



DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS
AND EASEMENTS FOR
HIGBY ESTATES

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DECLARATION
OF
CONDITIONS, COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
HIGBY ESTATES

HIGBY PROJECT, L.L.C., a Colorado limited liability company, (hereinafter called "Declarant") is the sole owner of real property which is described on Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter called the "Subdivision").

Declarant desires to place protective covenants, conditions, restrictions, reservations liens and charges upon the Subdivision to protect the Subdivision's quality residential living environment and also to protect its desirability, attractiveness and value.

The Declarant hereby declares that all of the Subdivision as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision and all of which shall run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in the Subdivision or any part thereof, their heirs, successors and assigns.

ARTICLE I

COVENANTS TO PRESERVE THE RESIDENTIAL
CHARACTER OF THE SUBDIVISION

Section 101. Property Uses. All single family residential Lots in the Subdivision shall be used exclusively for private residential purposes. No dwelling erected or maintained within the Subdivision shall be used or occupied for any purpose other than for a single family dwelling. No trade, business, profession, commercial activity or other activity conducted for gain shall be carried on or within any Lot, except as provided in Section 107.

Section 102. Structures. No Structure shall be erected within the Subdivision except single family dwellings and those Accessory Buildings and other Structures which have been approved by the Approving Authority. Other than a dwelling, no Structure, no trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. No Structure may be placed on any Lot except with the permission of the Approving Authority after its review and approval of the Structure's location on the Building Site.

Section 103. Construction Type. All construction shall be new. No building previously used at another location nor any building or Structure originally constructed as a mobile dwelling or manufactured housing may be moved onto a Lot, except as expressly hereinafter provided for temporary buildings.

Section 104. Storage. No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement.

Section 105. Substantial Completion. A Structure shall not be occupied in the course of original construction until substantially completed and approved for occupancy by the appropriate governmental authorities. All work of construction shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 106. Construction Completion. The exterior of all buildings or other Structures must be completed within one year after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities. If not so completed, or if construction shall cease for a period of sixty days without permission of the Approving Authority, the Approving Authority will give the Owner thereof Due Notice of such fact, and if construction on such Structure is not diligently commenced within thirty days after such notice, the unfinished Structure or unfinished portion thereof shall be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner. Erosion control Structures must be installed prior to the commencement of any construction upon any Lot.

Section 107. Construction or Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by Declarant or with the written permission of the Approving Authority. Model homes may be used and exhibited only by Declarant or with the permission of the Approving Authority.

Section 108. Drilling Structures and Tanks. The only drilling Structures and tanks permitted shall be during the construction phase of a single family residential home, in order to place a household well and septic system in place. All tanks shall be installed underground and the surrounding area shall be left free and clear of debris and returned to its natural state.

Section 109. Easement. There are hereby reserved to Declarant, its successors and assigns, perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across each of the fifteen foot strips within each Lot along and adjoining each and all Lot Lines of each Lot for use of all or part of such areas for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for utility lines, for drainage and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes.

Section 110. Underground Utilities. All utilities, except lighting standards and customary service devices for meters, transformers, access, control or use of utilities, shall be installed underground.

Section 111. Maintenance Agreement. Declarant hereby adopts the Private Detention Basin Maintenance Agreement) referred to in these Covenants as "Maintenance Agreement") recorded at Reception No. 098086364 of the records of the El Paso County Clerk and Recorder, and said Maintenance Agreement is incorporated herein by this reference. The Maintenance Agreement touches and concerns each and every Lot within the Subdivision. The Association shall adopt the maintenance Agreement and shall clean, maintain and repair the detention basin as provided in the Maintenance Agreement.

ARTICLE II

DENSITY, SETBACK AND QUALITY STANDARDS

Section 201. Resubdivision. No more than one dwelling Structure, and a private garage for not more than four cars, shall be erected or maintained within any Lot. No Lot shall be subdivided into additional Lots without the prior written approval of the Approving Authority.

Section 202. Setback Areas. Dwellings shall be constructed within the "building envelopes" as approved by El Paso County for Lots 3-7 inclusive, as noted on the final plat. Structures and buildings, including Accessory Buildings shall generally be placed or erected at least seventy-five (75) feet from any Lot Line fronting a roadway. Buildings and Structures shall generally be placed or erected at least thirty (30) feet from any side Lot Line and fifty (50) feet from any rear Lot Line. Variances from the suggested setback guidelines must be approved by the Approving Authority, but in no case shall setbacks be less than required by El Paso County. Setbacks shall be measured perpendicularly from property line to the foundation line for any

building. Except with approval of the Approving Authority, no building, porch, eaves, overhang, projection or other part of a building shall be located closer to Lot Lines than permitted by these Covenants or governmental requirements. The Approving Authority's approval may be given for (a) fireplace projections integral with the building; (b) eaves and overhangs; and (c) construction which extends less than one foot into the setback area and which the Approving Authority determines to be minor in nature and to be consistent with the Lot's shape, topography and in the interest of superior design.

Section 203. Dwelling Area Requirements. No dwelling Structure shall be constructed unless the ground floor area, or footprint area, of the main Structure exclusive of open porches, basements, and garages, is more than 2200 square feet for a one-story dwelling, and more than 1600 square feet on the main level of a dwelling more than one story, whether split-level or otherwise. Minimum finished area for a two story home shall be at least 2800 square feet. Attached garages are required for all homes and shall be of size to accommodate not less than three full-sized cars. Owners are encouraged to have a full basement whenever possible. Ranch styles must have a basement equal to at least three-fourths of the square footage of the main level.

Section 204. Height Restrictions. No dwelling or other Structure shall exceed thirty-four feet in heights or be more than two stories high. Height shall be measured from the highest finished grade contour at any point adjoining the foundation perimeter of the Structure to the highest point on the Structure exclusive of standard chimneys. Finished grade contour shall mean the ground contour established by Declarant during development of the Lots and existing immediately prior to commencement of construction of any dwelling or other Structure, or such other finished grade as may be approved by the Approving Authority.

Section 205. Roofs. All roof areas shall be of tile, slate, copper and/or premium grade asphalt. Asphalt shingles such as T-lock or 3 tab will not be allowed. For asphalt shingles, the preferred color is weathered wood or other similar colored shingles as approved by the Approving Authority. Other roofing materials may also be used, but only if approved by the Approving Authority. In no event shall wood shake materials be used unless the Approving Authority finds that said materials are sufficiently fire retardant.

Section 206. Building Material Standards. At least twenty percent (20%) of the front facade shall consist of stone, brick, or stucco or a combination of these materials. Siding such as aluminum, steel and vinyl, is not permitted. Lap siding shall be no more than 6 inches. Aluminum, wood or vinyl clad windows are permitted. All aluminum windows shall be anodized and painted or coated with a color to blend with or compliment the color of the dwelling. Gutters, if installed, shall be painted the same color as the adjoining trim color of the dwelling. Erosion control Structures must remain in place until disturbed ground has been returned to its natural state.

Section 207. Accessory Building and Yard Items. Accessory Buildings or Structures and yard items, whether movable or immovable, including without limitation, children's play or swing sets, basketball hoops, equipment or appliances, fountains, yard ornaments, stone figures, or above-ground swimming pools, shall be permitted only if approved by the Approving Authority in its sole discretion. Metal and pre-manufactured storage sheds will not be allowed.

Section 208. Antennas. No aerial, antenna, satellite dish or other device for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any building, nor shall they be maintained at any other exterior location unless screened in a manner approved by the Approving Authority. Only devices twenty-eight (28) inches in size or smaller shall be permitted. Plans for such Structures must be submitted to and approved by the Approving Authority prior to installation. If the Approving Authority disapproves, the party requesting approval may modify its plans to eliminate the Authority's objections and resubmit them for approval.

Section 209. Fire Resistant Materials.

a. All roofing material shall be non combustible or fire resistive Class A, B, or C rated.

