

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

AND

**CONSOLIDATION OF THE SUPPLEMENTAL DECLARATION TO
THE AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR BATTLEMENT MESA, AND THE
FIRST THROUGH FOURTH AMENDMENTS TO THE AMENDED
AND RESTATED DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR BATTLEMENT MESA**

THIS AMENDMENT is made this 7th day of April, 2005 and will become effective May 1, 2005.

RECITALS

A. The Battlement Mesa Service Association ("Association") is the Association named and referred to in the following:

1. The Amended and Restated Declaration of Covenants, Conditions and Restrictions for Battlement Mesa, recorded on August 31, 1991, at Reception Number 426419, in the records of the Clerk and Recorder of Garfield County, Colorado ("Declaration");
2. First Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Battlement Mesa, recorded on November 11, 2001, at Reception Number 592295, in the records of the Clerk and Recorder of Garfield County, Colorado ("First Amendment");
3. Supplemental Declaration to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Battlement Mesa Applicable Only to Willow Creek Village, Section One; Battlement Creek Village, Section One; and Stone Ridge Subdivision Properties, recorded on March 28, 2002, at Reception Number 600070, in the records of the Clerk and Recorder of Garfield County, Colorado ("Supplemental Declaration");
4. Second Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Battlement Mesa, recorded on October 31, 2002, at Reception Number 613708, in the records of the Clerk and Recorder of Garfield County, Colorado ("Second Amendment");

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5. Third Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Battlement Mesa, recorded on August 26, 2003, at Reception Number 634973, in the records of the Clerk and Recorder of Garfield County, Colorado ("Third Amendment"); and
6. Fourth Amendment and Supplement to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Battlement Mesa, recorded on March 1, 2004, at Reception Number 647410, in the records of the Clerk and Recorder of Garfield County, Colorado ("Fourth Amendment").

B. Pursuant to Article XI, Section 11.2 of the Declaration, the Declaration may be amended upon the approval of 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.

C. The undersigned, being the President and Secretary of the Association, hereby certify that Delegates representing at least fifty-one percent (51%) of the voting power of the Members of the Service Association have approved this Amendment as required under Article XI, Section 11.2 of the Declaration and that the recorded copy of this Amendment shall be placed in the Association's corporate records and shall be available for review and inspection upon request.

D. The Delegates within the Battlement Mesa Community desire to amend certain provisions of the Declaration by virtue of this Fifth Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Battlement Meas ("Fifth Amendment").

E. The Delegates within the Battlement Mesa Community desire to amend and restate the First Amendment, Second Amendment, Third Amendment, Fourth Amendment and Supplemental Declaration by virtue of this Fifth Amendment and intend, upon the recording of this Fifth Amendment, that the prior recorded First Amendment, Second Amendment, Third Amendment, Fourth Amendment and Supplemental Declaration shall be superseded and replaced by this Fifth Amendment.



NOW THEREFORE,

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

(a) **Addition. Article I shall is hereby amended to add the following Section 1.42:**

Common Interest Community. Common Interest Community (or “CIC”) is a development where common interest real estate is maintained through assessments for the benefit of the owners. Residential condominiums, lofts, commercial condominiums, townhomes and planned community development projects can all be considered CICs.

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

The Service Association has been incorporated under the Colorado Non-profit 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.

(c) **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.

- (d) **Repeal and Restatement. Article VII, Section 7.3 is hereby repealed in its entirety and the following Article VII, Section 7.3 is substituted:**

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. Within thirty (30) days after adoption of any proposed budget for the Service Association, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Members and shall set a date for a meeting to inform the Members of the next fiscal year budget. The Board of Directors shall give notice of the meeting to the Members in accordance with the Bylaws.

