

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF

VALLE VISTA SUBDIVISION  
A Planned Unit Development

THIS DECLARATION made on the date hereinafter set forth by BUTTOLPH CONSTRUCTION CO., a Colorado corporation, hereinafter referred to as "Declarant";

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the hereinafter described real property situate in Mesa County, Colorado, more particularly described as:

All that part of the E $\frac{1}{2}$  SW $\frac{1}{4}$  and of the SE $\frac{1}{4}$  lying South and East of the Orchard Mesa Canal Number 2, All in Section 34, Township 1 South, Range 1 East of the Ute Meridian, Except easements of record and existing rights of way, Mesa County, Colorado.

NOW THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of the real property. These covenants, easements, restrictions and conditions shall run with the real property and shall be binding upon the parties having or acquiring any right, title or interest in the described properties, or any part thereof, and shall inure to the benefit and limit of each owner and all future owners thereof.

WHEREAS, Declarant desires to establish a planned unit development relating to the aforesaid real property, buildings and improvements constructed, or to be constructed thereon, under the Condominium Ownership Act of the State of Colorado, together with all other statutes of the State as may be pertinent; and

WHEREAS, Declarant does hereby establish a plan for

the ownership in fee simple of the real property estates; or fee simple estates consisting of the area or space contained in each of the air space units in the building improvements and the coownership by the individual and separate owners thereof as tenants in common, of all of the remaining property, which property is hereinafter defined and referred to as the general common elements;

#### ARTICLE I

##### DEFINITIONS

A. "Association" shall mean and refer to the subdivision's homeowners association, its successors and assigns which shall be a Colorado not-for-profit corporation bearing the name of this planned unit development project, the articles of incorporation and by-laws of which shall govern the administration of this planned unit development property, the members of which association shall be all of the owners of the lots and dwelling units contained therein.

B. "Planned Unit Development" means all of the land and improvements initially submitted by this declaration and subsequently submitted as may be provided hereinafter.

C. "Building" means a single building containing units, as shown on the recorded plat and map related to the Planned Unit Development.

D. "Unit" means any plot of land or dwelling unit including an individual air space which is contained within the perimeter walls, floors, ceilings, windows and doors of any dwelling unit as shown on the condominium map to be filed for record together with all fixtures and improvements therein contained but not including any of the structural components of a multiple unit building, if any, located within the unit.

E. "Owner" shall mean and refer to the record owner, whether one or more persons, firm, corporation, partnership, association or other legal entity, or any combination thereof of a fee simple title to any dwelling unit or lot which is a

part of the properties including contract sellers but excluding those having such interest merely as security for the performance of an obligation.

F. "Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may be hereafter be brought within the jurisdiction of the association.

G. "Common Area" means and includes the land described in the plat recorded related to this property, which property is owned by the Association for the common use and enjoyment of the owners. The common area shall include all land with improvements thereon necessary or convenient for the common use of all owners of the project, including the air above such land, all of which shall be owned as tenants in common by the owners of the separate units, each owner of a dwelling unit having an undivided percentage or fractional interest in such general common area as is provided hereinafter.

H. "Limited Common Elements" means those parts of the general common area which are either limited to and reserved for the exclusive use of an owner of a dwelling unit or lot or are limited to and reserved for the common use of more than one but fewer than all of the owners of dwelling units or lots.

I. "Common Expenses" means and includes expenses for maintenance, taxes, repairs, operation, management and administration; expenses declared common expenses by the provisions of this declaration and the by-laws of the condominium association and all sums lawfully assessed against the general common elements by the administrative board of the Valle Vista Home-owners Association.

J. "Lot and Planned Unit Development Map" means and includes the engineering survey of the land depicting and locating thereon all of the improvements, the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of or all of the improvements and land contained in or upon the planned unit development.

K. "A Completed Dwelling Unit" shall mean any unit which has been constructed and occupied.

## ARTICLE II

### RESTRICTIVE COVENANTS

A. No building or carport shall be located on any of said lots or land parcels in the subdivision nearer to the front line nor nearer to any street line than is provided in the accepted plan of the subdivision.

