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DECLARATION

of

Conditions, Covenants, Restrictions, Easements and Charges

Affecting the Real Property known as

Vista Mesa Subdivision  
a Planned Residential Community

THIS DECLARATION is made by JBS Corporation, a Colorado corporation,  
hereinafter called Declarant.

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in the County of El Paso, State of Colorado that has been platted into lots in a planned community known as Vista Mesa Subdivision Filing No. 1, a Common Interest Community, and desires to provide for the preservation of the values and amenities of the Common Interest Community and to provide for maintenance of certain of the Common Interest Community's amenities and for the convenience of its residents and to this end desires to subject the Property to the conditions, covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which are for the benefit of said property and for each owner thereof and shall inure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest of any owner thereof;

NOW, THEREFORE, Declarant declares that the real property described in Exhibit A hereto (the "Property") is a Planned Community and shall be held, transferred, sold, conveyed and occupied subject to the conditions, covenants, restrictions, easements, charges and liens ("Covenants") hereinafter set forth.



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## ARTICLE I

COVENANTS TO PRESERVE THE RESIDENTIAL  
CHARACTER AND QUALITY OF THE COMMON INTEREST COMMUNITY

Section 101. Single Family Residential Use. All Lots in the Common Interest Community shall be used exclusively for private single family residential purposes. No dwelling erected or maintained within the Common Interest Community shall be used or occupied for any purpose other than for a single-family dwelling. No business or commercial use or activity shall be carried on or within any Lot, except as provided in Section 108 hereof and except for home occupation businesses allowed under applicable zoning regulations pertaining to the Property. ★

Section 102. Single Family Residential Construction. No Structure shall be erected within the Common Interest Community except single-family dwellings and those Accessory Buildings and accessory structures which have been approved by Declarant. No more than one dwelling may be erected on any Lot. No Structure other than a dwelling, no Accessory Building other than a guest house or servants' quarters, no trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. All Accessory Buildings and Structures must be compatible and in harmony with the dwelling on the Lot.

Section 103. Prohibited Temporary Structures. Except as permitted in Section 108, temporary living or camping quarters or other temporary Structures shall not be permitted on any Lot at any time. Tents and treehouses shall not be permitted on any Lot without the permission of Declarant and in any event shall not be visible from any street or adjoining property and shall not be used for habitation.

Section 104. New Construction. All construction shall be new. Declarant may in limited cases permit use of used materials such as antique items. No building previously used at another location nor any building or Structure originally constructed as a mobile dwelling or Structure may be moved onto a Lot except as expressly provided for in Section 108.



Section 105. Building Materials. No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement, unless enclosed within a building so as not to be visible from any neighboring property or adjacent streets.

Section 106. No Construction Occupancy. A Structure shall not be occupied in the course of original construction until substantially completed and until a final inspection has been performed and approved by Regional Building and other necessary governmental authorities.

Section 107. Completion of Construction. All work of construction shall be prosecuted diligently and continuously from the time of commencement until fully completed. The exterior of all buildings or other Structures must be completed within one (1) year after the commencement of construction except where such completion is impossible or would result in hardship due to strikes, fires, national emergency or natural calamities. If not so completed, or if construction shall cease for a period of sixty (60) days without written permission of Declarant, the unfinished Structure or unfinished portion thereof shall be deemed a nuisance and may forthwith be removed by Declarant at the cost of the Owner and/or such failure shall be deemed a breach of this Declaration.

Section 108. Temporary Structures; Model Homes. Temporary Structures, including without limitation, temporary parking facilities, signs and trailers, for use in connection with construction within the Common Interest Community or in connection with sales of new homes or Lots may be erected or maintained in the Common Interest Community by Declarant and those authorized by Declarant. Model homes may be used and exhibited by Declarant and those authorized by Declarant. The appearance and placement of temporary buildings permitted for construction or sales purposes must be approved by Declarant. Such temporary buildings shall be promptly removed when no longer used for their designed purposes.

Section 109. Construction Debris. When construction commences on a Lot, a trash container shall be provided, properly used and maintained by the Owner of the Lot. During the progress of construction, the Owner of a Lot shall use his best efforts

to ensure that the Lot is kept free of debris and trash, all of which shall be deposited in the trash container. The Owner of the Lot shall use his best efforts to ensure that no construction materials, debris or trash shall be allowed on the property of others and any materials, trash or debris blown off the Lot shall be promptly cleaned up by the Owner.

Section 110. Easements. 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 five foot (5') strips along and adjoining the side boundary lines of each Lot and each of the seven foot (7') strips along and adjoining the rear boundary lines of each Lot, for use of all or part of such areas or lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage, and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes. Easements in addition to those above described may have been or may hereafter be granted, vacated, modified or amended by duly recorded conveyance. Those easements affecting the Property or Expansion Property at the time of the recordation of the Plat are as reflected on the Plat or Plats of the Property and as will be reflected on the Plat or Plats of the Expansion Property. No Structures, planting or other materials shall be placed or permitted to remain on or in the easements which may damage or interfere with the installation and maintenance of the utilities, or which may change the direction or flow of drainage channels in the easements. The easements are on each Lot and all improvements on or in the easements shall be continuously maintained by the Owner of such Lot, except for those improvements for which a public authority, utility company, any special district or the Association is responsible. Additionally, the Property is subject to those easements described in Book 3968 at Page 887, Book 5166 at Page 139, Book 6471 at Page 734, El Paso County, Colorado and shall additionally be encumbered by any easements described in any approved Development Plan for the Property.



Section 111. Landscape Easements; Trail Easements. The Owners of each of Lots 1, 28, 29, 31 and 32 contained within the Property acknowledge and agree that each of such Lots shall be hereafter encumbered with a landscape easement, in addition to any landscape easement noted on the Plat, in favor of the Declarant, the Association and/or the Maintenance District for purposes of the installation, maintenance and repair of landscaping applicable to the subdivision contained within the Property. The landscape shall be originally installed by the Declarant, in a manner acceptable to Declarant, in Declarant's sole discretion, and such landscaping shall be installed in such locations as Declarant may determine, in Declarant's sole discretion. From and after the original installation by Declarant, each Owner of such affected Lot acknowledges and agrees that the Maintenance District and/or the Association shall have the right to enter upon the affected Lot for the purposes of maintaining, replacing or repairing any such landscape. In the event that any of the Expansion Property is hereafter annexed into these Covenants, the Expansion Property may have additional landscape easements created thereon and certain portions of the Expansion Property may have trail easements located thereon as further depicted in any Plats or Development Plans applicable to the Expansion Property.

Section 112. Underground Utilities. All utilities, including, electrical, telephone and cable television service, except lighting standards and customary service devices for access, control, or use of utilities, shall be installed underground. This provision shall not apply to any utilities not installed by Declarant.

Section 113. Garage and Driveway. The Structures on each Lot shall include an attached two-car or three-car fully enclosed garage or such equivalent garage arrangements as may be approved by Declarant. All driveways shall be improved with brick paver or concrete paving unless otherwise approved by Declarant.

Section 114. Setbacks. Building setbacks must comply with the requirements of the City of Colorado Springs for front, rear and side Lot lines, as of the date of commencement of construction. Each Owner acknowledges and agrees that there is a minimum twenty five (25) foot rear setback from any Preservation Areas or No-Build Areas situated or lying upon any Lot within the Property.

Section 115. Compliance with Building Codes. All construction must conform to the building codes, zoning codes and subdivision regulations of the City and County, which regulations may vary from the provisions of these Covenants; provided, however, if these Covenants are more restrictive than such governmental codes and regulations, then the more restrictive provisions of these Covenants shall control.