- b. All exterior walls shall have a fire resistance rating as required by applicable governmental requirements. Materials such as stucco, rock and brick shall be encouraged.
- c. All under-eaves vents shall be located near the roof line rather than near the wall. All eaves shall be boxed.
- d. All windows and patio doors shall be made of tempered safety glass or double pane glass. Exterior fire resistive shutters and interior fire resistant drapes or blinds shall be encouraged.
- e. Masonry patios and/or one hour fire rated decks shall be encouraged to create a setback safety zone.
- f. Builders shall be encouraged to minimize the number and size of windows and doors on the side of the house that would most likely be exposed to fire.

Section 210. Owner Maintenance. Each Owner shall maintain the exterior of the dwelling, any Accessory Building and all other Structures, lawns and landscaping, walks and driveways, in good condition as determined by the Approving Authority, shall cause dead or diseased landscaping to be promptly replaced and shall cause such other items to be repaired or replaced as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be repainted, sealed or stained periodically and before the surfacing has a weather-beaten or worn appearance as determined by the Approving Authority.

Section 211. Rebuilding or Restoration. Any dwelling or building which may be destroyed in whole or in part by fire, windstorm or from any other cause or act of God must be rebuilt or all debris must be removed and the Lot restored to a sightly condition; such rebuilding or restoration shall be completed with reasonable promptness and in any event within six months from the time the damage occurred.

Section 212. Fences.

a. The height, location and material of all fences, dog runs and other similar items must be approved by the Approving Authority. Split rails are encouraged as the primary fencing material. Chain link or similar wire or wire-mesh fencing shall not be allowed as the primary fencing material. No solid wood privacy fences or painted fencing shall be allowed. Dog runs may not exceed eight hundred (800) square feet, shall be constructed of a maximum four foot high split rail with wire screen and shall not be located in front yards. All fencing shall comply with the requirements of El Paso County and shall be submitted for prior written approval by the Approving Authority.

b. The Lots adjoin the property on the far western boundary of Higby Estates (the "Ranch Property") which is legally described on Exhibit "B" attached hereto and incorporated herein by this reference. The Association shall maintain and repair the five (5) strand barbed wire fence, already in place between the Lots and the Ranch Property; all such repairs shall be made within five (5) days of written demand by the owner of the Ranch Property. Owners acknowledge and agree that the Ranch Property is a working cattle ranch, and all Lot owners, family, domestic pets and guests shall respect the adjoining property and allow no trespassing, at any time. Trespassers may be subject to a fine.

Section 213. Chimneys. All fireplaces and chimneys or other devices for open flames will be equipped with a spark arresting screen or other similar device acceptable to the Approving Authority.

Section 214. Driveways. All drives, driveways and walks for vehicular or pedestrian ingress and egress shall be constructed of black asphalt, concrete, or decomposed crushed gravel.

Section 215. Approval by Approving Authority. Homes shall be subject to review and approval by the Approving Authority, which may require that a \$100 non-refundable filing fee be

paid with each submission, plus a \$500 refundable compliance fee. No home may begin construction until plans are approved in writing by the Approving Authority and erosion control Structures are in place.

Section 216. Relief from Violations. If any object, including without limitation, aerial, antenna, solar collection, satellite dish or other device or any fence, Accessory Building, improvements or vehicle, is installed or placed without the approval of the Approving Authority, or any action taken in violation of these Covenants, Declarant or the Approving Authority or both shall have the right after Due Notice, but not the obligation, to enter the Lot in question and remove the object or correct the action. Declarant and the Approving Authority shall not be liable for any losses, costs or damages to any Owner of the Lot on account of such removal of the offending object or correcting action, except for any such loss, cost or damage caused by Declarant's or the Approving Authority's gross negligence or willful misconduct. Declarant and the Approving Authority may delegate their entry and removal rights hereunder to agents and independent contractors. In the event Declarant or the Approving Authority elects to remove an object or correct the action pursuant to this section, Declarant or the Approving Authority will submit to the Owner of the Lot from which the object was removed, a written statement of the costs incurred by Declarant or the Approving Authority in removing the object or action corrected. These costs shall be paid to Declarant or the Approving Authority within twenty days after receipt of such notice. If the costs of Declarant or the Approving Authority have not been paid after expiration of this twenty-day period, Declarant or the Approving Authority may thereafter record a lien against the Lot involved for all costs (including without limitation reasonable attorneys' fees) incurred by Declarant or the Approving Authority in removing the object or correcting the action and in collecting such costs and foreclosing upon the lien, which lien shall be junior to all other liens or encumbrances of records with respect to the Lot on the date this lien is recorded. This lien may thereafter be foreclosed upon in the manner provided by Colorado law for foreclosing upon real estate mortgages. This lien shall provide that all sums expended by Declarant or the Approving Authority in foreclosing the lien and collecting the amount due Declarant or the Approving Authority (including reasonable attorneys' fees and other expenses) shall be additional indebtedness secured by the lien.

Section 217. Compliance with Zoning and other Laws. In the construction of any Structure or use of any Lot, the Owner shall comply with any and all federal, state and local laws and regulations, all of which are incorporated herein by this reference and may be enforced as part of these Covenants. Such laws and regulations shall include without limitation the notes and restrictions of the recorded Plat and the subdivision regulations of El Paso County. All construction must also conform to the building codes, zoning codes and subdivision regulations of El Paso County and the Regional Building Department, which regulations may vary from the provisions of these Covenants; in the event of any conflict, the most restrictive requirements shall prevail and control.

ARTICLE III

LIVING ENVIRONMENT STANDARDS

Section 301. Building and Grounds Conditions. Each Owner shall prevent the development of any unclean, unsightly or unkempt conditions or building or grounds on his Lot which tends to substantially decrease the beauty of the neighborhood as determined by the Approving Authority in its sole discretion.

Section 302. Garage Doors. All garage doors shall be equipped with automatic remote control openers and shall be kept closed except when being used to permit immediate ingress or egress to or from the garage.

Section 303. Maintenance Equipment. All maintenance equipment shall be stored in an enclosed building or otherwise adequately screened so as not to be visible from neighboring property or adjoining streets. All Structures shall be approved by the Approving Authority.

Section 304. Clotheslines. All outdoor clothes poles, clotheslines or other facilities for drying or airing of clothing or household goods are prohibited, unless completely screened from view on adjoining Lots and public streets.

Section 305. Refuse. No ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefor, shall be stored, accumulated or deposited outside the residential dwelling or Accessory Building or so as to be visible from any neighboring property or street, except during refuse collections.

Section 306. Nuisances. No noxious or offensive activity shall be carried on upon any Lot or anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on any Lot or in any living unit. No annoying lights, sounds or odors shall be permitted to emanate from any living units. No floor lights, spot lights or other bright lights shall be allowed which are visible from the roads or other Lots; indirect lighting shall be required. Nothing shall be done on the Property which pollutes the Ranch Property's adjudicated spring, and if such pollution does occur, the polluter shall be obligated to drill a new well to supply water to the Ranch Property at no cost to its owners, then or in the future.

Section 307. Sound Devices. No exterior speakers, horns, whistles, bells or other sound devices, except for built-in speakers on the rear decks and for security devices used exclusively for security purposes, shall be located, used or placed on any Structure or within any Building Site.

Section 308. Weeds. All yards and open spaces and the entire area of every Lot whether or not a Structure has been constructed thereon, shall be kept free from plants, thistle or weeds infected with noxious insects or plant diseases and from weeds or thistle, which in the reasonable opinion of the Approving Authority or as specified by governmental authorities, are likely to cause the spread of infection or weeds to neighboring property and free from brush or other growth or trash which in the reasonable opinion of the Approving Authority causes danger of fire, pests or vermin. The Association will annually spray for noxious weeds in the Common Area and will require Owners to spray for noxious weeds on their Lots, especially Lots adjoining the Ranch Property. The Association and the Owners shall notify the owners of the Ranch Property prior to any spraying.

Section 309. Mowing and Pruning. In order to control pest, insect, weed and fire dangers and to prevent and remove nuisances, the Owner of any Lot whether or not a Structure has been constructed thereon, shall mow, cut, prune, clear and remove from the Lot any unsightly brush, weeds and other unsightly growth and shall remove any trash which may collect or accumulate on the Lot. Declarant has the right (but not the duty) to enter any Lot and perform this work after Due Notice to the Owner, at such Owner's expense.

