of the Battlement Mesa Service Association. Owner agrees to perform all of his obligations as a member of the Battlement Mesa Service Association as they may from time to time exist, including, but not limited to, the obligation to pay assessments.

22. General Reservations. Declarant reserves the right (a) to dedicate any access roads and streets serving the Project for and to public use and (b) to establish easements,

reservations, exceptions and exclusions consistent with the ownership of the Project and for the best interests of the Owners and the Association.

23. General.

(a) Limited Invalidity. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

(b) Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

(c) Rule Against Perpetuities. Each provision contained in this Declaration which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints or alienation shall continue and remain in full force and effect for the period of 21 years following the death of the last survivor of the issue of President George Bush, and the now living children of said issue, or until this Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions contained in this Declaration shall continue and remain in full force and effect in accordance with Section 14 hereof.

(d) Enforcement of Covenants. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or thereafter imposed by the provisions of this Declaration.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration this 21st day of June, 1989.

BATTLEMENT MESA, INC.,
a Delaware corporation

By: RA Stenger
Vice - President

ATTEST

Maria Reitzug
Asst. Secretary

GARY LESTER HOMES OF COLORADO, INC.,
a Colorado corporation

ATTEST

Florence Lester
Secretary

By: [Signature]
President

STATE OF COLORADO)
COUNTY OF Garfield) ss.

V. 2 this 21st day of June, 1989 by R. A. Stanger
as President and [Signature] as Secretary of BATTLEMENT Battlement
MESA, INC., a Delaware corporation, on behalf of said
corporation.

Witness my hand and official seal.

W. S. Renee Burand
Notary Public
73 & S. Apple Dr.
My commission expires: 10-6-90

STATE OF COLORADO)
COUNTY OF Garfield) ss.

The foregoing instrument was acknowledged before me
this 25th day of April, 1989 by Gary Lester
as President and Florence Lester as Secretary of GARY LESTER
HOMES OF COLORADO, INC., a Colorado corporation, on behalf of
said corporation.

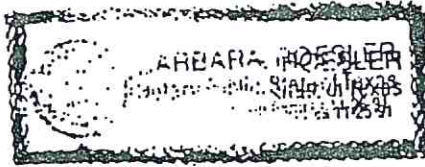
Witness my hand and official seal.

Nelda J. Amuth
Notary Public
My commission expires: 8-14-90

STATE OF TEXAS)
COUNTY OF Harris) ss.

The foregoing instrument was acknowledged before me this 23rd
day of June, 1989 by Maria Pitzug as Assistant
Secretary of BATTLEMENT MESA, INC., a Delaware corporation, on behalf of
said corporation.

Witness my hand and official seal.



Barbara Roesler
Notary Public

My commission expires: _____



EXHIBIT A

(Attached to and forming a part of Declaration
of Covenants, Conditions and Restrictions for
Mesa Ridge dated June 21st, 1989)

LEGAL DESCRIPTION OF THE ADDITIONAL REAL PROPERTY

A parcel of land located in the northeast quarter of Section 17, Township 7 South, Range 95 West of the Sixth Principal Meridian, Garfield County, Colorado, being that part of Lot 1, Block 1 of Jack's Pocket Village Filing 5, Reception No. 389773, more particularly described as follows; Commencing, as a point of reference, at the north quarter corner of said Section 17, from whence the northeast corner of said Section 17 bears S88°48'11"E a distance of 2652.18 feet, with all bearings contained herein relative thereto; Thence S32°23'41"E a distance of 1271.67 feet to a point on the southeasterly right-of-way of East Battlement Parkway, said point being the Point of Beginning, and also a point on the northerly boundary of a subdivision known as Mesa Ridge (Phase I), recorded in the office of the Garfield County Clerk and Recorder as Reception No. 395200;

Thence along said right-of-way N22°00'00"E a distance of 108.00;
Thence 331.89 feet along the arc of curve to the right, having a radius of 1095.92 feet, a central angle of 17°21'06" and a chord bearing N30°40'33"E a distance of 330.62 feet;
Thence 32.17 feet along the arc of curve to the right, having a radius of 20.00 feet, a central angle of 92°08'55" and a chord bearing N85°25'33"E a distance of 28.81 feet;
Thence S48°30'00"E a distance of 274.55 feet;
Thence 293.38 feet along the arc of a curve to the right, having a radius of 339.48 feet, a central angle of 49°30'57" and a chord bearing S23°44'31"E a distance of 284.34 feet;
Thence S01°00'57"W a distance of 1040.00 feet;
Thence N88°46'00"W a distance of 420.06 feet;
Thence N36°09'13"W a distance of 305.63 feet;
Thence N90°00'00"W a distance of 441.77 feet;
Thence S72°31'19"W a distance of 88.35 feet;
Thence N45°50'06"W a distance of 127.23 feet to a point on the right-of-way of East Battlement Parkway;
Thence 263.96 feet along the right-of-way of East Battlement Parkway, being the arc of a curve to the left, having a radius of 686.62 feet, a central angle of 22°01'35" and a chord bearing N70°25'31"E a distance of 262.34 feet to a point on the boundary of Mesa Ridge (Phase I);