B. No trailer, basement, tent, shack, garage, barn or other outbuilding erected in the subdivision shall be used as a residence temporarily or permanently nor shall any structure of a temporary character be used as a residence.

C. No dwelling or a residential unit shall be permitted on any lot or building site in said subdivision without specific written approval of the architectural control committee as defined herein, as to size, design and materials.

D. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over any portion of the real property of each lot as may be necessary. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may change the direction or flow of drainage channels in the easements. The easement area of each lot or building site and all improvements in it shall be maintained continuously by the owner or owners of the lot or building site, except for those improvements for which public authority or utility company is responsible.

E. No building, landscaping, fence, wall or other structure shall be commenced, erected or maintained, nor shall any addition to reroofing, or repainting or exterior, or change or alteration therein be made in such subdivision until plans and specifications therefor, showing the nature, kind, height, materials, floor plans, color schemes, locations, shape and approximate cost of each building, fence, wall or other

structure and the grading, planting, painting, reroofing and landscaping plan of the portion of the above described subdivision to be built upon and otherwise used in connection therewith shall have been submitted to and approved in writing by the Architectural Control Committee as the same shall be established by the developer herein and by the Homeowners Association, and a copy thereof as finally approved lodged permanently with such committee. Such committee shall have the right to refuse to approve any such plans or specifications for planting, painting, reroofing, landscaping or grading plan which are not suitable or desireable, in the opinion of the majority of such committee for any reason; that in so passing upon such plans, specifications for planting, painting, reroofing, landscaping or grading plans such committee shall have the right to take into consideration, among other things, the suitability of the proposed building, fence, wall, or other structure, planting, painting, reroofing, landscaping or grading and of the materials and colors to be used, the site upon which it is proposed to erect the same, the harmony and effect thereof with the surroundings, and the effect thereof on the outlook from the adjacent and neighboring property.

In the event, such committee fails either to approve or disapprove such plans or specifications within 30 days after the same have been delivered to any member of such committee, such approval or disapproval will not be required and this covenant and restriction shall thereupon be deemed to be fully complied with.

No member of such committee shall be entitled to any compensation for services performed pursuant to these covenants and restrictions.

At any time, the then record owners of the majority of the building sites and residential units shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from the committee or restore to it any of its powers and duties.

In the event of the death or resignation or the refusal or inability to act of any member of such committee remaining members shall have full authority to approve or disapprove such plans and specifications and to designate and appoint a successor member of such committee to fill any such vacancy with like authority.

F. These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty-five years from the date these covenants are recorded, after which time, said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the then owners of the lots and dwelling units has been recorded, agreeing to change said covenants in whole or in part.

G. No yard lights supported by a pole or other supporting device shall be installed on any residential site nor building without the prior approval of the Architectural Control Committee described heretofore; nor any light be installed and maintained on any lot or street area which is so located as to be, or the intensity of or glare from which is, substantially offensive to the senses or which materially interferes with the view available to owners of other lots in the subdivision.

H. No noxious or offensive trade or activity shall be carried on on any lot or dwelling unit nor shall anything be dumped thereon which may be or become an annoyance or nuisance to the neighborhood; and interim sewage treatment facility shall be abandoned and connected to regional facility when available.

I. All electrical and telephone service lines shall be provided as shown in plats of record including ammendments and subsequent filings.

J. No animals, including but not by way of limitation, horses, cows, pigs, goats, chickens, ducks and other domesticated animals, except household pets shall be maintained temporarily

or permanently on any of the said lots or dwelling units contained herein.

K. If the parties hereto or any of them or their heirs and assigns shall violate or attempt to violate any of the covenants herein or provisions hereof, it shall be lawful for any other person or persons or association or corporation, owning real property situated within the land platted by the recorded map and plat described herein to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or provision and either to prevent him or them from so doing or recover damages or other dues for such violation.

L. The invalidation of any of these covenants or provisions by judgment or Court order shall in no way affect any of the other provisions which shall remain in full force and effect.

