

**ARDIS W. SCHMITT
EL PASO COUNTY CLERK & RECORDER**

FIRST AMENDMENT TO DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FOUNTAIN VALLEY RANCH HOMEOWNERS ASSOCIATION

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF FOUNTAIN VALLEY RANCH HOMEOWNERS ASSOCIATION is made this 1st day of September, 1994, by NEW GENERATION HOMES, INC., a Colorado corporation referred to herein as "Grantor".

WHEREAS, Grantor is the owner of the real property (the "Property") described in Exhibit A attached hereto and incorporated herein by reference, which Property is located in Paso County, Colorado;

WHEREAS, a Declaration (the "Declaration") of Covenants, Conditions and Restrictions of Fountain Valley Ranch Homeowners Association by Grantor dated September 1, 1994, was recorded on December 6, 1994 in Book _____ at Pages _____ of the real property records of El Paso County, Colorado;

WHEREAS, Members, as defined in Section 7 of Article I of the Declaration, are members of Fountain Valley Ranch Homeowners Association, Inc., which, as defined in Section I of Article I of Declaration, is only Grantor inasmuch as no Lots of the Property have yet been sold;

WHEREAS, Grantor wishes to amend the declaration by adopting the following First Amendment to the Declaration in order to set out restrictive covenants applicable to the Property, whether submitted to this First Amendment pursuant to the recording of its First Amendment or pursuant to a Notice of Addition of Land recorded subsequent to the recording of this First Amendment.

DECLARATION

NOW, THEREFORE, Grantor hereby declares that the Property is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the following uniform covenants, conditions, restrictions and equitable servitudes in furtherance of, and the same shall constitute, a general plan for the use and occupancy of the Property, and to enhance the value, desirability and attractiveness of the Property. This First Amendment shall run with the Property and all parts thereof; shall be binding upon all persons having or acquiring any interest in the Property or any part thereof; shall inure to the benefit of and be binding upon every part of the Property and every interest therein; and shall inure to the benefit of, be binding upon, and be enforceable by Grantor and its successors in interest, each owner and his successors in interest, and the Association and its successors in interest.

ARTICLE I
DEFINITIONS

1.01 Additional Definitions. Unless the context otherwise specifies or requires, the following words and phrases when used in this First Amendment shall have the following meanings:

ARCHITECTURAL CONTROL COMMITTEE (hereinafter "Committee") shall mean the committee described in Section 3.01 of this First Amendment.

LOT shall mean any parcel of land within the Property which is designated on any recorded Subdivision plat, whether or not improved, as a separate parcel of land.

ASSOCIATION shall mean Fountain Valley Ranch Homeowners Association, Inc., a Colorado nonprofit corporation.

ARTICLE II
SUBJECTION OF LAND TO THIS DECLARATION

2.01 Land Immediately Subject to Declaration. The Property, as described in Exhibit A, is hereby subjected to the terms of this First Amendment as set forth in this First Amendment.

2.02 Subjection of Additional Land to Declaration. Grantor hereby reserves the right, to be exercised before November 15, 1993, to submit, in phases, from time to time, all or, some of the additional land described on Exhibit A attached hereto and by this reference incorporated herein, and the improvements constructed or to be constructed thereon, to this First Amendment, following acquisition, of such additional land by Grantor. Until such acquisition, this First Amendment shall in no way be deemed to constitute an encumbrance on such additional land. Upon the recording of a Notice of Addition of Land containing the provisions set forth below, the terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations contained in this First Amendment shall apply to the added land in the same manner as to the land originally subject to this First Amendment; and thereafter, such added land, together with the improvements constructed or to be constructed thereon, shall for all purposes be treated as an integral part of the Property and the rights, privileges, duties and liabilities of all Persons subject to this First Amendment shall be the same with respect to all added land as with respect to the land originally covered by this First Amendment. The Notice of Addition of Land referred to hereinabove shall contain the following provisions:

- A. A reference to this First Amendment which reference shall state the date of recordation hereof and the Book and Page numbers wherein this First Amendment is recorded; A statement that the provisions of First Amendment shall apply to the added land as set forth herein; An adequate legal description of the added land; and

- B. Written consent of Grantor, and any other Person who is an Owner of some or all of the added land.

No additional land may be added to the Property without the prior written consent of the Veterans Administration or the Federal Housing Administration, as Grantor may determine. No other consent of Owners or Mortgagees shall be required. Improvements installed within areas to be added to this First Amendment shall be consistent with the initial Improvements in terms of quality of construction. Any lien arising from ownership or construction upon land added to this First Amendment shall appertain only to such land and shall not affect the rights of existing Owners or the priority of Mortgages on Lots within the theretofore existing portion of the Property.