Section 310. Grading Patterns. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by any development or drainage plan approved by El Paso County or the Approving Authority for said Lot. Erosion control Structures shall be required prior to commencement of construction.

Section 311. Animals. No animals, except domesticated birds or fish and other small domestic animals permanently confined, and except an aggregate of not more than two (2) domesticated dogs, shall be maintained in or on any Lot within the Subdivision and then only if kept as pets. No animal of any kind shall be permitted which in the opinion of the Approving Authority makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Subdivision for any commercial purposes. No kennels whether for breeding or sale shall be allowed. No farm animals shall be permitted. The Association may adopt reasonable rules and regulations which may regulate, restrict or prohibit particular animals or animal related activities within the Subdivision. Barking dogs and loose cats may harm wildlife and disturb the peace of the Subdivision, and so are prohibited; the Association may require the immediate removal of any animal or pet which violates these Covenants or the rules of both.

Section 312. Trailers, Campers, Boats and Other Vehicles. No boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor home, recreational vehicle, motorcycle, any towed trailer unit or truck, excepting only pickup trucks solely for the private use of the residents of a dwelling, shall be parked for more than three days, as determined by the Approving Authority in its sole discretion, on any street or within any Lot, except in a completely enclosed Structure. All such enclosed Structures shall require the approval of the Approving Authority. If any such vehicle is not removed from the Subdivision or placed in a completely enclosed Structure, within three days after Due Notice is delivered to the Owner of the Lot on or adjacent to which the offending vehicle is parked, then Declarant or the Approving Authority or both shall have the right, but not the obligation to enter the Lot in question, remove or cause to be towed the offending vehicle and may store the same; any expenses thereof, including without limitation, reasonable attorneys fees shall be paid by the owner of the offending vehicle. Declarant and the Approving Authority shall not be liable from any losses, costs or damages to any Owner of the Lot or the owner of the vehicle on account of such removal of the offending vehicle, except for any such loss, cost or damage caused by Declarant's or the Approving Authority's gross negligence or willful misconduct.

Section 313. Vehicle Violations. No stripped down, abandoned, unlicensed, partially wrecked or junk motor vehicle or part thereof, as determined by the Approving Authority in its sole discretion, shall be permitted to be parked on any street or on any Lot in such a manner as to be visible at ground level from any neighboring property or street. No vehicle shall be parked overnight, for more than three (3) nights each month, outside of garages, unless the owner of such vehicle obtains a written variance from the Approving Authority. Any vehicles violating this Section may be removed as provided by Section 312 of these Covenants.

Section 314. Vehicle Repairs. No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat, machine or device may be carried on within the Subdivision except within a completely enclosed Structure which screens the sight and sound of the activity from the street and from adjoining property.

Section 315. Signs. The only signs permitted on any Lot or Structure shall be:

- a. One sign of a maximum of five (5) square feet for offering the signed property for sale or for rent;
- b. One sign of a maximum of one square foot for identification of the occupant and address of any dwelling;
- c. Multiple signs for information, sale, administration and directional purposes installed by, or with the permission of Declarant during development and sales of Lots and/or homes and project identification signs installed by Declarant or builders authorized by Declarant;
- d. Signs as may be necessary to advise of rules and regulations or to caution or warn of danger;
- e. Such signs as may be required by law;
- f. Signs approved by the Approving Authority. Except for permitted signs, there shall not be used or displayed on any Lot or Structure any signs or any banners, streamers, flags, lights or other devices calculated to attract attention whether for sale or rental or otherwise unless approval thereof is granted by the Approving Authority. All permitted signs must be professionally painted, lettered and constructed.

Section 316. Mailboxes. Mailboxes may be initially installed by the Declarant in accordance with the U.S. Post Office design specifications and may be located on the boundary line between Lots or as required by the U.S. Post Office. Declarant hereby reserves easements for any mailboxes or signs located by Declarant upon any Lot.

Section 317. Solar Collectors. Solar collectors or other devices are permitted so long as they are designed and installed to blend in with the overall architecture of other improvements on

the Lot. Any roof or wall-mounted collectors or solar devices must be built-in to the roof or wall, be flush with, and of the same pitch as, the adjacent portions of the building, and be architecturally compatible with the building upon which they are affixed. Ground level freestanding solar collectors or devices will be permitted so long as they are designed or screened in a manner accepted by the Approving Authority so as to be visually compatible with the buildings and landscaping on the Lot involved and to not impact views from adjacent Lots. Plans for any such solar collectors or other devices must be submitted to the Approving Authority for its review and approval prior to installation. If the Approving Authority disapproves, the party requesting approval may modify its plans to eliminate the Approving Authority's objections and resubmit them for approval.

Section 318. Homeowners Association. The Association shall operate as a Colorado non-profit corporation pursuant to its Articles of Incorporation and By-laws, which may include, without limitation, provisions for the indemnification of officers and directors. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. If additional Lots are added to the Association, membership shall automatically be expanded thereby. Members shall have the right to cast votes on all matters to be voted on by the members, as provided in the Association's Articles of Incorporation and Bylaws. Each Lot shall be entitled to one vote. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. The Association's Board of Directors shall appoint or may itself constitute the Approving Authority as provided by Section 501 of these Covenants. The Association's Board of Directors may adopt rules and regulations, including without limitation, construction, use and design standards and procedures for architectural control appeals from the Approving Authority, and fines for violations of rules and these Covenants, to supplement and interpret these Covenants, and any rule or decision of the Board shall be final, conclusive and binding on all Owners and other persons or parties. Pursuant to C.R.S. 38-33.3-116, the Association and the Property shall be subject only to C.R.S. 38-33.3-105, 38-33.3-106 and 38-33.3-107, and no other sections of said Article 33.

ARTICLE IV

ARCHITECTURAL CONTROL

Section 401. Building Approval. No Structure, construction or improvement shall be commenced, erected or placed on any Lot, permitted to remain on any Lot or altered in any way so as to materially change the Lot's previously existing exterior appearance, except in accordance with plans, specifications and other information submitted to the Approving Authority and approved by the Approving Authority no more than one year before start of the construction, alteration or installation. Matters which require the approval of the Approving Authority include but are not limited to: the exterior appearance, material, color, height and location of each Structure, construction or improvement on any Lot. In granting or withholding approval, the Approving Authority shall consider among other things: the adequacy of the materials for their intended use, the harmonization of the external appearance with the surroundings, the proper relation of the Structure, construction or improvement to the environment and to surrounding uses, the degree to which the proposed Structure preserves existing natural vegetation, the degree, if any, to which the proposed Structure or covering will cause intrusions of sound, light or other effect, including without limitation, any blockages of view corridors established by the Declarant or the Approving Authority, on neighboring sites beyond those reasonably to be expected in a quality residential area from considerate neighbors. Notwithstanding the foregoing or any provision of these Covenants, the houses and improvements, which exist on the Property when these Covenants is recorded, shall not be subject to architectural review and standards hereunder, but any modifications or additions thereto shall be.

Section 402. Development Approval. No Structure, construction or improvement shall be commenced, erected, or placed on any Lot nor shall any land be graded or otherwise disturbed for purposes of development or any other purpose unless such disturbance is undertaken in accordance with a plan submitted to the Approving Authority and approved by the Approving

Authority no more than one year before start of the disturbance and erosion control Structures are in place. The requirements for the plans, including grading plan, erosion control and reclamation, and landscaping plans, and any other requirements, may be set forth in rules and design standards adopted by the Association's Board of Directors and must be consistent with the laws and regulations of El Paso County. The Lots shall be maintained in a state compatible with the natural forest surroundings, except as approved by the Approving Authority, and except that a reasonably-sized lawn and/or garden may be planted around the house. The objectives of such plans are:

- a. To conserve the unique natural features and aesthetic qualities of the Subdivision;
- b. To minimize land disturbance;
- c. To protect natural plant and animal communities;
- d. To minimize water runoff and soil erosion problems incurred in adjustment of the terrain to meet development needs.
- e. To assure proper restoration of disturbed areas.
- f. To avoid or reasonably mitigate visual impacts upon offsite areas. Mitigation measures may include, but are not limited to:
 - (i) Alternative siting of Structures so that there is a mount or hillside backdrop to the Structure from areas where the Structure is visible. However, this shall not preclude siting of Structures on ridge lines where alternative siting is not available.
 - (ii) Use of existing vegetation to soften structural mass when Building Sites are located in highly visible areas.
 - (iii) Use of supplementary native landscaping to soften structural mass when Building Sites are located in highly visible areas.
 - (iv) Use of visually compatible stabilization measures for cuts and fills.

Section 403. Tree Management and Landscaping Program.

a. The trees within the Subdivision are an important asset to the entire community. Therefore, the Approving Authority shall be responsible for an ongoing and perpetual program of inspection to identify potential insect and disease problems in a timely manner. The Approving Authority shall also be responsible for a program to properly thin trees for better fire control, to promote a healthy growth of existing trees, to maintain views, which may be defined as "view corridors" in the Association's design standards, and to provide for the growth of new trees to perpetuate the forest. The thinning process is not intended to create a "tree farm" look or to replicate perfect fire protection recommendations. The object is to create a natural look to assist nature and promote an environment as healthy, beautiful and safe as possible. Owners shall not remove any tree taller than twenty (20) feet without the prior written approval of the Approving Authority.

b. The foregoing inspection and thinning programs shall be administered by the Approving Authority with funding provided by assessments against the Lots as provided in Article VII hereof. The Approving Authority shall retain the services of a professional forester or an experienced landscape professional to prescribe appropriate thinning and maintenance programs.

c. A perpetual easement is hereby reserved to Declarant, its successors and assigns and the Approving Authority over and across each Lot for the purpose of instituting, maintaining and administering the aforementioned tree inspection and thinning programs.

d. Approximately sixty (60) ponderosa pine trees will be transplanted along the western boundary of Higby Estates by the Declarant. The Association shall be responsible to maintain these trees and replace said trees when necessary to provide screening of the Ranch Property.

Section 404. Wildfire Mitigation. All dwelling Structures shall have a thirty (30) foot safety zone or primary fuel break in all directions. All brush within ten (10) feet of the dwelling Structure shall be removed and replaced with an irrigated greenbelt (including grasses, shrubs and/or flowers) or non combustible materials such as rock or gravel mulches. All large trees within the thirty (30) foot safety zone shall be thinned to eliminate overlapping crowns. Trees within two tree heights of the dwelling Structure shall be pruned of all dead limbs, and Owners shall prune live branches to ten (10) feet from at least half of the trees within the thirty (30) foot safety zone. All branches which extend over or under the eaves of the roof shall be trimmed. Owners shall be required to maintain the thirty (30) foot safety zone by removing all fuels from beneath large trees. Owners shall keep grasses trimmed to two (2) inches and well watered; keep roofs and roof gutters clear of pine needles and leaves, stack firewood uphill and at least fifteen (15) feet from Structures, and remove dead limbs, leaves, and grass clippings from all areas. All driveways shall be readily identifiable and maintained unobstructed at all times and shall be constructed in a manner acceptable to governmental authorities. All house addresses shall be clearly visible from the street. All chimneys shall be equipped with a mesh spark arrestor and inspected and cleaned on a regular basis. On-site burning of trash, leaves and weeds shall be prohibited. Fireworks of any kind shall be prohibited. All motor vehicles shall be parked on non-combustible surfaces. All dwelling Structures shall be equipped with smoke detectors and a minimum of one 2.5 pound fire extinguisher maintained in accordance with the manufacturer's recommendations.

Section 405. Approval Process. All action required or permitted to be taken by the Approving Authority shall be in writing and any such written statement shall establish the action of the Approving Authority and shall protect any person relying on the statement. If the Approving Authority does not execute and acknowledge such a statement within sixty (60) days after delivery of all the required materials to the Approving Authority, the materials so delivered shall be deemed approved for the purpose of these Covenants. The Approving Authority may charge reasonable fees to cover expenses incurred in review of plans, samples and materials submitted pursuant to these Covenants, exclusive of reimbursement to the members of the Approving Authority for their services. The Approving Authority shall be entitled to retain one copy of all approved plans as part of its files and records.

Section 406. Variances. The Approving Authority shall have the authority to grant from a Lot a variance from the terms of these Covenants, including without limitation, Sections 106, 110, 202, 204, 205, 209, 210 and 212, subject to terms and conditions which may be fixed by the Approving Authority and which will not be contrary to the interests of the Owners and residents of the Subdivision where, owing to exceptional and extraordinary circumstances, literal enforcement of any section will result in unnecessary hardship.

Following an application for a variance:

a. The Approving Authority shall, within sixty (60) days after the request for the variance was delivered, determine whether to grant or deny the variance. If the Approving Authority fails to act on the request for a variance within this sixty (60) day period, the variance will be deemed granted.

b. A variance granted thereunder shall run with the Lot for which granted.

c. A variance shall not be granted unless the Approving Authority shall find, in its sole discretion, that all of the following conditions exist:

(i) The variance will not authorize the operation of a use other than private, single family residential use;

- (ii) Owing to the exceptional and extraordinary circumstances, literal enforcement of the section above enumerated will result in unnecessary hardship.
- (iii) The variance will not substantially or permanently injure the use of other property in the Subdivision;
- (iv) The variance will not alter the essential character of the Subdivision;
- (v) the variance will not weaken the general purposes of these Covenants;
- (vi) the variance will be in harmony with the spirit and purpose of these Covenants;
- (vii) the circumstances leading the applicant to seek a variance are unique to the Lot or its Owner and are not applicable generally to Lots in the Subdivision or their Owners.

d. If the Approving Authority denies the request for a variance, the applicant may request a meeting of the Owners be held to reconsider the denial. In this case, the Approving Authority shall call a meeting of Owners of Lots in the Subdivision, to be held after Due Notice at the Approving Authority's principal office, at which meeting all Owners shall have an opportunity to appear and express their views. Whether or not anyone appears at the meeting in support of or in opposition to the application for variance, the Approving Authority shall within one week after the meeting either grant or confirm its denial of the variance. The decision to grant or deny the variance shall always rest with the Approving Authority.

e. If a variance is denied, another application for a substantially similar variance for the same Lot may not be made for a period of one year after submittal of the original request.

ARTICLE V

APPROVING AUTHORITY

Section 501. Composition of the Approving Authority. The Approving Authority shall consist of three individuals. Declarant reserves the right, until January 1, 2005, to appoint all members of the Approving Authority. Thereafter or sooner with Declarant's written consent, the Board of Directors of the Association may, by majority vote, appoint or change the membership of the Approving Authority, so long as the members of the Approving Authority, which may consist of the Board itself, are Owners of Lots within the Subdivision. Whenever a member shall be deceased or unwilling or unqualified to act, the Board of Directors of the Association shall appoint an Owner of a Lot within the Subdivision as a member of the Approving Authority so as to fill the existing vacancies, except until January 1, 2005 any such vacancy may be filled by Declarant.

Section 502. Authority of Approving Authority. The Approving Authority is empowered to approve or disapprove in writing all matters delegated to it under these Covenants, including without limitation, all plans for construction, site locations, clearing, plantings, fencing, additions to existing Structures, remodeling that alters the exterior, replacement of natural environment of Lots or appearance of homes in the Project. Disapproval of submissions by the Approving Authority may be based upon any grounds, including purely aesthetic grounds. If such submissions are disapproved, the Approving Authority shall give written reason for said requirements of the applicant including, but not limited to, submission of additional plans, specifications, and material samples, and may require such changes as it deems necessary to conform to the overall intent as herein expressed.

The Approving Authority shall have the right to alter site locations as shown on the submitted site plan, or deny construction if, in the opinion of the Approving Authority, the proposed site locations will unduly interfere with adjoining Lots as to view, intrusions or sound or light, sanitation, proximity or type of construction, actual or proposed, or unduly damaged the natural growth and terrain.

The Approving Authority may prohibit the construction of fences, Structures, houses or any other improvements to any Lot, and is empowered to order their removal if written application was not made by the Owner, or if approval was not granted in accordance with these Covenants, or if actual construction is different from the approved plans.

The Approving Authority shall be the sole and exclusive judge of whether or not plans or Structures comply with these Covenants. It is the intent of these Covenants that the Approving Authority shall exercise broad discretionary powers hereunder. The Association's Board of Directors shall resolve all questions and interpretations of these Covenants which shall be interpreted in accordance with their general purpose and intent as herein expressed; the Board's decisions shall be final and conclusive.

Section 503. Delivery of Items. Any item required or permitted to be delivered to the Approving Authority shall be deemed properly delivered when actually received by the Approving Authority at such address as it may from time to time designate.

Section 504. Non-Liability. Members of the Approving Authority and the Association's Board of Directors shall not be liable to any party whatsoever for any act or omission unless the act or omission is in bad faith and amounts to wanton and willful misconduct.

ARTICLE VI

WATER AND LANDSCAPE FEATURES

Section 601. Water Augmentation and landscaping:

- a. All Lots in the Project shall be subject to the requirements as set forth in the decree in Consolidated Case Nos. 96CW1133 (Division 1) and 96CW232 (Division 2), and the decree in 93CW68 (Division 2), copies of which is attached hereto as Exhibit "C" and incorporated herein by this reference (the "Augmentation Plan").
- b. Each Owner shall be responsible for obtaining a permit for a well to provide a water supply to his dwelling and for constructing and operating such well. All wells shall be constructed and operated in compliance with the Augmentation Plan and the permits for such wells.
- c. Each Owner may be required to log a well as it is constructed and a well meter, with an accessible, exterior read-out, shall be installed so as to provide information necessary to the Augmentation Plan. Each Owner shall maintain the meter and the well and shall allow the Association or its agents to enter the Owner's Lot and read and inspect the meter.
- d. Each Owner shall provide any information necessary to enable any reports required under the Augmentation Plan to be filed in a timely manner.
- e. Declarant hereby assigns to the Association any and all right, interest and responsibilities under the Augmentation Plan, including its rights, interests and responsibilities under the Northgate Contracts which are attached hereto as Exhibits "E" and "F" and are incorporated herein by this reference. By this assignment to the Association, Declarant shall be relieved of any responsibility for the administration or enforcement of the Augmentation Plan or the operation of the augmentation water supply, and the Association shall be obligated to perform the same. By such assignment, the Association shall hold such interest in the Augmentation Plan and augmentation water supply for the benefit of all Lot Owners, shall assume the responsibility for administering and enforcing the Augmentation Plan, and shall take all necessary actions to ensure protection of water and well rights for all Lot Owners pursuant to the Augmentation Plan, including

pursuing and maintaining all further action required under the Augmentation Plan. Failure of the Association or the Owners to comply with the terms of the Augmentation Plan may result in an order from the Division Engineer's office to curtail or eliminate pumping of the Owners' wells.

f. No changes or deletions to this Paragraph may be made which may alter or in any manner compromise the Augmentation Plan or the water rights of either Declarant or the Owners.

Section 602. Landscaping. The Common Area shall be landscaped and maintained so as to enhance the attractiveness of the Subdivision as a residential area and to preserve the enjoyment of the appearance and open space afforded by said Common Area.

ARTICLE VII

COVENANTS FOR ASSESSMENTS

Section 701. Assessments. The Association shall assess the Owners for the costs of common expenses as determined by the Association's Board of Directors. The assessments hereunder shall be imposed equally upon each Lot and each Owner, provided however, notwithstanding any contrary provision, any assessments hereunder shall commence upon the earlier of (a) the completion of a residential dwelling unit upon the Lot, as demonstrated by final governmental approval, or (b) twelve (12) months from the date on which the Lot is conveyed by the Declarant, and provided further, that the Association's Board of Directors may impose an assessment which shall be applicable only to a particular Lot or particular Owner or both for any violation of the Association's rules or any violation or expense under these Covenants, including without limitation Section 216 hereof. The Declarant shall not be obligated to pay assessments on any Lots owned by it nor shall Declarant's Lots be subject to lien hereunder.

Section 702. Purpose of Assessments. Assessments may also be levied by the Association's Board of Directors for promoting the health, safety, property values, welfare and convenience of the members, including the enforcement of these Covenants, and to pay for the costs of the ownership, maintenance, watering, mowing, fertilization and landscaping of the Common Area, and any other common expenses as determined by the Association's Board of Directors including without limitation, maintenance, administrative, legal and insurance, including without limitation, insurance on the Common Area and Association activities, which insurance shall, to the fullest extent reasonably available and practical, meet the requirements of C.R.S. 38-33.3-313, as now existing or hereafter amended, the common fences, property boundary fences, monument signs and related landscaping, street signs, maintenance and repair of drainage and detention facilities within the Common Area, tree inspection and thinning programs, as it may relate to the Approving Authority and other activities of the Association. The Association shall perform any obligations required of it under the recorded Maintenance Agreement with El Paso County recorded at Reception No. 098086364 of the records of the El Paso County Clerk and Recorder.

Section 703. Assessments a Liens and Personal Obligation. Each Owner, by acceptance of a conveyance of his Lot, whether or not it shall be so expressed in the conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments and other assessments authorized by these Covenants. Each such assessment and charge, together with the interest thereon and costs of collection, shall be a continuing lien upon the Lot against which it is made and shall also be the personal obligation of the person who owned the Lot at the time the assessment or charge fell due, except Declarant.

Section 704. Payment of Assessments. The foregoing assessments shall be payable in advance in annual or other installments as the Association's Board of Directors may fix. The Board may set the annual assessment in any amount which does not exceed the maximum set forth in Section 705 hereof. The Association's Board of Directors shall give each member written notice of each assessment at least ten (10) days in advance of the due date. Such notice shall state the amount of the assessment and if the assessment is payable in other than in a single payment, the amount and due dates of each installment as fixed by the Association's Board of Directors. Failure to give such notice shall not affect or impair the assessment, but shall postpone its effective date.

Section 705. Limit on Annual Assessments. The maximum annual assessments on each Lot for 1998 shall be Seventy-Five Dollars (\$75.00); the maximum annual assessment for 1999 shall not exceed Seventy-Five Dollars (\$75.00) and after January, 2000, the maximum annual assessment may be increased by the Association's Board of Directors at a rate not to exceed five percent (5%) per year thereafter, provided however, that notwithstanding any contrary provision, the annual average common expense assessment of each Lot, exclusive of any optional user's fees and any insurance premiums paid by the Association, shall never exceed \$300.00 per year, or such higher limit as may be allowed now or hereafter by C.R.S. 38-33.3-116 for homeowner associations which are not subject to said Act; it is the Declarant's stated intent that these Covenants, the Property and the Association will not be subject to the Colorado Common Interest Ownership Act, except for Sections 38-33.3-105, 38-33.3-106, 38-33.3-107, as provided in Section 38-33.3-116; any references herein to said Act are only for the purposes of describing or imposing similar rights and duties and do not make said Act generally applicable hereto.

Section 706. Collection of Assessments.

a. Personal Liability. Any assessment which is not paid when due shall be delinquent, and the Association may impose a late charge for each month any assessment is delinquent, and may also collect the attorneys fees, costs and expenses of any collection. Additionally, the Association may bring an action at law against any Owner personally obligated to pay any assessment and, in the event of any lawsuit, the delinquent Owner shall pay all attorneys fees, court costs and any expenses of such lawsuit.

b. Lien. Additionally, any such unpaid assessment, together with all expenses of collection and attorneys fees, shall be a continuing lien upon the Lot against which such assessment was made. The Association may enforce such lien by filing with the Clerk and Recorder of El Paso County a statement of lien with respect to said Lot, setting forth such information as the Association may deem appropriate. Said lien shall run with the land and shall additionally secure all assessments and expenses which become due after its filing. Said lien may be foreclosed by the Association in the manner provided for foreclosures of mortgages under the laws and statutes of the State of Colorado. All rights and remedies of the Association are cumulative, and foreclosure of the lien shall not prevent a lawsuit against the Owner personally liable therefor whether taken before, after or during such foreclosure. Said lien may be released by recording an appropriate document executed by an officer or agent of the Association. Such lien is in addition to any statutory lien allowed to the Association by law or statute. Said lien shall be superior and prior to any homestead rights or similar exemption now or hereafter provided under state or federal law to any Owner, whose acceptance of a deed to a Lot shall constitute a waiver of such homestead or other rights.

