



TABLE OF CONTENTS

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
FOUNTAIN VALLEY RANCH FILING NO. 7**

**ARTICLE I**

**DEFINITIONS**..... 1

Section 1.1 "Association"..... 1

Section 1.2 "Owner" ..... 1

Section 1.3 "Property" ..... 2

Section 1.4 "Expansion Property" ..... 2

Section 1.5 "Common Area"..... 2

Section 1.6 "Lot" ..... 2

Section 1.7 "Declarant" ..... 2

Section 1.8 "Member" ..... 2

Section 1.9 "Mortgage" ..... 2

Section 1.10 "First Mortgage" ..... 2

Section 1.11 "Mortgagee" ..... 2

Section 1.12 "Architectural Control Committee"..... 3

Section 1.13 "Improvements" ..... 3

**ARTICLE II**

**MEMBERSHIP AND VOTING RIGHTS**..... 3

Section 2.1 Membership ..... 3

Section 2.2 Classes of Membership ..... 3

Section 2.3 Nonliability of Association and Others ..... 4

**ARTICLE III**

**COVENANT FOR ASSESSMENTS**..... 4

Section 3.1 Creation of the Obligation for Assessments..... 4

Section 3.2 Purpose of Assessments..... 4

Section 3.3 Annual Assessments ..... 4

Section 3.4 Limit on Annual Assessments ..... 5

Section 3.5 Procedure for Assessment Under Sections 3.4 ..... 5

Section 3.6 Rate of Assessment ..... 6

Section 3.7 Assessment Procedure..... 6

Section 3.8 Certificate of Payment ..... 6

Section 3.9 Effect of Nonpayment of Assessments-Remedies of the Association ..... 7

Section 3.10 Subordination of the Lien to Mortgages ..... 8

Section 3.11 Notice to Mortgagee and Inspection of Books ..... 8

Section 3.12 Homestead ..... 8

Section 3.13 Exempt Property..... 8

CR 2094

ARTICLE VIII

USE RESTRICTIONS.....16  
Section 8.1 Single-Family Use Only .....16  
Section 8.2 Animals .....17  
Section 8.3 Antennae..... 17  
Section 8.4 Transmitters.....17  
Section 8.5 Garages .....17  
Section 8.6 Garage Sales .....17  
Section 8.7 Restriction on Parking.....17  
Section 8.8 Restrictions on Access.....18  
Section 8.9 Association Enforcement Authority .....18  
Section 8.10 Easements.....18  
Section 8.11 Nuisance .....18  
Section 8.12 Garbage and Refuse Disposal .....18  
Section 8.13 Commercial Usage .....19  
Section 8.14 Permitted Roofing .....19  
Section 8.15 Repairs to Motor Vehicles .....19  
Section 8.16 Height Restrictions .....19  
Section 8.17 Fences .....19

ARTICLE IX

FURTHER SUBDIVISION, EASEMENTS.....19  
Section 9.1 Further Subdivision .....19  
Section 9.2 Payment of the Cost of Utilities and Services .....20  
Section 9.3 Emergency Easement.....20  
Section 9.4 Easements Deemed Created.....20

ARTICLE X

MISCELLANEOUS..... 20  
Section 10.1 Interpretation .....20  
Section 10.2 Violation and Nuisance .....20  
Section 10.3 Violation of Law .....20

ARTICLE XI

GENERAL PROVISIONS.....21  
Section 11.1 Acceptance..... 21  
Section 11.2 Enforcement ..... 21  
Section 11.3 Non-Waiver .....21  
Section 11.4 Cumulative .....21  
Section 11.5 Severability .....21  
Section 11.6 Conflicts of Provisions ..... 21  
Section 11.7 Duration and Amendment .....21

Section 11.8 Registration by Owner of Mailing Address .....22  
Section 11.9 Number and Gender .....22  
Section 11.10 Captions .....22  
Section 11.11 Board to Resolve Ambiguities .....22  
Section 11.12 Governing Law .....23

- Exhibit "A" Legal Description of Property
- Exhibit "B" Expansion Property
- Exhibit "C" Common Area

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
FOUNTAIN VALLEY RANCH FILING NO. 7

THIS DECLARATION, made and entered as of this 11<sup>th</sup> day of May, 1998, by NEW GENERATION HOMES, INC., a Colorado corporation, hereinafter called "Declarant" for itself, its successors and assigns.

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property described on Exhibit "A" attached hereto and incorporated herein (hereinafter called the "Property"), and

WHEREAS, the Declarant desires to submit the Property to the covenants, terms and provisions hereof.

NOW, THEREFORE, the Declarant hereby declares that all of the Property, 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 purposes of enhancing and protecting the value, desirability and attractiveness of the Property 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 Property or any part thereof, their heirs, successors, and assigns.

ARTICLE I  
DEFINITIONS

Section 1.1 "Association" shall mean and refer to FOUNTAIN VALLEY RANCH FILING NO. 7 HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation, organized under the laws of the State of Colorado, its successors and assigns.

Section 1.2 "Owner" means any person, corporation, partnership, association, contract seller or other legal entity or any combination thereof, including Declarant, who owns the record fee simple interest in one or more Lots and shall include the purchaser under any executory land sales contract wherein the Administrator of Veterans Affairs is seller, whether recorded or not, and whether owned by said Administrator or his assigns. The term "Owner" shall include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assign of any Owner but shall not refer to any Mortgagee as herein defined, or other person or entity having an ownership interest in any Lot merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 1.3 "Property" shall mean and refer to that certain real property described on Exhibit "A" hereto, together with all appurtenances thereto and all Improvements now or hereafter thereon and shall include any real property which is hereafter annexed to the Project pursuant to Article VI hereof.

Section 1.4 "Expansion Property" shall mean and refer to that certain real property described on Exhibit "B" hereto, which may be annexed to the Project pursuant to Article VI hereof, together with all appurtenances thereto and all Improvements now or hereafter thereon.

Section 1.5 "Common Area" shall mean and refer to that certain real property described on Exhibit "C" hereto, which is to be owned by the Association, together with all appurtenances thereto and all Improvements now or hereafter thereon and all common property owned by the Association in connection therewith and shall include any Common Area located upon any real property which is hereafter annexed to the Project pursuant to Article VI hereof.

Section 1.6 "Lot" shall mean and refer to any of the Lots shown on any recorded plat of the Property, together with all appurtenances thereto and Improvements now or hereafter thereon and shall include any Lots located upon any real property which is hereafter annexed to the Project pursuant to Article VI hereof.

Section 1.7 "Declarant" shall mean and refer to NEW GENERATION HOMES, INC., a Colorado corporation, its agents, employees, contractors, successors and assigns to whom it expressly transfers in writing all or any part of its rights as Declarant hereunder, and its authorized representative.

Section 1.8 "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 1.9 "Mortgage" means and refers to any mortgage, deed of trust or other assignment or comparable security instrument recorded in the real property records of the office of the Clerk and Recorder of the County in which the Property is located, and by which a Lot or any part thereof is encumbered. The term shall also include any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the original seller, whether such contract is recorded or not (but if not recorded, then written notice thereof shall be delivered to the Board) and whether such contract is owned by the said Administrator or has been assigned by the said Administrator and is owned by the Administrator's assignee, or a subsequent assignee who has notified the Board in writing of such assignment.