2.03 Declaration. Grantor, for itself, its successors and assigns, hereby declare that the Property shall be part of the property subject to this First Amendment and that the Property, and each part thereof, shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to this First Amendment, for the duration thereof.

2.04 Equitable Servitudes. This First Amendment is hereby imposed as equitable servitudes upon each Lot within the Property, as a servient tenement, for the benefit of each and every other Lot and Association Property as the dominant tenements.

2.05 Architectural Control Committee. Grantor shall designate the members of the Architectural Control Committee until it assigns that power by written instrument to the Board of the Association.

ARTICLE III 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:

3.01 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 Grantor. 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 thirty (30) days after the date of submission.

3.02 New Construction. All dwelling units shall be of new construction and no existing or prefabricated dwelling unit shall be moved onto any Lot. No 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 First Amendment 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 Grantor, provided that when completed such Improvements shall in all ways conform to this First Amendment and the Declaration. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this First Amendment 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 First Amendment shall not prevent or limit the right of Grantor 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.

3.03 Assignment by Grantor. Any other provision of this First Amendment to the contrary notwithstanding, Grantor may assign in whole or in part any of its privileges, exemptions, rights and duties under this First Amendment 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.

3.04 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 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 IV USE RESTRICTIONS

4.01 Single-Family Use Only. No lot and no residence 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 First Amendment shall prevent the rental of a Lot by the Owner thereof for residential purposes in accordance with Section 4.08 below, subject to all the provisions of this First Amendment, as the same may be amended from time to time. No commune, cooperative or similar type living arrangement shall be permitted on any Lot.

4.02 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.

4.03 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.

4.04 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.

4.05 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.

4.06 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; if such sale is held at such time and in such manner as not to disturb any other resident of the area; and if such sale is held in full compliance with all applicable governmental ordinances, statutes, resolutions, rules and regulations.

4.07 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. Arty vehicle parked on a Lot shall be parked only within the garage or driveway constructed by the Grantor. The Board of -the Association may from time to time adopt and enforce restrictions or prohibitions on parking in public ways within the Property. No stripped down, partially wrecked, unlicensed or junk motor vehicles, mobile homes, recreational vehicles, trucks or trailers, or sizeable parts thereof, may be parked on any public or private streets within the Property or on any part of a Lot, except that recreational vehicles may be so parked if fencing is erected to block its visibility from any adjoining street.

4.08 Restrictions on Access. Vehicular access to and from any Lot shall be limited to Curb Cuts and driveways installed by Grantor 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.

4.09 Association Enforcement Authority. The Association shall have the authority to enforce the restrictions on use of Lots within the Property set forth in First Amendment.

4.10 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.

4.11 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.

4.12 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 Lot. 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 First

Amendment, 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, Grantor- and other contractors engaged in construction upon the Property may store building materials upon the Property.

4.13 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 buildings used by Grantor, its successors, assigns or designees for use in developing and marketing the Property and Lots.

4.14 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.

4.15 Repairs of Motor Vehicles. No motor vehicles, campers, trailers, boats or recreational vehicles shall be rebuilt or repaired upon any Lot. Automobiles and pickup trucks may be repaired in the garage.

4.16 Height Restrictions. No improvement, building or appurtenance shall exceed the heights permitted by applicable ordinances, rules or regulations or twenty-five (25) feet in height, measured from the front elevation thereof, whichever is less, unless approved otherwise by the Committee.

4.17 Fences. No fences shall be installed on any Lot by an Owner other than the Grantor 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 V FURTHER SUBDIVISION, EASEMENTS

5.01 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 Grantor is the Owner -thereof, Grantor may further divide and subdivide any Lot, convey any easements, right-of-way or other interest ~~BOOK~~ ~~6573~~ ~~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.~~ ~~PAGE~~ ~~780~~

5.02 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 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.

5.03 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, in the performance of their duties.

5.04 Easements 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 First Amendment, even though no specific reference to such easements, uses or rights appears in any such conveyance.

ARTICLE VI
MISCELLANEOUS

6.01 Term. This First Amendment, including all of the covenants, conditions and restrictions hereof, shall run until November 15, 2013, unless amended as herein provided. After November 15, 2013, this First Amendment, including all such covenants, conditions, and restrictions, shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by at least three-fourths (3/4) of the Owners of the Lots in the Property and recorded in the El Paso County real property records.