- (e) **Repeal and Restatement. Article VII, Section 7.8 is hereby repealed in its entirety and the following Article VII, Section 7.8 is substituted:**

Rate of Assessments. 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. Exceptions to this uniform rate of Common Assessments and Special Assessments are as follows:

- (a) Effective April 1, 2006 and continuing thereafter, an Assessment Unit owned by a Member which is vacant land that is not improved with a Dwelling Unit shall be fixed at one-half (1/2) of the Common Assessment rate for other Assessment Units. As of the date of any temporary or final certificate of occupancy for a Dwelling Unit on such vacant land, whichever comes first, the Common Assessments for that Assess-



ment Unit shall be the full Common Assessment for the Assessment Unit.

- (b) An Assessment Unit within a Common Interest Community Subassociation shall be fixed at one-half (1/2) of the Common Assessment rate for other Assessment Units.

- (c) Notwithstanding anything to the contrary contained in this Declaration, or any amendments thereto, the rate of Common Assessments and Special Assessments set for each Assessment Unit owned by Declarant which is vacant land and is not improved with a Dwelling Unit, a Commercial Unit, or which is part of an improved and operating Miscellaneous Use Site, shall be fixed at one-half (1/2) of the Common Assessment rate for other Assessment Units. Until such time as 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, Declarant shall pay to the Service Association the amount of full parity on such Common Assessments, if such shortfall was caused by the Declarant's payment of partial Common Assessments. A written notice shall be sent by the Service Association to the Declarant within one hundred twenty (120) days following the termination of the Service Association's fiscal year for which such shortfall is claimed. 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 Com-



mon 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.

(f) Repeal and Restatement. Article VIII, Section 8.16(a) is hereby repealed in its entirety and the following Article VIII, Section 8.16(a) is substituted:

- (i) Within the Service Association Area, no trailer, camping trailer, boat, boat accessories, trailer carrying recreation devices, snowmobiles, all terrain vehicles, trucks or commercial vehicles larger than one (1) ton, Recreational Vehicle or similar vehicular equipment shall be parked or stored anywhere in the Service Association Area, unless such vehicle is parked or stored within a garage, behind a six foot (6) high solid fence, or in designated parking or storage areas. Non-recreational oversized vehicles (larger than twenty-five (25) feet in length or one hundred (100) inches in height or ninety (90) inches in width) may not be parked on or at any Residential Site unless they are completely enclosed within a garage. Any such vehicles may be parked as a temporary expedience, for up to seventy-two (72) hours, for loading, delivery of goods or services, or emergency, and may also be stored on such Privately Owned Sites or Publicly Owned Sites as may be specifically exempted from this restriction by any Supplemental Declaration. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Service Association Area or on any Residential Site which are necessary for construction or for the maintenance of any Service Association Property or any Improvement located thereon. No automobile, truck or other vehicle may be parked in any side yard or rear yard unless behind a six foot fence.



- (ii) Any Delegate Area within the Service Association Area may elect to impose additional restrictions or prohibitions related to parking and storage of vehicles within their Delegate Area. If so approved, by a majority of all Members within the Delegate Area, such additional restrictions or prohibitions shall be recorded in the real estate records, shall be binding on all owners within the Delegate Area and shall supercede those restrictions set forth in subsection (i) hereof.
 - (iii) Any such additional action contemplated per subsection (ii) hereof shall be taken at a duly noticed Special Meeting of the Members of said Delegate Area in accordance with the Amended and Restated Bylaws. The proposed text of any such additional restrictions or prohibitions must be pre-approved by the Service Association Board of Directors and a copy of said text shall be attached to and distributed with the Notice of the Special Meeting mailed to all Members of the Delegate Area.
- (g) **Repeal and Restatement. As to all property located within the Willow Creek Village, Section One; Battlement Creek Village, Section One; and Stone Ridge Subdivision Delegate Areas, Article VIII, Section 8.16(a)(i), is hereby repealed in its entirety and the following Article VIII, Section 8.16(a)(i) is substituted:**

Within the Delegate Areas of Willow Creek Village, Section One; Battlement Creek Village, Section One; and Stone Ridge Subdivision, no trailer, camping trailer, boat, boat accessories, trailer carrying recreation devices, snowmobiles, all terrain vehicles, trucks or commercial vehicles larger than one (1) ton, Recreational Vehicles or similar vehicular equipment shall be parked or stored anywhere within said Delegate Areas unless such equipment or vehicle is parked or stored within a garage. The temporary expedience provisions of Article VIII, Section 8.16(a)(i) will still apply.