Section 116. Minimum Floor Area. Except with the prior written approval of the Declarant (which approval may be granted or withheld in the sole discretion of the Declarant) no dwelling or Structure used for residential dwelling purposes shall be erected upon Lots 1-28, inclusive within the Property, which, exclusive of basements below grade level, porches, patios, covered but unenclosed area, garages and any Accessory Building, has a gross liveable floor area not less than as follows: (1) if a ranch or single store Structure, 1150 square feet, and (2) if other than a ranch or single store Structure, 1450 square feet. Except with the prior written approval of the Declarant (which approval may be granted or withheld in the sole discretion of the Declarant), no dwelling or Structure used for residential purposes shall be erected upon any other Lot within the Community which, exclusive of basements below grade level, porches, patios, covered but unenclosed areas, garages and any Accessory Building, has a gross liveable floor area not less than as follows: (1) if a ranch or single story structure, 1250 square feet, and (2) if other than a ranch or single story structure, 1450 square feet.

Section 117. Height. No dwelling or other Structure shall exceed thirty (30) feet in height. Height shall be measured from the highest finished grade contour at any point on the Structure exclusive of any chimney. Finished grade contour shall mean the grade contour established by Declarant during development of the Lots and existing immediately prior to commencement of construction, or such other finished grade contour approved by Declarant.

Section 118. General Architectural Standards. Architectural standards are established to the end that the Common Interest Community may benefit from the natural advantages of its particular location. While the standards for architectural style are flexible, compatibility with the informal natural environment is required. All



Structures must be designed to fit the natural contours of the Lot. All Structures shall be designed and all plans signed by a registered architect in the State of Colorado or by a qualified designer approved by Declarant. Declarant shall have the right and authority to establish and amend specific architectural standards from time to time.

Section 119. Fences. The height, location and material of all fences, animal pens, dog runs and other similar items must be approved by the Declarant. Chain link or similar wire or wiremesh fencing shall not be allowed as the primary fencing material. Except with approval of the Declarant, no fence or hedge more than two feet high shall be installed closer to an adjoining street than the dwelling located on the Lot. The total fencing of front yards is not permitted. Each Lot Owner acknowledges and agrees that any Lot adjacent to any proposed open space shall only be allowed to have fencing if such fencing is (1) approved by Declarant as set forth previously and (2) split rail fencing along the rear Lot line of any such Lot. Each Lot Owner further acknowledges and agrees that any Lot located within "No Build Areas" or a "Preservation Area" shall be further restricted as to fencing as provided in Sections 120 and 121 hereof.

Section 120. No Build Areas. "No Build Areas" may be located within the Property as further depicted and shown on the Plat or Plats of the Property and on any approved Development Plan for the Property. The No Build Areas are used to provide a buffer area between certain portions of the Property. No building or other Structures shall be allowed within the No Build Areas. No privacy fences shall be allowed to encroach within any No Build Areas, however, a Lot Owner may be allowed to install split rail fencing within the No Build Areas extending to a point not beyond the proposed open space in the No Build Areas. The Lot Owner may be allowed to plant trees and shrubs within the No Build Area. The No Build Area on an affected Lot shall be maintained by the Owner of that Lot.

Section 121. Preservation Areas. "Preservation Areas" may be located within the Property as further depicted and shown on the Plat or Plats of the Property and on any approved Development Plan of the Property. Preservation Areas are used to preserve the significant vegetation stands located in the area and the steep slopes

along the drainage. No buildings, Structures, fences or overlot grading shall be permitted within any Preservation Area. Drainage improvements may be allowed where necessary to facilitate the stormwater flows of the area.

Section 122. Landscaping. Within three (3) months after completion of a dwelling on any Lot and transfer of same to, or occupancy by, an initial homeowner, all yards and open spaces, except as prevented by subsequent construction activities, shall be landscaped and thereafter maintained in lawn or landscape in accordance with a landscape plan approved by Declarant. If weather conditions will not permit the timely installation of such landscaping, the applicable Owner shall complete the installation of same as soon as practicable. Declarant reserves the right to require that all or a specified percentage of the front yard of all Lots shall consist of a manicured lawn or sod. Landscape should include areas of natural vegetation, and preservation of existing trees, scrub oak and other natural vegetation is desired. No existing trees, surface boulders, or scrub oak shall be removed from any Lot unless required by construction activity or unless approved by Declarant. The use of gravel, small rocks, and paving as primary landscape materials is not desirable. The initial occupant of any dwelling situated upon a double fronted Lot shall be required to sod the front and rear yards of the Lot in a manner acceptable to Declarant and may be required by the Declarant to fence the rear yard. The initial occupant of any dwelling situated upon a Lot shall install not less than two (2) Pinon trees with a height of not less than eight (8) feet upon the Lot, in locations approved by Declarant.

Section 123. Aerials, Solar Devices and Antennas. Except with the prior written approval of the Declarant (which approval may be granted or withheld in the sole discretion of the Declarant), no aerial, solar device, satellite dish or antenna 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 location on the Lot so as to be visible from neighboring property or adjacent streets.

Section 124. Maintenance of Structures. 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 and shall cause them to be



repaired as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be repainted periodically and before the surfacing becomes weatherbeaten or worn off. Periodic exterior maintenance also includes repair and maintenance of gutters, downspouts, roofs, paving, lawn, shrubs, trees, other landscape material, fences, signage, mail boxes and outdoor lighting. All lawns, trees and landscaping shall be mowed, watered and trimmed as necessary to avoid becoming unsightly or a nuisance.

Section 125. Destroyed or Damaged Structure. Any dwelling or building that is destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be restored or rebuilt; all debris must be removed and the Lot promptly restored to a sightly condition. Rebuilding or restoration shall be completed with reasonable promptness and in any event within six (6) months.

Section 126. No Unsightly Condition. Each Owner shall prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on such Lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or in the specific area.

Section 127. Garage Doors. Garage doors shall be kept closed except when being used to permit ingress or egress to or from the garage.

Section 128. Maintenance Equipment. All maintenance equipment, including yard and garden equipment, shall be stored in an enclosed Structure or otherwise adequately screened so as not to be visible from neighboring property or adjoining streets. The Declarant shall have the right to grant variances from the requirements of this Section 128, which variances may be granted or withheld in the sole discretion of the Declarant.

Section 129. Clothes Lines. All outdoor clothes poles, clothes lines and other facilities for drying or airing of clothing or household goods shall be placed or screened by fence or shrubbery so as not to be visible from neighboring property or adjacent streets. The Declarant shall have the right to grant variances from the requirements of this Section 129, which variances may be granted or withheld in the sole discretion of the Declarant.

Section 130. Garbage and Trash: Stacking of Firewood. No ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material, or other refuse, or receptacles or containers therefore, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or street, except during refuse collection days. Except with the prior written permission of the Declarant (which permission may be granted or withheld in the sole discretion of the Declarant), no firewood shall be stacked, accumulated or stored so as to be visible from any neighboring property or street.

Section 131. No Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities shall be permitted on any Lot or in any living unit. No annoying lights, sound or odors shall be permitted to emanate from any property.

Section 132. No Oil or Water Wells. No derrick or other Structure designed for use in or used for boring or drilling for water, oil or natural gas shall be permitted upon or above the surface of any Lot, nor shall any water, oil, natural gas, petroleum, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under said property.