Section 1.10 "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.

Section 1.11 "Mortgagee" means any person or entity, or any successor or assign thereof, which holds or owns a Mortgage. The term shall also include the Administrator of Veterans Affairs, an Officer of the United States of America, and his assigns under any executory

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.

Section 1.12 "Architectural Control Committee" or "Committee" shall mean the committee of three or more persons appointed by the Declarant or Association to review and approve the plans for all Improvements constructed on the Property.

Section 1.13 "Improvements" shall mean and refer to all buildings, structures and any appurtenances thereto or components thereof of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, patio covers, awnings, painting or other finish material of any exterior surfaces of any visible structure, additions, walkways, bicycle and/or pedestrian trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, concrete, paving, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, mailboxes, exterior tanks, solar equipment, satellite dishes, and exterior air conditioning and water softener fixtures, and any alterations, changes or modifications to the foregoing. "Improvements" shall also mean an excavation or fill the volume of which exceeds two cubic yards, and 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.

## ARTICLE II MEMBERSHIP AND VOTING RIGHTS

Section 2.1 MEMBERSHIP. 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. In the event that additional property is annexed as provided in Article VI, the membership shall automatically be expanded thereby.

Section 2.2 CLASSES OF MEMBERSHIP. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and each membership shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members, and 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 such Lot.

Class B. The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot it owns. The Class B membership shall cease and be converted to Class A membership on December 31, 2005, unless sooner terminated when the Declarant consents thereto in writing or when the Declarant, its successors and assigns no longer owns any Lot in the Project.

**Section 2.3 NONLIABILITY OF ASSOCIATION AND OTHERS.** The Board of Directors, the officers 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 Bylaws.

### ARTICLE III COVENANT FOR ASSESSMENTS

**Section 3.1 CREATION OF THE OBLIGATION FOR ASSESSMENTS.** Each Owner, for each Lot owned within the Property, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such deed, 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 this Declaration and 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. 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 Property or the facilities contained therein, by abandonment or leasing of his Lot, or by asserting any claims or defenses against the Association, the Declarant or any other person or entity.

**Section 3.2 PURPOSE OF ASSESSMENTS.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners.

**Section 3.3 ANNUAL ASSESSMENTS.** The annual assessments shall specifically include, but shall not be limited to the following common expenses:

- (a) expenses of management and maintenance of the Common Area and such other maintenance or other expense, such as street lighting, as the Board determines in its discretion is appropriate;
- (b) taxes and special assessments;
- (c) premiums for all insurance which the Association is required or permitted to maintain;
- (d) wages for Association employees;
- (e) legal and accounting fees;
- (f) any deficit remaining from a previous assessment year;

- (g) a working capital fund; and
- (h) 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 this Declaration.

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 Property.

**Section 3.4 LIMIT ON ANNUAL ASSESSMENTS.** For the year in which the first Lot is conveyed to an Owner, the maximum annual assessment shall be Sixty Dollars (\$60.00).

(a) For all subsequent calendar years, the maximum annual assessment may be increased each year, without a vote of the membership, not more than the rise, if any, of the most recent annual Consumer Price Index (published by the Department of Labor, Washington, D.C. or any comparable successor index for Housing-General Shelter-Homeowners Costs, and fuel and other utilities) for the Denver metropolitan area.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to any Owner, the maximum annual assessment may be increased above the limitation which is set forth in paragraph (a) above, by the procedure set forth Section 3.5 of this Article.

(c) The Association's Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

(d) Notwithstanding any provision of this Declaration or otherwise, the annual average common expense liability of each Lot, exclusive of optional user fees and any insurance premiums paid by the Association, shall never exceed the dollar amount set forth in C.R.S. 38-33.3-116 so that the Association and the Property are subject only to C.R.S. 38-33.3-105, 38-33.3-106 and 38-33.3-107 and are not subject to any other provisions of the Colorado Common Interest Ownership Act (C.R.S. 38-33.3-101 et seq.), unless the Members amend this Declaration, with Declarant's prior written consent, to make such Act applicable to the Association and the Property.

**Section 3.5 PROCEDURE FOR ASSESSMENT UNDER SECTION 3.4.** Any assessment requiring a vote of the Members under Section 3.4 of this Article shall require the assent of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for that purpose. Written notice of any meeting called for the purpose of taking such action shall be sent to all Members not less than thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of membership shall constitute a



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

**Section 3.6 RATE OF ASSESSMENT.** Except as provided herein, annual assessments must be fixed at a uniform rate for all Lots sufficient to meet the expected needs of the Association, provided however, notwithstanding any provision herein to the contrary, the Declarant and all Lots owned by Declarant shall be subject to assessment or other charge under this Declaration only as provided as follows: Any unimproved Lots which are owned by Declarant and which are leased, rented, or otherwise occupied as a residence shall, commencing on the date of occupancy thereof, be assessed at the same rate as other Lots. All other Lots owned by the Declarant shall be assessed or charged at a rate equal to ten percent (10%) of the annual assessment, provided however, if the annual assessments due from other Owners are insufficient to meet the Association's needs because of such partial Declarant assessment, the Declarant shall, upon written notice from the Association, pay an amount, up to the amount of full parity on such assessments, to the Association to meet any such shortfall so long as such notice must be given within one (1) year after the end of each annual assessment period and is waived if not made in such timely manner (such final one year period to terminate one (1) year after the date of closing of last Lot owned by Declarant within the Property).

**Section 3.7 ASSESSMENT PROCEDURES.**

(a) **Annual Assessments.** No later than thirty (30) days before the beginning of each annual assessment period, the Board of Directors of the Association shall set the total annual assessment based upon advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during the following assessment year. That annual assessment shall be payable for each assessment year by April 1 of that year, unless the Board otherwise 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 assessment. The annual assessments provided for herein shall commence, as to a particular Lot, upon the recording of this Declaration. On all sales of Lots by Declarant, Declarant will collect at closing the assessment for the next twelve months from the Owner.

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

**Section 3.8 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, but only as to the Association's claims regarding liens.

**Section 3.9 EFFECT OF NONPAYMENT OF ASSESSMENTS-REMEDIES OF THE ASSOCIATION.**

(a) **General.** Any assessment which is not paid when due shall be delinquent, and, in addition to other remedies, the Association may impose a late charge/administrative fee not to exceed an amount set forth in the Association's Bylaws. Any assessment not paid within thirty (30) days after the due date thereof shall 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. 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, a late/administrative charge as set forth in the Association's Bylaws or other sum, court costs and all other collection costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien, in favor of the Association, upon the Lot against which each such assessment, charge, fee or other sum of is made. All payments on account shall be first applied to interest, the late charge, the expenses, the costs, the attorneys fees, and then to the assessment payment first due. The Board may enforce such lien by filing with the Clerk and Recorder of the County in which the Property is located a statement of lien with respect to the Lot, setting forth the name of the Association and the amount of delinquent assessments then owing. The lien statement shall be duly signed and acknowledged by an officer or authorized agent of the Association, and notice thereof shall be mailed to the Owner of the Lot. Such a claim of lien shall also secure all assessments, charges, fees and sums which come due thereafter until the lien, together with all costs, attorneys' fees, administrative charges and interest have been fully paid or otherwise satisfied. Thirty (30) days following the mailing of such notice, the Board may proceed to foreclose the statement of lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. 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 such 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 sums and charges 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 3.10 SUBORDINATION OF THE LIEN TO MORTGAGES.** The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money loan evidenced by a First Mortgage of record (including deed of trust) and to any executory land sales contract wherein the Administrator of Veterans Affairs (Department of Veterans Affairs) is seller, whether such contract is owned by the Department of Veterans Affairs or its assigns, and whether such contract is recorded or not. Sale or transfer of any Lot shall not affect the lien for said assessment charges except that sale or transfer of any Lot pursuant to foreclosure of any such mortgage or any such executory land sales contract, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract shall extinguish the lien of assessment charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture of any such executory land sale contract shall relieve any Lot from liability for any assessment charges thereafter becoming due nor from the lien thereof.