- (h) **Repeal and Restatement. Article VIII, Section 8.19 is hereby repealed in its entirety and the following Article VIII, Section 8.19 is substituted:**

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 with the exception of a pet enclosure of chain link or plant protection of welded wire.

- (i) **Repeal and Restatement. Article IX, Section 9.3 is hereby repealed in its entirety and the following Article IX, Section 9.3 is substituted:**

The Board of Directors shall appoint the Architectural Committee which shall consist of three (3) to five (5) persons. The Board will also appoint two (2) alternates. These alternates can assume the duties of committee members and/or establish a quorum for a meeting of the Architectural Committee in the event a member of the Architectural Committee cannot attend a meeting of the Architectural Committee. 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 with or without cause.

- (j) **Repeal and Restatement. Article XI, Section 11.2 is hereby repealed in its entirety and the following Article XI, Section 11.2 is substituted:**

Amendment of Amended and Restated Declaration by Delegates.
Except as otherwise provided in this Amended and Restated Declaration, and any amendments thereto, and subject to provisions elsewhere contained in this Amended and Restated Declaration and any amendments thereto 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, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval by Dele-



gates representing at least 2/3 of the voting power of Members of the Service Association at a duly constituted meeting of the Delegates.

(k) Repeal and Restatement: Exhibit A under subsection “Residential Area” is hereby repealed in its entirety and the following subsection “Residential Area” is substituted:

<u>Residential Area</u>	<u>Delegate Area</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
Stone Ridge	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
Saddleback Village Filing No. 1 - Rental Area	Delegate Area #11



Saddleback Village Delegate Area #12
Filing No. 2 - Rental Area

Valley View Village Delegate Area #13*

Canyon View Delegate Area #14

Fairway Villas Delegate Area #15

*Valley View Village, Delegate Area #13, is composed of 119 dwelling units, of which 41 units shall be developed as single-family dwelling units, and the remaining 78 units shall be multi-family dwelling units.

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

STATE OF COLORADO)
) ss.
COUNTY OF Garfield)

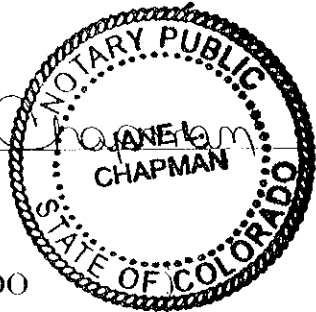
The foregoing was acknowledged before me this 7th day of April, 2005, by Charles D Hall, as President of the Battlement Mesa Service Association, a Colorado nonprofit corporation.

Witness my hand and official seal.
My commission expires: 10/30/08



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11 of 11 R 56.00 D 0.00 GARFIELD COUNTY CO

James D. Chapman
Notary Public



STATE OF COLORADO

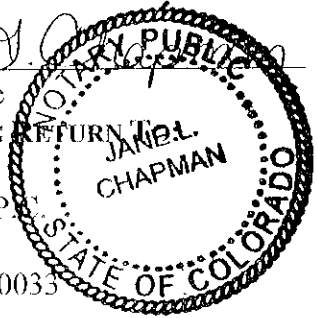
COUNTY OF Garfield)

) ss.

The foregoing was acknowledged before me this 7th day of April, 2005, by Suzanne M. Camcaste, as Secretary of the Battlement Mesa Service Association, a Colorado nonprofit corporation.

Witness my hand and official seal.
My commission expires: 10/30/08

James D. Chapman
Notary Public



AFTER RECORDING RETURN TO:

Orten & Hindman, P.A.
11901 W. 48th Ave.
Wheat Ridge, CO 80033
Attn: LKS