Section 133. Weed Control. All yards and open spaces and the entire area of every Lot on which no building has been constructed, shall be kept free from plants or weeds infected with noxious insects or plant diseases and from weeds which in the opinion of Declarant are unsightly or likely to cause the spread of infection or weeds to neighboring property and free from brush or other growth or trash which in the opinion of Declarant causes undue danger of fire or is unsightly. In order to effect insect, weed and fire control or to remove nuisances, Declarant has the right, but not the obligation, to enter upon any Lot and to mow, cut, prune, clear and remove from the Lot brush, weeds or other unsightly growth which in the opinion of Declarant detracts from the overall beauty, setting and safety of the area, and to remove any trash.



Section 134. Soils, Grading and Maintenance. The soils within the state of Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of the Structure or dwelling located upon a Lot if the Structure or dwelling and the Lot containing it are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils, and the addition of moisture to low-density soils causes a realignment of soiled grains, thereby resulting in consolidation and/or collapse of the soils.

Declarant intends to sell Lots to Owners, who may thereafter construct or have constructed a Structure or dwelling upon each Lot purchased. Declarant shall require the Owner to have prepared a grading plan for the Owner's Lot or Lots, which plan must be in accordance with specifications of the grading plan approved by the City of Colorado Springs and which shall be submitted to the Declarant prior to commencement of construction of a Structure or dwelling, certified and stamped by a registered engineer in the State of Colorado. Each Lot shall be graded by the Owner in accordance with the approved grading plan. No change in the approved grading plan may be made without the prior written approval of the Declarant. Anyone desiring to change the grading plan shall cause to be prepared by a professional engineer, a revised grading plan which must be submitted to the Declarant prior to the change of grading. The procedure for approving grading plans shall be the same as the procedure for approval of plans and specifications applicable to the construction of a Structure or dwelling upon the Lot, as further set forth in these Covenants. Each Structure or dwelling shall be located on a Lot in such a way as to be compatible with the approved grading plan and not interfere with drainage patterns established by the grading plan. The final drainage patterns established during grading of a Lot are the sole responsibility of the Owner and the Declarant shall not have any liability whatsoever for damage caused by improper grading or drainage upon any Lot.

An Owner shall not permit the moisture content of the soil supporting the foundation and supporting the concrete slabs forming a part of the Structure or dwelling to increase to an extent that would adversely affect the foundation and

concrete slabs, and shall not introduce excessive water into the soil surrounding the Structure or the dwelling. An Owner shall maintain the grading and drainage patterns of the Lot established according to the approved grading plan authorized by the Declarant.

An Owner shall not impede or hinder in any way the water flowing on his Lot from reaching the drainage courses established for the Lot and the Property.

By virtue of the review and submittals described in this Section 134, the Declarant is in no manner certifying, guaranteeing or otherwise making any representations or warranties with respect to the adequacy, sufficiency or appropriateness of any grading plan applicable to the Lot. Each Owner of a Lot acknowledges and agrees that the Declarant shall have no responsibility or liability whatsoever with respect to such issues and each Owner shall be fully and solely responsible for same.

Section 135. Animals. No animals except an aggregate of three (3) domesticated dogs or cats and except domesticated birds and fish and other small domestic animals permanently confined indoors shall be maintained within the Common Interest Community and then only if kept as pets. No animal of any kind shall be permitted which in the opinion of Declarant makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Common Interest Community for any commercial purposes. Animals shall not be permitted to roam in the Common Interest Community and shall only be permitted off the Lot of the Owner of the animal if on a leash.

Section 136. Vehicle Parking. No boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor home, motorcycle, any towed trailer unit, or truck shall be parked on any street or within any Lot, except in a completely enclosed Structure or in a fully screened manner approved by Declarant. Commercial vehicle does not include a private passenger vehicle commonly described as a pickup. Parking of automobiles on the side of a dwelling is not permitted unless it is in a completely enclosed Structure or in a fully screened manner approved by Declarant.



Section 137. Junk Vehicles. No stripped down, wrecked, unlicensed, inoperable or junk motor vehicle or sizeable part thereof, shall be permitted to be parked on any street or on any Lot in such manner as to be visible from any neighboring property or street.

Section 138. Vehicle Maintenance. No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat, machine or devise may be carried on except within a completely enclosed Structure which screens the sight and sound of the activity from the street and from adjoining property.

Section 139. Signs. The only signs permitted on any Lot or Structure shall be:

1. One sign of customary size for offering of the signed property for sale or for rent;
2. One sign of customary size for identification of the occupant and address of any dwelling;
3. Such signs for sale, administration and directional purposes during development as Declarant may install or authorize;
4. Project identity and entrance signs;
5. Such signs as may be necessary to advise of rules and regulations or to caution or warn of danger; and
6. Such signs as may be required by law.

No banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental shall be permitted. All permitted signs must be professionally painted, lettered, constructed and maintained.

## ARTICLE II

### RESERVED RIGHTS OF THE DECLARANT

Section 201. Architectural Control by the Declarant. No Structure shall be commenced, erected, placed, moved onto a Lot, permitted to remain on any Lot or altered in any way so as to change materially its exterior appearance, except in accordance with plans, specifications and other information submitted to Declarant

and approved by Declarant not more than one (1) year before start of the construction, alteration or installation. Matters which require the approval of Declarant include but are not limited to: the exterior appearance, material, color, height and location of each Structure, drive, walk, fence, mailbox, grading of site, site lighting, and the location, size and type of any landscape material including grass, ground cover, ornamental rock, shrubs and trees.

a. In granting or withholding approval Declarant shall heed the standards specified in these Covenants and shall also consider among other things: the adequacy of the materials for their intended use; the harmonization of the external appearance with the surrounding uses; and/or the degree, if any, to which the proposed Structure will cause intrusions of sound, light or other effect on neighboring sites beyond those reasonably to be expected in a residential area from considerate neighbors.

b. All plans, samples and other materials to be submitted to Declarant shall be submitted in duplicate, together with a fee of \$50.00 to compensate Declarant for the cost of the review of the items submitted. The submittal fee may be increased in a reasonable amount from time to time by the Declarant to reflect increases in costs of the plan review process. The minimum scale of such plans shall be 1/20th inch equals one foot. The plot plan shall show in scale the location of all buildings, drives, walks, fences and any other Structures. Structure plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples, if requested by Declarant. If requested, a soils report for the building site shall be supplied to Declarant. Landscaping plans shall show the location of all landscaping elements, including grass, ground cover, shrubs, trees and other landscape materials for all the area of the Lot not covered by Structures. The size and type of all new plant materials shall be indicated.

c. A written statement of the approval or disapproval or other action by Declarant, signed by an officer of Declarant, shall establish the action of Declarant and shall protect any person relying on the statement. If Declarant does not execute such



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a statement within thirty (30) days after delivery of all the required materials to Declarant's principal office, the material so delivered shall stand approved for the purpose of these Covenants; but such approval shall not be deemed to permit any matter that is in violation of or contrary to an express provision of these Covenants. Declarant shall be entitled to retain one copy of all approved plans as part of Declarant's files and records.

d. Declarant shall have the right to adopt and amend guidelines concerning architectural and other building standards consistent with this Declaration.

e. In discharging its rights and obligations hereunder, the Declarant makes no representations or warranties to the Owner or any other person or entity concerning the construction of the Structures on the Lot, and the Declarant shall have no liability or responsibility for defective construction or other similar matters.