**Section 3.11 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 this Declaration and/or the Bylaws of the Association, which is not cured within sixty (60) days, after the Board of Directors has actual knowledge thereof, and the First Mortgages may, at its option but without any obligation, cure such default. The Association shall grant to each First Mortgages the right to examine the books and records of the Association at any reasonable time.

**Section 3.12 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 this Declaration shall constitute a waiver of the homestead or other exemption as against said assessment lien.

**Section 3.13 EXEMPT PROPERTY.** All Property dedicated to and accepted by local public authority shall be exempt from the assessments created herein.

#### ARTICLE IV COMMON AREA, INSURANCE, DAMAGE AND MERGER

**Section 4.1 TITLE TO THE COMMON AREA.** Subject to the limitations and restrictions of this Declaration, title to the Common Area shall be conveyed in fee simple, free and clear of all encumbrances except easements or similar rights of record, by the Declarant to the Association, prior to the conveyance of the first Lot in any phase.

**Section 4.2 NON-DIVISION OF COMMON AREA.** The Common Area shall remain undivided and shall not be subject to partition. By the acceptance of its 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 other provisions of this Declaration shall entitle the Association to collect personally, 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. Nothing contained herein shall be construed as a limitation of the right of legal partition of a Lot between the Owners thereof, but such legal partition shall not affect any other Lot, nor shall any such partition sever any part thereof from such Lot as a whole.

**Section 4.3 OWNERS COMMON AREA EASEMENT OF ENJOYMENT.** Subject to the limitations and restrictions of this Declaration, 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 with the title to every Lot without the necessity of additional reference.

**Section 4.4 EXTENT OF OWNERS COMMON AREA EASEMENT.** The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to enforce the restrictions contained in this Declaration and to promulgate and publish rules and regulations which every Owner, his family members, guests, tenants, and contractors shall strictly comply with, 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 this Declaration, 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 Declarant or the Association to grant easements and/or similar rights for utilities, access and related rights and 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;

(e) The right 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, subject to this Declaration, to mortgage said property as security for any such loan; and

(f) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure.

**Section 4.5 DELEGATION AND 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 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 4.6 NON-DEDICATION OF COMMON AREA.** Declarant, in recording this Declaration, has designated certain areas of land as Common Area intended for the common use and enjoyment of Owners for various purposes. The Common Area is not dedicated hereby for use by the general public but is dedicated to the common use and enjoyment of the Owners, as more fully provided in this Declaration.

**Section 4.7 COMMON INSURANCE.** Commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, the Association shall obtain and maintain at all times, to the extent reasonably obtainable, insurance policies covering the following risks:

(a) **Property.** Property insurance on the Common Area for fire and broad form covered causes of loss; the total amount of insurance must be not less than the full current, insurable replacement cost of the insured property, less applicable deductibles, at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Such insurance must include all personal property owned by the Association and any Improvements and fixtures located upon the Common Area. Such insurance as maintained by the Association pursuant to this Section shall afford protection against at least the following:

(i) loss or damage by fire and all other hazards that are covered by the standard extended coverage endorsement, including without limitation endorsements for vandalism and malicious mischief, and

(ii) all other perils customarily covered for similar types of Projects, including without limitation, those covered by the standard "all risk" and "replacement cost" endorsements and such other endorsement as the Board determines are reasonable.

(b) **Public Liability.** Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area and Association operations, as deemed sufficient in the judgment of the Board but not less than any amount specified herein, insuring the Board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area. The insurance shall cover claims of one or more insured parties against other insured parties. Such insurance shall be in such

amounts as the Board of Directors of the Association may from time to time determine, but not in an amount less than \$1,000,000.00 per occurrence covering claims for personal injury, bodily injury and/or for property damage. To the extent reasonably obtainable, coverage shall include, without limitation, liability for personal injuries, operation of automobiles (whether owned, non-owned or hired) on behalf of the Association, and activities in connection with the ownership, operation, maintenance or other use of the Common Area by the Association, its officers, directors, agents, employees, representatives and the Owners, off-premises employee coverage, water damage liability, contractual liability, bailee's liability for property of others, and any legal liability that results from lawsuits related to employment contracts to which the Association is a party.

(c) Workmen's Compensation. Workmen's Compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(d) Fidelity Insurance. The Association shall purchase, in an amount equal to the maximum amount of funds in the Association's custody at any one time, but not less than the sum of three months' assessments on the entire Project, plus reserves, blanket fidelity insurance covering losses resulting from dishonest or fraudulent acts or omissions committed by the Association's directors, managers, including without limitation, any person employed as an independent contractor for the purpose of managing the Association and any employee thereof, trustees, employees, volunteers, or anyone who manages the funds collected and held for the benefit of the Owners, provided however, any managing agent which handles funds for the Association should be covered by its own fidelity insurance policy, which must provide the same coverage required of the Association. Such policy shall also cover destruction or disappearance of money or securities and forgery. Such policy shall cover any person or entity handling funds of the Association, including but not limited to, employees of the professional manager which should also be covered by its own fidelity bond and submit evidence thereof to the Association. Such fidelity coverage or bonds shall name the Association as the named insured and as obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(e) Officers' and Directors' Personal Liability Insurance. To the extent obtainable, appropriate officers' and directors' personal liability insurance shall be obtained by the Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

(f) Other Insurance. In addition, the Board of Directors may obtain any other insurance against such other risks, of a similar or dissimilar nature, which the Board shall deem appropriate with respect to the Project.

#### Section 4.8 FORM OF INSURANCE

(a) All insurance shall be carried in blanket policy form, shall name the Association as the insured and shall provide that the proceeds shall be paid to the Association for the benefit of and in trust for the Association, the Owners and their First Mortgagees, as their interests may appear, shall additionally insure and identify the interest of each Owner and the

First Mortgagee, and shall provide a standard, non-contributory mortgage clause in favor of each First Mortgagee which has given the Association notice of its lien. Each Owner shall be an insured person under such policy with respect to liability arising out of such Owner's interest in the Common Area.

(b) To the extent possible, all insurance policies shall:

(i) be obtained from responsible companies duly authorized and licensed to do insurance business in the State of Colorado, and having at least a "B" general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide;

(ii) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, its Owners and members of their households;

(iii) provide that the insurance cannot be canceled, invalidated, or suspended on account of the conduct of the Association, its officers, directors, employees and agents;

(iv) provide for a waiver of any defense based on co-insurance;

(v) provide that the policy of insurance shall not be permitted to lapse, be terminated, canceled or materially or substantially changed or modified without at least thirty (30) days' prior written notice to the Association, the Owners and the First Mortgagees which have given notice of their liens;

(vi) provide that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(vii) provide that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance;

(viii) provide that no assessments therefor may be made against First Mortgagees and any such assessments made against others shall not become a lien on the Property superior to the First Mortgagee; and

(ix) may contain such deductible provisions as the Board deems consistent with good business practice and as are consistent with the requirements of First Mortgagees and any secondary lenders purchasing First Mortgages.

**Section 4.9 DAMAGE OR DESTRUCTION OF COMMON AREA .** Any portion of the Common Area, which is damaged or destroyed and which is insured pursuant to this Declaration, shall be repaired or replaced promptly by the Association.

**Section 4.10 MERGER, DISSOLUTION OR CONSOLIDATION.** Subject to the requirements of the Declaration, the Association may be dissolved, merged or consolidated as provided by the Colorado Non-Profit Corporation Act. Upon dissolution of the Association other than incident to a merger or consolidation, the assets of the Association shall be distributed and transferred as the Members may direct, subject to the requirements, limitations and other provisions of the Declaration. In such event, the assets may be granted, conveyed and assigned to any public agency, non-profit corporation, association, trust or other organization to be devoted to purposes similar to those for which the Association was created. The surviving entity in any such merger or consolidation shall be the Association for purposes of this Declaration.

## ARTICLE V ADDITIONAL RESTRICTIONS

**Section 5.1 RESTRICTION UPON ASSOCIATION AND OWNERS.** Unless at least two-thirds (2/3) of the First Mortgagees (based upon one (1) vote for each First Mortgage owned or held) and two-thirds (2/3) of the Members have given their prior written approval, the Association shall not be empowered or entitled to do any of the following:

- (a) by act or omission, seek to abandon or terminate this Declaration or enforcement thereof, as set forth in this Declaration;
- (b) by act or omission, seek to abandon partition, subdivide, encumber, sell or transfer any of the Common Area or other real property owned by the Association, if any;
- (c) fail to maintain full, current replacement cost fire and extended insurance coverage on the Common Area or other real property owned by the Association, and such other insurance as is required under this Declaration;
- (d) use hazard insurance proceeds for loss to the Association's Improvements for other than repair, replacement or reconstruction of such Improvements as herein provided; or
- (e) merger, consolidation or dissolution of the Association.

**Section 5.2 ADDITIONAL RESTRICTIONS DURING DECLARANT CONTROL.** In addition to the provisions of Section 5.1 of this Article, after the Declarant has obtained evidence of guaranty by Federal Housing Administration or the Department of Veterans Affairs and continuing until such time as the Class B membership has terminated, the prior written approval of the Department of Veterans Affairs or the Federal Housing Authority of the U.S. Department of Housing and Urban Development shall be required for any of the following:

- (a) Amendment of this Declaration;
- (b) Amendment to the Articles of Incorporation or the Bylaws of the Association



- (c) Annexation of all or any part of the Expansion Property to this Declaration;
- (d) Encumbering or mortgaging of all or any part of the Common Area;
- (e) Dedication of all or any part of the Common Area; or
- (f) Merger, consolidation or dissolution of the Association.

## ARTICLE VI PHASED DEVELOPMENT

**Section 6.1 RIGHT TO EXPAND.** For a period continuing until seven (7) years from the date hereof, Declarant reserves the right to expand this Project to include all of any part of the Expansion Property and including without limitation any additional Common Area Improvements located thereon, provided, however, that the total number of Lots in the Project, as expended, shall not exceed 325 Lots. By accepting a deed to a Lot, each Owner hereby grants to Declarant a right to expand the Project and to modify the Owner's interest in the Common Area accordingly, as hereinafter set forth in this Article.

**Section 6.2 PROCEDURE FOR EXPANSION.** Such expansion may be accomplished by the filing for record by Declarant with the Clerk and Recorder of the Declaration, a supplement or supplements to this Declaration continuing a legal description of the land area to be added to the Project, together with any supplemental plats which may be required. Any such supplement to this Declaration shall also contain a listing of the number of Lots to be contained in the expanded portion of the Project. The expansion may be accomplished in "phases" by successive supplements.

### **Section 6.3 EFFECT OF EXPANSION.**

(a) In the event of such expansion, the definitions used in this Declaration shall automatically be expanded to encompass and refer to the property described herein plus any additional real property added by any supplement to this Declaration. References to this Declaration shall mean this Declaration as so supplemented. Every Owner of a Lot in the land added shall, by virtue of such ownership, be a member of the Association and shall be entitled to the same rights and privileges and subject to the same duties and obligations as any other Association member. Any Common Area, which is located within the land added as provided herein, shall be conveyed to the Association by the Declarant at the time of conveyance of the first Lot and shall thereafter be owned by the Association subject to the provisions of this Declaration and the Association's Articles of Incorporation, Bylaws and rules and regulations.

(b) Upon recording of the supplement(s) to Declaration and supplement plat, if any, with the Clerk and Recorder of the County in which the Project is located, the additional Lots and Common Area shall be subject to the provisions of this Declaration.

(c) At such time, within seven (7) years of the date hereof, that the Declarant determines that the Project is completed, it shall record with the Clerk and Recorder of the County in which the Project is located, a Certificate of Completion. Said Certificate shall contain a statement of the total number of Lots.

(d) Until the expansion of the Project is accomplished by recording the supplement(s) to this Declaration and supplemental plat(s), if any, the Expansion Property and any Improvements constructed thereon shall not be subject to this Declaration in any way whatsoever, including but not limited to, consideration for the purpose of apportioning assessments or determining voting rights or privileges. If such expansion does not occur, nothing contained in this Declaration or otherwise shall restrict, impair, hinder, encumber or burden, in any way whatsoever, Declarant's, or its successors or assigns, sole and complete right, title and interest to the Expansion Property and any Improvements constructed thereon.

## ARTICLE VII GENERAL RESTRICTIONS

All real property within the Property shall be owned, held, conveyed, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

**Section 7.1 ARCHITECTURAL CONTROL COMMITTEE APPROVAL.** The size of dwelling units to be located upon Lots and all plans and specifications, including but limited to the size, height, location, design, exterior colors and materials, of all Improvements, drives, walks, fences, grading and landscaping must be approved in writing by the Architectural Control Committee prior to commencement of any construction other than construction to be performed by Declarant. Any plans and specifications submitted to the Architectural Control Committee shall be deemed approved unless a disapproval in writing is mailed to the applicant within sixty (60) days after the date of submission.