Section 707. Protection of Lenders. The lien for any assessment provided for herein shall be subordinate to the lien of a First Mortgage recorded before the delinquent assessment was due. Sale or transfer of any Lot shall not affect the lien for said assessment except that sale or transfer of any Lot pursuant to foreclosure of any such First Mortgage, or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien of any assessment which became due prior to any acquisition of title to such Lot by the First Mortgagee pursuant to any such sale or transfer, or foreclosure, of any proceeding in lieu thereof including, without limitation, any deed in lieu of foreclosure. No such sale, transfer, foreclosure or any above-described proceeding in lieu thereof, shall relieve any Lot from liability for any assessment becoming due after such acquisition of title, nor from the lien thereof, nor the personal liability of the Owner of such Lot for assessments due during the period of his ownership.

Section 708. Funding Fee. Upon conveyance from Declarant, or a builder, to the initial Owner, that Owner shall pay a funding fee of \$125.00. This fee shall be paid to the Association to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board. Furthermore, payment of such sum shall not relieve an Owner from making the regular payment of assessments as the same become due.

ARTICLE VIII

GENERAL PROVISIONS FOR EFFECT OF THE COVENANTS

Section 801. Definitions. The following words and expressions used in these Covenants have the meanings indicated below unless the context clearly requires another meaning:

- a. Accessory Building. Detached garages, patios, swimming pools, covers, enclosures, dressing rooms or other similar Structures, spas, hot tubs, gazebos, recreation facilities and other buildings customarily used in connection with the single family residence.
- b. Approving Authority. The architectural review board established pursuant to Section 501 of these Covenants.
- c. Association. The Higby Estates Homeowners Association, Inc., a Colorado nonprofit corporation, which has been organized under the laws of the State of Colorado, its successors and assigns.
- d. Building Site. The location within a Lot on which a Structure may be erected with the prior written approval of the Approving Authority, including the "building envelope" described herein.
- e. Common Area. All real property and improvements deeded or otherwise transferred to the Association for the use and benefit of its owners, which may include easements, erosion control and drainage Structures. Tract A as shown on the Plat shall be part of the Common Area.
- f. Covenants. These Covenants and the provisions contained in it, and any amendments thereto.
- g. Declarant. The Higby Project, L.L.C., a Colorado limited liability company, its agents, employees, contractors, successors and assigns to whom it expressly transfers all or any part of its rights as Declarant hereunder.
- h. Lot. Each area designated as a Lot in any recorded Plat of the Subdivision.
- i. Lot Lines. Front, side and rear Lot Lines shall be the same as defined in the zoning regulations of El Paso County in effect from time to time. In the absence of such a definition, a front Lot Line is each boundary line (whether one or more) between the Lot and any public street. A side Lot Line is any boundary line which meets and forms an angle with a public street except that for a corner Lot with two front Lot Lines, the side Lot Line is the boundary which forms an angle with the street which affords the principal access to the Lot.
- j. Plat. The plat which has been or will be recorded for this Subdivision is generally shown on Exhibit "D" attached hereto and incorporated herein by this reference.
- k. Mortgagee. Any person or entity, or any successor or assign thereof, which holds or owns a deed of trust, mortgage or similar encumbrance. The term shall also include the Administrator of the Department of Veterans Affairs, an office of the United States of America, and his assigns under any executed land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not but if not recorded, then written notice thereof shall be delivered to the Board. "First Mortgage" shall mean a mortgage upon a Lot having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).. "First Mortgagee" means a mortgagee whose encumbrance is a First Mortgage.
- l. Owner. Person or entity having fee simple legal title to a Lot. If more than one person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an Owner through such one of them as they may designate from time to time. A vote of Owners shall be determined on the basis of one vote for each Lot.

m. Structure. Any thing or device, including related improvements, such as Accessory Buildings, painting, fences, trees and landscaping, the placement of which upon any Building Site might affect its architectural appearance, including by way of illustration and not limitation, any dwelling, building, garage, porch, shed, greenhouse, driveway, walk, patio, swimming pool, tennis court, fence, wall, tent, covering, antenna, mailbox, solar collector or outdoor lighting. Structure shall also mean an excavation or fill the volume of which exceeds five cubic yards or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

n. The Subdivision. The area described in Exhibit "A" hereto and any property added subsequently by Declarant or by the Association as provided in these Covenants.

o. Enumeration's Inclusive. A designation which describes parcels or other things as from one number, letter or other designation to another includes both such numbers, letters or other designations and all in between.

p. Gender and Number. Whenever the context permits, Owner or Owners shall be deemed to refer equally to persons of both sexes and to entities or corporations, singular to include plural and plural to include singular.

q. Due Notice. Due Notice means written notice sent by the United States mails, either first class or certified mail, return receipt requested, or by hand delivery to the Lot or the Owner at least ten days prior to the action required by the notice.

Section 802. Captions. Captions, titles and headings in these Covenants are for convenience only and do not expand or limit the meaning of the section and shall not be taken into account in construing the section.

Section 803. Association Resolves Questions of Construction. If any doubt or questions shall arise concerning the true intent or meaning of any of these Covenants, the Association's Board of Directors shall determine the proper construction of the provision in question; the Board may set forth its decision in written instruments duly acknowledged and filed for record with the Clerk and Recorder of El Paso County; those decisions will thereafter be binding on all parties so long as they are not arbitrary or capricious. Matters of interpretation involving Declarant shall not be subject to this Section 803.

Section 804. Covenants Run With the Land. These Covenants shall run with the land and shall inure to and be binding on each Lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any Lot in the Subdivision.

Section 805. Covenants are Cumulative. Each of these Covenants is cumulative and independent and is to be construed without reference to any other provision dealing with the same subject matter or imposing similar or dissimilar restriction. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision. Any and all rights and remedies of the Association and the Approving Authority are distinct and cumulative to any other right or remedy hereunder or afforded by law or equity and may be exercised concurrently, independently or successively without affect or impairment upon one another.

Section 806. Waivers. Except as these Covenants may be amended or terminated in the manner hereinafter set forth, they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these Covenants. Every person bound by these Covenants is deemed to recognize and agree that it is not the intent of these Covenants to require constant, harsh or literal enforcement of them as a requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as an impediment to their subsequent enforcement and each such person agrees not to plead as a defense in any civil action

to enforce these Covenants that these Covenants have been waived or impaired or otherwise invalidated by a previous failure or neglect to enforce them.

Section 807. Enforcement. These Covenants are for the benefit of the Owners, jointly and severally, the Association, and the Approving Authority and may be enforced by action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by one or more Owners, the Association, or the Approving Authority, or any combination of these. Until January 1, 2005, Declarant may also enforce these Covenants in any manner as Declarant is permitted herein or by law or statute. All costs, including reasonable attorneys' fees, incurred by the Association or by the Approving Authority in connection with any successful enforcement proceeding initiated by them (alone or in combination with Owners) or, during the period it is permitted to enforce these Covenants, incurred by Declarant, shall be paid by the party determined to have violated these Covenants. Any party exercising its right to enforce these Covenants shall not be required to post any bond as a condition to the granting of any restraining order, temporary or permanent injunction or other order. The rights and remedies for enforcement of these Covenants shall be cumulative, and the exercise of any one or more of such rights and remedies shall not preclude the exercise of any of the others.

Section 808. Duration of Restrictions. Unless sooner terminated as provided in Section 809, the restrictions and other provisions set forth in these Covenants shall remain in force until January 1, 2017, and shall be automatically renewed for successive periods of ten years unless before January 1, 2017, or before the end of any ten year extension, there is filed for record with the Clerk and Recorder of El Paso County an instrument stating that extension is not desired, signed and acknowledged by Owners of at least two-thirds (2/3's) of the Lots in the Subdivision. However, the provisions of Section 601 shall not terminate except by order of the Water Court, which may amend, modify or change such provisions by judicial order.