M. Each wall which is built as a part of the original construction of the homes or dwelling units upon the properties and placed on the dividing line between the lots, shall constitute a party wall, and to the extent not inconsistent with the provisions of this article and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

### ARTICLE III

#### PLANNED UNIT DEVELOPMENT MAP

The planned unit development map may be filed for record in whole or in parts or sections, from time to time, as the stages of construction of the units and other improvements are substantially completed. Each section of the planned unit development map filed subsequent to the first or initially planned unit development map shall be termed a supplement to such planned unit development map and the numerical sequence of such supplement shall be shown thereon. Declarant reserves

the right to amend the planned unit development map, from time to time to conform the same according to the actual location of any of the constructed improvements and to establish, vacate and relocate easements, access road easements and onsite parking areas.

#### ARTICLE IV

##### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot or dwelling unit, subject to the following provisions:

(a) The right of the Association to charge reasonable admission or other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his lot or dwelling unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of all members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any owner may delegate in accordance with the by-laws his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.



## ARTICLE V

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot or dwelling unit which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot or dwelling unit which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each lot or dwelling unit owned. When more than one person holds an interest in any lot or dwelling unit, all such persons shall be members. The vote for such lot or dwelling unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one lot or dwelling unit.

Class B. The Class B. members shall be the Declarant and shall be entitled to three votes for each lot or dwelling unit owned. The class B. Membership shall cease and be converted to a Class A membership on the happening of either of the following events whichever occurs earlier:

(a) When the total votes outstanding in the Class A. membership equal the total votes outstanding in the Class B. membership, or

(b) on January 1, 1982.

Section 3. It is anticipated that there shall be a total of 450 dwelling units included within the planned unit development which shall initially entitle the declarant or a Class B. member to an original voting power of 1,350 votes which shall decrease by three votes for each dwelling unit conveyed in accordance with Article VI, Ownership-Title.

## ARTICLE VI

OWNERSHIP TITLE

A lot or dwelling unit may be held and owned in any real property tenancy relationship recognized under the laws of the State of Colorado.

## ARTICLE VII

NON-PARTITIONABILITY OF GENERAL COMMON ELEMENTS

The general common elements shall be owned in common by all of the owners of the units, and shall remain undivided and no owner shall bring any action for partition or division of the general common elements. Nothing contained herein shall be construed as a limitation of the right of partition of a condominium-type unit between the owners thereof, but such partition shall not affect any other lots or dwelling units.

## ARTICLE VIII

EXTERIOR MAINTENANCE

Section 1. Each owner of any lot or dwelling unit herein shall be obligated to provide all necessary maintenance for the exterior of his buildings, improvements and grounds and his failure to perform shall entitle the Association to provide exterior maintenance upon each lot and dwelling unit which is subject to an assessment under the terms of this declaration, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees shrubs, grass, walks, and other exterior improvements.

Section 2. The cost of such exterior maintenance shall be assessed against the lot or dwelling unit upon which such maintenance is done and shall be added to and become part of the annual maintenance assessment or charge to which such lot or dwelling unit is subject under the terms of the declaration herein, and as part of such annual assessment or charge, it shall be a lien and obligation of the owner and shall

become due and payable in all respects as provided under other assessments described herein. Provided that the administrative board of the Association, when establishing the annual assessment against each lot or dwelling unit for any assessment year as required herein, may add thereto the estimated cost of the exterior maintenance for that year but shall thereafter, make such adjustment with the owner as is necessary to reflect the actual cost thereof.

Section 3. For the purpose solely of performing the exterior maintenance required or authorized by this article, the Association through its duly authorized agents or employees shall have the right, after reasonable notice to the owner, to enter upon any lot or exterior of any dwelling unit at reasonable hour on any day.

Section 4. If the assessments under this article or under other sections of this declaration are not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon, thereupon become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of 8% per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such an assessment the costs of preparing and filing the Complaint in such action, and in the event a judgment is obtained

such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the Court together with the costs of the action.

Section 5. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

#### ARTICLE IX

#### COMPLIANCE WITH PROVISIONS OF DECLARATION AND BY-LAWS

#### OF THE ASSOCIATION

Each owner shall comply strictly with provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both, and for reimbursement of all attorney's fees incurred in connection therewith, which action shall be maintainable by the Managing Agent or Board of Managers in the name of the Association on behalf of the owners or, in a proper case, by an aggrieved owner.