**Section 7.2 NEW CONSTRUCTION.** All Improvements and dwelling units shall be of new construction and no existing or prefabricated dwelling unit shall be moved onto any Lot. No Improvement or other building or structure (including but not limited to playhouse, storage sheds and windmills) may be moved onto a Lot without the prior written approval of the Architectural Control Committee. No building materials shall be stored on any Lot except temporarily during continuous construction of an Improvement or its repair, alteration or replacement. A structure shall not be occupied in the course of original construction until all required certificates of occupancy have been issued by the appropriate governmental authorities. All work of construction shall be prosecuted diligently and continuously from the time of commencement until fully completed. No trailer, mobile home, tent or shack or other temporary building, Improvement or structure shall be placed upon any part of the Property, except that temporary structures necessary for storage of tools and equipment and for office space for architects, engineers, salesmen, builders, foremen and similar persons during actual construction may be maintained with the prior approval of the Architectural Control Committee, such approval to include nature, size, location and maximum duration of such structure. This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during

the construction of Improvements by an Owner, including the Declarant, provided that when completed such Improvements shall in all ways conform to this Declaration. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence, is in compliance with applicable federal, state and local laws and ordinances and any rules and regulations adopted pursuant thereto, and conforms to usual construction practices in the area. In the event of any dispute, a temporary waiver of the applicable provision, including but not limited to any provision prohibiting temporary structures, may be granted by the Architectural Control Committee, provided that such waiver shall be only for the reasonable period of such construction. Such waiver may, but need not, be recorded or in recordable form. This Declaration shall not prevent or limit the right of Declarant or other developers to whom it sells Lots to excavate and grade, to construct and alter drainage patterns and to maintain model homes and construction, sales and leasing offices and similar facilities, and to post signs incidental to construction, sales and leasing, all anywhere on the Property; provided, however, that no such activities shall be carried on in such a way as to create a health hazard or unreasonably interfere with the use and enjoyment by any Owner or his family of their residence. All utilities except lighting standards and customary service devices for access, control or use of utilities shall be installed underground, unless approved otherwise by the Architectural Control Committee.

**Section 7.3 ASSIGNMENT BY DECLARANT.** Any other provision of this Declaration to the contrary notwithstanding, Declarant may assign in whole or in part any of its privileges, exemptions, rights and duties under this Declaration to any other person or entity and may permit the participation in whole or in part by any other Person in any of its privileges, exemptions, rights and duties hereunder.

**Section 7.4 RECONSTRUCTION OF DAMAGED OR DESTROYED IMPROVEMENTS.** Any Improvement within the Property which is damaged or destroyed, in whole or in part, by any cause whatsoever shall be repaired or reconstructed or all debris removed and the Lot restored to a slightly condition within six (6) months after the damage or destruction occurs. All reconstruction and exterior repair or reconstruction and exterior repair shall be approved by the Committee prior to commencement of repair or reconstruction. In the event the repair or reconstruction is not commenced or the Lot is not restored to a slightly condition within such six (6) month period, the Association may remove debris and bring the Lot to a slightly condition and the owner of the Lot shall be liable to the Association for all of the costs thereof.

## ARTICLE VIII USE RESTRICTIONS

**Section 8.1 SINGLE-FAMILY USE ONLY.** No Lot and no residence or Improvement on any Lot shall be used for any purpose other than for one single-family residence, or, with proper zoning, a duplex family residence. However, nothing in this Declaration shall prevent the rental of a Lot by the Owner thereof for residential purposes in accordance with this Declaration,

as the same may be amended from time to time. No commune, cooperative or similar type living arrangement shall be permitted on any Lot.

**Section 8.2 ANIMALS.** No animals shall be kept on any Lot except an aggregate of two (2) domesticated dogs or cats, and except domesticated birds and fish and other small domestic animals, and then only if kept as pets. All dogs shall be kept on a hand-held leash except when on their Owner's own Lot. No animal or other pet of any kind shall be permitted which might be dangerous or which makes an unreasonable amount of noise or odor or is a nuisance. No kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be kept on any Lot. No poultry may be kept on any Lot. No rare, exotic or unusual animals or other pets (except non-dangerous birds and fish) shall be kept on any Lot without the prior written approval of the Board of the Association. Each Owner shall be responsible for cleaning up after his pet and for all damage to the Lot of any other Owner or Association Property caused by any pet in the possession of such Owner. The Board may adopt rules, restrictions and prohibitions regarding animals and pets.

**Section 8.3 ANTENNAE.** No aerial or antenna for reception of radio or television or other electronic signal, microwave, satellite dish, or similar device shall be maintained on the roof of any building nor shall any be maintained at any location on a Lot so as to be visible from adjacent streets. The location of any such device shall be approved by the Architectural Control Committee, which may require the Owner to place screening materials around such device. No towers of any type, including those for the purpose of generating electricity from wind, shall be erected or maintained on any Lot, without the prior written approval of the Architectural Control Committee.

**Section 8.4 TRANSMITTERS.** No electronic, radio, microwave or similar transmitter of any kind, other than garage door openers, shall be located or operated in or on any Improvement or on any Lot with the prior written approval of the Architectural Control Committee.

**Section 8.5 GARAGES.** The doors of any garage located on a Lot shall be kept closed at all times except when an automobile is entering into or exiting from such garage or when any person is performing lawn maintenance work.

**Section 8.6 GARAGE SALES.** No garage, patio, porch or lawn sale shall be held on any Lot, except that the Owner of any Lot may conduct such a sale if the items sold are only his own furniture and furnishings, not acquired for purpose of resale; any such sale shall be held at such time and in such manner as not to disturb any other resident of the area and such sale shall be held in full compliance with all applicable governmental ordinances, statutes, resolutions, rules and regulations.

**Section 8.7 RESTRICTIONS ON PARKING.** Each Owner for himself, members of his family, his agents, guests, employees, invitees, licensees and lessees shall make every effort to park private vehicles in the garage or driveway located on said Owner's Lot and not on the streets. Any vehicle parked on a Lot shall be parked only within the garage or driveway constructed by the Declarant. The Board of the Association may from time to time adopt and

**Fountain Valley Ranch  
 Home Owners Association  
 Filing 7**

**Covenant Article VIII, section 8.7**

Currently reads:

...except that a recreational vehicle may be so parked if fencing is erected to block its visibility from any adjoining street or lot.

Proposed change to read:

...except that a recreational vehicle maybe so parked behind a fence in a side or rear yard.

NAME	ADDRESS	DATE
① RICHARD HAYL <i>Richard Hayl</i>	707 FOXWOOD DR	11 FEB 01
② BEN MARTINEZ <i>Ben Martinez</i>	715 FOXWOOD DR.	11 FEB 01
③ C. RAY E. HAYFIELD <i>C. Ray E. Hayfield</i>	724 Sycamore	2/11/01
④ LISA M. STARK <i>Lisa M. Stark</i>	723 FOXWOOD	2/11/01
⑤ ARIE COUDONS <i>Arie Coudons</i>	716 FOXWOOD DR	2-11-01
⑥ BRIGIER VAN DAM <i>Brigier Van Dam</i>	705 STAGATE DR.	11 Feb 01
⑦ LISA WOLFE <i>Lisa Wolfe</i>	723 FOXWOOD	2/11/01

*Stargate Dr 2/11/01*

The integrity of the ( ) is maintained by the following on this page

Sandra L. Hall

3/10/02

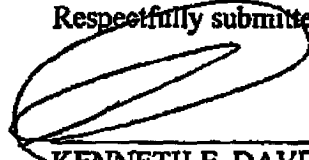
Page 1 of 31

**AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS & RESTRICTIONS  
OF FOUNTAIN VALLEY RANCH FILING #7**

Following hereinafter is an amendment to the recorded Declaration of Covenants, Conditions and Restrictions of Fountain Valley Ranch Filing #7, which were originally recorded at Reception No. 098065225 on May 15, 1998.