Section 202. Variances. Declarant shall have authority to grant for a Lot a variance from the terms of one or more of the Sections of Article I of these Covenants (i) pursuant to any expressed powers of the Declarant set forth in Article I, or (ii) if not expressly provided in Article I, subject to terms and conditions established by Declarant that will not be contrary to the interests of the Owners and residents of the Common Interest Community where, owing to exceptional and extraordinary circumstances, literal enforcement of those Sections will result in unnecessary hardship. Following an application for a variance under Section 202(ii) above:

a) Declarant shall call a meeting of Owners of those Lots in the Common Interest Community that Declarant determines, in the sole and absolute discretion of Declarant, will be affected by the variance, if granted. The meeting will be held at Declarant's principal office or at such other place designated by Declarant. Notice of the meeting shall be given to the applicable Owners at least ten (10) days in advance, at which meeting the Owners shall have opportunity to appear and express their views. The opinions and views of the Owners who attend the meeting shall be advisory only and shall not be binding upon Declarant.

b) Whether or not anyone appears at the meeting in support of or in opposition to the application for variance, Declarant shall within one (1) week after the meeting either grant or deny the variance.

c) A variance granted hereunder shall run with the Lot for which granted.

d) If a variance is denied another application for a variance for the same Lot for substantially the same variance may not be made for a period of one (1) year.

e) A variance shall not be granted unless Declarant shall find 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 as permitted hereunder;

ii. Owing to the exceptional and extraordinary circumstances, literal enforcement of the Sections above enumerated will result in unnecessary hardship;

iii. The variance will not substantially or permanently injure the use of other property in the Common Interest Community;

iv. The variance will not alter the essential character of the Common Interest Community;

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 Common Interest Community or their Owners.

Section 203. Declarant's Successors and Assigns.

a) Ten years after Declarant first conveys a Lot in the Common Interest Community to a purchaser or at such earlier time as Declarant may choose, Declarant shall transfer all of its functions, rights and powers of granting or withholding approval, permission or consent and its other responsibilities, functions, rights, and powers under Articles I and II of these Covenants to an Architectural Control



Committee of three (3) members, each of whom shall be an Owner of a Lot in the Common Interest Community; or the owner of a Lot in such other single-family residential subdivisions in the same general area as are determined by Declarant to contain Lots substantially similar in size, character and value to Lots in the Common Interest Community; or an officer, director or employee of Declarant; or a member of the Association. Prior to the time when Declarant is obligated to effect such transfer to an Architectural Control Committee, Declarant may transfer some, but not all, of its rights, powers and functions to an Architectural Control Committee, to include an Architectural Control Committee formed by the Master Association or an association into or with which the Association is merged.

b) After the Declarant has transferred its rights, powers and responsibilities pursuant to Section 203(a), any one or more members of the Architectural Control Committee may from time to time be removed and their successor or successors designated by the Association or if there is no Association, by an instrument signed and acknowledged by the Owners of at least 51% of the Lots in the Common Interest Community and filed for record with the County Clerk and Recorder of the County.

c) The Architectural Control Committee may delegate to one or more of its members any or all of the functions and powers of the Committee and until each delegation is revoked or modified the action of the member to whom such delegation is made shall constitute the action of the Committee for the purposes of these Covenants.

d) The Committee may take action without a meeting by a written statement signed by the members of the Committee or by their delegate.

e) Vacancies in the Architectural Control Committee may be filled by action of the remaining member or members of the Committee, subject always to the power of the Owners to remove and designate members of the Architectural Control Committee pursuant to Section 203(b).

f) Declarant, or its successor Architectural Control Committee, may, if it determines such action to be in the best interest of the Owners, cause the Architectural Control Committee for the subdivision to be merged with the

Architectural Control Committees of other single-family residential subdivisions in the same general area that contain Lots of substantially similar size, character and values as Lots in the Common Interest Community. Such merger shall be accomplished by filing with the County Clerk and Recorder of the County a written document signed by Declarant, or by the Architectural Control Committee for each subdivision participating in such merger, acknowledging the action and appointing an Architectural Control Committee for the merged group.

Section 204. Officers and Agents Excused from Liability. Declarant, the officers and directors, members and agents of Declarant, and the members of the Architectural Control Committee 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 fraud.

Section 205. Declarant Can Remedy Violations. Until the time for establishment of the Architectural Control Committee as provided by Section 203(a) Declarant may, and after its establishment the Architectural Control Committee or Declarant, including an assignee or delegate, may give notice to the Owner of the Lot where a violation of these Covenants occurs or which is occupied by the persons causing or responsible for the violation, which notice shall state the nature of the violation, and the intent of the Committee or Declarant to invoke this Section unless within a period stated in the notice (not less than five (5) calendar days), the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the violation is not cured and terminated as required by the notice, the Committee or Declarant (whichever gives the notice) may cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, and entry on Owner's property as necessary for such purpose shall not be deemed a trespass. Each Owner of a Lot hereby grants a license to the Declarant and the Committee for the purpose of entering on a Lot to remedy violations or breaches of these Covenants. The cost so incurred by the Committee or Declarant shall be paid by the Lot Owner and the person responsible for the breach and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of eighteen per cent (18%) per



annum and costs of collection, shall be a lien on the ownership interest in the Lot (including improvements thereon) and shall in all respects be the personal obligation of the Owner. The Committee or Declarant may bring an action at law for recovery of the costs so incurred by it, plus interest and costs of collection against the Owner and may bring an action to foreclose the lien against the Lot and improvements subject to the lien and there shall be added to the amount of such obligation the costs of collection, and the judgment in any such action shall include interest as above provided and the costs of collection. The foregoing specified rights and remedies shall not limit the right of any Lot Owner to enforce these Covenants pursuant to Section 606 or as otherwise may be provided by law or equity; provided, however, that only the Declarant and/or the Committee shall have the right to proceed under this Section 205. In the event that the Declarant or Committee elect to exercise the right to enter upon a Lot to remedy a violation of these Covenants, they shall not be liable to the Owner of the Lot for any loss or damage occasioned by the entry on the Lot unless damage is caused to the Lot or improvements thereon that is unrelated to the remediation of the breach of the Covenants and is caused by the willful and wanton acts of the Declarant or Committee. In no event shall there be any liability for damage to a Structure that is in violation of these Covenants.

Section 206. Declarant's Rights to Complete Development of the Property. No provision of this Declaration shall be construed to present or limit Declarant's rights to complete the development of property within the boundaries of the Property or nearby areas and to subdivide, resubdivide, or rezone any portion of such property; to grant licenses, easements, reservations and rights-of-way; to construct or alter improvements on any property owned by Declarant within the Property; to maintain model homes, offices for construction, sales, management or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within the Property and to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Property. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals to excavate, cut, fill or grade any property

owned by Declarant; to make changes or modifications to this Declaration by means of an amendment to this Declaration or addition hereto; to change any landscaping, grading, drainage, vegetation, or view, or to construct, alter, demolish or replace any improvements on any property owned by Declarant, or to use any Structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Property, or to engage in any of the permitted activities described in Section 108 hereof, nor shall anything herein be deemed to require Declarant to seek or obtain the approval of the Architectural Control Committee or of the Association for any such activity or improvement to property by Declarant on any property owned by Declarant or by the Association. Nothing in this section shall limit or impair the reserved rights of Declarant as may be elsewhere provided in this Declaration. The maximum number of lots to be created within the Property described on Exhibit A by Declarant is 101.

Section 207. Declarants Reserved Rights to Expand. Declarant hereby reserves the right to expand the scope of the Common Interest Community to include the property described in Exhibit B attached hereto and by this reference incorporated herein in which the maximum number of Lots to be created within the Expansion Property shall be 250, in addition to the Lots created within the Property described on Exhibit A (the "Expansion Property"). To bring the Expansion Property into the Common Interest Community, Declarant shall execute, acknowledge and record a plat map or maps depicting the Expansion Property and the Lots created thereby, together with an amendment to this Declaration in which the scope of this Declaration is extended to include the Expansion Property. Declarants' reserved rights as to the Expansion Property shall allow Declarant to expand the scope of the Common Interest Community to include the Expansion Property in phases pursuant to which portions, but less than all, of the Expansion Property may be made a part of the Common Interest Community without all of the Expansion Property being made a part of the Common Interest Community.

Section 208. Provisions Regarding Exercise of Declarant's Reserved Rights. Declarant may exercise the reserved rights of Declarant as to the Property and



Expansion Property as set forth herein. Declarant makes no assurances that any of the Expansion Property will be developed and made a part of the Common Interest Community and makes no assurances that all of the Expansion Property will be developed and made a part of the Common Interest Community. The exercise by Declarant of some of the reserved rights of Declarant hereunder shall not require Declarant to exercise any other of Declarant's reserved rights hereunder.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 301. Formation. The Association shall be formed prior to or immediately after the recordation of these Covenants. The Association shall be formed as a Colorado non-profit corporation. The liability of Owners for the payment of assessments shall accrue from the date of the recordation of these Covenants.

Section 302. Membership; Voting. The following shall be members of the Association: The Declarant and every Owner of a Lot which is subject to assessment hereunder. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. Each Owner of a Lot, including Declarant, shall have one vote for each Lot owned. Any corporation, partnership or other legal entity who is an Owner may designate a person to act in its behalf to exercise all rights of a Member or Owner, including without limitation, the right to serve as a member of the Board of Directors of the Association. The vote of each Owner of a Lot may not be split and each person or entity comprising the "Owner" of a Lot must agree between or among them how their one vote is to be cast on all voting matters.

Section 303. Reserved Rights of Declarant in Association Matters.

- (a) Subject to the provisions of subparagraph (b) and (c) of this Section, Declarant hereby reserves the right, which right may be exercised by Declarant or persons appointed by Declarant, to appoint and remove officers and members of the Board of the Association.

- (b) The reserved rights of Declarant pursuant to Section 303(a) shall terminate no later than the earliest to occur of (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than Declarant, (ii) two years after the last conveyance of a Lot by Declarant in the ordinary course of business, or (iii) two years after any right of Declarant to add new Lots was last exercised.
- (c) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots by Declarant to persons or entities other than Declarant, at least one member, but not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots to persons or entities other than Declarant, not less than one-third (1/3) of the members of the Board must be elected by Owners other than the Declarant.
- (d) The Owners by a two-thirds (2/3) vote of all persons present and entitled to vote at a meeting of the Owners at which a quorum is present, may remove any member of the Board with or without cause other than a member appointed by the Declarant.

Section 304. Nonliability of Association and Others. The Board of Directors, the officers and committees of the Association and the Declarant, including without limitation, the officers, directors, employees, agents, and representatives of the Declarant, but not including its independent contractors or managing agents, shall not be liable in damages or otherwise to any person whatsoever for any act or omission done as an officer, director, agent or representative on behalf of the Association, except for willful misconduct done in bad faith or gross negligence and shall be indemnified from all such liability as provided in the Association's By-Laws.

Section 305. Management of Association: By-Laws: Rules and Regulations. The affairs of the Association shall be managed by its Board of Directors who shall be



elected in accordance with the Articles and By-Laws of the Association, the provisions of which, as amended from time to time, shall be deemed a part of this Declaration. The Association shall have the authority to adopt and amend its By-Laws, but such By-Laws may not be in conflict with this Declaration. In the event of a conflict among the documents pertaining to the Association, the following priority shall apply: (i) the Declaration, (ii) the Association Articles of Incorporation and then (iii) the By-Laws. The Association shall also have the authority to adopt and amend Rules and Regulations pertaining to the use of the Common Areas.

Section 306. Association's Membership in Master Associations. The Association may become a member in a Master Association with other associations in the general vicinity of the Common Interest Community, whether or not such other associations were created by Declarant. As a result of such membership, the Association may be subjected to an assessment which shall in turn be levied upon the Members as a part of the annual assessment pursuant to Article IV.

#### ARTICLE IV

##### COVENANT FOR ASSESSMENTS

Section 401. Creation of the Obligation for Assessments. Each Owner, for each Lot owned by acceptance of a deed therefor, or interest therein, whether or not it shall be so expressed in such deed or instrument creating the interest in the Lot, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all assessments, charges, fees, fines, and other sums which are described in these Covenants, which shall be both a personal obligation of the Owner and a lien against his Lot as provided herein. Each Owner shall be jointly and severally liable to the Association for the payment of all assessments, charges, fees and other sums attributable to them and/or their Lot. The personal obligation for delinquent assessments and sums shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges, fees and other sums provided for herein by nonuse of the Common Area or

the facilities contained therein, by abandonment or losing of his Lot, or by asserting any claims against the Association, the Declarant or any other person or entity.

Section 402. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Common Area as more specifically provided herein.

Section 403. Annual Assessments. The annual assessment shall specifically include, but shall not be limited to the following common expenses:

- (a) expenses of management;
- (b) taxes and special assessments for the Common Area;
- (c) premiums for all insurance which the Association maintains as required or permitted under these Covenants;
- (d) common lighting, water and other common utility and sewer service charges;
- (e) maintenance which is the responsibility of the Association as provided in Article V;
- (f) wages for Association employees;
- (g) legal and accounting fees;
- (h) any deficit remaining from a previous assessment year;
- (i) a working capital fund;
- (j) the creation of reasonable contingency reserves, surpluses and sinking funds;
- (k) trash removal;
- (l) security services;
- (m) the annual assessment of the Master Association and any association with which the Association merges; and
- (n) any other costs, expenses and fees which may be incurred or may reasonably be expected to be incurred by the Association for the benefit of the Owners under or by reason of these Covenants.



The Association shall also have authority, to the extent it deems proper, to provide any other services requested by particular Owners, but only on a contract basis under which those Owners pay the cost thereof. The Association may enter into cooperative arrangements for provision of services with other homeowner associations in the surrounding area and may assume responsibility for that part of the cost fairly attributable to the Common Interest Community.

Section 404. Fixing Assessments. For the calendar year 1995, the annual assessment shall be Thirty Five Dollars (\$35.00) per Lot which assessments shall commence upon such date as a Lot has had a dwelling constructed thereon and the dwelling is initially occupied as a residence. Each year thereafter the Association's Board of Directors shall fix the annual assessment at an amount deemed sufficient to meet the needs of the Association.

Section 405. Master Association Assessment. As a part of the annual assessment authorized above, the Association may levy, in any assessment year an amount equal to a pro rata share of the assessment levied upon the Association by the Master Association. The pro rata share shall be a uniform charge for all Lots sufficient to meet the total assessment levied upon the Association by the Master Association.

Section 406. Special Assessments. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of an emergency situation or of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto.

Section 407. Procedure for Assessment Under Section 406. Any assessment under Section 406 of this Article shall be made pursuant to the procedures for special assessments set forth in the Bylaws of the Association.

Section 408. Rate of Assessment. Except as provided herein, both annual and special assessments shall be fixed at a uniform rate for all Lots sufficient to meet the expected needs of the Association. The formula for allocation of assessments under this Declaration is one share for each Lot in the Common Interest Community with the

total being the total number of Lots then in existence in the Common Interest Community, including any Lots in the Expansion Property that have been made a part of the Common Interest Community. Thus, the fractional or percentage share of each Lot of the total association assessment shall be one divided by the total number of Lots in the Common Interest Community.

Section 409. Assessment Procedure.

(a) Annual Assessments. No later than ninety (90) days before the beginning of each annual assessment period, the Board of Directors of the Association shall prepare a proposed budget for the Association for the purpose of setting the total annual assessment based upon the cash requirements needed by it to provide for the administration and performance of its duties during the following assessment year. At least sixty days prior to the commencement of the assessment year, the Board shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all Lot Owners and shall set a date for a meeting of the Lot Owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing or other delivery of the summary. Unless at that meeting a majority of the Owners entitled to vote reject the budget, the budget shall be deemed ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board. The annual assessment shall be payable either (i) in one annual installment or (ii) in monthly installments (the "monthly assessment") on the first day of each successive month, as the Board directs. The Association shall cause to be prepared, delivered or mailed to each Owner, at least thirty (30) days in advance of each annual assessment period, a payment statement setting forth the annual and monthly assessment, as applicable.

(b) Special Assessments and Other Sums. Special assessments and other sums imposed hereunder shall be due and payable on the date specified by the Board in written notice to each Owner, but such date shall not be less than thirty (30) days after such notice is sent. In the event that the Association incurs any expense or liability as a result of the willful, negligent or wrongful act of an Owner, his family,



tenants or guests, or any breach by any of such parties of any of the provisions of these Covenants, the Association's By-Laws or the Association's rules and regulations, and the same is not paid for by insurance, the cost thereof shall be deemed to be a special assessment against such Owner and his Lot and shall be enforceable as provided herein. Any other sum imposed by the Board as provided hereunder shall also be deemed a special assessment.

(c) Notice. Failure of the Board to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of his Lot for such assessment, but if notice is not given, the date when payments shall be due shall be deferred to a date thirty (30) days after such notice given.

Section 410. Certificate of Payment. 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 a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 411. Effect of Nonpayment of Assessments-Remedies of the Association.

(a) General. Any assessments which are not paid when due shall be delinquent. If any assessment is not paid when due, the Association may impose a late charge/administrative fee for each delinquent assessment. The amount of the late charge shall be as set forth in the Bylaws of the Association, or if no such amount is stated, the later charge shall be the greater of (i) ten percent (10%) of the amount of the delinquent assessment or (ii) fifty dollars (\$50.00). Any assessment not paid within thirty (30) days after the due date thereof shall also bear interest from the due date at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Owner's Lot, and/or may suspend the delinquent Owner's right to vote and the right to use the Common Area. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided,

and a reasonable attorneys' fee to be fixed by the court, together with the expenses, late charges and costs of the action.

(b) Lien. Any unpaid assessment, charge, fee or other sums assessed against an Owner or his Lot, including without limitation with interest thereon at the rate of eighteen percent (18%) per annum, late charges, court costs and all other collection costs, and reasonable attorneys' fees, shall be a charge on the interest of the Owner in that Lot and shall be a continuing lien, in favor of the Association, upon the Lot against which each such assessment, charge, fee or other sum is made. All payments on account shall be first applied to interest, late charges, any court or filing costs and attorney's fees, and then to the assessment payment first due. The Board may, but shall not be required to, Record a statement of lien with respect to the Lot. The Board may proceed to foreclose the lien in the manner as provided for in CCIOA. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from suing the Owner personally liable therefor or from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, fees or other sums, which are not fully paid when due.

(c) Authority. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association, acting on behalf of the Lot Owners shall have the power to bid at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, if acquired by the Association at the foreclosure sale or by deed in lieu of foreclosure.



Section 412. Working Capital. The Association may require an Owner who purchases a Lot from Declarant to pay to the Association an amount equal to One Hundred Dollars (\$100.00), which sum shall be held by the Association as and for working capital. Such sums shall not be refundable to such Owner but, if the Association decides that such sums are not required for working capital, shall be placed in the general revenues. Furthermore, such sum shall not relieve an Owner from making the regular payment of assessments as the same become due.

Section 413. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any bona fide First Mortgage of record (including deed of trust) provided, however, that the assessment lien shall have priority over a First Mortgage in an amount equal to the common expense assessments based on the budget adopted by the Association pursuant to this Declaration which would have become due, in the absence of any acceleration, during the six months immediately preceding the institution of the action to enforce the assessment lien, but in no event shall the priority of the assessment lien exceed one hundred fifty percent (150%) of the average monthly assessment during the immediately preceding assessment year multiplied by six. Sale or transfer of any Lot shall not affect the lien for said assessment charges except that transfer of title 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 assessment charges which became due prior to any such transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, subject to the limited priority granted to the assessment liens as described in this Section. No such transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure shall relieve any Lot from liability for any assessment charges thereafter becoming due, nor for the lien thereof.

Section 414. Notice to Mortgagees and Inspection of Books. Upon written request, a First Mortgagee shall be entitled to written notification from the Association of any default in the performance by the Owner of any obligation under these Covenants and/or the By-Laws of the Association, which is not cured within sixty (60)

days, after the Board of Directors has actual knowledge thereof, and the First Mortgagee may, at its option but without any obligation, cure such default. The Association shall grant to each First Mortgagee the right to examine the books and records of the Association at any reasonable time.

Section 415. Homestead. The lien of the Association assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to these Covenants shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 416. Exempt Property. The following Property subject to these Covenants shall be exempt from the assessments created herein: (a) all Property dedicated to and accepted by local public authority; and (b) the Common Area.

#### ARTICLE V MAINTENANCE

Section 501. Association Maintenance. The Association shall be responsible for the repair, replacement, improvements and maintenance of the Common Area and all improvements thereto.

#### ARTICLE VI GENERAL PROVISIONS FOR EFFECT OF THE COVENANTS

Section 601. Definitions. The following words and expressions as used in these Covenants have the meaning indicated below unless the context clearly requires another meaning:

a. Accessory Building: Patios, swimming pools, dressing rooms for swimming pools, separate guest house without kitchen, separate servants' quarters without kitchen and other buildings customarily used in connection with the single-family residence.

b. Agencies: "Agencies" shall mean and collectively refer to the Federal National Mortgage Association ("FNMA"), the Government National Mortgage



Association ("GNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal Housing Administration of the Department of Housing and Urban Development ("FHA"), the Veterans Administration ("VA"), the Colorado Housing Finance Authority ("CHFA") or any other public, quasi-public or private agency or entity which performs (or may in the future perform) functions similar to those currently performed by the entities specifically listed herein.

c. Association: The Vista Mesa Homeowners Association, a Colorado nonprofit corporation formed in accordance with its Articles of Incorporation and Bylaws. Association shall also mean and include any association with which the Association merges and shall also mean the Master Association if the rights of the Association hereunder are assigned or delegated to a Master Association.

d. City: The City of Colorado Springs, Colorado.

e. CCIOA: The Colorado Common Interest Ownerships Act, C.R.S. §38-33.3-101 et seq.

f. Common Area: All real property owned by the Association, including improvements thereto, as well as any easements owned by the Association for the common use and enjoyment of the members of the Association, as well as any other property which the Association agrees to maintain for the common good of the Common Interest Community and the Owners, or which the City requires the Association to maintain. Common Area shall also include any areas maintained by a Master Association in which the Association is a member or an association with which the Association is merged.

g. Common Interest Community or Community: Shall mean the Property as described in Exhibit A hereto, and the Expansion Property in the event that Declarant exercises the reserved rights of Declarant to subject the Expansion Property to the Declaration. For purposes of voting on Association matters, and assessments, the Property and Expansion Property shall only be subject to this Declaration when a plat is recorded pursuant to which each portion of the Property or Expansion Property, as applicable, is subdivided into Lots. Declarant may at any time withdraw portions of

the Property for which no plat has been recorded from the Common Interest Community.

h. Cost of Collections: All expenses and charges incurred, including attorney's fees.

i. County. Shall mean the County of El Paso, State of Colorado.

j. Covenants: This Declaration and the provisions contained in it.

k. Declarant: JBS Corporation, a Colorado corporation as well as the successors and assigns of Declarant, whether by assignment by Declarant or merger of Declarant with another entity. Declarant shall have the right to transfer all or any part of its reserved rights hereunder to another person or entity, in which event, Declarant shall refer to such transferee or assignee as to the rights transferred.

l. Declarant's principal office: The principal office maintained by Declarant in El Paso County, Colorado, and if there is not such office, then Declarant's registered office for service of process, and if there is none then the location at which service of process could be made according to the laws and rules governing civil actions in District Courts in Colorado.

m. Development Plan. Shall mean any Development Plan approved by the City and pertaining to the Property and/or the Expansion Property, as applicable.

n. Expansion Property. "Expansion Property" shall mean and refer to the property described in Exhibit B attached hereto.

o. First Mortgage: "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of El Paso, Colorado, pertaining to a Lot and having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments), and which was recorded before the date on which the assessment lien to be enforced became delinquent.

p. First Mortgagee: "First Mortgagee" shall mean and refer to any person or entity named as a mortgagee or beneficiary under any deed of trust.



q. Lot: Each area designated as a Lot in the recorded plat of the Common Interest Community or parts thereof. Lot does not include those portions of the Property and Expansion Property, as depicted in a master plan or otherwise, for which a plat has not been recorded to create a Lot.

r. Lot Lines: Front, side and rear Lot lines shall be the same as defined in the zoning regulations of the City or County in effect from time to time; in the absence of such a definition a front Lot line is each boundary line between the Lot and any public street which affords the principal access to the Lot; a side Lot line is any boundary line which meets and forms an angle with the front Lot line. Other Lot lines are rear Lot lines.

s. Master Association. The Association may become a member of the Master Association or may be merged with or into the Master Association. The Association may take such action on behalf of the Association as is necessary to (i) make the Association a member of the Master Association, (ii) to cause the Association to be merged into or with the Master Association and (iii) to delegate or assign to the Master Association or to contract with the Master Association to exercise the rights, duties and obligations of the Association under these covenants.

t. Owner: The 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.

u. Person. "Person" shall include natural persons, corporations, trusts, limited liability companies, partnerships and any other entity capable of holding title to real property.

v. Plat. Shall mean and refer to any Plat of the Property and/or the Expansion Property, as applicable, which has been approved by the City and recorded in the real property records of the County.

w. Property. "Property" shall mean and refer to the real property described in Exhibit A hereto. If Declarant exercises the reserved rights of Declarant to include the Expansion Property as a part of the Common Interest Community, then Property

shall also include those portions of the Expansion Property as to which Declarant has exercised its rights.

x. Record or Recordation. Means recordation in the real property records of the Clerk and Recorder of the County.

y. Structure: Any thing or device, other than trees and landscaping, the placement of which upon any Lot might affect its architectural appearance, including by way of illustration and not limitation, any dwelling, residence, building, garage, porch, shed, greenhouse, driveway, walk, patio, deck, swimming pool, tennis court, fence, wall or outdoor lighting. Structure shall also mean an excavation or fill the volume of which exceeds five (5) 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.

Section 602. 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 603. 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 Common Interest Community.

Section 604. Covenants are Cumulative. Each of these Covenants is cumulative and independent and is to be construed without reference to any other provisions dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

Section 605. These Covenants May Not be Waived. 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 defend against enforcement of these Covenants on the grounds of waiver, laches or estoppel.

Section 606. Right to Enforce the Covenants. These Covenants are for the benefit of the Owners jointly and severally, the Association, the Architectural Control Committee and Declarant, and may be enforced by an 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, Declarant, the Architectural Control Committee, the Association or any combination of them. All costs, including reasonable attorney's fees, incurred by Declarant, an Owner, the Association or the Architectural Control Committee in connection with any successful enforcement proceeding initiated by Declarant, the Association or the Architectural Control Committee (alone or in combination with Owners) shall be paid by the party determined to have violated the Covenants. Whenever a right is given to the Declarant to do certain things in these Covenants, it shall be the right, but not the obligation, of the Declarant to do such things.

Section 607. Duration of Restrictions. These Covenants shall remain in force until twenty years after the date of the Recordation of these Covenants, and shall be automatically renewed for successive periods of ten (10) years, unless before the expiration of the initial twenty (20) years or before the end of any ten-year extension, there is filed for Record an instrument stating that extension is not desired, signed and acknowledged by the Owners of at least two thirds (2/3) of the Lots in the Common Interest Community, in which event these Covenants shall terminate as of the end of the initial twenty year term or ten year extension, as applicable.

Section 608. Amendment.

a. Amendment by Owners. From time to time any Section of these Covenants may be amended or new Sections may be added to these Covenants by

an instrument signed and acknowledged by the Owners of a majority of the Lots in the Common Interest Community and filed for Record.

b. Agency Amendments. Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to any of the Agencies, then, subject to the following sentence of this section, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without first obtaining the approval of any Owners or First Mortgagees. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to the conveyance of the last Lot within the Property owned by Declarant to the first Owner (other than Declarant).

c. Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at such time as the last Lot within the Property has been conveyed by Declarant to the first Owner other than Declarant.

Section 609. Property Rights Remain. Section 110 concerns property rights which can be changed only by conveyances, releases or other appropriate legal instruments executed by those to whom such property rights belong.

Section 610. Severability. If any Section or Sections of these Covenants shall be held invalid or become unenforceable, the other Sections of these Covenants shall in no way be affected or impaired but shall remain in full force and effect.

Section 611. Action in Writing. Notices, approval, consents, extensions, 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. Permission, consent or approval of Declarant or the Architectural Control Committee under these Covenants is not effective unless in writing.

Section 612. Notices. Any writing described in Section 611, including but not limited to any communication from Declarant, the Association or the Architectural Control Committee to an Owner, shall be sufficiently served if delivered by mail or otherwise: a) to the dwelling situate on the Lot owned by that Owner; or b) if there is no dwelling, then to the address furnished by the Owner to Declarant or the Architectural Control Committee and if the Owner has not furnished an address, then to the most recent address of which Declarant or the Architectural Control Committee has a record.

Section 613. Interpretation of Covenants. These Covenants are intended to be interpreted in a manner that will provide for the preservation of the values and amenities of the Common Interest Community. In the event that it is necessary to interpret the meaning of any word, paragraph, term or provision of these Covenants, the determination of the Declarant shall be final and conclusive. In interpreting the architectural and building standards set forth in these Covenants, it is acknowledged that the Declarant may be required to exercise its discretion concerning the architectural and building standards and control within the Common Interest Community. The fact that Declarant has exercised Declarant's discretion with respect to one Lot or property in the Common Interest Community is not a guarantee that Declarant's discretion will be exercised in the same manner with respect to other Lots or properties in the Common Interest Community. It shall be presumed that the Declarant has at all times exercised the discretion of the Declarant in a reasonable manner. Certain of the matters concerning architectural and building standards as are set forth in these Covenants are intended as guidelines, and the fact that an Owner believes that the Owner has complied with the guidelines shall not guarantee that the Declarant will approve such matter. The determination of the Declarant as to whether the architectural and building standards set forth in these Covenants have been met shall be final and conclusive. In the event that any person or entity brings an action

or proceeding challenging any action or interpretation of the Declarant under these Covenants, then it shall be the burden of the person or entity challenging the actions or interpretation of the Declarant to establish beyond a reasonable doubt that the Declarant has acted in a manner that is arbitrary and capricious.