#### ARTICLE X

#### ADDITIONS, ALTERATIONS AND IMPROVEMENTS OF

#### GENERAL AND LIMITED COMMON ELEMENTS

There shall be no additions, alterations or improvements of or to the general limited common elements by the Association requiring an expenditure in excess of \$100.00 per building lot

or dwelling unit in any one calendar year without prior approval of a majority of the owners and such expenditure shall be a common expense. Such limitation shall not be applicable to replacement, repair, maintenance or obsolescence of any general or limited common element or common personal property.

## ARTICLE XI

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot or dwelling unit owned within the properties, hereby covenants, and each owner of any lot or dwelling unit 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: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties and for the improvement and maintenance of the common area, and of the homes situated upon the properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot or dwelling unit to an owner, the maximum annual assessment shall be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per building lot or dwelling unit.

(a) From and after January 1 of the year immediately following the conveyance of the first lot or dwelling unit to an owner the maximum annual assessment may be increased each year not more than 50% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first lot or dwelling unit to an owner the maximum annual assessment may be increased above 50% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The administrative board of the Homeowners Association may fix the annual assessment at an amount not in excess of the maximum.

#### Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments 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 two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes of each class

of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and dwelling units and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments:  
Due Dates. The annual assessments provided for herein shall commence as to all building lots and dwelling units on the 1st day of the month following the conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot or dwelling unit at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every owner subject thereto. The due date shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Association setting forth whether the assessments on the specified building site or dwelling unit have been paid.

Section 8. Effect of Nonpayment of Assessments:  
Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight per cent (8%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape the liability for the assessments provided for herein by non-use of the common area or abandonment of his lot or dwelling unit.

Section 9. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot or dwelling unit does not affect the assessment lien. However the sale or transfer of any lot or dwelling unit 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 lot or dwelling unit from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE XII

INSURANCE

The administrative board of the Homeowner's Association shall obtain and maintain at all times insurance to protect the Association against loss by fire and perils included in extended coverages, together with liability insurance protecting the Association from any responsibility for bodily injury or property damage related to the ownership and use of the common element property owned by the Association herein. The insurance shall be carried in blanket policy form naming the Association the insured, as attorney in fact for all of the lot and dwelling unit owners, which policy or policies shall provide that the policy cannot be cancelled until after ten days prior written notice as first given to the administrative board of the Homeowner's Association.

ARTICLE XIII

PERSONAL PROPERTY FOR COMMON USE

The administrative board of the Homeowner's Association as attorney in fact for all of the owners, may acquire and hold for the use and benefit of all the lot and dwelling unit owners, real, tangible and intangible personal property and may dispose of the same by sale or otherwise. The beneficial



interest in any such property shall be owned by all of the lot owners and dwelling unit owners in the same proportion as their respective interests in the general common elements and such interest therein shall not be transferable except with the conveyance of the lot or dwelling unit. A conveyance of a lot or dwelling unit shall transfer to the grantee ownership of the grantor's beneficial interest in such property without any reference thereto in the deed. 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 lot or dwelling unit under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed lot or dwelling unit.

#### ARTICLE XIV

##### REGISTRATION OF MAILING ADDRESS

Each owner shall register his mailing address with the Association, and notices or demands intended to be served upon an owner shall be sent by mail, postage prepaid, addressed in the name of the owner at such registered mailing address. Notices or demands intended to be served upon the Association shall be sent by mail, postage prepaid, to 2856½ Bunting, Grand Junction, Colorado 81501.

#### ARTICLE XV

##### RECREATION PROPERTY AND FACILITIES

The real property described herein as common elements is designated as the recreation area and will be improved by the Declarant at Declarant's expense by constructing thereon a swimming pool, club house, play areas and otherwise as shall be deemed necessary or useful to the owners herein. Such facilities and improvements shall be constructed at different and various times during the phase of development but as promptly as the development will support such expenditures and facilities.