The following amendment is intended to amend Article VIII (use restrictions), Section 8.7 of the original Covenants. The remaining Covenants shall remain in full force and effect except for the amended paragraph as written.

Respectfully submitted,



**KENNETH E. DAVIDSON**

Attorney for Fountain Valley Ranch Filing  
#7 Homeowner's Association

J. Patrick Kelly	El Paso Cty, CO	202043582
03/19/2002	12:00	
Doc \$0.00	Page	
Rec \$185.00	1 of 37	

enforce restrictions or prohibitions on parking on the Lots and/or in public ways within the Property. No stripped down, partially wrecked, unlicensed or junk motor vehicles, mobile home, recreational vehicles, trucks or trailers, or sizable parts thereof, may be parked on any public or private streets within the Property or on any part of a Lot, except that a recreational vehicle may be so parked if ~~fencing is erected to block its visibility from any adjoining street or Lot.~~  
*so that it's behind the fence.*

**Section 8.8 RESTRICTION ON ACCESS.** Vehicular access to and from any Lot shall be limited to curb cuts and driveways installed by Declarant or approved by the Architectural Control Committee. The Owners of all Lots are hereby specifically denied vehicular and pedestrian access to and from their Lots from or to any other Lot or any other portion of the Property or public ways, unless specifically permitted otherwise by the Architectural Control Committee.

**Section 8.9 ASSOCIATION ENFORCEMENT AUTHORITY.** The Association shall have the authority to enforce the restrictions on use of Lots within the Property as set forth herein.

**Section 8.10 EASEMENTS.** Easements for the installation, repair, maintenance and replacement of utilities, television cables and drainage facilities over and across portions of the Lots are reserved as shown on the Plat. Within these easements, no Improvements, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation, repair, maintenance and replacement of any utilities or cables or which may change the direction of flow or obstruct or retard the flow of water through the drainage channels located in the easements or through drainage channels stemming from said easements. Notwithstanding the foregoing, all easement areas located on each Lot and all Improvements constructed thereon shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible.

**Section 8.11 NUISANCE.** The Owner of any Lot shall not suffer or permit any noxious or offensive activity to be conducted, carried on or practiced thereon or within any dwelling or accessory building constructed thereon or otherwise use or employ such Lot and Improvements for any purpose that will constitute any annoyance to the neighborhood or a nuisance as provided by law, or that will detract from the residential value, reasonable enjoyment and quality of the Property or that will violate any law or statute.

**Section 8.12 GARBAGE AND REFUSE DISPOSAL.** No Lot shall be used or maintained as dumping ground for rubbish, trash, garbage or other waste. All such items shall be kept in approved sanitary containers located on the Lot so long as they in no way interfere with the overall beauty and reasonable enjoyment of the other Lots located within the Property. No exterior incinerator shall be permitted on any Lots. All equipment for the lawful storage or disposal of garbage and refuse shall be kept in a clean and sanitary condition. No weeds shall be permitted to grow upon any Lot at a height in excess of six (6) inches or as provided by applicable law, whichever is lesser. Further, the Owners of each Lot located within the Property shall use reasonable efforts in order to maintain their Lots in conformance with this Declaration, as well as in conformance with reasonable and accepted practices in order to maintain the overall beauty of the Property. Notwithstanding the foregoing to the contrary, during the construction of

Dwellings on Lots, Declarant and other contractors engaged in construction upon the Property may store building materials upon the Property.

**Section 8.13 COMMERCIAL USAGE.** No business building, machine shop or other industrial or commercial structure or building devoted to commercial or public enterprises shall be erected or used on any Lot, and no business which attracts any customers or clients to a Lot shall be conducted or carried on or be practiced upon any Lot or within any dwelling or accessory building constructed thereon, except that the Declarant may exempt any buildings used by it, its successors, assigns or designees for use in developing and marketing the Property and Lots, and the Declarant, its successors, assigns and designees may exempt from this restriction certain designated Lots or sites for use as day care or child care facilities.

**Section 8.14 PERMITTED ROOFING.** Any and all roofing materials utilized for Improvements within the Property shall be restricted to asphalt shingles, or such other materials as may be approved by the Committee, and except that solar energy collectors or panels, if used, may be installed on the roof of any building or structure or in any exposed location, if harmoniously done and if approved by the Architectural Control Committee in its sole discretion.

**Section 8.15 REPAIRS OF MOTOR VEHICLES.** No motor vehicles, campers, trailers, boats or recreational vehicles shall be rebuilt or repaired upon any Lot or public street. Automobiles and pickup trucks may be repaired only in the garage.

**Section 8.16 HEIGHT RESTRICTIONS.** No Improvements, building or appurtenance shall exceed either the height permitted by applicable ordinances, rules or regulations or twenty-five (25) feet in height, as measured in the Committee's sole discretion from the front elevation thereof, commencing from the top of the foundation, whichever is less, unless approved otherwise by the Committee.

**Section 8.17 FENCES.** No fences shall be installed on any Lot by an Owner other than the Declarant without the approval of the Committee. Any fencing which is visible from the street must be constructed of wooden materials. Any fencing installed by an Owner on any corner Lot must be set back fifteen (15) feet from any sidewalk.

## ARTICLE IX FURTHER SUBDIVISION, EASEMENTS

**Section 9.1 FURTHER SUBDIVISION.** Except as hereinafter provided, no Lot shall be divided or subdivided, nor may any easement, right-of-way or other interest therein less than the whole, other than a leasehold estate or interest in or to the Lot or an easement across the Lot in question to serve only said Lot or the Improvements located thereon, be conveyed by the Owner of said Lot, nor shall any two (2) or more lots be combined into a single parcel. Notwithstanding the foregoing, however, while the Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot, convey any easements, right-of-way or other interest less than the whole and combine any two (2) or more Lots into a single parcel. Nothing herein shall prohibit transfer or sale of any Lot to more than one Person to be held by them as tenants in common or joint



tenants or prohibit the granting of any Mortgage. Nothing herein shall prohibit easements created by recorded subdivision plats for utilities, drainage or vehicular or pedestrian ingress and egress.

**Section 9.2 PAYMENT OF THE COST OF UTILITIES AND SERVICES.** Each Lot is subject to all easements for gas, electric, telephone, cable television, water, sewer and other lines as are necessary to provide service by any utility or other company or public, governmental or quasi-governmental entity for such purposes. Each Owner shall be billed separately and shall pay as billed for all electric, gas, telephone, cable television and other utilities and services supplied to said Owner's Lot and the Improvements located thereon.

**Section 9.3 EMERGENCY EASEMENT.** A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter servicing the Property, to enter upon all streets, roads and driveways located in the Property, and upon the Property and Common Area, in the performance of their duties.

**Section 9.4 EASEMENT DEEMED CREATED.** All conveyances of Lots hereafter made shall be construed to grant and reserve such reciprocal easements, uses and rights as are provided in this Declaration, even though no specific reference to such easements, uses or rights appears in any such conveyance.

## ARTICLE X MISCELLANEOUS

**Section 10.1 INTERPRETATION.** The provisions of this Declaration and the Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuation the fundamental concepts of the Property as set forth in this Declaration.

**Section 10.2 VIOLATION AND NUISANCE.** Every act or omission whereby any provision of the Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated by any Owner, by the Declarant, or the Board of the Association, whether or not the relief sought is for negative or affirmative action. However, only Declarant or the Board of the Association and the duly authorized agents of any of them may enforce by self-help any of the provisions of this Declaration, and then only if such self-help is preceded by reasonable notice to the Owner in question.

**Section 10.3 VIOLATION OF LAW.** Any violation of any federal, state or local law, ordinance or regulation pertaining to the ownership, occupancy or use of any Lot within the Property is hereby declared to be a violation of this Declaration and subject to all enforcement rights and remedies set forth herein.

## ARTICLE XI GENERAL PROVISIONS

**Section 11.1 ACCEPTANCE OF PROVISIONS OF ALL DOCUMENTS.** The conveyance or encumbrance of a Lot or the Improvements thereon shall be deemed to include the acceptance of all provisions of this Declaration, the Articles of Incorporation of the Association and the Association's Bylaws and rules and regulations, all of which shall be binding upon each Owner, his heirs, personal representatives, family, guests, tenants, successors, assigns, and everyone having an interest in the Lot without the necessity of inclusion of an express provision in the instrument of conveyance or encumbrance.

**Section 11.2 ENFORCEMENT.** The Association, the Declarant (only so long as the Declarant owns any Lot or any interest in the Expansion Property) or any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, the Declarant or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In addition to all other remedies, the Board of Directors shall have the right, after notice and an opportunity of hearing, to impose upon any Owner a fine not to exceed Fifty Dollars (\$50.00) per occurrence for any breach by that Owner of the provisions of this Declaration, the Bylaws and/or the Association's rules and regulations. All rights and remedies provided in this Declaration 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. Any person or party enforcing this Declaration shall be entitled to recover costs and attorneys fees from the violator thereof.

**Section 11.3 NON-WAIVER.** Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of any such provision. The rights and remedies of the Association are distinct and cumulative to any other right or remedy hereunder or afforded by law and may be exercised concurrently, independently or successively without effect or impairment upon one another. Owners shall not assert any claim or defense of waiver, estoppel or unreasonableness in any court action seeking to enforce this Declaration.

**Section 11.4 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 restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

**Section 11.5 SEVERABILITY.** Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

**Section 11.6 CONFLICTS OF PROVISIONS.** In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control.

**Section 11.7 DURATION AND AMENDMENT.** Each and every provision of this

Declaration shall be binding upon each and every Owner, his heirs, successors, assigns and personal representatives and shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be amended, modified or terminated by an instrument signed by not less than seventy-five percent (75%) of the Members of all classes duly recorded in the office of the Clerk and Recorder of the County in which the Property is located; provided, however, (a) that any section in this Declaration which requires a particular percentage of Owners and/or Mortgagees may be amended only by written consent of that percentage of those parties, (b) that this section may be amended by an instrument signed by ninety percent (90%) of the Members, and one hundred percent (100%) of all First Mortgagees who have given the Association notice of their lien, and (c) that notwithstanding any contrary provisions, until the Declarant, its successors or assigns no longer owns any of the Lots or December 31, 2005, whichever occurs earlier, the Declarant hereby reserves the right to make such amendments, without vote of the Owners, as may be required by primary or secondary lending institutions or agencies, or insurers or as may be required to induce such organizations to make, purchase, sell, insure or guarantee First Mortgagees covering any portion of the Property, or as may be required to correct any technical or typographical or clerical error, and each Owner and each Mortgagee by accepting a deed, mortgage 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.

**Section 11.8 REGISTRATION BY OWNER OF MAILING ADDRESS.** Each Owner shall register his mailing address with the Association, and except for statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to the registered agent of the Association at his address filed with the Secretary of State of Colorado, together with a copy addressed to the President of the Association at his registered address.

**Section 11.9 NUMBER AND GENDER.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

**Section 11.10 CAPTIONS.** The captions to the Articles and Sections are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of the Declaration nor the intent or any provisions hereof.

**Section 11.11 BOARD TO RESOLVE AMBIGUITIES.** If any doubt or question shall arise concerning the true intent or meaning of any of this Declaration, the Board of Directors of the Association shall, by resolution, determine the proper construction of the provision in question, and such resolution shall fix and establish the meaning, effect and application of the provision and its decision be final, conclusive and binding on all persons and parties.

Section 11.12 GOVERNING LAW. This Declaration of Covenants, Conditions and Restrictions shall be governed by, and construed in accordance with the statutes and laws of the State of Colorado.

IN WITNESS WHEREOF, the Declarant has hereunto set its hand and seal as of the day and year first written above.



NEW GENERATION HOMES, INC.  
a Colorado corporation

By: [Signature]  
President

[Signature]  
Secretary

STATE OF COLORADO )  
                                  ) ss.  
COUNTY OF EL PASO )

The foregoing was acknowledged before me this 11th day of May, 1998, by J. Mark Watson and Frank C. Watson as President and Secretary respectively of NEW GENERATION HOMES, INC., a Colorado corporation.

Witness my hand and official seal

Marion R. Swape  
Notary Public

My commission expires: 3-26-02



ARTICLES OF INCORPORATION

OF

FOUNTAIN VALLEY RANCH FILING NO. 7 HOMEOWNERS ASSOCIATION, INC.

19981111226 M  
\$ 55.00  
SECRETARY OF STATE

The undersigned person acting as Incorporator under the Colorado Non-Profit Act, hereby signs and acknowledges the following Articles of Incorporation for the following Corporation:

ARTICLE I

Name

The name of this Corporation shall be FOUNTAIN VALLEY RANCH FILING NO. 7 HOMEOWNERS ASSOCIATION, INC.

ARTICLE II

Duration

The term of existence of this Corporation is perpetual.

ARTICLE III

Purposes

19981111226 M  
\$ 55.00  
SECRETARY OF STATE  
Filed at 9:58 AM on 11/18/98

The business, objects and purposes for which the Corporation is formed are as follows:

1. To be an constitute the Association to which reference is made in the Declaration of Covenants, Conditions and Restrictions for Fountain Valley Ranch Filing No. 7, and any amendment or supplement thereto (hereinafter called the "Declaration" and the definitions and provisions thereof are incorporated herein by this reference as if set forth at length) which has been or will be recorded in the records of the Clerk and Recorder of the County of El Paso, Colorado, and to perform all obligations and duties of the Association and to exercise all rights and powers of the Association. The Declaration consists of beneficial property restrictions which are mutually enforceable by all Owners within the subdivision. Any terms used in these Articles of Incorporation shall have the same meaning as set forth in the Declaration.

2. To provide an entity for the furtherance of the interests of all of the Owners, including the Declarant named in the Declaration, of Lots in with the objectives of establishing and maintaining Fountain Valley Ranch Filing No. 7 (the "Subdivision"), as a project of quality and value; enhancing and protecting its value, desirability and attractiveness; promoting the health, safety and welfare of the residents of said subdivision and providing for the maintenance, preservation and architectural control of the Lots within said subdivision.



(i) To adopt, alter and amend or repeal such Bylaws as may be necessary or desirable for the proper management of the affairs of the Association.

## ARTICLE V

### INDEMNITY

The Corporation shall indemnify and defend its directors, officers and committee volunteers (whether serving now or in the past or future) from any claims, lawsuits, expenses, or liabilities arising from such persons' acts or omissions in performing their rights or duties on behalf of the Association. Such indemnification and defense shall include the fullest protection allowed by the law and statute, including without limitation, the most protective provisions, which shall apply to all such persons, of C.R.S. 7-22-101.5, 7-108-402, 7-109-101 et. seq., 13-21-115, 13-21-116, and 38-33.3-311(1), provided however, nothing in this indemnification and defense shall affect or impair any insurance coverage applicable to such persons, including without limitation the insurance company's duty to defend and to pay any claim.

## ARTICLE VI

### Membership

1. This Corporation shall be a membership corporation without certificates or shares of stock. As more fully provided in the Declaration, every person or entity, who is a record owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Association, including contract sellers, shall be a member of the Corporation. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

2. A membership in this Corporation and the share of a Member in the assets of this Corporation shall not be assigned, encumbered or transferred in any manner except as appurtenant to the transfer of title to the Lot to which the membership pertains; provided, however, that the rights of membership may be assigned to the holder of a mortgage, deed of trust or other security instrument on a Lot as further security for a loan secured by a lien on such Lot.

3. A transfer of membership shall occur automatically upon the transfer of title to the Lot to which the membership pertains; provided however, that the Bylaws of this Corporation may contain reasonable provisions and requirements with respect to recording such transfers on the books and records of this Corporation.

4. Members shall have the right to purchase other Lots and to exercise the membership rights appurtenant thereto as provided in the Declaration.

5. This Corporation may suspend the voting rights of a Member for failure to comply with rules and regulations or the Bylaws of the Association or with any other obligations of the

**AMENDMENT TO BYLAWS**

**FOUNTAIN VALLEY RANCH FILING NO. 7**

**NOTWITHSTANDING ANY PROVISION OF THESE BYLAWS, THE BYLAWS ARE HEREBY AMENDED TO PROVIDE THAT THE NUMBER OF DIRECTORS SHALL BE FIVE; AT THE 2000 ANNUAL MEETING, THE MEMBERS SHALL ELECT THREE DIRECTORS TO TWO YEAR TERMS AND TWO DIRECTORS TO ONE YEAR TERMS. THEREAFTER, DIRECTORS SHALL BE ELECTED TO TWO YEAR TERMS OR APPOINTED TO FILL VACANCIES OF THE REMAINING TERMS.**



Owners of a Lot under the Declaration. All Members who are in default in any obligations to the Association. Cumulative voting is prohibited.

6. The Bylaws may contain additional provisions setting forth the rights, privileges, duties and responsibilities of the Members; provided however, the provisions of these Articles of Incorporation and the Bylaws shall be subject to the covenants, terms and provisions of the Declaration which shall control in the event of any conflict, and the provisions of these Articles of Incorporation shall control over any conflicting provisions in the Bylaws.

## ARTICLE VII

### Voting Rights

The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and each membership shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members, and 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 such Lot.

Class B. The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot it owns. The Class B membership shall cease and be converted to Class A membership on December 31, 2006, unless sooner terminated when the Declarant consents thereto in writing or when the Declarant, its successors and assigns no longer owns any Lot in the Project.

## ARTICLE VIII

### Board of Directors

1. The business and affairs of the Corporation shall be conducted, managed and controlled by a Board of Directors. The initial Board of Directors shall consist of ~~three (3)~~ <sup>changed to 5</sup> Directors, and thereafter the specific number shall be set forth as provided in the Bylaws of the Corporation, but shall not exceed nine (9) Directors. The Declarant may, until the termination of Declarant's Class B membership as provided in Article VI above, appoint or remove any member of the Board of Directors of the Association. Following the relinquishment of control by Declarant, the Owners shall elect the Board of Directors as provided in the Declaration, the Articles of Incorporation and the Bylaws.

2. The names and addresses of the members of the initial Board of Directors who shall serve until the first annual meeting as provided in the Bylaws and until their successors are duly elected and qualified are as follows:

Roger A. Dekloe

3 Widefield Boulevard  
Colorado Springs, CO 80911

Frank C. Watson                      3 Widefield Boulevard  
Colorado Springs, CO 80911

J. Mark Watson                        3 Widefield Boulevard  
Colorado Springs, CO 80911

3. Directors shall be elected, replaced and removed and vacancies of the Board of Directors shall be filled in the manner and for the terms as provided in the Bylaws.

4. Directors shall have no liability to the Corporation or its Members for monetary damages for breach of any duty as a Director except as otherwise provided by law or statute. Except as paid by insurance, the Corporation shall indemnify its Directors and other persons pursuant to C.R.S. 7-22-101.5 and its Bylaws.

## ARTICLE IX

### Officers

The Board of Directors may appoint a President, one or more Vice-Presidents, a Secretary, a Treasurer and such other officers as the Board believes will be in the best interest of the Corporation. The Officers shall have such duties as may be prescribed in the Bylaws of the Corporation and shall serve at the pleasure of the Board of Directors.

## ARTICLE X

### Dissolution, Merger or Consolidation

The Corporation may be dissolved, merged or consolidated as provided by the Colorado Non-Profit Corporation Act but subject to the Declaration. Upon dissolution of the Corporation other than incident to a merger or consolidation, the assets of the Corporation shall be distributed and transferred as the Members may direct, subject to the requirements, limitations and other provisions of the Declaration. In such event, the assets may be granted, conveyed and assigned to any public agency, non-profit corporation, association, trust or other organization to be devoted to purposes similar to those for which this Corporation was created.

## ARTICLE XI

### Initial Registered Office and Agent

The initial registered office of the Corporation shall be 3 Widefield Blvd., Colorado Springs, El Paso County, Colorado 80911. The initial registered agent shall be Roger Dekloe whose address is the same as the initial registered office.

## ARTICLE XII

### FHA/VA Approval

After the Declarant has obtained approval for guaranteed or insured loans by the Federal Housing Administration or the Department of Veterans Affairs and continuing so long as there is Class B membership, 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 Common Area, dissolution of the Association, and amendment of these Articles.

## ARTICLE XIII

### Amendment

1. Except as provided in paragraph 2 of this Article XI, amendments to these Articles of Incorporation shall require the consent of at least sixty-seven percent (67%) of the votes which Members present in person or by proxy at a meeting, duly called and attended as provided by the Bylaws, are entitled to cast, provided, however, that no amendment to these Articles of Incorporation shall be contrary to or inconsistent with the provisions of the Declaration.

2. Notwithstanding any contrary provisions of these Articles of Incorporation or any other document, the Declarant under the Declaration hereby reserves the right, until Declarant no longer owns any of the Lots or December 31, 2003, whichever occurs earlier, but without approval or vote of the Members, to amend these Articles of Incorporation and/or the Bylaws, as may be necessary to correct typographical errors or make clarifications 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 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 name and recording any such amendments to these Articles 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.

## ARTICLE XIV

### Nonprofit Purposes

The Corporation is formed under the Colorado Non-Profit Corporation Act and not for pecuniary profit or financial gain. The Corporation is organized and operated to provide for the acquisition, construction, management, maintenance and care of property of the Subdivision as provided in the Declaration.