Section 809. Amendment and Extensions. From time to time any one section of these Covenants (except Sections 109, 601 and 814) may be amended or a new section may be added to these Covenants by an instrument signed and acknowledged by the Association's Board of Directors certifying approval by Owners of at least two-thirds (2/3's) of the Lots and filed for record with the Clerk and Records of El Paso County.

Section 810. Termination. All sections of these Covenants (except Sections 109, 601 and 814) may be terminated at any time by an instrument signed and acknowledged by the Association's Board certifying approval by Owners of at least two-thirds (2/3's) of the Lots and filed for record with the Clerk and Recorder of El Paso County. Notwithstanding Sections 809, 810 or 814 or other provisions of these Covenants, no provision hereof for the benefit of the owner of the Ranch Property shall be amended, terminated or modified without the prior written approval of the Ranch Owner, provided however, any provisions of these Covenants referring to the Ranch Property shall apply to and benefit only the current owner of the Ranch Property and shall automatically cease and terminate upon the sale, transfer or conveyance of the Ranch Property, in whole or part, except a donation to a non-profit or governmental entity, by the current owner of record.

Section 811. Severability. If any of these Covenants shall be held invalid or become unenforceable, the other Covenants shall not be affected or impaired but shall remain in full force and effect.

Section 812. Action in Writing. Notices, approval, consents, applications and other action provided for or contemplated by these Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, applications or other action.

Section 813. Notices. Any notice or writing described in these Covenants, including but not limited to any communication from the Approving Authority to an Owner, shall be sufficiently served if delivered by mail or otherwise: (a) to the dwelling situated on the Lot owned by the Owner; or (b) if there is no dwelling, then to the address furnished by the Owner to the Approving Authority and if the Owner has not furnished an address, then to the most recent address of which the Association has a record.

Section 814. Rights of Declarant. Notwithstanding any contrary provision of these Covenants, the Declarant, its successors or assigns, expressly reserves the following rights and privileges, which may or may not be exercised in Declarant's sole discretion:

- a. Declarant may amend or change the Plat to add additional property to the Subdivision, change Lot Lines or subdivide Lots into more Lots, combine Lots into fewer Lots, grant utility or other easements, or all of the foregoing.
- b. Declarant, or any builder authorized by Declarant may construct and maintain sales offices, management offices, advertising signs, model homes, construction yards and construction materials within the Subdivision.
- c. Declarant may grant easements for utilities or public purposes through the Subdivision and make improvements or changes necessitated by such easements.
- d. Declarant may, until the Declarant has conveyed all of the Lots to residential purchasers or January 1, 2005, whichever occurs earlier, appoint or remove any officer or any director of the Board of Directors of the Association of the Approving Authority or both. Following the relinquishment of control by Declarant, the Owners shall elect the Association's Board of Directors as provided in these Covenants, the Articles of Incorporation and the Bylaws.
- e. Notwithstanding any contrary provisions of these Covenants or any other document, the Declarant hereby reserves the right, until January 1, 2005, but without approval or vote of the Members or Mortgagees, to amend these Covenants, the Articles of Incorporation and/or the Bylaws, as may be necessary to correct typographical errors or make clarifications or as may be approved or required by any governmental entity or as may be approved in writing by Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or the Department of Veterans Affairs so as to induce any of such organizations to make, purchase, sell, insure or guarantee First Mortgages covering any portion of the subdivision, and each Owner and Mortgagee by accepting a deed, mortgage or other instrument affecting a Lot appoints Declarant as his attorney-in-fact for purposes of executing in said Owner's or Mortgagee's name and recording any such amendments to these Covenants or other document, and each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of and a consent to the reservation of the power to the Declarant to make, execute and record any such amendments.
- f. Declarant may enter into agreements with the purchase of any Lot or Lots (without the consent of the purchasers of other Lots or adjoining or adjacent property) to deviate from those conditions, restrictions, limitations and agreements herein set forth, and any such deviation which shall be manifested by agreement in writing shall not constitute a waiver of any such condition, restriction, limitation, or agreement as to the remaining Lots in the Subdivision, and the same shall remain fully enforceable on all other Lots located in the Subdivision by Declarant, its successors or assigns, and the Association or other Owners, except as against the Lot where such deviation is permitted.
- g. Until January 1, 2005, Declarant reserves the right to expand the Subdivision, without approval of the Owners or Mortgagees, to include additional real property and improvements but the total number of Lots as expanded shall not exceed three hundred (300) Lots. Such expansion may be accomplished by recording a supplement or supplements to these Covenants with the Clerk and Recorder of El Paso County, Colorado containing a legal description of the real property thereby annexed and any additional provisions deemed appropriate by Declarant, which may annex the property in phases, but shall not be liable or obligated to annex any property. Upon annexation, the additional property and the owners thereof shall be bound by these Covenants, the Association's Articles of Incorporation, Bylaws and Rules, and any additional provisions in the annexation supplement, which may include, without limitation, additional designations of additional custom home areas. By accepting a deed to any Lot or a Mortgage, each Owner and Mortgagee grants Declarant a right to expand the Subdivision and consents to such annexation expanding the Subdivision and will not oppose or hinder Declarant's right to expand and annex additional real property and improvements or to develop adjoining

properties and improvements. The right to annex additional property shall pass to the Association after the expiration of Declarant's rights stated above, and the Association may undertake such annexation upon approval of at least two-thirds (2/3's) of the Owners present at a meeting duly called for such purpose.

h. If the Association fails to perform its obligations to the owner of the Ranch Property pursuant to Sections 212, 308 and 403(d), the Declarant, its successors and assigns, may perform those obligations but shall be entitled to reimbursement from the Association for all costs and expenses, including any attorneys fees and eighteen (18%) percent per annum interest on such sums.

Section 815. Lender. After the Declarant has sold a sufficient number of Lots to obtain evidence of approval for guaranteed or insured loans by the Federal Housing Administration or the Department of Veterans Affairs and continuing until such time as the right of the Declarant to appoint the Board of Directors under Section 814 (d) hereof has terminated, the following actions will require the prior approval of the Federal Housing Administration or the Department of Veterans Affairs: Annexation of additional properties, mergers and consolidations of the Association, mortgaging or encumbering of any real property owned by the Association, dedication of any real property owned by the Association, dissolution of the Association and amendment of these Covenants or the Association's Articles of Incorporation or Bylaws.

ARTICLE IX

COMMON AREA

Section 901. Title to the Common Area. The Association shall hold title to the Common Area which may include drainage areas and Structures, entry areas and signs, and other areas. The Common Area shall be maintained and insured by the Association, which shall also maintain, repair and replace the common fences, common signs and all other maintenance described in Section 702 hereof. Subject to the limitations and restrictions of these Covenants, title to the Common Area shall be conveyed by Declarant to the Association in fee simple or granted by easement.

Section 902. Non-Division of Common Area. The Common Area shall remain undivided and shall not be subject to partition by the Owners. By the acceptance of his deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Area. Each Owner specifically agrees not to institute any action therefor. Further, each Owner agrees that this Section may be pleaded as a bar to the maintenance of such an action. A violation of this provision, or any other provision of these Covenants, shall entitle the Association to personally collect, jointly and severally, from the parties violating the same, the actual attorney fees, costs and other damages the Association incurs in connection therewith. It is agreed by all Owners that the foregoing restrictions are necessary to preserve the rights of all Owners regarding the operation and management of the Common Area.

Section 903. Owners' Common Area Easement of Enjoyment. Subject to the limitations and restrictions of these Covenants, every Owner shall have an equal, nonexclusive right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass automatically with the title to every Lot without the necessity of additional reference.

Section 904. Extent of Owners' Common Area Easement. The rights and easements of enjoyment created hereby in the Common Area shall be subject to the following:

a. The right of the Association to enforce the restrictions contained in these Covenants and to promulgate and publish rules and regulations with which every Owner, his family members, guests, tenants, and contractors shall strictly comply, including, but not limited to, the right of the Association to establish reasonable charges for the use of all or a portion of the Common Area if deemed necessary;

- b. The right of the Association, as provided in its Articles or Bylaws, to suspend an Owner's voting rights and the right to the use of the Common Area for any period during which such Owner is in default under these Covenants, including without limitation the non-payment of any assessment levied by the Association, and to make such suspensions for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- c. The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area;
- d. 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, subject to such conditions as may be imposed by the public entity; for example, if any drainage Structures are private and have not been built to County specifications and so might not be accepted by them;
- e. The rights of the Association as set forth in the Association's Articles of Incorporation and Bylaws, including, without limitation, to borrow money for the purpose of improving the Common Area and to mortgage said property as security for any such loan;
- f. The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure;
- g. The right of the Declarant to construct improvements on the Common Area, and notwithstanding any provision of these Covenants to the contrary, Declarant reserves the right to create, grant and transfer non-exclusive easements in, under, over, across, through, and upon the Property for the purpose of installing, maintaining, repairing and replacing any utilities or related services, including but not limited to any gas, electric, water or sewer line, wells, mains or laterals, any telephone and cable television lines, any heating or cooling installations, any master television antenna system, any drainage or retention areas, or for other public purposes consistent with the intended use of the Property under these Covenants. The foregoing easements shall include, without limitation, the right of ingress and egress, the right to erect and maintain the necessary pipes, wires, poles and other equipment and the right to enter into agreements relating to such utility service and easements; all of which shall be binding upon the Association and the Owners. Should any person or party furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on the Property without conflicting with the terms hereof. The foregoing easements shall be in addition to any other recorded easements on the Property, including, but not limited to, any easements granted in the recorded subdivision map. The rights reserved herein for Declarant shall pass to the Association when the Declarant no longer owns any Lot or real property in the Project, and any and all of the covenants, terms, provisions, rights and duties arising from such easements granted by the Declarant and any related agreements shall thereupon pass to the Association and be assumed by it in place of the Declarant. Any consideration for any such easement shall be delivered to and become the property of the Association, whether the grant of easement was made by the Declarant or by the Association; and
- f. Declarant hereby reserves easements across the Common Area to enable Declarant to access, construct, maintain and use wells on the Common Area as may be desirable for Declarant in conjunction with Declarant's reserved water rights, and as may be necessary in support of the administration of the Augmentation Plan. If the Association should need to construct any wells pursuant to the requirements of the Augmentation Plan, Declarant covenants and agrees to allow the Association to use necessary easements therefor, such easements shall be selected by Declarant in its reasonable discretion and in a manner reasonably determined to meet the Association's requirements under the Augmentation Plan. If Declarant conveys or assigns its rights to those easements, Declarant covenants to require the person or entity acquiring Declarant's interest to assume and perform Declarant's obligations to the Association under this paragraph.

Section 905. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family,

his tenants, his guests, or contract purchasers who reside on his Lot. Each Owner shall, to the maximum extent permitted by law, be liable for any damage done to the Common Area by his family, tenants, guests, or contract purchasers and for any breach of the Association's rules and regulations by such persons.

Section 906. Non-Dedication of Common Area. Declarant, in recording these Covenants, has designated certain areas of land as Common Area intended for the common use and enjoyment of Owners for recreation and other related activities. Nothing contained in these Covenants shall be deemed to dedicate the Common Area for use by the general public.

Section 907. Association Maintenance. The Association shall provide all repair, replacement, improvement and maintenance of the Common Area and all improvements located thereon, including without limitation, if applicable, any landscaping, sprinkler system, any wells, parking, roadways, driveways, utility lines ponds, recreational areas, trail easements, any drainage Structures or facilities or public improvements to the extent applicable and any light fixtures, sidewalks, and pathways, or other improvements located on the Common Area. The Association shall maintain and be responsible for keeping the common drainage areas and Structures clear and free of silt to insure the areas drain properly. The Association shall advise the El Paso County Highway Department when maintenance of drainage areas and Structures is needed, under the terms of the Maintenance Agreement, and shall notify the owner of the Ranch Property.

IN WITNESS WHEREOF, Declarant has executed these Covenants this 23 day of June, 1998.

DECLARANT:

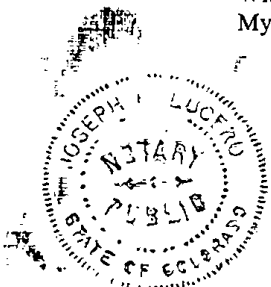
HIGBY PROJECT, L.L.C.,
 a Colorado Limited Liability Company

By: Carol N. Turse
 Title: manager

STATE OF COLORADO)
) ss.
 COUNTY OF)

The foregoing instrument was acknowledged before me this 23 day of JUNE, 1998, by Carol N Turse as _____ of Higby Project L.L.C., a Colorado Limited Liability Company.

Witness my hand and official seal.
 My commission expires 2 APRIL 2000



Joseph Lucero
 Notary Public

EXHIBIT "A"

REAL PROPERTY

The legal description of Higby Estates is as follows:

The East Half of the Southeast Quarter of Section 19 and the Southwest Quarter of Section 20, in Township 11 South, Range 66 West of the 6th P.M., El Paso County, Colorado.

More particularly described as follows:

From the Point of Beginning at the Southwest Corner of Section 20, Township 11 South, Range 66 West of the 6th P.M., thence along the South Line of the Southwest Quarter of said Section 20, N 89 39'02" E a distance of 2566.54' to the Southeast Corner of said Southwest Quarter. Thence along the East Line of said Southwest Quarter N 00 50'02" E a distance of 2606.22 Feet to intersect the South Right of Way Line of Higby Road. Thence along said South Right of Way Line, S 89 32'34" W a distance of 2603.49 Feet to intersect the West Line of the Southwest Quarter of said Section 20. Thence, continuing along said South Right of Way Line of Higby Road, N 89 27'11" W a distance of 1312.77 Feet to intersect the West Line of the East Half of the Southeast Quarter of Section 19, Township 11 South, Range 66 West of the 6th P.M. Thence along said West Lines S 00 02'38" W a distance of 2625.83 Feet to the Southwest Corner of said East Half of the Southeast Quarter of Section 19. Thence along the South Line of said East Half of the Southeast Quarter of Section 19, N 89 27'20" E a distance of 1313.76 Feet to the Point of Beginning at the Southwest Corner of Section 20, Township 11 South, Range 66 West of the 6th P.M. and Containing 233.267 Acres, More or Less.

EXHIBIT "B"

"RANCH PROPERTY"

The legal description of The Homeplace Ranch is as follows:

East Half of the Southeast Quarter with more or less Section 24-11-67; Northeast Quarter of the Northeast Quarter with more or less Section 25-11-67; Southwest Quarter, West Half of the Southeast Quarter, South Half of the North Half with more or less Section 19-11-66; North Half of the Northwest Quarter with more or less Section 30-11-66.

EXHIBIT "C"

"AUGMENTATION PLAN"

The Augmentation Plan was recorded on the 8th day of December, 1997 in the District Court of El Paso County under reception #97143918. The Amended Augmentation Plan was recorded on the 23 day of June, 1998 in the District Court of El Paso County under reception # 098086358.

J. Patrick Kelly El Paso Cnty 06/23/1998 04:41
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EXHIBIT "D"

"SUBDIVISION PLAT"

The subdivision plat for Higby Estates was recorded on the 23 day of June, 1998 in the District Court of El Paso County under reception # 98086361.

EXHIBIT "E AND F"

"SPECIAL WARRANTY DEED"

The Special Warranty Deed from Carl N. Turse to Higby Estates provides an undivided 2.0 one-hundred-twenty-first (2.0/121) interest in the non-tributary water from the Dawson-Arkose Aquifer of the Denver Basin which was decreed in Case No. W-8269, by the District Court for Water Division No. 1, on December 30, 1976.

An undivided 1.0 four-hundred-ninety-four (1.0/494) interest in the non-tributary water from the Denver Aquifer of the Denver Basin which was decreed in Case No. 82CW295 by the District Court for Water Division No. 1, on November 23, 1983.

Said Special Warranty Deed was quit claimed from Carl N. Turse to Higby Estates ^{Project} and was recorded on the 23 day of June, 1998 in the District Court of El Paso County under reception # 098086356.