In the event that the powers of the Declarant are transferred to an Architectural Control Committee in accordance with the provisions of Section 203(a) of these Covenants, then the provisions of this Section shall be applicable to the Architectural Control Committee to the same extent as this section provides for the Declarant.

Section 614. FHA/VA Approval. Until the termination of Declarant's reserved rights under this Declaration, and provided further that the FHA or the VA is insuring or guaranteeing or has agreed to insure or guarantee loans in any portion of the Property with respect to initial sales of Lots by Declarant, the following actions shall require the prior review of the FHA or the VA, in accordance with the procedure set forth herein: (a) dedication of any of the Common Areas; or (b) annexation of any additional real property to the Property; or (c) material amendments of the Articles of Incorporation or the Bylaws of the Association.

Section 615. Colorado Common Interest Ownership Act. Declarant intends that this Declaration and the Common Interest Community be fully in compliance with the provisions of CCIOA. In the event that any provision of this Declaration is found to be in violation or is otherwise not in compliance with CCIOA, then reference shall be made to CCIOA to determine the rights of the parties as to such provision of this Declaration that violates or is not in compliance with CCIOA and the other provisions of this Declaration that are in compliance with CCIOA shall continue in full force and effect.

Section 616. Enumerations 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.

Section 617. Gender and Number: Whenever the context permits, Owner or Owners shall be deemed to refer equally to persons of both sexes and to corporations, singular to include plural and plural to include singular.



Section 618. Norwood Maintenance District. Each Lot Owner acknowledges that the City has created the Norwood Special Improvement Maintenance District (the "Maintenance District") pursuant to Chapter 19, Article 9 of the City Code by City Ordinance 81-167, and that the Property is within the Maintenance District pursuant to provisions of the City Code. The Maintenance District has been established for the purposes of maintaining improvements, including landscaping, fencing, pillars, neighborhood theme signage, theme areas, entry islands, medians, trail systems, open space and utility rights of way, and provides for a mill levy and a property tax upon Owners of Lots contained within the Property to pay the cost of maintaining such improvements. Each Lot Owner further acknowledges that the ordinance creating the Maintenance District requires the seller of the Lot to such Owner to provide copies of the ordinance to all contract purchasers of homes upon the Lots, and each Lot Owner acknowledges receipt of a copy of such ordinance.

619. General Improvement District. Each Lot Owner acknowledges that the City has created the Colorado Springs Cottonwood General Improvement District (the "General District") pursuant to Part 6, Article 25, Title 31, Colorado Revised Statutes, as amended, by City Ordinance 85-112, and that the Property is within the General District pursuant to provisions of the Colorado Revised Statutes. The General District has been established for the purposes of constructing and installing improvements, including street improvements, sanitary sewer collection, water distribution and transmission system improvements and storm drainage improvements, and provides for a mill levy and a property tax upon Owners of any Lot within the Property to pay the cost of constructing and installing such improvements. The General District's mill levy as of the date of recording of this Declaration is 33 mills, which each Lot Owner acknowledges is subject to change. Each Lot Owner further acknowledges that the ordinance creating the General District requires the seller of the Lot to the Owner to provide copies of the ordinance to all contract purchasers of a home upon any Lot, and each Lot Owner acknowledges receipt of a copy of such ordinance.





### Approval and Subordination

Carolyn Sue Jenkins and Development Management, Inc. do hereby execute this Approval and Subordination for the sole purposes of (a) evidencing their approval of the terms and provisions hereof, and (b) ~~acknowledging the subordination of any mortgage or deed of trust held by all or any of such persons or entities to the terms and provisions of this Declaration.~~

Development Management, Inc.

Carolyn Sue Jenkins  
Carolyn Sue Jenkins

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF COLORADO )  
COUNTY OF EL PASO ) ss.

The foregoing instrument was acknowledged before me this 6th day of September, 1994, by Roni A. Petre as President of Development Management, Inc.

My Commission Expires: 6/7/27

Michael M. Lerner  
Notary Public



BOOK PAGE  
6575 869

EXHIBIT "A" TO DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS,  
EASEMENTS AND CHARGES FOR VISTA MESA SUBDIVISION

Legal Description of the Property

Lots 1 - 101, inclusive, in Vista Mesa Subdivision Filing No. 1, Colorado Springs, El Paso County, Colorado as further depicted in that certain plat recorded in Plat Book G-5, at Page 29 of the real property records of El Paso County, Colorado.

ccc:dms\elite\docs\vista.ccr



## EXHIBIT B

200  
65 75  
1161  
871

## LEGAL DESCRIPTION OF EXPANSION PROPERTY

A parcel of land located in Section 14, Township 13 South, Range 66 West of the Sixth Principal Meridian, City of Colorado Springs, County of El Paso, State of Colorado described as follows:

Beginning at the Southeast corner of Rangewood Drive and Vickers Drive as monumented by a 1/2" rebar with cap marked with LS#6128; thence S 59°08'24"E, along the Southwesterly right-of-way line of said Rangewood Drive, 300.00 feet to a concrete nail with cap marked with LS#22577; thence departing said Southwesterly right-of-way line, S16°27'14"E 447.55 feet; thence S03°51'30"E 514.66 feet; thence S19°15'00"E 470.00 feet; thence S15°30'00"E 297.11 feet; thence S34°30'00"E 880.00 feet; thence S05°21'44"W 594.25 feet; thence S56°30'00"W 470.00 feet; thence N48°20'04"W 407.89 feet; thence S82°30'00"W 370.00 feet; thence N83°00'00"W 331.00 feet; thence N00°00'00"E 1265.00 feet; thence N30°04'04"W 358.44 feet; thence N01°16'04"E 64.85 feet; thence N88°43'56"W 208.91 feet to a point of tangent curve to the left, whose radius is 365.00 feet and central angle of 23°58'01"; thence southwesterly 152.68 feet along the arc of said curve; thence S67°18'03"W a distance of 21.48 feet to the point of a tangent curve to the right, whose radius is 255.00 feet and central angle is 40°00'00"; thence northwesterly 178.02 feet along the arc of said curve; thence N72°41'57"W 10.23 feet to the easterly right-of-way line of Vickers Avenue and point of curve to the left, whose radius is 1340.00 feet and central angle is 02°52'33"; thence northerly 67.25 feet along the arc of said curve and the easterly right-of-way line of Vickers Avenue; thence continuing along Vickers Avenue for the following five courses:

- 1) N15°29'38"E 250.00 feet;
- 2) thence 934.57 feet along a curve to the right whose radius is 1560.00 feet and central angle is 34°19'30";
- 3) thence N49°49'08"E 368.08 feet;
- 4) thence 211.77 feet along a curve to the left whose radius is 640.00 feet and central angle is 18°57'32";
- 5) thence N30°51'36"E 67.74 feet

to the Point of Beginning, containing 3653361 Sq. Ft. (83.87 acres) more or less.

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