Thence departing said right-of-way, and along the boundary of Mesa Ridge (Phase I), N90°00'00"E a distance of 446.30 feet;
Thence S36°09'13"E a distance of 40.00 feet;
Thence N50°13'42"E a distance of 167.02 feet;
Thence N00°00'00"E a distance of 119.26 feet;
Thence N16°30'00"E a distance of 195.15 feet;
Thence N22°00'00"E a distance of 55.63 feet;
Thence N24°30'00"W a distance of 94.77 feet;
Thence 38.56 feet along the arc of curve to the left, having a radius of 93.57 feet, a central angle of 23°36'41" and a chord bearing N36°18'22"W a distance of 38.29 feet;
Thence N41°53'19"E a distance of 56.00 feet;
Thence 51.92 feet along the arc of curve to the left, having a radius of 149.57 feet, a central angle of 19°53'19" and a chord bearing N58°03'20"W a distance of 51.66 feet;
Thence N68°00'00"W a distance of 189.00 feet to the Point of Beginning, said parcel containing 15.78 acres more or less.

RECORDED AT 242 O'CLOCK P.M. NOV 21 1990
 REC # 419050 MILDRED ALSDORF, COUNTY CLERK,
 GARFIELD COUNTY, COLORADO

FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
 FOR
MESA RIDGE

Whereas, under date of June 21, 1989, Battlement Mesa, Inc., a Delaware Corporation, and Gary Lester Homes of Colorado, Inc., a Colorado Corporation, jointly executed as Declarant that certain Declaration of Covenants, Conditions and Restrictions for Mesa Ridge, hereinafter called the "Declaration" applicable to Mesa Ridge (Phase I) and recorded in the real estate property records of Garfield County, Colorado on June 29, 1989, in Book 757 at Page 504 as Reception No. 403093 and,

Whereas, Battlement Mesa, Inc. assigned, sold, transferred and conveyed to Battlement Mesa Partners all right, title and interest that Battlement Mesa, Inc. had as "Declarant" for Mesa Ridge by execution of that certain ASSIGNMENT OF DECLARANT RIGHTS and recorded in the real estate property records of Garfield County, Colorado on December 21, 1989, in Book 769 at Page 576 as Reception No. 408515 and,

Whereas, the Owners having the right to vote more than 80 percent of the total votes of all Owners of Townhome Lots within the Association hereby approve of the amendments contained herein,

Now, therefore, the Declaration is hereby amended as follows:

1. Section 8, Paragraph (h) shall be amended in its entirety to read as follows:

DECLARANTS EXEMPTION. For so long as the Declarant, or any builder to whom Declarant has sold a minimum of 3 Townhome Lots, retains fee title to a Townhome Lot, any Townhome Lot so owned shall be subject to a payment of assessments at the rate of 25% of the Common and Special Assessments. Builder shall submit to the Association recorded copies of general warranty deeds as satisfactory evidence that it has purchased a minimum of 3 Townhome Lots to qualify for the reduced assessment rate. Notwithstanding anything to the contrary set forth herein, the full assessment rate shall be paid on any such Townhome Lot upon the first of the following to occur: (i) the sale or conveyance of said Townhome Lot to a third party, (ii) the leasing or rental of a Townhome located on said Townhome Lot to a third party, (iii) the issuance of a certificate of occupancy by Garfield County.

2. The following paragraph is added to Section 8 as Paragraph (m):

Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any Townhome Lot shall not affect the assessment lien. However, the sale or transfer of any Townhome Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Townhome Lot from liability for any assessments thereafter becoming due or from the lien thereof. Extinguishment of the assessment lien as provided for herein shall not simultaneously extinguish the personal obligation of the assessment by the prior Owner, and the personal obligation of the assessment by the prior Owner shall survive.