(a) Title to the recreation or common element area described herein shall be conveyed to the Association subsequent to the time that declarant conveys at least 75% of the building lots or dwelling units planned, Declarant reserving the right

to amend the legal description of the recreation area and common elements to conform the same to a resurveyed description of the recreation area or common elements made subsequent to the construction of the facilities and improvements. The recreation facilities and improvements such as but not limited to the parkways and play areas may encroach on the vacant land limited to construction of residences and dwelling units. Any such encroachment shall not be considered or determined to be an encumbrance either on the general common elements or the building lots or dwelling units for purposes of marketability of title, any encumbrance on the recreation area shall be the sole obligation of the Declarant, provided, however, that within five years from the date the Declarant conveys the first lot or dwelling unit, Declarant shall cause the same to be released.

(b) Every owner shall have a perpetual common non-exclusive right and easement in common with all of the other owners of the use and enjoyment of the recreation and common element area, facilities and improvements, and such easement shall be appurtenant to the membership of each owner in the Association, membership therein being mandatory under the provisions of this Declaration.

(c) The rights and easements of use and enjoyment of the recreation area and common elements described herein shall always be subject to the right of the administrative board of the Homeowner's Association to limit the number of guests of the owners, the right of the Association to suspend the rights of an owner to use and enjoyment thereof for any period during which any assessment remains unpaid, and further for a period not to exceed thirty days for any infraction of its published rules and regulations and the right of an owner to delegate such rights of use and enjoyment to the members of his family, his tenants, lessees or contract purchasers of his

dwelling unit.

(d) Nothing heretofore shall detract from or hinder the rights of the Declarant to enlarge this Planned Unit Development project. Declarant reserves the right to grant the right of use of the recreation area or common elements, facilities and improvements to owners, tenants, lessees, and their guests of the additionally submitted lots or dwelling units or other buildings and improvements constructed on the property described herein; provided, however, that not more than sufficient grants are made to include all families owning lots or dwelling units or residing within dwelling units located on the Planned Unit Development are made and, provided, further, that each user shall be obligated to pay an equal share of the common expenses incident to the recreation area, common elements, facilities and improvements.

#### ARTICLE XVI

##### GENERAL PROVISIONS

Section 1. Enforcement. 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 hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no way be deemed a waiver of the right to do so thereafter.

Section 2. Transfer of Rights. Any rights or interest reserved hereby to the Declarant may be transferred or assigned by the Declarant at will.

Section 3. Mortgage Liens. Real estate described herein may be subject to construction loans which loans shall be discharged as to specific building lots or dwelling unit as such lots or units are sold.

Section 4. Unsold Lots or Dwelling Units. Declarant contemplates the sale of 100% of units planned and constructed;

however, Declarant reserves the right to retain unsold units and building sites and sell, lease or inhabit them without the approval of the Association so long as Declarant uses due care and diligence regarding the good character, habits and general desirability of the purchaser, tenant or inhabitant.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or Court Order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 6. Annexation. Additional residential property and Common Element Areas may be annexed to the properties with the consent of two-thirds (2/3) of each class of members.

Section 7. Binding Clause. This Declaration shall be binding upon the undersigned, its successors, grantees and assigns.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration this 19<sup>th</sup> day of October, 1976.

BUTTOLPH CONSTRUCTION CO.

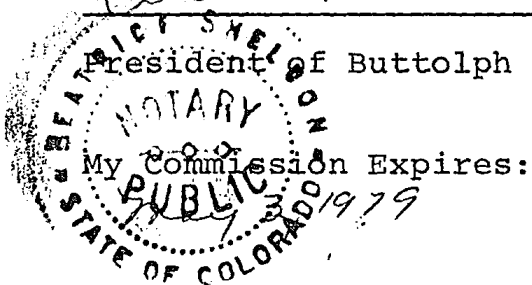
By William H. Buttolph  
President

ATTEST:

Shirley A. Buttolph  
Secretary

STATE OF COLORADO     )  
                                  ) ss.  
COUNTY OF M E S A     )

Subscribed and sworn to before me this 19<sup>th</sup> day of October, 1976, by William H. Buttolph as President of Buttolph Construction Co.



Beatrice Sheldon  
Notary Public