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OF
FOUNTAIN VALLEY RANCH FILING NO. 7**

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

THIS DECLARATION, made and entered as of this 11th 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