3. Section 15 shall be amended in its entirety to read as follows:

Amendments or Revocation. This Declaration may be amended or revoked upon the written approval in recordable form of 51 percent of Owners (other than the Declarant) having the right to vote, and the Declarant. The Declaration shall be revoked in its entirety or with respect to any Townhome Lot within the project, upon the sale of Townhome Lots pursuant to Sections 11(c), 12(b) or 13(a).

4. Section 20, Paragraph (j) shall be amended in its entirety to read as follows:

RESTRICTION ON ANIMALS. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Townhome Lot by any Owner, except that dogs and cats, not to exceed two total animals, may be kept, provided that express written permission to keep such dogs and cats is received from the Board of Directors or its agent in advance. Such permission may be revoked at any time by the Board of Directors for cause. Cause for revocation includes violation of rules governing the conduct of animals kept on townhouse lots as promulgated by the Board of Directors from time to time.

5. The following paragraph is added to Section 20, as Paragraph (ee):

Fencing Restriction. No fences of any type may be constructed on any Townhome Lot or to enclose any portion of a Common Area Parcel adjacent thereto. However, fences may be constructed to enclose Common Area Parcel improvements accessible to all Owners, such as a community swimming pool or tennis courts (for example purposes only), which fence is determined by the Board of Directors as necessary to protect

the Associations property and interests.

6. The following conditions are added as Section 24:

24. Mortgage Protection Provisions.

- (a) Notwithstanding anything to the contrary contained herein, the Association shall not take any of the following actions without the prior written approval of at least two-thirds of the holders of first mortgages or deeds of trust (collectively, the "Holders") (based on one vote for each mortgage or deed of trust owned) or two-thirds of the Owners (other than the Declarant):
- (i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Space Parcels owned, directly or indirectly, by the Association (The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Space Parcels is not a transfer in the meaning of this clause);
 - (ii) change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner;
 - (iii) by act or omission change, waive, or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Buildings, the exterior maintenance of Buildings, the maintenance of the Common Space Parcel party walks and driveways, and the upkeep of lawns and plantings in the Properties;
 - (iv) fail to maintain fire and extended coverage on insurable Common Space Parcels or Buildings on a current replacement cost basis in an amount at least 100 percent of the insurable value (based on current replacement cost); or
 - (v) use hazard insurance proceeds for losses to any Common Space Parcels or Buildings for other than the repair, replacement, or reconstruction of the Common Space Parcels or Buildings, respectively.
- (b) Notwithstanding anything to the contrary contained herein, the Holders may:
- (i) jointly or singly pay taxes or other charges that are in default and that may or have become charges against the Common Space Parcels; and

- (ii) pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Space Parcels in case of lapse of a policy.

Holders making such payments shall be immediately reimbursed by the Association.

(c) Each Holder, upon request, is entitled to written notice from the Association of any default by the borrower Owner of any obligation hereunder or the Associations's articles or bylaws not cured within 60 days.

(d) No agreement for the professional management of the Properties, or any other contract providing for services of the developer, sponsor or builder, may exceed a term of three years, and each such agreement shall be terminable by either party without cause and without payment of a termination fee on 90 days or less written notice.

7. Except to the extent provided herein, all other provisions of the Declaration shall remain in full force and effect.

8. Battlement Mesa Partners and Witt Homes - Battlement Mesa hereby certifies that they are members of the Association holding at least 80% of the total votes of all Owners of Townhome Lots.

Executed as of the 13TH day of NOVEMBER, 1990.



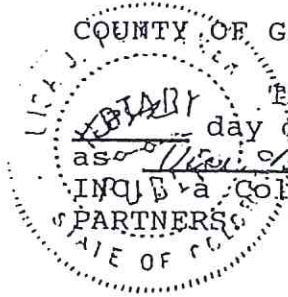
BATTLEMENT MESA PARTNERS,
by Community Holdings West, Inc.
its General Partner

by: William Uible

WITT HOMES - BATTLEMENT MESA,
by Richard L. Witt, Owner

by: Richard L. Witt

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)



The foregoing instrument was acknowledged before me this 13th day of November, 1990, by William W. Wilder as Vice President of COMMUNITY HOLDINGS WEST, INC. a Colorado Corporation, General Partner of BATTLEMENT MESA PARTNERS.

Lisa J. de Kramer
Notary Public

My commission expires: 8/8/94

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)



The foregoing instrument was acknowledged before me this 13th day of November, 1990, by Richard L. Witt as Owner of WITT HOMES - BATTLEMENT MESA.

Lisa J. de Kramer
Notary Public

My commission expires: 8/8/94