6.02 Amendment. This First Amendment may be amended as hereinafter provided. Prior to November 15, 2013, amendment shall require the written approval of Grantor, and at least two-thirds (2/3) of the total votes of the Lot Owners (one vote per Lot) other than Grantor. The Amendment shall be effected by recordation of an instrument setting forth the amendment and including a statement of Grantor's consent, executed and acknowledged by the Grantor certifying that such amendment has been approved in writing by at least two-thirds (2/3) of the Lot Owners. After November 15, 2013, amendment shall require the approval of at least two-thirds (2/3) of the total votes of the Lot Owners (one vote per Lot) and shall be effected by recordation of an instrument setting forth the amendment and including a statement executed and acknowledged by the Association certifying that such amendment has been approved in writing by at least two-thirds (2/3) of the total votes entitled to be cast. Evidence sufficient to establish the truth of the certification on any recorded amendatory instrument shall be retained by the Association in its permanent files. Notwithstanding any other provisions of this First Amendment, amendments of this First amendment to conform to the requirements of the Veterans Administration, Federal Housing Administration, Federal National Mortgage Corporation, Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation or any other governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities and/or to induce any of such agencies or entities to make, purchase, sell, insure or guarantee deeds of trust or mortgages covering Lots or other parts of the Property may be made by the Grantor without the consent of any of the Owners.

6.03 Notices. Any notice permitted or required to be given by this First-Amendment shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or

legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purposes of service of notices, or to be residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing given by such person to the Association.

6.04 Interpretation. The provisions of this First Amendment shall be liberally constructed to effectuate their purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property as set forth in this First Amendment. This First Amendment shall be construed and governed under the laws of the State of Colorado.

6.05 Enforcement and Nonwaiver.

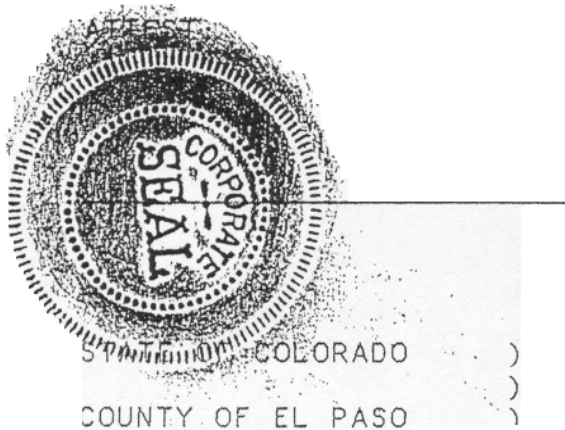
- C. Right of Enforcement. Except as otherwise provided herein, and Owner, at his own expense, Grantor, and the Board of the Association shall have the right to enforce all of the provisions of this First Amendment against any property within the Property and the Owners thereof. Such rights of enforcement shall include both damages for and injunctive relief against the breach of any such provision. The right of any Owner to so enforce such provisions shall be equally applicable without regard to whether the land (or other interest) of the Owner seeking such enforcement or the land (or other interest) whereon or with respect to which a violation of such provisions is alleged is initially set forth in Exhibit A or is hereafter subjected to this First Amendment pursuant to Section 2.02 above.
- D. B. Violation a Nuisance. Every act or omission whereby any provision of this First Amendment is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated by any owner at his own expense, by the Grantor, or the Board of the Association, whether or not the relief sought is for negative or affirmative action. However, only Grantor 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 First Amendment, and then only if such self-help is preceded by reasonable notice to the Owner in question.
- E. Violation of Law. Any violation of any federal, state or local law, ordinance or regulation pertaining to the ownership, occupancy or use of any property within the Property is hereby declared to be a violation of this First Amendment and subject to all of the enforcement procedures set forth herein.
- F. Remedies Cumulative. Each remedy provided by this First Amendment is cumulative and not exclusive.

G. Nonwaiver. The failure to enforce any provision of this First Amendment at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this First Amendment.

6.06 Construction.

- A. Restrictions Severable. Notwithstanding the provisions of the foregoing Section 6.05, each of the provisions of this First Amendment shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.
- B. Singular Include Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.
- C. Captions. All captions and titles used in this First Amendment are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, Sections or Articles hereof.

IN WITNESS WHEREOF, Grantor has executed this First Amendment the day and year first above written.



NEW GENERATION HOMES, INC
a Colorado corporation

By: *[Signature]*
 Title: President

KNOWLEDGEMENT

The foregoing instrument was acknowledged before me on the 1st day of December, 1994, by J. Mark Watson, as President.

Witness my hand and official seal. My commission expires:

